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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2022-000973
Case No. 2021-CP-10-0555

Teresa Melhado and Dane Neller.....Appellants,

v.

City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Wallace, Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016 Respondents.

**RETURN OF RESPONDENTS GEORGE WALLACE, ERIKA WALLACE, AND ERIKA
R. WALLACE, TRUSTEE OF THE ERIKA R. HAYES REVOCABLE TRUST U/A/D 8-
4-2016'S TO APPELLANTS' PETITION TO CONFIRM AUTOMATIC STAY, OR IN
THE ALTERNATIVE, FOR A WRIT OF SUPERSEDEAS**

Respondents George Wallace, Erika Wallace, and Erika R. Wallace, as the Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016 (hereinafter the "Wallaces"), by and through their undersigned counsel, respectfully submit this Return to Appellants "Petition to Confirm Automatic Stay, or in the Alternative, for Writ of Supersedeas" filed on July 14, 2022 (hereinafter referred to as the "Petition for a Writ of Supersedeas"). Along with their Return, the Wallaces have served and filed the Affidavit of George "Skip" Wallace that sets forth the facts supporting the Wallaces' opposition to the Petition for a Writ of Supersedeas.

This is an appeal from lower court orders affirming the unanimous decisions of the Board of Zoning Appeals – Zoning of the City of Charleston (the "BZA") approving the Wallaces'

application for a slight variance from the maximum permissible lot coverage and a special exception to allow a small encroachment into the specified setback for the side lot line. The Wallaces sought the variance and special exception to accommodate renovations to their historic home, more than 200 years old, at 62 Church Street in downtown Charleston. The main renovation consists of the construction of a small addition to the rear of their house. They are now in the middle of constructing that addition and doing other facets of the renovation after receiving all the necessary approvals and permits from the City to proceed.

Appellant Teresa Melhado bought the house next door at 60 Church Street approximately a year ago as a part-time residence. Upon learning of the Wallaces' application to the BZA and the proposed renovation, she immediately hired an attorney to oppose it. Appellants complain that the small addition may shade their pool house, partially obstruct their view from windows in their second-story master suite balcony, and might generate noise from the air conditioning units and generator that are being replaced and relocated. Their attorney appeared before the BZA and expressed their opposition to the request for variance and special exception.

No other persons opposed the application. Other neighbors sent in letters of support. The two historic preservation organizations supported the Wallaces' request. The City Zoning Administrator recommended approval.

After hearing all the comments, the BZA discussed the request at length and unanimously granted the Wallace's application for the variance and special exception. Responding to the Appellants' concern, the BZA imposed a condition on their approval that the Wallaces take steps to reduce the sound from their air conditioning units and generator. Appellants filed a petition for rehearing before the BZA that the BZA unanimously denied at a later meeting after hearing from Appellants' attorney yet again.

Appellants then appealed the BZA decisions to the circuit court under S.C. Code Ann § 6-29-820. The Honorable R. Markley Dennis, Jr., Circuit Judge, heard the appeal. Appellants' main argument to the circuit court and to this Court is that the BZA's general use of Zoom® technology violates participants' due process rights because participants are prevented from speaking outside of the time they are allotted for presentation. Judge Dennis rejected Appellants' due process argument as well as their other arguments in a 10-page order affirming the decisions of the BZA and denying the appeal. Appellants then filed a Motion to Reconsider that Judge Dennis denied without argument.

Appellants now ask this Court to enjoin the ongoing renovation of the Wallaces' house that is halfway through the renovation and exposed to the elements without posting any security and without showing any likelihood of success on the merits. As set forth in detail in Mr. Wallace's Affidavit, halting the project at this stage for the duration of the appeal would cause irreparable harm to the Wallaces in addition to hundreds of thousands of dollars of losses.

As discussed below, Appellants' Petition for Writ of Supersedeas should be denied.

Factual and Procedural Background

On July 19, 2021, after four years of planning (and six years of design), the Wallaces applied to the BZA for a special exception and variance from the City's Zoning Ordinances to construct a small addition to the rear of their historic home at 62 Church Street to enable them to add standard amenities such as a laundry room and walk-in closet.¹ (**Aff. of George Wallace, ¶¶**

¹ The Wallaces' plans required a special exception from City Ordinance § 54-110(f) because the addition would extend a non-confirming side setback on the South side of the property. (**Ex. 1, p. 13**). The historic house encroaches on the required 9-foot South side setback by 3 feet and 10 3/8 inches. (**Ex. 1, pp. 10, 13, 17**). The addition extends the small encroachment into the South side setback, albeit to a slightly lesser degree (the addition will encroach on the 9-foot setback by 2 feet and 9 5/8 inches). (**Ex. 1, pp. 13, 16, 17**).

8-11; Ex. 1, BZA Record, at pp. 12-13, 18, 44 ll. 4-21). The proposed addition was designed to extend from the rear of the house into the courtyard that is currently enclosed by a brick border wall that is eight feet tall in most places. **(Ex. 1, pp. 16, 27-31).** Within the courtyard was a small sitting area, overgrown landscaping, a generator, HVAC unit, equipment platform, and a tool shed. **(Ex. 1, p. 29).**

Appellants' neighboring property at 60 Church Street is situated behind the tool shed (a partial view of their main residence structure can be seen to the right of the tool shed in the photograph shown on the next page) and wraps around in an "L" shape to the East (i.e., the left side of this picture, behind the brick wall). **(Ex. 1, pp. 11, 50 ll. 15-19).** Appellants' single-story pool house is on the other side of the brick border wall. **(Ex. 1, p. 77 ll. 14-17).**

The Wallaces have long planned to improve their property and make it livable as a primary residence in today's age. **(Ex. 1, p. 44 ll. 4-21).** Skip Wallace, an architect registered in the State of South Carolina for 37 years, refined plans for this small addition over a period of what is now six (6) years, with input from the Historic Charleston Foundation, neighbors, and special consideration of the unique and historic features of the property. **(Ex. 1, pp. 32-35, 44, l. 4, 45 ll. 7-12).** The plans call for a first-floor garden room and above it, a hallway, closet, laundry room, and walk-in closet/exercise area. **(Ex. 1, pp. 17-18).** The remaining courtyard will also be renovated. **(Ex. 1, pp. 17-18).** The existing condition of the area of the Wallaces' property where the rear addition is planned for is depicted in the photograph below:

The Wallaces' historic home is also currently non-confirming with respect to lot occupancy. **(Ex. 1, p. 16).** The required variance from City Ordinance § 54-301 which restricts maximum lot occupancy to 35% (i.e., the ratio between the size of the building footprint as compared to total lot size). **(Ex. 1, p. 13).** The existing lot coverage is 37.14%. **(Ex. 1, p. 16).** The addition will increase the total lot coverage to 42.96%. **(Ex. 1, p. 16).** Non-conformity with respect to maximum lot coverage is typical in this historic downtown area. **(Ex. 1, p. 39 ll. 3-11).**



(Ex. 1, p. 29).

The Wallaces introduced themselves and solicited their new neighbors’ approval of their plans after Appellant Teresa Melhado acquired 60 Church Street on or around July 1, 2021. **(Aff. of George Wallace, ¶14).** Ms. Melhado’s initial response was:

“All of your plans sound like enhancements to me ...

Looks like it will be very pretty.”

(Aff. of George Wallace, ¶14, Ex. B).

After this initial exchange, Ms. Melhado changed her mind and demanded that the Wallaces remove the application from the agenda for the August 3, 2021, BZA meeting. **(Aff. of George Wallace, ¶15).** The Wallaces accommodated her request and deferred consideration of the BZA application for a month. **(Aff. of George Wallace, ¶16).**

The BZA considered the Wallaces' application at its meeting on September 7, 2021. (Ex. 1, pp. 2, 7). The BZA staff recommended approval. (Ex. 1, p. 41 l. 13). The Wallaces' application was supported by the Historic Charleston Foundation who holds a conservation easement on the property. (Ex. 1, p. 32). The Wallaces also submitted letters of support from various neighbors. (Ex. 1, pp. 33-35, 49 ll. 8-13). The Appellants were the *only* opponents to the Wallaces' application. (Ex. 1, p. 49 ll. 14-16).

All seven BZA members were present at the meeting. (Ex. 1, p. 36).² The BZA first heard from Lee Batchelder, the City's Zoning Administrator/Division Director. (Ex. 1, pp. 37-42). Mr. Batchelder presented the Wallaces' application and submissions to the BZA which included a lot coverage and angle view studies prepared by Skip Wallace. (Ex. 1, p. 38, l. 5 – p. 42, l. 3). Mr. Batchelder recommended approval of the Wallaces' application and explained why to the BZA in detailed fashion. (Id.). The BZA then heard from the Wallaces, then the opposition, allowed the Wallaces a short rebuttal, and then opened the discussion to BZA members for approval, denial, or approval with conditions. (Ex. 1, pp. 42-64).

After an exhaustive review of more than one hour on this one application, the BZA unanimously approved the lot coverage variance and unanimously approved the special exception for the side setback subject to certain conditions. (Ex. 1, p. 37 l. 21 [Start of audio 00:05:40]; Ex. 1, p. 64, l. 7 [End of audio 1:08:03]). The BZA's 7-0 decision is reflected in the transcript of the September 7, 2021, meeting as well as the minutes from the meeting which were approved on September 21, 2021. (Ex. 1, pp. 37-64 (meeting transcript), p. 123 (meeting minutes)).

² The transcript of the meeting reflects an indiscernible name at 00:00:17, which is Ms. Allison Cannon Grass. The recording of the BZA meeting is accessible at: <https://www.youtube.com/watch?v=GzTu4Tp6pEE>.

The BZA issued an order approving both the special exception and the variance request. **(Aff. of George Wallace, Ex. D).** As to the Wallaces' request for a special exception, the order sets out that the BZA held a public hearing to consider the appeal and after considering the evidence and arguments presented, the BZA made the following findings of facts and conclusions:

The Board concludes that the standards in the Section(s) of the Zoning Ordinance listed above [Sec. 54-110], which are applicable to the requested special exception, have been met and therefore orders that the special exception(s) be granted, subject to the following conditions...: conditioned on applicant making best efforts to baffle/reduce noise emanating from generator and HVAC units.

(Aff. of George Wallace, Ex. D).

With respect to the variance request, the order reflects the following findings of fact and conclusions, made after consideration of the evidence and arguments presented:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property.
2. These conditions do not generally apply to other property in the vicinity.
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. Authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character will not be harmed by granting the variance.

THE BOARD, THEREFORE, finds that the applicant has an unnecessary hardship and orders that the variance be granted, subject to the following conditions, if any: [none].

(Aff. of George Wallace, Ex. D).

On September 13, 2021, Appellants filed an appeal for reconsideration with the BZA. **(Ex. 1, pp. 72-73).** The parties submitted briefs to the BZA on their respective positions. **(Ex. 1, pp. 90-102).** In their request that the BZA reconsider its decision, Appellants raised the following arguments: (1) Appellants were deprived of their procedural and substantive due process rights; (2) the BZA failed to consider the Wallaces' business use of 62 Church Street in the context of the

special exception test; (3) the BZA failed to consider the impact to the rear or East property line of 62 Church Street; (4) the BZA did not properly draft conditions tied to the grant of the special exception; (5) the BZA misapplied the variance test; and (6) the BZA misapplied the special exception test. **(Ex. 1, p. 73, pp. 98-102).**

The BZA heard the Appellants' request for reconsideration at its meeting on October 19, 2021. **(Ex. 1, pp. 66-67).** Appellants attorney, Brian Hellman, appeared on their behalf, and was given a 10-minute opportunity to speak initially, as well as an opportunity for a rebuttal. **(Ex. 1, pp. 75-79, 83-84).** The BZA discussed the request for reconsideration in detail. **(Ex. 1, pp. 85-88).** The board members addressed each of the grounds one by one and provided the reasons for rejecting Appellants' assertions. **(Id.).** After full consideration and discussion of the alleged grounds for reconsideration, the entire seven-member board unanimously denied Appellants' appeal for reconsideration. **(Ex. 1, p. 88).** The BZA issued an order denying the appeal for reconsideration on October 19, 2021. **(Aff. of George Wallace, Ex. E).**

Appellants initiated an appeal to the circuit court pursuant to S.C. Code Ann. § 6-29-820 on November 18, 2021. **(App. Pet. for Writ of Supersedeas, Ex. 1).** Appellants did not file a motion for a supersedeas or stay with the filing of the Notice of Appeal to the circuit court.

The Wallaces obtained approval of their plans from the Board of Architectural Review of the City of Charleston ("BAR") on January 4, 2022. **(Aff. of George Wallace, ¶21(a), Ex. F).** The application was submitted on October 20, 2021 and is readily available online. **(Aff. of George Wallace, ¶21(a)).** The Wallaces posted the approval placard dated January 4, 2022, in the living room window (streetside) on January 5, 2022, and remained in the window until January 20, 2022. **(Aff. of George Wallace, ¶21(a)).** Appellants did not object to the BAR application or approval. **(Aff. of George Wallace, ¶24).**

The Wallaces also obtained a building and electrical permit from the City of Charleston Building Department. (**Aff. of George Wallace, ¶21(b)**). Skip Wallace applied for the building permit on December 9, 2021, and on January 31, 2022, the City of Charleston issued a building permit for the project. (**Aff. of George Wallace, ¶21(b)**). The permit was posted in the living room (streetside) window on February 1, 2022, and remains there. (**Aff. of George Wallace, ¶21(b)**). Appellants did not object to the issuance of a building permit. (**Aff. of George Wallace, ¶24**).

The Wallaces' contractors began construction on the house soon after the building permit was issued on January 31, 2022. (**Skip Aff. para. 23**).

Thereafter, the Appellants' filed a Motion for Supersedeas to Stay Matters Affected by this Appeal on March 16, 2022. (**App. Pet. for Writ of Supersedeas, Ex. 3**). Appellants cited to S.C. Code Ann. § 6-29-830(B) as the authority for their motion. (**Id.**) ("The statutory authority for this motion is provided by S.C. Code Ann. § 6-29-830(B), which states: 'The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.'").

Judge Dennis conducted a hearing on the appeal by Webex® on April 20, 2022.³ (**Ex. 2**). Appellants' counsel focused his oral argument solely on Appellants' argument that the BZA deprived them of their rights to due process because the hearing was conducted by Zoom® and their lawyer was limited to 10 minutes to express their arguments against the zoning request. (**Ex. 2**). Judge Dennis first considered the merits of Appellants' appeal under S.C. Code § 6-29-820 and decided at the hearing that the BZA's decisions were not erroneous as a matter of law, were

³ The parties extensively briefed the matter prior to this hearing. (**App. Pet. for Writ of Supersedeas, Ex. 2, Ex. 5, Ex. 6, Ex. 7**).

supported by the record evidence, and were neither arbitrary nor capricious. **(Ex. 2).** Having dismissed the appeal, Judge Dennis did not rule on Appellants' Motion for Supersedeas to Stay Matters Affected by this Appeal under S.C. Code Ann. § 6-29-830(B) because it was mooted by his decision affirming the decision of the BZA. **(Ex. 2).**

Judge Dennis entered a 10-page formal order affirming the decisions of the BZA and dismissing the appeal on May 18, 2022. **(Ex. 2).** Judge Dennis's order rejected the Appellants' novel due process argument that the use of virtual hearing technology deprived Appellants of due process rights. **(Ex. 2).** Judge Dennis also rejected Appellants' claim that their due process rights in this setting included the right to cross-examine the applicants and lodge objections throughout the proceedings, relying on Kurschner v. City of Camden Planning Com'n, 376 S.C. 165, 656 S.E.2d 346 (2008). **(Ex. 32 pp. 8-9).**

Appellants filed a Motion to Reconsider on May 27, 2022. **(App. Pet. for Writ of Supersedeas, Ex. 9).** Judge Dennis denied Appellants' Motion for Reconsider in an order entered on June 15, 2022. **(App. Pet. for Writ of Supersedeas, Ex. 11).** Appellants filed their Notice of Appeal of Judge Dennis's orders on July 14, 2022, one day shy of the 30-day deadline to appeal. **(Notice of Appeal).** Appellants filed their Petition to Confirm Automatic Stay, or in the Alternative, for Writ of Supersedeas the same day, on July 14, 2022. **(App. Pet. for Writ of Supersedeas).**

Applicable Standard

The imposition of a supersedeas when no automatic stay applies is an extraordinary remedy. See, e.g. Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007) ("Accordingly, absent the grant of some extraordinary relief to the debtor by the

appellate court during the pendency of such an appeal, the creditor is entitled to enforce its judgment.”).

The issue whether a discretionary stay should be imposed pending appeal is decided by these commonly recognized standards: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies. See generally 4 C.J.S. Appeal & Error §528 (emphasis added); see also 5 Am.Jur.2d Appellate Review §405 (recognizing various jurisdictional formulations for considering a discretionary motion to stay by an appellant, all of which recognize the potential for irreparable prejudice or harm to the respondent as a primary factor); Order entered Nov. 3, 2003, Strategic Resources Company v. BCS Life Insurance Company, 2003 WL 25773446 (S.C. Com. Pl. Case No. 03-CP-20-262); Order entered June 27, 2011, Carolina Park Associates, LLC v. Marino, 2011 WL 9369844 (S.C. Com. Pl. Case No. 2010-CP-10-6042); Order entered Sept. 22, 2021, Gaddy v. Douglass, 2001 WL 36215944 (S.C. Com. Pl. Case No. 99-CP-20-76).⁴ Where no automatic stay is in effect, the burden is on the requesting party to establish that a supersedeas should be granted. Rule 241(d), SCACR.

Argument

Appellants are seeking an extraordinary remedy from this Court, supported by barely a four (4) page petition, that ignores (i) most of the factors to be considered in deciding whether to grant or lift a stay pending appeal, (ii) the rules governing how such applications relating to a stay should

⁴ The majority of the cases in South Carolina state courts evaluating whether a stay should be applied are decided at the lower court level as the lower court or administrative body whose decision is on appeal retains jurisdiction to consider matters affected by the appeal. Appellants’ failure to present this Petition for a Writ of Supersedeas to the circuit court first is addressed in Section III of the Argument section that follows.

be filed, and (iii) the law on whether the appeal of a zoning board's decision acts as an automatic stay.

The BZA's decisions, affirmed by Judge Dennis, are not stayed during this appeal. A specific statutory provision provides an exception from the automatic stay where appeals are taken from the decision of local zoning or planning boards.

Turning to the request for a writ of supersedeas, Appellants fall far short of meeting their burden of establishing grounds for a discretionary stay. Appellants have not (and cannot) show a strong likelihood of success on the merits of this appeal and show no harm or injury if the construction continues. On the other hand, the Wallaces will face irreparable and substantial harm if a stay is imposed, as will their contractors and neighboring property owners. Appellants propose no bond or other security to protect these interests if a stay is imposed. Appellants' Petition for a Writ of Supersedeas should be denied, or, alternatively, directed to the circuit court for consideration.

I. There is no automatic stay during the pendency of this appeal.

Rule 241, SCRCF, governs stays in civil actions. The general rule is that service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. See Rule 241(a), SCACR. This case does not come within the general rule. Exceptions to the general rule "are found in statutes, court rules, and case law." Rule 241(b), SCACR. Some of the exceptions to the automatic stay are listed in Rule 241(b). Id. ("A list of some, but not all, of the exceptions to the general rule is: . . ."). As stated by the Rule, the list of exceptions set out in Rule 241(b) is not exclusive. This case involves such statutory exception.

S.C. Code Ann. § 6-29-830(B of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Enabling Act”) provides:

The filing of an appeal in the circuit court from any decision of the board *does not ipso fact act as a supersedeas*, but instead, the judge, in his discretion, may grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

S.C. Code Ann. § 6-29-830(B) (double emphasis added).

The General Assembly clearly expressed its intent that the mere filing of an appeal from a local board of zoning appeals shall not as an automatic stay of the board’s decision. See Mikell v. Cty. of Charleston, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009) (“The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.”). Otherwise, third persons could tie-up small and large projects for years and years simply by filing an appeal of a board of zoning appeals’ decision to the circuit court and then later appealing the circuit court’s order affirming the decision of the board to this Court.

S.C. Code Ann. § 6-29-850, the section of the Enabling Act that authorizes appeals of zoning board decisions “to [the] Supreme Court” and allows for this appeal, must be read in conjunction with S.C. Code Ann. § 6-29-830(B) and its mandate that the filing of an appeal does not act as an automatic stay. “In construing statutory language, the statute must be read as a whole and *sections which are part of the same general statutory law must be construed together and each one given effect.*” Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (emphasis added). The appeal to this Court is no more than a continuation of the appeal that Appellants took to the circuit court.

To interpret the sections of the Enabling Act that govern the appeal of local zoning board decisions in any other way would provide an absurd result and render S.C. Code Ann. § 6-29-830(B) meaningless. No provision in the Enabling Act remotely suggests that a further appeal of

the decision of the local board of zoning appeals stays the approval granted. The current appeal is simply an extension of the initial appeal. The law is clear that a court should not construe a statute “in a way which leads to an absurd result or renders it meaningless.” Florence Cnt’y Democratic Party v. Florence Cnt’y Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012); see also Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (“The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.”).

If Appellants’ interpretation of the various sections of the Enabling Statute is accepted, a party aggrieved by a decision of the local zoning board could file its first appeal, without the protection of an automatic stay – *and lose* – and then turn around, file a notice of appeal to this Court and obtain the ultimate relief it seeks through the granting of a stay through the duration of the appeal. The result is particularly nonsensical where, as in this case, the person appealing is not the applicant, but an objector who is not suffering harm and whose property is not the subject of the variance or special exception. The Wallaces will be put in a position of facing serious and irreparable injury by the mere fact that they exercised the rights with respect to their property that they were legally authorized and approved to do and be deprived of the benefits of the BZA decisions and circuit court orders; conversely, Appellants would obtain what they have desired all along, control over the Wallaces’ use of their property and their plans therefore, without a meritorious basis for their objection.

Because of the express statutory exception, Appellant's Notice of Appeal to this Court did not trigger an automatic stay of the approvals of the BZA⁵ and did not cause the construction renovations to grind to a halt mid-way through the project with hurricane season fast approaching.

II. The considerations and equities weigh in favor of denying Petitioner's Writ of Supersedeas.

Rule 225, SCRAC, governs Appellants' Petition for Writ of Supersedeas. Appellants' Petition should be denied under SCACR Rule 241(c)-(d) because: (1) Appellants fail to show a strong likelihood of success on the merits of the appeal; (2) fail to demonstrate that they suffer substantial and irreparable harm absent a stay; (3) the facts show that the Wallaces and other interested parties will suffer substantial and irreparable injury if a stay is imposed; and (4) the public interest and equities are not in favor of the imposition of a stay.

A. Appellants are not likely to succeed on the merits of this appeal.

Most, if not all, jurisdictions require the moving party to show a likelihood of success on the merits of the appeal to obtain supersedeas relief. See 4 C.J.S. Appeal & Error §528 (requiring the party requesting a stay pending appeal to show likelihood of success on the merits); 5 Am.Jur.2d Appellate Review §405 (explaining the appellant must show likelihood of success on the merits of the appeal to warrant a discretionary stay). This is the rule in South Carolina as well for considering relief under Rule 65, SCRCR. See Helsel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) ("When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary

⁵ The relief that Appellants seek to stay is not the order of the circuit court. The circuit court merely affirmed the BZA's decisions and did not award any relief. Appellants are seeking to stay the effect of the approvals granted by the BZA, not the circuit court. Clearly, the specific instruction of S.C. Code Ann. § 6-29-830(B) applies. An appeal does not act as a supersedeas or stay of the approvals granted by the BZA.

injunction is appropriate.”). In asserting a single, conclusory allegation in their four (4) page petition, supported by a footnote with no citation to the facts or law supporting their claims, Appellants have failed to carry their burden of demonstrating the imposition of a stay is appropriate because they are likely to be successful on the merits.

Appellants’ grievance is a procedural one, involving the BZA’s use of Zoom® and its functions during the meeting where they considered the Wallaces’ BZA application. (**App. Pet. for Writ of Supersedeas, n. 1**). Throughout the course of the proceedings below, Appellants have increasingly focused on this issue. In fact, Appellants’ counsel argued only this single issue in the appeal hearing before Judge Dennis.

Judge Dennis found the Appellants’ due process argument far from persuasive. (**Ex. 2**). Judge Dennis relied on the considerable authority of this Court and our Supreme Court rejecting Appellants’ notion that a local zoning board must afford a member of the public all the rights a civil litigant or criminal defendant has in a trial and that meetings or hearings conducted by Webex® or Zoom® fall short of what due process requires:

“Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest.’ *Kurschner v. City of Camden Planning Com’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). “Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Id.* at 172, 350. The South Carolina Supreme Court was presented with similar due process arguments in the context of a planning commission’s decision and flatly rejected the notion in *Kurschner v. City of Camden Planning Com’n*, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008). In this case, the Kurschners applied to the City of Camden Planning Commission for approval to subdivide their property into 8 lots. *Id.* at 169, 348. After the seven-member Commission unanimously voted to disapprove their application, they appealed, arguing the Commission “did not inform them of the opposing evidence prior to trial, considered hearsay evidence, deprived them of the opportunity to cross-examine adverse witnesses, and failed to allow them to conduct *voir dire* questioning of the members of the Commission.” *Id.* at 171, 349.

In keeping with the Supreme Court’s holding in *Kurschner*, the Court finds that “due process does not require the full gamut of rules and procedures” to which the

Appellants claim they were entitled. *Id.* at 172, 350. Administrative bodies exercising *discretionary* authority in the area of local planning and zoning afforded to them by the legislature do not have to conduct trial-type hearings. *Id.* Indeed, our Supreme Court has acknowledged the additional procedures requested by the Kurschners and the Appellants here would actually hinder, not aid, the ability of a board like this one to make an informed and reasoned decision and would intrude into their statutorily-granted discretion. *Id.* at 172, 350.

Based on the foregoing, I find the record shows that the BZA conducted its meetings in accord with its Rules and Regulations and gave interested parties notice of this procedure at the meeting on September 7, 2021, and that the Appellants were given a meaningful opportunity to be heard before the BZA at both the September 7, 2021 and October 19, 2021 meetings. The Appellants were afforded due process.

(Ex. 2, pp. 8-9).

Appellants offer no change in the law, or anything new, about their due process argument in their Petition for a Writ of Supersedeas but, instead, demonstrate the ridiculousness of their appeal, claiming that the use of virtual hearing technology, wholesale, in the post-COVID age violates participants' due process rights because the technology better controls order in the courtroom (or here, the board meeting). See generally (App. Pet. for Writ of Supersedeas) (claiming Appellants were "technologically gagged" from raising objections and participating in the board question and answer session outside of their allotted time to do so). Appellants have not shown that they are likely to succeed on the merits of this appeal which is critically fatal to their Petition for a Writ of Supersedeas.

The Honorable Roger M. Young, Sr., circuit court judge, was presented with a similar scenario in the case of Carolina Park Associates, LLC v. Marino, 2011 WL 9369844 (S.C. Com. Pl. Case No. 2010-CP-10-6042). There, plaintiffs had filed a lis pendens that covered 1,600 acres of land owned by defendant. See Order entered June 27, 2011, Carolina Park Associates, LLC v. Marino, 2011 WL 9369844 (S.C. Com. Pl. Case No. 2010-CP-10-6042). The lower court found that neither of the plaintiffs had a cognizable interest in the title to defendant's land to support the

filing of a lis pendens and therefore cancelled the lis pendens. Id. One of the plaintiffs appealed. Id. The automatic stay applied, serving to stay the cancellation of the lis pendens. Id. Judge Young flatly rejected the plaintiff's argument, noting that the court is given broad powers to fashion relief to all parties during the course of an appeal and Rule 241(c)(3), which expressly contemplates the lifting of a stay and conditions thereof, does not mandate that a court cannot afford relief where the automatic stay applies. Id. In granting defendant's motion to lift the stay he reasoned:

The only way to afford [defendant] complete relief from Plaintiffs lis pendens is by lifting the stay and cancelling the lis pendens. With the lis pendens in place, Plaintiff Republic is impairing Defendant CDM's investment in the property without any showing that Republic or CPA has a right to do so. Plaintiff Republic has done this at no cost to itself whatsoever.

...

Plaintiff Republic is simply not in danger of losing a potential claim because it has no potentially cognizable claim to anything other than profits derived from the property and the partnership after Defendant CDM's investment is returned.

Id. (emphasis and double emphasis added).

The Supreme Court affirmed Judge Young's ruling setting aside the automatic stay of his ruling cancelling the lis pendens during the appeal based on the appellant's failure to show it had a cognizable right to the lis pendens requested:

Because Appellants have failed to state a claim for a constructive trust, they have no claim affecting the title to real property and the lis pendens is not 'authorized by this chapter.' We therefore affirm the cancellation of the lis pendens.

Carolina Park Associates, LLC v. Marino, 400 S.C. 1,9, 732 S.E.2d 876, 880 (2012).

The same rationale applies here. Appellants seek, at no cost to themselves, to completely impair the Wallaces' use and enjoyment of their house and inflict irreparable harms as well as hundreds of thousands of dollars of losses on them without establishing a right to do so or a likelihood of success on the merits of their objections that have been rejected twice by the BZA

and twice by the circuit court. Appellants' Petition for a Writ of Supersedeas should be denied on these grounds alone.

B. Appellants will not be irreparably harmed absent a stay.

Appellants further fail to show that they will be irreparably harmed absent a stay. The only harm that Appellants allege is that their appeal may become moot if a writ of supersedeas is not issued halting construction mid-project for the next several years while the appeal works its way through this Court and possibly a petition for writ of certiorari to the state Supreme Court. (**App. Pet. for Writ of Supersedeas, p. 3**). Appellants do not allege any physical or financial harm to them if the renovation is completed. (**App. Pet. for Writ of Supersedeas**). The only "harm" is metaphysical and conceptual - that their appeal of the unconstitutionality of remote meetings and hearings may be rendered moot.

It is not necessary for this Court to grant a supersedeas to preserve Appellants' due process argument. Our courts have recognized the widely adopted exception for issues that are capable of repetition but evading review. Croft as Tr. of James A. Croft Tr. v. Town of Summerville, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021). If this Court considers that Appellants' constitutional challenge to the use of technology for the conduct of municipal board meetings to be meritorious, then it can refuse the Petition and decide the issue.

Turning to the merits of the Petition, the determination of the appellate court on a request for supersedeas is entirely discretionary. Matter of Decker, 322 S.C. 212, 214, 471 S.E.2d 459, 461 (1995). Whether the party requesting the stay has shown irreparable injury in the absence of a stay is a pertinent consideration. See 4 C.J.S. Appeal & Error §528 (requiring the party requesting a stay pending appeal to show irreparable injury in the absence of a stay); see also 5 Am.Jur.2d Appellate Review §405 (recognizing various jurisdictional formulations for considering a

discretionary motion to stay by an appellant, all of which recognize the potential for irreparable prejudice or harm to the appellant in the absence of a stay as a primary factor). To this effect, section 1-23-380(2) of the South Carolina Code (Supp. 2010) also requires the reviewing court to consider Rule 65, SCRPC, setting forth the procedural prerequisites for injunctive relief, before granting a discretionary stay during appeal. “The issuance of an injunction depends upon the equities between the parties and if great injury will be done to the [party against whom the injunction is sought] with little benefit to the [moving party], it is proper for the trial court to deny equitable relief.” Kneale v. Bonds, 317 S.C. 262, 268, 452 S.E.2d 840, 843 (Ct. App. 1994).

The focus of Appellants’ appeal is the BZA’s process, not any alleged physical or financial harm to them from the construction of the small addition. They allege certain things they do not like about the addition but none comes remotely close to the level of physical or economic harm. They all deal with the everyday reality of living in an historic neighborhood. They have contended the second story of the addition will shade their pool house and slightly obstruct the view from the master suite balcony. (**Ex. 1, p. 78 ll. 1-9**). They surmise the new air conditioners and generator may be noisy. (**Id.**).

The BZA addressed Appellants’ concerns and either rejected them as not meritorious (i.e., slight shading and slight obstruction of view) or took action to mitigate the concern (i.e., the BZA conditioned their approval on the Wallaces making efforts to reduce the noise of this equipment). (**Ex. 1, pp. 41 ll. 13-16, 57-64; Aff. of George Wallace, Ex. D**). In Ms. Melhado’s Affidavit filed with the circuit court in support of her Motion for a Supersedeas while the circuit court appeal proceeded, she claims the ongoing construction at 62 Church Street is a nuisance to her, creating unpleasant sights, sounds, and smells. (**App. Pet. for Writ of Supersedeas, Ex. 4**). She claims she has view of a porta-potty out the kitchen window and the construction work involves the use

of heavy materials and loud tools. (**Id. at ¶¶8, 12**). She does not identify anything that is atypical of any construction project.

Moreover, Appellants do not live full-time at 60 Church Street. (**Aff. of George Wallace, ¶13**). In fact, they have spent maybe 25% of the last year in the house. (**Id.**). Their residence is New York. (**Id.**). They spread their time among all their properties, including those in the Hamptons and Manhattan. (**Id.**).

Appellants utterly fail to show the level of irreparable harm necessary to warrant the extraordinary relief they seek and, for this additional reason, their Petition for a Writ of Supersedeas should be denied.

C. The Wallaces will suffer real and irreparable injury if this Court grants a writ of supersedeas.

Even if Appellants could conjure some real harm, which they have failed to do, their claimed injury must be balanced against the equities and the injury to the Wallaces and other interested parties. Appellants ignore, entirely, the requisite balancing of the harms and the real personal harm and economic injury the Wallaces will suffer if this Court were to order the cessation of construction for the next few years midway through the work.

As demonstrated by the Affidavit of George Wallace and the photographs made an exhibit thereto, substantial progress has been made on the Wallaces' addition; the construction is at a precarious stage with the house being open to the elements and hurricane season approaching. (**Aff. of George Wallace, ¶¶23, 27, 28-29, Ex. H, Ex. I**). The two-story rear addition and the front dormer are framed and electrical and plumbing work is ongoing. (**Aff. of George Wallace, ¶23, Ex. H, Ex. I**). The front and the back of the roof on the existing structure has been penetrated, leaving the building envelope open and exposed. (**Aff. of George Wallace, ¶27, Ex. I**). The breach on the east side of the roof is approximately 15' by 15' in size. (**Id.**).

Indefinitely suspending work on the project in its current stage would expose various components of 62 Church - both new and existing - to the elements for a period of time beyond their rating for such. (**Aff. of George Wallace, ¶28-29**). The penetration of the building's envelope creates a myriad of problems. (**Aff. of George Wallace, ¶28**). As a licensed architect, George Wallace has serious concerns about leaving certain elements open to extended exposure, partially finished, and electrical and plumbing open and exposed, especially during hurricane season. (**Aff. of George Wallace, ¶28**). There would be enormous damage if a tropical storm or hurricane hit. (**Aff. of George Wallace, ¶28**). There is uncertainty as to how the inspections that have been completed to date would be affected, whether the property would pass future inspection, and whether this addition, which the Wallaces invested a significant amount of money into, would be insurable when this appeal is dismissed and construction is completed. (**Aff. of George Wallace, ¶29**).

The Wallaces have already invested approximately \$350,000.00 in their project, not accounting for the time and expense they have invested in the designing and planning of this project or the legal fees and costs they have incurred to defend the BZA's decisions. (**Aff. of George Wallace, ¶31**). The Wallaces took out substantial financing, a \$500,000.00 line of credit against 62 Church Street, to fund the project. (**Aff. of George Wallace, ¶32**).

Among the equipment they have purchased are new, commercial-grade air compressors and upgraded dampers and controls that greatly muffle the sound of the equipment at a cost of \$17,580.00, to address Appellants' concerns and comply with the condition imposed by the BZA. (**Aff. of George Wallace, ¶31**). This new, state of the art, technology will greatly enhance the conditions that have existed at 62 Church Street even prior to the addition.

The further harms the Wallaces will likely suffer in the event a stay is imposed include:

damage to the existing structure in the form of mold, mildew, wood rot, and rodent infestation; additional and unanticipated project costs incurred in the removing, transporting, and storing of salvageable components of the new addition; the costs incurred in taking measures intended to protect the existing structure and the exposed elements that are not removable or storable (if any such measures are available); damage to the building materials stored on the property; breach of contract claims asserted by the general contractor and subcontractors working on the project; the costs that will be incurred in resuming the project, including material and labor cost escalations; breach of the terms and conditions of the facade conservation easement on the property held by the Historic Charleston Foundation; extensive project delays due to the unavailability of contractors and subcontractors when the project resumes; and the dislocation for the entire time the house is unlivable because of the half-completed construction. (**Aff. of George Wallace, ¶129**).

It is impossible to maintain the status quo as of the filing of this appeal and not cause great irreparable harm to the Wallaces, who, to date, have acted under the legal authority of all necessary approvals and permits.

Appellants offer no bond or undertaking to protect Appellants' interests during the pendency of this appeal. This omission alone is fatal to Appellants' Petition for a Writ of Supersedeas. See Order filed Feb. 15, 2019, n. 1, American Star Dev. SC, LLC v. PulteGroup, Inc., Appellate Case No. 2018-002277 (S.C. Ct. App.) ("We note although Respondent suggested this court could lift the automatic stay for only a subset of the lis pendens pursuant to Rule 241(c)(3), SCACR, it has not proposed, or offered relevant information related to, the filing of a bond or undertaking to protect Appellant's interests during the pendency of this appeal in connection with lifting the automatic stay.").

The great irreparable harm and financial loss to the Wallaces if a stay is imposed that is entirely unaddressed and unrefuted by Appellants constitutes yet another independent ground for denying the Petition.

D. The public interest and other equitable considerations do not support the imposition of a stay.

The Wallaces are not just mindful of their own vested interest in protecting their significant investment in this addition (which, to date, totals approximately \$350,000.00) and desire to be able to use their home, but also of their neighbors' interests. If a stay is granted, neighbors will have to look at Tyvek house wrap, building felt, and a large hole in the Wallaces roof. (**Aff. of George Wallace, ¶30, Ex. J**). It is not fair to the Wallaces, nor is it fair to the neighborhood to impose a stay pending this appeal, especially in consideration of the fact that Appellants are part-time residents concerned about shading on their pool house. It bears note that it is also unfair to the contractors who are scheduled to work on this project to completion over the next several months and relying on the work to support their employees, vendors, and other market participants.

Appellants' failure to do anything but gloss over these factors weighs heavily against the issuance of a supersedeas in this case. The factors discussed herein, as further supported by the Affidavit of George Wallace, all support the denial of supersedeas.

III. Appellants failed to comply with the procedure relating to matters pertaining to any stay or supersedeas.

Appellants do not just ignore the key considerations governing whether a supersedeas should be issued, but also disregard the applicable procedure for obtaining the relief they seek.

Pursuant to Rule 241(d)(1), SCACR, "an application for an order lifting the automatic stay or for supersedeas *must first be made to the lower court* or administrative tribunal which entered the order or decision on appeal." (emphasis added). Similarly, Rule 205, SCACR, provides: "Upon

service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided in Rule 241.” It is only “[a]fter the lower court or administrative tribunal has ruled” that a party may petition the appellate court where the appeal is pending or an individual judge or justice for review of this order under Rule 241(d)(2), SCACR.

The only exception to the rule that applications for supersedeas must first be made with the circuit court is “where extraordinary circumstances make it impracticable.” Rule 241(d)(1), SCACR.

Because applications for supersedeas or a lift of a stay are appropriately brought before the lower court who issued the order on appeal, the decisions relating thereto are primarily circuit court decisions. In Gaddy v. Douglass, the Honorable Thomas L. Hughston, Jr., reiterated that the circuit court has the jurisdiction to hear any matters related to any stay or supersedeas, which includes jurisdiction to declare whether the automatic stay applies. See Order entered Sept. 22, 2001, Gaddy v. Douglass, 2001 WL 36215944 (S.C. Com. Pl. Case No. 99-CP-20-76) (“Since this Court has jurisdiction under Rule 225 [the former version of Rule 241] to lift the stay, it also has jurisdiction to declare whether an automatic stay applies.”).

Appellants cite one case for their claim that it is a matter for the Court of Appeals, not the circuit court, to consider whether the automatic stay applies: State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000). (**App. Petition for Writ of Supersedeas, p. 2**). As Judge Hughston pointed out, the appellant in that case initially brought its application for a stay pending the appeal before the trial court. See Order entered Sept. 22, 2001, Gaddy v. Douglass, 2001 WL 36215944 (S.C. Com. Pl. Case No. 99-CP-20-76); 536 S.E. 2d at 396, 536 S.E.2d at 874 (“The State also moved

in the circuit court for a stay pending the appeal in the event the appeal did not automatically stay the Order to pay the fee. The circuit court denied the motion to stay.”).

Appellants have skipped the first step in asking the circuit court to consider matters set out in their Petition for a Writ of Supersedeas. Appellants filed a motion for a supersedeas several months after filing their appeal to the circuit court, but that motion was made under S.C. Code Ann. § 6-29-830(B) for a stay while the appeal was taken up by the circuit court. The appeal to the circuit court has concluded. Appellants, by and through their Petition for a Writ of Supersedeas, have sought a stay under different authority and during the pendency of this appeal. Appellants should have submitted this request to the circuit court first. They have not alleged, much less proven, any extraordinary circumstances that would relieve them of first seeking relief from the circuit court.

CONCLUSION

Appellants’ Notice of Appeal did not trigger an automatic stay because of the statutory exception for appeals from decisions of local boards of zoning appeals. A writ of supersedeas is an extraordinary remedy. Appellants have not shown that they have a strong likelihood of success on the merits nor that they have been physically or economically harmed or will suffer any real consequence if a writ of supersedeas is not issued by this Court for the duration of the appeal. Appellants ignore the significant harm to the Wallaces and the public interest if a writ were issued, and completely fail to offer the considerable security necessary to protect the Wallaces and compensate them for their harm and losses during the years this appeal will take.

The potential for an appeal being rendered moot does not itself constitute irreparable harm or justify the imposition itself constitute irreparable harm. See In re Adelphia Communications Corp., 361 B.R. 337, 347-48 (S.D.N.Y. 2007 (discussing the issue)). Even in a minority of

jurisdictions where it is considered to constitute irreparable harm to the party seeking the stay, it does not negate the consideration of other factors. See, e.g., Roland Machinery Co. v. Dresser Indus., Inc., 749 F.2d 380, 386-88 (7th Cir. 1984) (holding there is an “inverse relationship” between the burden of proving likelihood of success and providing irreparable harm, where the more likelihood of success can be found, the less irreparable harm needs to be shown).

For all the foregoing reasons, Appellants’ Petition to Confirm Automatic Stay, or in the Alternative, for Writ of Supersedeas should be DENIED.

Respectfully Submitted,

WALKER GRESSETTE & LINTON, LLC

/s/ G. Trenholm Walker

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ATTORNEYS FOR RESPONDENTS GEORGE M.
WALLACE, ERIKA WALLACE, AND ERIKA R.
WALLACE, AS THE TRUSTEE OF THE ERIKA R.
HAYES REVOCABLE TRUST U/A/D 8-4-2016

July 25, 2022
Charleston, South Carolina

EXHIBIT 1

ELECTRONICALLY FILED - 2021 Dec 24 1:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Teresa Melhado and Dane Neller,

Appellants,

vs.

City of Charleston, City of Charleston
Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Hayes,
Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016,

Respondents.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05255

**MATERIALS FROM CITY OF
CHARLESTON RELATIVE TO APPEAL**

Hearing transcript and Board Materials.

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin

Bar No.: 65264

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: tdomin@clawsonandstaubes.com

Attorney for City of Charleston Board of Architectural
Review, appearing pursuant to S.C. Code §38-77-150

Charleston, South Carolina

December 24, 2021

EXHIBIT 1



City of Charleston

BOARD OF ZONING APPEALS-ZONING

September 7, 2021

5:15 PM

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY

www.charleston-sc.gov/bza-z

****Video and microphone is currently disabled for all attendees.****

This meeting is being recorded.

Zoom Meeting Protocol

Order on Each Application:

- Chair announces each application followed by staff presentation and recommendation
- Staff presents application and City's recommendation. Staff will control slide presentation
- Staff announces comments received and whether anyone has signed up to speak
- Applicant, after being sworn in, will be allowed to present their application if opposition or questions are raised, followed by public comments from pre-registered attendees in favor. Each speaker will be sworn in before speaking
- Staff then recognizes registered attendees for public comments in opposition. Each speaker will be sworn in
- Staff then recognizes the applicant for a short rebuttal before Chair closes public comments and begins Board discussion

Providing Comment:

- People who sign up to speak prior to the 12 noon deadline will be called on when it is your turn to speak and your microphone will be enabled. You may only speak once on each item.
- Your microphone will be disabled after you are finished speaking.

Board of Zoning Appeals-Zoning

Your Board of Zoning Appeals-Zoning Members are:

Michael Robinson - Chair	Howell Morrison
John Bennett	Robben Richards
Allison Cannon Grass	Geiza Vargas-Vargas
Walter Jaudon	

Your City of Charleston Staff are:

Lee Batchelder, <i>Zoning Administrator</i>	Pennye Ashby, <i>Senior Planner</i>
Scott Valentine, <i>TRC Coordinator</i>	Vanessa Ellington, <i>Clerk</i>

The Board of Zoning Appeals—Zoning has the authority to do three things:

1. Hear appeals to decisions of the Zoning Administrator;
2. Grant special exceptions, a fact finding function of the Board; and
3. Grant variances to the Zoning Ordinance if the application meets the hardship test outlined in Section 54-924 of the ordinance.

Board of Zoning Appeals-Zoning

Requirements for Granting a Variance

A variance may be granted by the Board of Zoning Appeals in an individual case of unnecessary hardship if the Board makes the following findings:

- a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
- b. these conditions do not generally apply to other property in the vicinity;
- c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Agenda Item #A-1

Approval of August 17, 2021 BZA-Z Minutes
(click on link below)

[https://www.charleston-sc.gov/AgendaCenter/ViewFile/Agenda/ 08172021-6789](https://www.charleston-sc.gov/AgendaCenter/ViewFile/Agenda/08172021-6789)

Agenda Item #A-2

62 CHURCH STREET

(CHARLESTOWNE)

TMS # 458-13-01-097

Request special exception under Sec. 54-110 to allow a horizontal expansion (garden room) and vertical extension (hall/closet/exercise/laundry) that extends a non-conforming 6.2-ft. south side setback (9-ft. required).

Request variance from Section 54-301 to allow a 2-story addition having a 43% lot occupancy (35% limitation; existing lot occupancy 37%).

Zoned SR-4



EXHIBIT 1



EXHIBIT 1





EXHIBIT 1



Application for Variance, Special Exception, Reconsideration, or Extension Page 1 of 2
to the Board of Zoning Appeals - Zoning (BZA-Z)

City of Charleston

Instructions - This application, along with the required information and fee, must be submitted to the Permit Center at 2 George Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals - Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

- ☒ A Variance and/or Special Exception as indicated on page 2 of this application.
☐ Reconsideration of a decision of the Board or action of a zoning official (attach Appeal form).
☐ Extension of an unexpired Variance and/or Special Exception approval.

MEETING DATE REQUESTED: _____

Property Address 62 Church St TMS # C 4581301097

Property Owner Erika and George Wallace Daytime Phone 804-301-6120

Applicant George Wallace Daytime Phone 804-301-6120

Applicant's Mailing Address 62 Church St, Charleston, SC 29401

Email Address skip@islandarchitects.com

Relationship of applicant to owner (same, representative, prospective buyer, other) same

Zoning of property SR4

Information required with application: (check information submitted)

- ☒ Scaled plans or plats, including elevations, showing the variance(s) or special exception(s) being requested (3 sets).
☒ For new construction or additions within a flood zone, show HVAC units and platform on scaled plans.
☒ Scaled floor plans with rooms labeled and the total floor area for each dwelling unit noted are required for all density variances and building additions, unless exempted by the Zoning staff (3 sets).
☒ Plans or documents necessary to show compliance with special exception requirements (3 sets).
☐ Check, credit card or cash (make checks payable to the City of Charleston).
☐ YES or ☒ NO - Is this Property restricted by any recorded covenant that is contrary to, conflicts with or prohibits the proposed land use encompassed in this permit application? § 6-29-145 of the South Carolina Code of Laws

Optional but very helpful information:

- ☒ Photographs
☒ Letters or petitions from neighbors or organizations directly affected by your request

I certify that the information on this application and any attachments is correct, that the proposed improvement(s) comply with private neighborhood covenants, if there are any, and that I am the owner of the subject property or the authorized representative of the owner. I authorize the subject property to be posted with a notice of the Board hearing and inspected.

Applicant George Wallace Date 5/27/21

For office use only: Date application received _____ Staffperson _____	Fee: \$ _____ Time application received _____ Receipt # _____
--	---

For **Variance** requests, applicants should list the specific variance(s) being requested and, if possible, explain how the variance test that follows is met (add as an attachment if necessary):

A variance is requested to increase the lot occupancy which is currently over the allowable lot coverage of 35%(1678 sq. ft.) by 103 sq. ft.(37.14%). We are requesting to add a one room addition on the rear (East) side of the residence not visible from Church Street of 279 sq. ft., bringing the total lot occupancy to 2,060 sq. ft. (42.96%). The house is 213 years old, is currently 2,554 sq. ft. of conditioned 2 story space on a lot that is 4,795 sq. ft., and is surrounded by much larger residences. We desire to add a Loutrel Briggs inspired "Garden Room" off the back (East) side of the house in order to have a sun filled room to eat casual meals and lounge in a "Garden". Our original gardens were designed by Loutrel Briggs in 1974, one of his last in Charleston. These requirements do not exist with our neighboring houses as they are much larger and modernized more recently. Because of these conditions, the allowable 35% lot coverage would only allow a footprint of 1678 sq. ft. (and the existing footprint of 1,781 sq. ft.), and would inhibit the ability of the house to function appropriately in the 21st Century. The granting of this variance would not be of substantial detriment to the adjacent properties (not visible at all from the residence at 64 Church St.) or to the good of the public, and being not visible from Church Street at all, the character of the district will not be harmed by the granting of the variance.

Variance Test: The Board of Zoning Appeals-Zoning is authorized to approve a variance from the requirements of the Zoning Ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

In granting a variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. (SC Code of Laws § 6-29-800)

For **Special Exception** requests, applicants should list the specific approval(s) being requested and include documentation to demonstrate compliance with the relevant special exception requirements of the Zoning Ordinance, such as § 54-110, § 54-206, or sections in Article 5 (add as an attachment if necessary):

We are requesting a zoning special exception to extend the non-conforming South side setback (Sec. 54-110.f.). The current house sits 5'-1 5/8" from the South property line (a pre-existing encroachment of 3'-10 3/8" into the 9' setback from the South property line), and our proposed room sits 6'-2 3/8" from the South property line (an encroachment of 2'-9 5/8" into the 9' South setback). The existing Tool Shed built in 1973 also encroaches and sits fully within the South setback. One proposed brick wall of the Garden Room extends 39 1/2" to the West of the existing shed, and one proposed brick wall extends 21 1/8" to the East of the existing shed. Both proposed walls are 11'-6" tall. We propose to connect the existing shed to the proposed Garden Room with an 8" connecting brick wall that will sit 2" inside the exterior walls of the existing shed and 2" below it's existing roof. We will leave the existing shed in it's existing form but intend to expose the old brick on the exterior parged wall and replace an old rotted door with an antique salvaged window (see Architectural Drawings).

All approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Article 9, Part 5 of the zoning ordinance. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has lapsed.

EXHIBIT 1

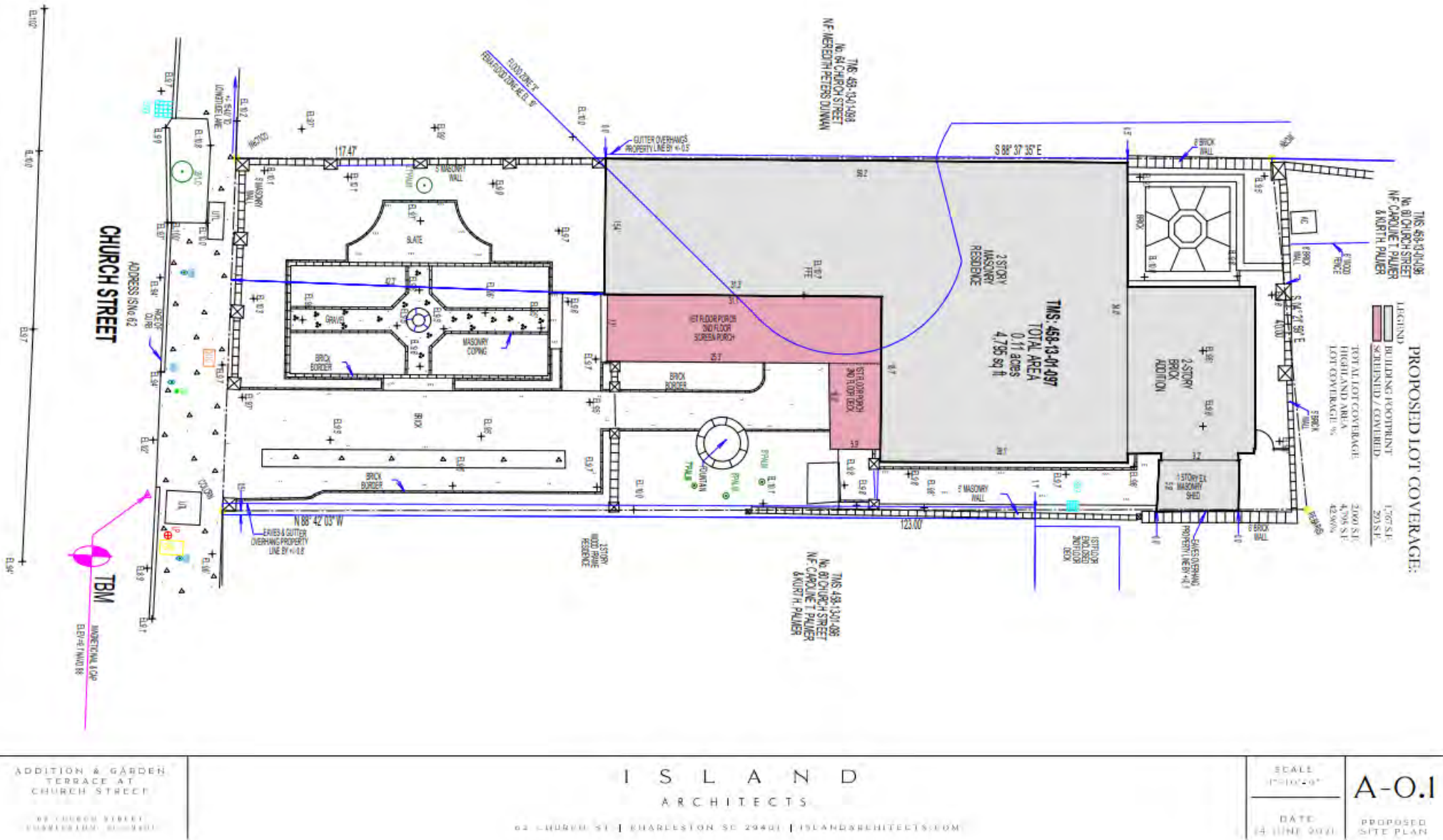


EXHIBIT 1

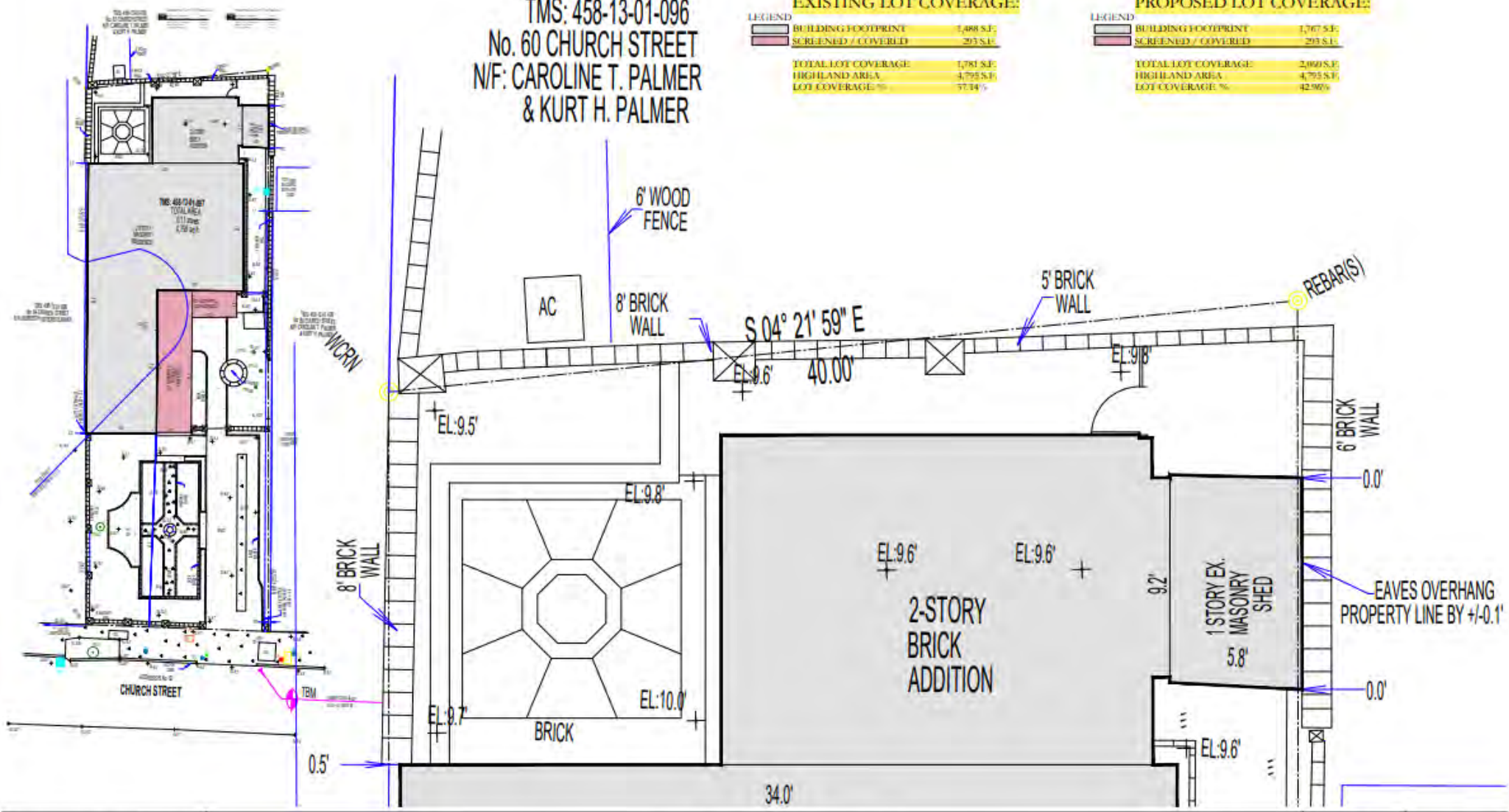
TMS: 458-13-01-096
No. 60 CHURCH STREET
N/F: CAROLINE T. PALMER
& KURT H. PALMER

EXISTING LOT COVERAGE:

LEGEND	
BUILDING FOOTPRINT	1,488 S.F.
SCREENED / COVERED	293 S.F.
TOTAL LOT COVERAGE	1,781 S.F.
HIGHLAND AREA	4,795 S.F.
LOT COVERAGE %	37.14%

PROPOSED LOT COVERAGE:

LEGEND	
BUILDING FOOTPRINT	1,767 S.F.
SCREENED / COVERED	293 S.F.
TOTAL LOT COVERAGE	2,060 S.F.
HIGHLAND AREA	4,795 S.F.
LOT COVERAGE %	42.96%



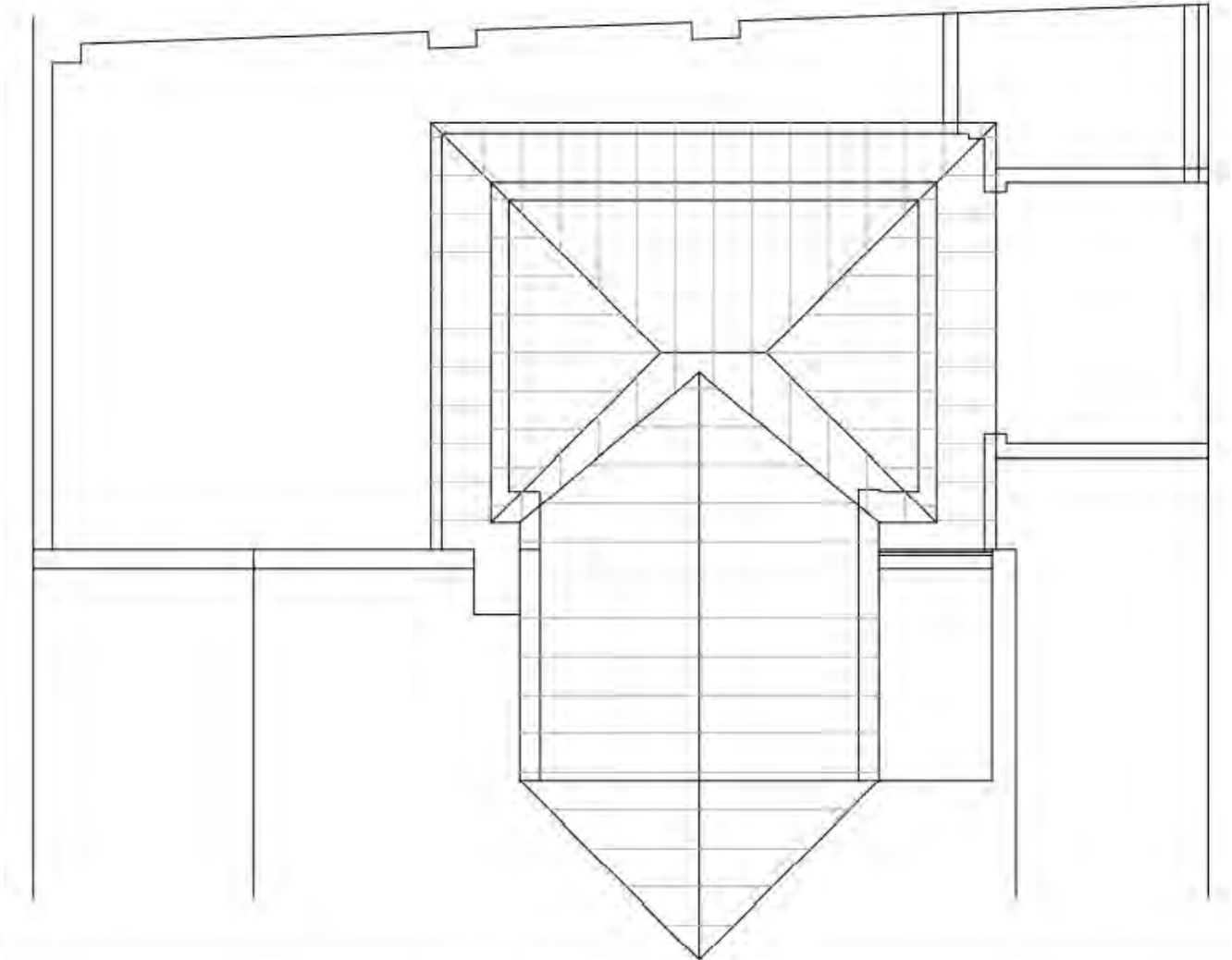
ADDITION & GARDEN
TERACE AT
CHURCH STREET
N/F: CAROLINE T. PALMER
& KURT H. PALMER

ISLAND
ARCHITECTS

141 CHURCH STREET, CHARLESTON, SC 29401 | ISLANDARCHITECTS.COM

SCALE 1"=20'-0" 1/4"=1'-0"	A-0.2
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EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
DORCH STREET

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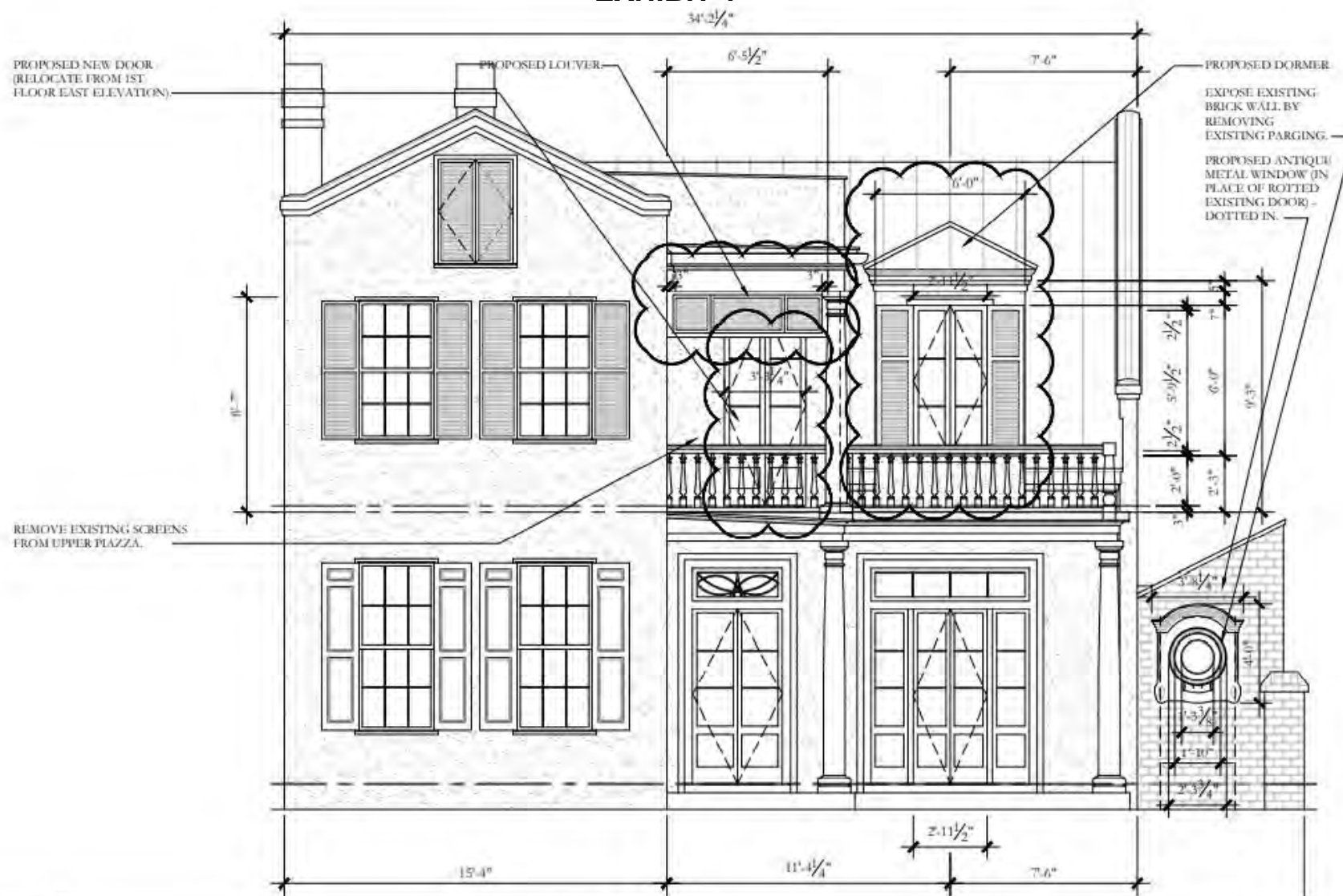
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EXHIBIT 1

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EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

101 SOUTH STREET
CHARLESTON, SC 29401

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ADDITION & GARDEN
TERRACE AT
CHURCH STREET

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EAST
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EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
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EXHIBIT 1

62 CHURCH STREET



Looking East down side alley to Tool Shed

EXHIBIT 1



Tool Shed (door rotted)

EXHIBIT 1



Looking North at rear yard

EXHIBIT 1



Looking East at rear wall



Looking SE at Tool Shed and HVAC platform

EXHIBIT 1



Looking South at Tool Shed



Looking West at rear of Existing House

EXHIBIT 1



HVAC Platform (existing)

EXHIBIT 1



Generator Platform behind Tool Shed (existing)

EXHIBIT 1

HISTORIC CHARLESTON FOUNDATION

To: Members of the Board of Zoning Appeals (BZA-Z)
Lee Batchelder, Zoning Administrator

From: April Wood, Manager of Easements and Technical Outreach

Date: August 3, 2021

Re: 62 Church Street

Historic Charleston Foundation has a preservation easement on the property at 62 Church Street and has met with the applicant multiple times to review the proposed alterations to the property to confirm that the work complies with the terms of the easement.

The historic house is set on the rear portion of the lot with an exceptional Loufrel Briggs garden in the front portion of the parcel. The proposed alterations were carefully designed to attach to the non-historic "L" addition to the house with minimal impact to historic fabric. We have been impressed with the applicants' thoughtful consideration of the historic structure and the important garden elements as they developed this proposal.

The Foundation is in support of the request for a special exception under Section 54-110 to allow a horizontal expansion and vertical extension that extends a non-conforming 6'2" south side setback, and the request for a variance from Section 54-301 to allow a 2-story addition having a 43% lot occupancy. We respectfully request approval of this application.

EXHIBIT 1

City of Charleston
Board of Zoning Appeals

June 16, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom It may Concern,

We are the property owners of 64 Church St directly to the North of the Wallace's Home located at 62 Church St. Erika and Skip have shown us their Architectural Plans for their proposed Garden Room addition, and we are in favor of granting them a variance for the density to be 42% which we realize exceeds the allowable 35% density for the property. We are also in favor of granting them the variance for the South wall of the Garden room addition which will extend into the required 9' setback by 2' 9 5/8", which is set back 12.75" from the existing encroaching wall of the current house and is therefore not visible from Church St. As far as the design of the addition goes, we approve the drawings that we were shown dated June 14, 2021 consisting of 15 sheets, including the removal of the screened porch from the Upper Piazza, the addition of the louvered panel on the West side of the Upper Piazza, the addition of the dormer on the West façade, as well as the addition on the East side of the house of a (2) story Garden Room, the attaching to the existing Tool Shed and the elevating of the existing generator platform to the East of the existing shed. We also are in favor of them extending the historic brick wall in the rear of their property to the South property line, replacing the newer and lower brick wall there currently.

Yours truly,



John and Meredith Dunnan
64 Church St.
Charleston, SC 29401

EXHIBIT 1

City of Charleston
Board of Zoning Appeals

August 18, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom It may Concern,

We are the property owners of 68 Church St three lots to the North of the Wallace's home located at 62 Church St. Erika and Skip have shown us their Architectural Plans for their proposed Garden Room addition, and we are in favor of granting them a variance for the density to be 43% which we realize exceeds the allowable 35% density for the property. We are also in favor of granting them the variance for the South wall of the Garden room addition which will extend into the required 9' setback by 2' 9 5/8", which is set back 12.75" from the existing encroaching wall of the current house and is therefore not visible from Church St. As far as the design of the addition goes, we approve the drawings that we were shown dated June 14, 2021 consisting of 15 sheets, including the removal of the screened porch from the Upper Piazza, the addition of the louvered panel on the West side of the Upper Piazza, the addition of the dormer on the West façade, as well as the addition on the East side of the house of a (2) story Garden Room, the attaching to the existing Tool Shed and the elevating of the existing generator platform to the East of the existing shed. We also are in favor of them extending the historic brick wall in the rear of their property to the South property line, replacing the newer and lower brick wall there currently.

Yours truly,



Bart and Cindy McLean
68 Church St.
Charleston, SC 29401

EXHIBIT 1

City of Charleston
Board of Zoning Appeals

August 18, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom It may Concern,

We are the property owners of 69 East Bay St at the East end of Longitude Lane. This Lane connects us to Church Street five houses North of where the Wallace's home is located at 62 Church St. Erika and Skip have shown us their Architectural Plans for their proposed Garden Room addition, and we are in favor of granting them a variance for the density to be 43% which we realize exceeds the allowable 35% density for the property. We are also in favor of granting them the variance for the South wall of the Garden room addition which will extend into the required 9' setback by 2' 9 5/8", which is set back 12.75" from the existing encroaching wall of the current house and is therefore not visible from Church St. As far as the design of the addition goes, we approve the drawings that we were shown dated June 14, 2021 consisting of 15 sheets, including the removal of the screened porch from the Upper Piazza, the addition of the louvered panel on the West side of the Upper Piazza, the addition of the dormer on the West façade, as well as the addition on the East side of the house of a (2) story Garden Room, the attaching to the existing Tool Shed and the elevating of the existing generator platform to the East of the existing shed. We also are in favor of them extending the historic brick wall in the rear of their property to the South property line, replacing the newer and lower brick wall there currently.

Yours truly,



Michael and Alison Brewer
69 East Bay St.
Charleston, SC 29401

EXHIBIT 1
CityofCharlestonBZA-ZMeeting9_7_2021

ELECTRONICALLY FILED - 2021 Dec 24 1:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPI005255

1 Chair Michael Robinson: Thank you. This is the September 7th, 2021 meeting of the
2 City of Charleston Board of Zoning Appeals - Zoning. Board members present are Mr.
3 Morrison, Mr. Judan, Mr. [indiscernible] [00:00:17], Ms. Richards, Ms. Vargas-Vargas, Mr.
4 Bennett and Mr. Robinson. Present from the planning staff are Mr. Batchelder, Ms. Ashby and
5 Mr. Valentine. These proceedings are being recorded and we ask those who speak to identify
6 themselves for the record. We will conduct this meeting in usual fashion. We'll first receive
7 information from city staff about the application and their recommendation. If the
8 recommendation is favorable, and no one objects to the application, usually the Board of Zoning
9 Appeals treats the matter as being uncontested and passes it as a matter of course.

10 If however, the city recommends against the application, or there is opposition to the
11 application, we treat the application as contested, and hear from the applicant and anyone else
12 who is in favor of the application. Next, we hear from anyone opposed, followed by a short
13 rebuttal from the applicant. We then close the public hearing portion of the meeting for that
14 particular application and open discussion to the Board of Zoning Appeals members only, who
15 will then make a decision to approve, approve with conditions or deny the application.

16 The Board of Zoning Appeals – Zoning has the authority to do three things. First, to hear
17 appeals to decisions of the Zoning Administrator. Second, to grant special exceptions, a fact-
18 finding function of the board. And third, grant variances to the zoning ordinance if the
19 application meets the hardship test outlined in Section 54-924 of the ordinance. The board may
20 deliver and make a final decision on the matter by a majority vote of members present at the
21 hearing and qualified to vote, provided not less than a quorum is present and qualified to vote.
22 However, an affirmative vote of two-thirds of the board members present and voting shall be

EXHIBIT 1
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1 required before a use variance may be granted or a variance to be granted, the Board of Zoning
2 Appeals must make the following findings:

3 A: That there are extraordinary and exceptional conditions pertaining to the particular
4 piece of property;

5 B: These conditions do not generally apply to other property in the vicinity;

6 C: Because of these conditions, the application of the ordinance to the particular piece of
7 property would effectively prohibit or unreasonably restrict the utilization of the property; and

8 D: The authorization of a variance will not be of substantial detriment to adjacent
9 property or to the public good, and the character of the district will not be harmed by the granting
10 of the variance.

11 We have a couple of, we've got one application that's been withdrawn from
12 consideration at this meeting. It's item number 4, B4, 430 Meeting Street has been withdrawn
13 and will not be heard tonight. Also, we have item number 8, B8, 30 F Street has been deferred
14 by the applicant and it will not be heard tonight. I would like to make a comment as to protocol
15 on presentations. Our rules call for us to allow the applicant and anyone else in favor of the
16 application to have a total of 10 minutes per presentation and the opposition to have 10 minutes
17 in their opposition presentation, and then the applicant has a rebuttal time of 5 minutes. Due to
18 the number of applications tonight, we're going to follow that protocol and city staff will keep
19 record of the time. The first item on the agenda is item A1, review of the minutes of the August
20 17th, 2021 board meeting.

21 [00:04:54 – 00:05:40]

22 Chair Robinson: Second item on the agenda is 62 Church Street, Charlestowne. Request
23 a special exception under section 54-110 to allow a horizontal expansion (garden room) and

EXHIBIT 1
CityofCharlestonBZA-ZMeeting9_7_2021

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1 vertical extension (hall/closet/exercise/laundry) that extends a non-conforming 6.2 foot. south
2 side setback (9 feet required). Request variance from section 54-301 to allow a 2-story addition
3 having a 43% lot occupancy (35% limitation; existing lot occupancy 37%). Zoned SR-4. Mr.
4 Batchelder.

5 Lee Batchelder: Thank you. So, this is a residential property on the east side of Church
6 Street, the south of Trad Street. And this shows, this map shows the location of the property
7 from the middle of that block. And, and as you can see, there are a variety of lot shapes and
8 sizes in, in this immediate area. The property is Zoned SR-4. Some of the properties – well, I’ll
9 just say that within this area of Church Street, the SR-4 zoning is what applies, and you’ll see
10 that in a minute, but some of these other properties in the area and the neighborhood have other
11 zoning districts. But all of them have a 35% lot occupancy limitation. So just keep that in mind.

12 Here is an aerial view. This does a good job of illustrating that most of the homes are set
13 all the way up to or very close to Church Street. This house has been set well back from Church
14 Street as you can see. Here is a view from the street. Again, showing the house situated well
15 back from Church Street. There is a neighboring property to the south, it’s right on Church
16 Street and the property to the north, the home to the north is closer, much closer to Church Street
17 than 62. The zoning map illustrating the zoning to the property is SR-4 in that area. And again,
18 this does a good job of showing how this home, for whatever reason, I don’t know the history of
19 the home, but it sets well back from Church Street unlike many vast majority of homes on
20 Church Street.

21 The applicant in preparing this application, which involves not only a special exception to
22 extend the building with a nonconforming building setback, but also a variance to allow the
23 increase in the total lot occupancy of the building on the lot has submitted this document. And I

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1 have blowups of each section. You can see the numbers illustrate the addresses of the property.
2 So 62 is directly in the middle of the drawing and the drawing is —so this is the blowup of the
3 northern part of that drawing. And what the applicant has done is, is identify the existing lot
4 occupancies for the neighboring properties. So right now, 62 Church Street has a 37% lot
5 occupancy. The house to the north, 29.7; then moving north 65.5 and so on. So you can see that
6 there are very large lot occupancies in this area. And again, the limit from a zoning standpoint is
7 35% for all of these lots.

8 On the south side of 62 you have other lot occupancies shown here. Some of them are at
9 or below the 35% limitation. Most of them are above that limitation. And just on the map that I
10 prepared I X'd out the homes that do exceed that 35% lot occupancy on the east side of Church
11 Street.

12 So this is a site plan showing the existing home on the property. Church Street is on the
13 left side of the site plan front yard and the house situated well back from the front property line
14 and a small back yard. And the other thing to point out is I guess this, this small building here is
15 apparently an old building. Maybe it was a privy at one time I'm not sure, but anyway it's
16 existing. Now this, this site plan shows the proposed addition. This is a 2-story addition located
17 right back here that connects to the rear of the existing house plus it connects to this privy, which
18 right now I believe is a storage shed. And here's, the next image is going to be a view looking
19 from approximately somewhere around here back towards the back of the lot. So here is a view
20 of that existing shed-like structure at back of the property. I think it, it uses the existing wall, I
21 believe on that south side property line as its wall, interior wall. Here's a closeup view and view
22 of the back yard, the top view, it is looking south at that storage shed that abuts the property line
23 60 Church Street and then the lower view is a view of looking at the back of 62 Church Street.

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1 So these are floorplans, or site plan actually in this case and floorplan illustrating the
2 proposed addition. I just went ahead and highlighted the outline of the proposed addition. You
3 can see that it ties into the existing house here, and then this is that storage shed structure that
4 becomes usable condition for area of the house once it's connected. And this is a view of the
5 second floor, which is a smaller footprint. The applicant can explain in more detail the, what this
6 is looking at. And then again, I've highlighted the outline to the additions to help illustrate these
7 and I hope that I've done this correctly, that I think I have. So this is a view looking from the
8 south side. So, this would be a view looking from, basically from the property line north and
9 you see the existing storage shed here. And that would be, I guess the interior because the
10 property line is the side of the, the south side of that shed. That make sense.

11 And then this is a view looking at the back of the house with the addition outlined. So
12 just to illustrate the second floor of the addition is smaller than the first. I want to make sure that
13 [indiscernible] [00:14:36] and then there is, there is some opposition to this I believe from the
14 property owner to the south and just to refresh your memory I've, I've included the section,
15 section 54-110 sub-section F from the zoning ordinance that just simply explains the special
16 exception test that is to be applied by the board for an extension, a physical extension in a
17 nonconforming – in this case, nonconforming building footprint with the rear addition. So the
18 existing house sits 6.2 feet off that south side property line. 9 feet is required and the second
19 floor a little further away from that south side. But anyway that's, it's still extending the
20 nonconforming outside setback that exists on this property. And the board is to make a finding
21 or determine that it's limited to extending or increasing the nonconforming use then in existence,
22 and two, would not result in an unreasonable intensification of the nonconforming use. And then
23 the board should consider the effect of the extension or increase on the property in the vicinity to

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1 include traffic impacts, not applicable in this case in my opinion. Vehicular and pedestrian
2 safety, again not applicable. Parking impacts, not applicable. The potential impacts of noise,
3 lighting fumes, obstruction of airflow or light on the adjoining property, that would I believe
4 apply in this case. And the impacts on the aesthetic character of the environs to include possible
5 need for screening. Again that's, that's possibly one that would apply as well.

6 The board, and I, I want to point out that this, this addition I think probably is my, my
7 guess, it's probably not visible from a public right of way. I could be wrong about that. If it
8 were not visible under normal circumstances, the BAR will not have any jurisdiction over the
9 review of this addition. However, once the board hears a request for this type of extension and
10 grants a special exception, it's automatically subject to review and approval by the Board of
11 Architectural Review as well. I just want to add that as an additional step that would be
12 necessary if the board was to grant this approval.

13 So my recommendation is for approval of this request. I feel like the, this is to the north,
14 the property at 60 Church Street, and that is the adjoining property that I believe is not in favor of
15 this request. So the light impact on that property is very minimal to the extent that there would
16 be an impact and an air impact I believe could be minimal as well. So I would recommend
17 approval of this request. I believe it meets the special exception requirements. And I believe the
18 variance is reasonable given the, the nature of property lot occupancies in the immediate area.
19 They're all subject to the 35% lot occupancy limitation. So, for those reasons I think this is a
20 reasonable request. It's in line with how we looked at these in other situations. The property
21 sitting back from Church Street, you know, you're very limited on where you could possibly
22 build any addition onto this home and the, certainly wouldn't be allowed in front of the property
23 given the controls that the BAR has and also in this case, and you'll hear from April Wood that

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1 Historic Charleston Foundation does have a façade easement on this home. So, they have review
2 authority over this addition as well and they have recommended that it be approved. So, with
3 that I complete my remarks and, and I guess, yeah, I'll just let the chair move on.

4 Chair Robinson: The city recommends approval. Ms. Ashby, is there opposition
5 present?

6 Ms. Penney Ashby: Yes, Mr. Robinson. There is opposition present. I believe that Mr.
7 Yates.

8 Mr. Batchelder: So we, we should just go ahead and hear from applicant I believe first.

9 Ms. Ashby: First? Okay.

10 Chair Robinson: With that in mind, I'll hear from the applicant. And will the applicant
11 please be sworn in.

12 Mr. Batchelder: So Penney, that's going to be Skip Wallace.

13 Ms. Ashby: Yes, it's going to be Skip Wallace and ...

14 Mr. Batchelder: [Overlap] [00:20:29] as well I believe?

15 Ms. Ashby: Let's see, I'm looking right now.

16 Chair Robinson: And then the attorney.

17 Ms. Ashby: Yeah, the attorneys. I didn't see where she signed up. But Skip Wallace is
18 signed up.

19 Chair Robinson: Mr. Wallace, are you present?

20 Mr. Batchelder: So we need to promote him, if Scott, you could do that.

21 Scott: I believe I have.

22 Chair Robinson: Mr. Wallace, are you present?

23 Skip Wallace: Yes, can you hear me?

EXHIBIT 1
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Chair Robinson: Yes, Mr. Wallace, would you please be sworn in.

Skip Wallace: Okay.

Mr. Batchelder: Skip, this is Lee Batchelder. So do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Skip Wallace: I do.

Chair Robinson: Mr. Wallace, you and anyone else in favor have a total of 10 minutes to make your presentation. Please proceed.

Skip Wallace: Okay.

Mr. Batchelder: And, and before you do that, if you could also mention anyone else that we should promote as part of your applicant presentation.

Skip Wallace: Okay. Okay, can you hear me okay.

Mr. Batchelder: Yes, we can.

Skip Wallace: Can you see me?

Mr. Batchelder: No, cannot see you.

Skip Wallace: Is there something I should do for that?

Scott: There should have been a request to promote you to a panelist, you have to accept that, I believe.

[Pause] [00:21:54 – 00:22:21]

Mr. Batchelder: Okay, there you go. Okay.

Skip Wallace: Okay, you can hear me and see me?

Mr. Batchelder: Yes.

Skip Wallace: Okay. Alright as, as a way of introduction my name is Skip Wallace. This is my wife, Erica. We've been here at 62 Church Street for nine years. I'm an architect

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1 registered in the State of South Carolina for 37 years. I have a studio on Broad Street that, that I
2 occupy daily. My home quarters, my headquarters for my firm is up in Richmond, Virginia and I
3 have nine people up there and a partner up there. So, it's just me down here, and my wife.

4 So. we've been working on this for about four years and we, just as an introduction, I was
5 on the preservation committee for my local county in Virginia for 26 years, so I take historic
6 properties very seriously. I love them. That's why I'm here. This is over 200-year-old house.
7 It's got one of Loutrel Briggs' latest, last gardens back in 1974. We have the actual drawings on
8 the wall. So we really feel like we are stewards to an amazing piece of property. We open it up
9 to the public whenever we can. Historic Charleston Foundation uses it for its garden tours about
10 four times this spring. We allow people to take pictures in the garden, wedding pictures all the
11 time. We, we just, we just feel like it's, we're just here temporarily and we're the stewards of
12 this amazing, caretaker of this amazing piece of property.

13 It's a unique house. It's a very small house. It was never used as a fulltime residence.
14 What we are doing to we feel will bring it into livable condition for this, for this type of lifestyle
15 we have. Nothing has been done to this in over half a century and I think we, we all live in a
16 beautiful city and in a beautiful historic district in a beautiful city. And my feeling is that it's
17 been successful because the, the committees have allowed people to do things like this, which
18 brings a historic home, makes it a viable home for today's society. And without, without
19 approvals to do things like this, these homes would become stagnant. And they become
20 museums basically, Sturtevant Village, you know, it'd just be a museum and it wouldn't be the
21 vibrant community that we have grown to love.

22 We obviously can't do an addition on the front. We can't go to the sides, so the back is
23 the only way to go. We're adding just one room on the ground floor, which one of the things

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1 about these Charleston singles is that they're just a series of rooms and the floor was usually
2 pretty poor. So that's what we have. So this room we're adding would actually create a very
3 good circulation from the kitchen to the mud room to our new room and back in the central hall
4 to our den and to the rest of the house. On the second floor, which is almost the more important
5 part for us, we get to have a laundry room and closets. And that's the, the things that are lacking
6 in this house that make it so difficult for us and we, we've committed to stay here the rest of our
7 lives. So that was a reason for moving forward with this, spending so much time designing it,
8 getting so much input from all the people we can. Eddie Fobb is a friend, he, he helped us. So
9 we really spent a long time doing this. We feel like we got the right solution, we've got the
10 support of April Wood and Historic Charleston. And we just want to move forward with it.

11 We have letters from our neighbors moving north up Church Street of approval. We have
12 letters from someone who lives on Longitude Lane of approval. Um...

13 Mr. Batchelder: And Skip, just by the way, I forgot to mention, but all of your slides that
14 you, all of the information that you submitted with the application is in this PowerPoint, if you
15 want to refer to anything in the letters I have [overlap] [00:26:04] support letters as well.

16 Skip Wallace: Okay. I did forget to mention that we do have two attorneys who are
17 going to be representing us and they are here too. So, I should have told you that. They're with
18 [indiscernible] [00:26:54] Walker and it's Jennifer Ivey and John Litton, I believe. So, they are
19 waiting to be admitted as well, if that's possible. That in a nutshell is what we're trying to do.
20 We, we've been here for quite a while. We, we walked around, my wife and I walked around
21 yesterday in about a 5-minute radius about three blocks either way from, from where we are.
22 And we counted how many?

23 Erica: 80.

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1 Skip Wallace: 80, 80 houses that have done something similar to what we're asking,
2 which are 2-story additions to homes in the back. So, it's something that, you know, that is quite
3 often done. And again, this house has not been touched in half a century. So this is, this is what
4 we feel, we need to make this a home we can stay in for the rest of our lives. I don't need the
5 full 10 minutes. If there's any questions.

6 Chair Robinson: Any questions for Mr. Wallace from the board? Does anyone else wish
7 to speak in favor of the application?

8 Jennifer Ivey: Yes sir.

9 Mr. Batchelder: Jennifer, this is Lee Batchelder. I'll swear you in.

10 Jennifer: Great.

11 Mr. Batchelder: And are you the only one that will be speaking or is there...?

12 John Litton: Lee, this is John [indiscernible] [00:28:17] Litton. I may handle the reply if
13 one is necessary but I am, if you want to swear us in together, that's fine.

14 Mr. Batchelder: Yeah. Let me do that. Do you swear to tell the truth, the whole truth
15 and nothing but the truth, so help you God.

16 John: I do.

17 Jennifer: I do.

18 Mr. Batchelder: Thank you.

19 Jennifer: Good evening all. My name is Jennifer Ivey. We're representing Skip and
20 Erica Wallace and, and I want to just spend a couple of minutes running through this, the
21 application of the special exception test, as well as the nonconforming use test and, and as
22 you've heard from Mr. Batchelder and our client Skip Wallace, this is very unique property.
23 You've heard from Mr. Wallace, it's a 213-year-old property situated in the historic district and

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1 demonstrative of the Charleston single, built in the 18th and 19th Centuries. It's also very small
2 as compared to its neighboring properties. 62 Church currently consists of roughly 2400 feet of
3 conditioned space on a lot that is, is under twice the size, but what is so unique with this
4 property, and you've heard from, from Mr. Batchelder and, and can see it in some of the pictures
5 is that this property unlike its neighboring properties is set back from the street from the
6 sidewalk. The property is home to a Loutrel Briggs designed garden, which is the central feature
7 of this property and unlike the neighboring residences, it can't, it can't move in that space. It
8 can't utilize the space in the front of the property. It's got nowhere to go, but back.

9 Also unlike neighboring properties it, it is so much smaller and so much older in its
10 current design. The portion of the property that the Wallaces intend to add, add to on the rear of
11 the property is actually not any part of the historic building. It's a more recent addition in what
12 we view as a great improvement to that addition. And so, the positioning of the residence at 62
13 Church is very unique among the other residential properties situated in the vicinity. And like
14 Mr. Batchelder has recommended it, it meets the extraordinary and exceptional condition test,
15 the first aspect of the test. Likewise, these conditions do not apply to other property in the
16 vicinity. The property is distinct by way of its set back, and the other neighboring homes are
17 much larger and have been more recently modernized. The Wallaces have provided a listing of
18 properties just walking around the four-block area of homes that have all had similar 2-story
19 additions and you've seen from, from the lot coverage study that Skip Wallace prepared, and Mr.
20 Batchelder blew up in a way that, that most of the lots around it, most of the lots and residences
21 around the Wallaces' property are much larger and are taking up a much larger portion of their
22 lot presently and even as, as would be altered up that 43% lot coverage.

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One, one example is the Wallaces' neighboring property, 60 Church, the property to the south who is here as I understand it to speak in opposition, that property, 60 Church, did the same thing. Put an addition on the rear side of their house years ago and the Wallaces did not object to that addition. In fact, they supported their former's, former neighbor's application. It's, it's such on Church Street that a lot of these houses have done these 2-story additions on the back side, and what the Wallaces are looking to do here really speaks to the third and fourth prong of that test. This is a long intentional and well-planned design to make this property more functional and more beautiful than it already is. You see in their plans that they're looking to put another out, outdoor area, another garden feature to this home, as well as a garden room. And then on the second, second story addition, just some very functional aspects. A laundry area, or area to expand for a laundry area, some closets in a much much more modern size and to speak to the last prong and also touch on the special exception test, the proposed addition would not be visible at all from 64 Church Street. You're not going to see this standing, standing across the street or, or behind it and so the character of the district will not be harmed by granting the variance, as this will keep the use of this property as a residential property, add another garden area and really the neighbor's view is going to be enhanced.

I think one thing that has been submitted in the package to you is a view angle study, which measures potentially how the light and view is going to be affected if you were sitting on that second-floor porch next door. And so this is if you're turning your head all the way towards the Wallaces' property and, and on that smaller star on the front left corner sitting in the most restrictive position on that porch looking towards the Wallaces. And so there is, is some minimal impact as Mr. Batchelder indicated on the light, which is really, you know, if you're sitting on that back porch, more attributable to the heavy tree overhangs on that property. We think that

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1 the view is going to be enhanced overall. We do not believe that there's any easement of view
2 recognized in South Carolina. And that this property is actually going to be enhanced by the
3 proposed addition and would ask for your support.

4 Chair Robinson: Thank you very much. Any questions for Ms. Ivey? I think that
5 probably takes care of the 10 minutes.

6 Ms. Ashby: That takes care of the 10 minutes.

7 Chair Robinson: Very good. Is there any opposition present?

8 Mr. Batchelder: Before we get to that, let me just...I failed to reference the letters of
9 support like I normally would. Of course, we have the letter from April Wood of the Historic
10 Charleston Foundation. They have an easement, and they request approval of this application
11 during that last sentence. Then the homeowner at 64 Church in support. 66 Church Street is in
12 support. 68 Church Street and 69 East Bay Street, this is a property a block away. But nearby
13 and, and then anyway. So I just wanted to reference those letters as well for the board.

14 Chair Robinson: Thank you. Is anyone present who wishes to speak in opposition to the
15 application?

16 Ms. Ashby: Yes, Mr. Robinson. I believe it may be Mr. Hellman, Brian Hellman.

17 Chair Robinson: Is Mr. Hellman present? Mr. Hellman?

18 Brian Hellman: Can you hear me?

19 Mr. Batchelder: Yes.

20 Brian Hellman: Thank you.

21 Mr. Batchelder: Let me swear you in Brian. Or is there anyone else that would be
22 speaking in opposition too?

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1 Brian Hellman: I, I'm here along with my client. I'm trying to, how do I turn the video
2 on here?

3 Mr. Batchelder: You're only an attendee that is enabled to speak. We don't necessarily
4 promote you to be a panelist, if that makes sense. There you are.

5 Brian Hellman: Very good, very good. I'm here. I'm ready to be sworn in Mr.
6 Batchelder. Thank you.

7 Mr. Batchelder: Do you swear to tell the truth, the whole truth and nothing but the truth,
8 so help you God?

9 Brian Hellman: I do.

10 Chair Robinson: Thank you Mr. Hellman. Please proceed.

11 Brian Hellman: Thank you Mr. Chairman. I'm Brian Hellman, I'm here with Johnathan
12 Yates. We're at 105 Broad Street. Also with me tonight are my clients, Theresa Melhado and
13 Dane Neller. Ms. Melhado recently bought 60 Church Street and actually found out about this
14 application, not from the Wallaces, but from her contractor when she knows, when he noticed
15 that the house was posted for this, this hearing. And he advised her of it. It's not surprising
16 because most of the impact that this project imposes on its neighbors is on 60 Church and 60
17 Church is not only to the south of 62 Church, but it also turns a corner at the rear of the property.
18 So its, its impacted on just on the north/south property line, but also the east/west property line at
19 the rear of 62 Church. So in, as soon as this happened Ms. Melhado reached out to us and asked
20 us to, to take a look at the application, because she had significant concerns about the impact that
21 it was going to have on her house. And it's clear that the two-part special exception test and the
22 four-part variance test are not met in this situation. Other issues also came to light, which further
23 we believe support the denial of this application.

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1 Though it's not as difficult to satisfy as the four-part variance hardship test, I'm going to
2 start with the two-part special exception test and why the application we believe fails, and we
3 would ask that it be denied. Under 54-110F that Mr. Batchelder brought up, the controlling
4 language, the nonconforming use of a building or a structure cannot be physically extended to
5 provide more area for the nonconforming use, unless the Board Zoning Appeal - Zoning finds
6 that the extension or increase in the nonconforming use: number 1, is limited to extending or
7 increasing the nonconforming use then in existence and number 2, would not resolve in an
8 unreasonable intensification of the nonconforming use. And then the board shall consider
9 impacts, such as traffic impacts, parking impacts, potential impacts of noise, lighting, fumes and
10 obstruction of airflow or light on the adjoining property, as well as the impact on the aesthetic
11 character of environs. So, in looking at the special exception first element, the first thing that,
12 that was, that we uncovered here was that there are a number of businesses that are registered to
13 this address. Mr. Wallace's architectural firm uses 62 Church Street as its listed address. If you
14 go to his website, we – we actually sent some exhibits that can show the board this. I'm not sure
15 if that's something that Mr. Batchelder can show, but it's, we have a number of slides that show
16 that 62 Church Street is listed as the address for Island Architects, both on their website and a
17 number of... Next slide please. So, this is the Island Architect's website showing that the
18 business use has occurred at this address. The next slide shows that Island Architects is
19 registered with the LLR as its primary business address in South Carolina is 62 Church Street
20 that Mr. Wallace himself in the next slide has listed that as his address. That Island Architects,
21 the next slide please, on their drawings, architectural drawings show that 62 Church Street is its
22 business address. In the next slide it shows that the vehicle registrations for Island Architects
23 two vehicles are listed to 62 Church Street.

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1 In the next slide, Mrs. Wallace shows that on her email signature two businesses are
2 being operated at this address. Both her interior design firm Stone Ridge Interiors, as well as
3 Island Architects. And in the next slide, her Facebook page shows that 62 Church Street is the
4 business address for Stone Ridge Interiors. Interestingly enough, in the next slide, neither of
5 those two companies have a business license according to the City of Charleston to operate
6 anywhere in the City of Charleston, yet they identify those addresses as their primary business
7 address. No business addresses nor any home occupation applications have been made to that
8 address. Therefore, we feel that part of this application is really to intensify the effect of two
9 unlawful nonconforming uses. And therefore, the first element of the test is not met.

10 The second element of the test, unreasonable intensification of the nonconforming use,
11 we believe is also not met. First, because of the impact that the operation of two businesses on
12 this quiet and densely populated residential street would have negatively impacting both traffic
13 and parking on Church Street. With the special exception application that was requested, the
14 drawings are unclear and confusing as to what the exact request is and if we could turn Mr.
15 Batchelder to drawing A-2, you will see that the mechanical systems that are going to be used for
16 60 Church Street are located literally right outside of the bedroom windows of 60 Church Street
17 in such a location... A-2 please sir. You can see the equipment, the two compressors located
18 right there and right across from those two compressors is the, is the 60, is 60 Church Street,
19 nearly about five or six feet away. Secondly, in drawing A10, you will see that the placement of
20 the generator now lifted and located in a corner with a wall right, right upon it will impact the
21 rear yard, pool, pool house and bedroom of 60 Church Street. A10 was in the package that was
22 sent to us. It was also part of the application.

23 Mr. Batchelder: I don't know what happened.

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1 Brian Hellman: Yeah, we believe that's an important, important drawing. You can see
2 the generator lifted there right on the corner at A-7 perhaps. The height of the proposed addition
3 will also negatively impact 60 Church by obstruction of light and airflow on 60 Church Street, its
4 pool, its rear yard. This can be seen in drawing A-0.2 and on the aesthetic character of the
5 environs. All elements that the board shall consider according to 54-110F, clearly these
6 improvements will result in an unreasonable intensification of the nonconforming use, as well as
7 an unlawful intensification of the two unlawful business uses. So for that reason, we do not
8 believe that the special exception test is met either element of the special exception test is met.
9 And therefore, the special exception should be denied. As it relates to the variance test, we do
10 not believe there are any extraordinary exceptional conditions pertaining to this property. If you
11 look at this property and you go back to the drawing, all of the properties that are to the north
12 and south have approximately the same percentage of land being used. Very very few are in the
13 40s. They're in the 60, 58 Church, 60 Church, 62 Church, 64 Church. 64 Church next door is
14 locate, is setback. 30 Trad Street is setback. 62 and 48 Church are all setback. The size, the
15 shape, the topography are common among many Charleston properties and therefore there are
16 really not extraordinary and exceptional conditions, and this requirement hasn't been met.

17 Even if the board were to find that there were extraordinary and exceptional conditions,
18 and it's my client's position that there are not, the size and the shape in this topography are very
19 common as you can see in these drawings. There are a number of lots of this size and this shape
20 throughout the vicinity and the peninsula. You can look at 64 Church, you can look at 30 Trad,
21 you can look at 48 Church and therefore this requirement has not been met because these
22 conditions do apply to other properties in the vicinity. These, these conditions also do not
23 effectively prohibit or unreasonably restrict the utilization of the property. The property is

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1 presently, is presently utilized as a business and the operation of two separate businesses. Even
2 as a residence, as it's been for over 200 years, it seems that there is no problem in doing so,
3 therefore, there is no effectively prohibit because it's been utilized. And as it relates to
4 unreasonably restricting the utilization of the property, there is no way for this house, the
5 inability of this house to function whether in the future or as it has been for the past 200 years.
6 There is no effective prohibition, nor is there an unreasonable restriction and this requirement
7 hasn't been met.

8 The last part of the test is really the most important that, that there can't be a substantial
9 detriment to an adjacent property, and there is here a substantial detriment to adjacent property
10 and the public good. First, our client is going to be harmed because of the location of the
11 compressors, the generator, the effect of light and air on its backyard because of the nature of 60
12 Church Street being an L-shaped lot for the, both the south and to the, to the rear of 62 Church.
13 The applicant says this expansion isn't visible from Church Street and they also made a point of
14 saying it's not visible from 64 Church, where they got a letter of support. Well, this is not the
15 standard. Why does 60 have to bear the burden of the impact of this improvement while 64
16 Church receives no visible impacts whatsoever. 60 Church Street will be substantially harmed
17 due not only of the height, scale and mass of the proposed improvements, but also the placement
18 of the mechanical systems right next to the master bedroom of 60 Church Street. Furthermore,
19 there are two businesses that are being illegally operated in violation of long-established City of
20 Charleston ordinances, which is clearly contrary to the public good and harmful to the character
21 of the district. The fact that the proposed addition is not from Church Street has no bearing in
22 the statutory variance test for a variance. Therefore, we do not believe that the fourth prong of
23 the test, nor the other three are met by the applicant.

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1 Our client is in a position that this is going to significantly harm them, because of the
2 nature of the improvements, where they're located and the fact that they were really kept in the
3 dark from the beginning on this. We hope that the board would find that there are not, the
4 application is not, the elements of the application and the special exception test and the variance
5 requests are not being met by the applicant and that it would deny this application.

6 Chair Robinson: Any questions for Mr. Hellman from the board? Was that 10 minutes
7 Mr. Batchelder?

8 Mr. Batchelder: Yeah.

9 Ms. Ashby: Yes, it was.

10 Chair Robinson: Thank you very much Mr. Hellman. We'll hear now rebuttal from the
11 applicant.

12 Skip Wallace: All right, thank you very much. Thank you.

13 John Litton: Skip, this is John. May I take the rebuttal please?

14 Skip Wallace: Oh sure, sure. Thank you, John.

15 John: Good evening, John Litton, also here on behalf of the Wallaces. Mr. Hellman said
16 that the neighbors at 60 Church Street have been kept in the dark. I just want to point out that
17 this application was deferred last month at their request. And what's happened in the last month
18 is that they've done research, and what they've discovered is that the Wallaces have a mailbox.
19 They have discovered that they've used this mailbox for the last nine years. And they are now
20 coming to this board and they're attacking them, asserting that they're running the businesses out
21 of their house because they have their business addresses and their home offices at their home.
22 You heard Mr. Wallace at the beginning say that he has an architectural firm that's
23 headquartered in Richmond with a number of staff up there, fulltime staff. And in addition, rents

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1 a physical location here in Charleston. The fact that they use their mailbox for business mail has
2 nothing to do with this application. And the board, I hope, will not be distracted by that
3 assertion, that there's some illegal activity at the home.

4 To the variance and special exception test, the special exception test, I want to focus on
5 the fact that the nonconformity here is the side setback. It is not as the objectors would have you
6 believe, some sort of expansion of a business use. It is simply a side setback, and there has been
7 nothing put in front of the board to suggest that granting that special exception will have any
8 negative impacts. As to the variance test, you even heard Mr. Batchelder remark that this
9 property is different than the other properties in the vicinity. That this garden in front, this
10 historic beautiful garden that the Wallaces are stewards of, is what makes this unique. And
11 anyone who walks past there knows that. This is a relatively modest addition to modernize the
12 house similar to the one at 60 Church Street, but smaller. There is just no reason not to grant the
13 variance and the special exception. The four-part test is clearly met. Staff has recognized that
14 it's met. The Historic Charleston Foundation has recognized that this is an appropriate addition
15 to this beautiful home. And for those reasons, we would ask that you approve both of these
16 requests.

17 The assertion that the mechanical system is going to be loud or that there's going to be
18 some issue with light is not backed up by any sort of empirical or other evidence. And in fact, if
19 you look at the current site plan, you will see that the air condition systems are on the same side
20 of the yard today as they're planned to be after the renovation. They're moving, but the idea that
21 this is going to be some dramatic impact on 60 Church Street is just something taken out of thin
22 air. So for those reasons, we would ask that all of the requests be granted. Thank you.

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1 Chair Robinson: Thank you. Any questions from the board for Mr. Litton? Okay, well
2 the public hearing portion of the meeting is closed. Mr. Batchelder, it seems to me that the
3 contention on the uses that are occurring in the building really not properly before us. We don't
4 deal with those sorts of things. We're dealing with the physical, a request of a physical change
5 to the property. So it's my feeling that we don't have to deal with any uses that may or may not
6 be occurring in there other than residential.

7 Ms. Vargas-Vargas: I would agree with that.

8 Chair Robinson: Do you agree with me, Mr. Batchelder?

9 Mr. Batchelder: I agree with you on that.

10 Chair Robinson: Let me ask you on another issue. Did you hear anything during the
11 opposition presentation that was news to you, or shed a different light on your approval, your
12 recommendation for approval of the application?

13 Mr. Batchelder: No, I did not hear anything.

14 Chair Robinson: Does the board have any questions for Mr. Batchelder or anyone else or
15 any comments?

16 Howell Morrison: This is Howell. What is your view about the issues of mechanical
17 systems and being close to the master bedroom?

18 Mr. Batchelder: Let me go down here. Let me go into... let me see

19 Ms. Vargas-Vargas: Lee, maybe while you're doing that, maybe we could see where the
20 existing units are, as opposed to where they're going to be.

21 Mr. Batchelder: There's a photograph here. I need to ... I got to figure out where I am in
22 this slide [indiscernible] [00:54:36]. Now we're getting into the applicant slides. And so I
23 believe this, this plan illustrates the location of those units right now. So you've got this, this

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1 one-story building that you've seen in photographs. Back here is an AC stand and generator in
2 this back corner. And I believe it's these units that would be elevated to the ... let me just move
3 on. So perhaps the units are in this enclosed space right back here right now. And they would
4 be, and there's a view looking into that enclosed space that we just saw. This wall that you see is
5 the back property line of 62 Church Street and beyond is the, that L-shaped section at 60 Church
6 Street and another view. That's, I guess that would be, I'm not sure what that is. Generator
7 platform behind [indiscernible] [00:56:15]. And moving on, let me get back to the drawings.
8 [indiscernible] [00:56:32] through. So this is the deck area where the, the HVAC compressors
9 will be relocated to I believe and any applicants could correct me if I'm wrong on that.

10 Howell: Why do they have to be raised?

11 Mr. Batchelder: I'm not sure, but perhaps that would be a good question for the
12 applicant.

13 Howell: Well, let me make sure I understand. It's the same compressor unit or a bigger
14 compressor unit or a second compressor unit required by the addition and the same generator or a
15 second generator? I'm lost on that.

16 Mr. Batchelder: I don't know the answers to those questions. So, but I will say that
17 again if you look at the side view, I believe this is the existing parapet to that [indiscernible]
18 [00:57:46], the existing section of the house.

19 Howell: Yeah.

20 Mr. Batchelder: And so, I believe that's clear and then these units will be on the other
21 side of that wall, so they wouldn't have, there would be a wall separating those units from the
22 adjoining property. I believe it is the correct way of looking at that. Again, I'd like the
23 applicants to maybe chime in on this point if you don't mind.

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Chair Robinson: Is the applicant still present?

Skip Wallace: Yes.

Chair Robinson: Could you comment on the questions please?

Skip Wallace: Absolutely, absolutely. We are not getting a second generator, we're just taking the same one we have. It's in the same location we're raising it up. The two, it's low to the ground right now, which is bothersome. The two compressors are going to be relocated. They're in the way of the, of the footprint right now, the addition. And we are, one of them is a new one. The new one's very quiet and the other one is not. We're going to replace that with a new one. These, these new jet compressors are whisper quiet. So they will be behind that parapet wall. That parapet wall starts at 6'6" high above the deck, where the compressors are and rises at about 8 and 12. So they will never, they will never see these compressors, whereas they do right now. They can see, they can look down upon our compressors, and the location in terms of relationship to the bedroom is, is almost similar. They're a little closer, but they do have that wall that will baffle the sound of them.

Howell: So, your existing louder compressor is going to be switched out for a newer model, less noisy compressor. Is that what you're saying?

Skip Wallace: Yes sir.

Howell: And, and the generator I presume only comes on in the event of loss of power.

Skip Wallace: That's right.

Howell: So, an emergency generator.

Skip Wallace: Absolutely.

Howell: Okay.

Chair Robinson: Any other questions, any comments from the board?

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1 Ms. Vargas-Vargas: I think I have a question. Is the, is the neighbor's views 60 Church
2 Street, is the view from the bedroom going to be now the facade of the, of the new addition?
3 And is that substantially impacting their light?

4 Mr. Batchelder: Well, the ... can you hear me.

5 Ms. Vargas-Vargas: Yes sir.

6 Skip Wallace: Their bedroom is back from this porch. And in fact, the, the addition that
7 we supported in 2016 actually has a window on the northside that looks directly into our
8 bedroom. Their bedroom is back property 15 feet from that back of that addition. So, they're
9 already looking at the side of our house. The view, the view angle that's cut off by this addition
10 will be almost miniscule because of the existing parapet wall. And they are to our south so there
11 is no sunlight being blocked, because the sun is to our south and all shadows are cast to the
12 north.

13 Ms. Allie Grass: I have a question too for you all please. The letter of support that you
14 received from the property owner on the East Bay Street, is that the property owner to the rear of
15 your property?

16 Skip Wallace: No, no they're on Longitude Lane, but they are friends of ours and they're
17 very familiar with the addition, and so I asked if they would write us a letter of support. They're
18 on East Bay but they are actually on Longitude Lane, which intersects with Church Street just
19 north of our house, three houses up.

20 Ms. Allie Grass: Thank you. And I have one more question. Just to clarify about the,
21 the second floor porch, is that the very edge of their structure closest to your, closest to where
22 your addition will be? I'm confused about this drawing that we're looking at.

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1 Skip Wallace: Oh, well I did that, sorry. It is kind of messy. I didn't know you were
2 going to show it. Where Lee is pointing right now, that's their second-floor porch right there,
3 that rectangle.

4 Ms. Allie Grass: And that's not the farthest structure part of the building is what I'm
5 trying to [overlap] [1:02:23]. Okay, so okay.

6 Skip Wallace: Yes, yeah. [indiscernible] [01:02:24] That little section to the right was
7 just something I was doing to study the view angle of somebody sitting on their porch. And we
8 stepped our second floor back and did a slopped roof so you can see the view angle is only 27
9 degrees from someone sitting in a sitting position.

10 Ms. Allie Grass: Thank you.

11 Howell: Where will the HVAC units be relative to that second-floor porch?

12 Skip Wallace: To their second-floor porch, they'll be on the other side of the 6½ foot
13 alleyway. And on the other side of a parapet wall that's about 14" thick. It's right where the red
14 dot is, where Lee's red dot is, there. There are things I can do to help with the sound too. When
15 we do these on [indiscernible] [01:03:16] we use sound baffles to, to help control them. So we
16 could certainly do something like that to absorb the sound. Because I get it, you know, I don't
17 want to hear compressors either, but the new ones are very quiet.

18 Chair Robinson: Any other questions for the board, any comments? Any motions?

19 Ms. Vargas-Vargas: I'll make a motion to approve.

20 Ms. Allie Grass: I'll second it.

21 Chair Robinson: Ms. Vargas-Vargas, would you consider that was a condition that an
22 additional baffling be provided around the compressors?

EXHIBIT 1
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1 Ms. Vargas-Vargas: Mr. Robinson, how would we, how would we measure or evaluate
2 whether that condition is met?

3 Chair Robinson: Well, we're going on good faith here I believe of the next door
4 neighbor.

5 Ms. Vargas-Vargas: Mr. Wallace, what do you think about adding that condition? Is that
6 something, that sounded to me like it's something that you could accomplish.

7 Ms. Allie Grass: If needed.

8 Skip Wallace: Yes, I'd be, I'd be fine with that, because it would, it would be something
9 that I could, I could deal with and make a lot better.

10 Ms. Vargas-Vargas: What would be the best way to describe that condition?

11 Skip Wallace: Are you asking me?

12 Ms. Vargas-Vargas: Oh I am sorry, I guess I'm thinking out loud. So maybe making
13 commercially reasonable efforts to minimize or do implement changes that minimize any
14 excessive noise, I don't know if that ...

15 Skip Wallace: Yeah. And we can also purchase, you know, high-seer ratings to get them
16 even quieter, which we intend to do.

17 Ms. Vargas-Vargas: So if we say the condition that you purchase the high-seer ratings
18 and make any reasonable, make any reasonable [indiscernible] [01:05:56] some direction some
19 area...

20 Skip Wallace: Yeah.

21 Ms. Vargas-Vargas: ...effort to further minimize.

22 Skip Wallace: Yeah, we'll do all we can to, to meet the noise and keep it down. We can,
23 we can even measure the decibels and prepare it through a chart.

EXHIBIT 1
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1 Ms. Vargas-Vargas: Okay. Do, do my colleagues think that that would be acceptable to
2 have two conditions – one to purchase the high-seer ratings. Am I saying that correctly?

3 Skip Wallace: Yes, S-E-E-R.

4 Ms. Vargas-Vargas: So one, purchase the high-seer ratings and then make reasonable
5 efforts to further minimize noise production.

6 Ms. Allie Grass: I think I'd be more comfortable seconding just the second part of your
7 proposal and not requiring them to, like not [overlap] [0:01:06] not burdening, but just a
8 condition.

9 Ms. Vargas-Vargas: Okay. Yep, I think that's actually a good point, because making
10 reasonable efforts to minimize the noise with purchasing the appropriate mechanism would be
11 captured with that. So I think you're right Ms. Grass. So Mr. Robinson, I will make the motion
12 to approve with a condition that the applicant make reasonable efforts to further minimize the
13 noise production from the generators and the mechanical units outside of 60 Church Street
14 [indiscernible] [01:07:30].

15 Chair Robinson: Is there a second to that?

16 Ms. Allie Grass: I second it.

17 Chair Robinson: Any comments? All in favor signify by saying aye, Mr. Morrison.

18 Mr. Morrison: Aye.

19 Chair Robinson: Mr. Judan.

20 Mr. Judan: Aye.

21 Chair Robinson: Ms. Grass.

22 Ms. Grass: Aye.

23 Chair Robinson: Ms. Richards.

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1 Ms. Richards: Aye.

2 Chair Robinson: Ms. Vargas-Vargas.

3 Ms. Vargas-Vargas: Aye.

4 Chair Robinson: Mr. Bennett.

5 Mr. Bennett: Aye.

6 Chair Robinson: Mr. Robinson votes aye. The motion is unanimously approved. Thank
7 you very much. [End of audio 1:08:03]

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Teresa Melhado and Dane Neller,

Appellants,

vs.

City of Charleston, City of Charleston
Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Hayes,
Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016,

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05255

**ADDITIONAL MATERIALS FROM CITY
OF CHARLESTON RELATIVE TO
APPEAL**

Hearing transcript and Board Materials (10.19.2021 planning meeting)

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin

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Email: tdomin@clawsonandstaubes.com

Attorney for Respondents City of Charleston
and City of Charleston Board of Zoning
Appeals

Charleston, South Carolina
March 28, 2022



City of Charleston

BOARD OF ZONING APPEALS-ZONING

October 19, 2021

5:15 PM

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY
www.charleston-sc.gov/bza-z

****Video and microphone is currently disabled for all attendees.****
This meeting is being recorded.

Go to www.charleston-sc.gov/bza-z for instructions to join. Call (843) 724-3770 if you are experiencing

Agenda Item #B-2

62 CHURCH STREET

(CHARLESTOWNE)

TMS # 458-13-01-097

Request reconsideration of the Board's decision on September 7, 2021 to approve a special exception for a 2-story addition and lot occupancy variance with a lot area on SR-4 (single-Family Residential) zone district.

EXHIBIT 1

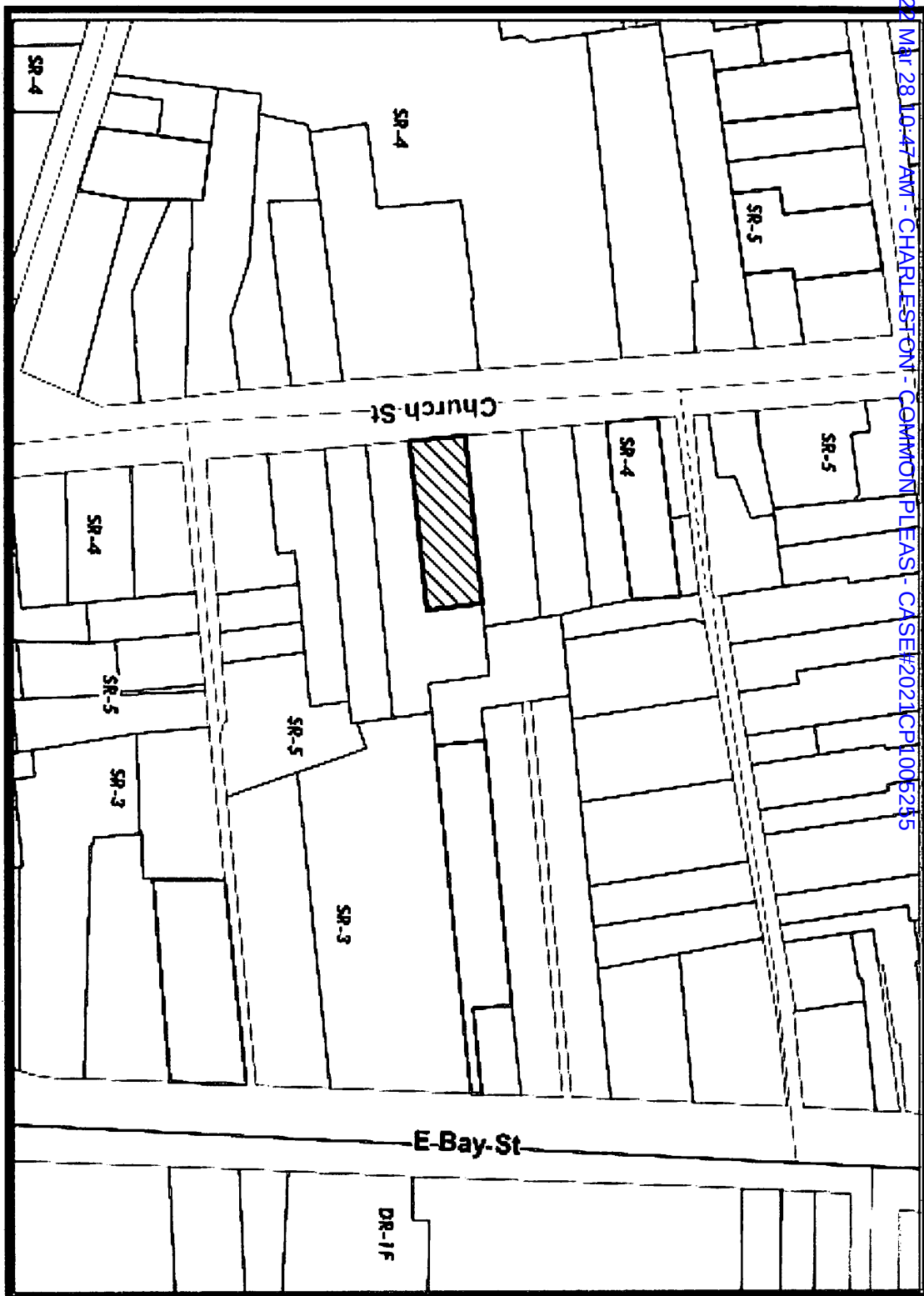


EXHIBIT 1



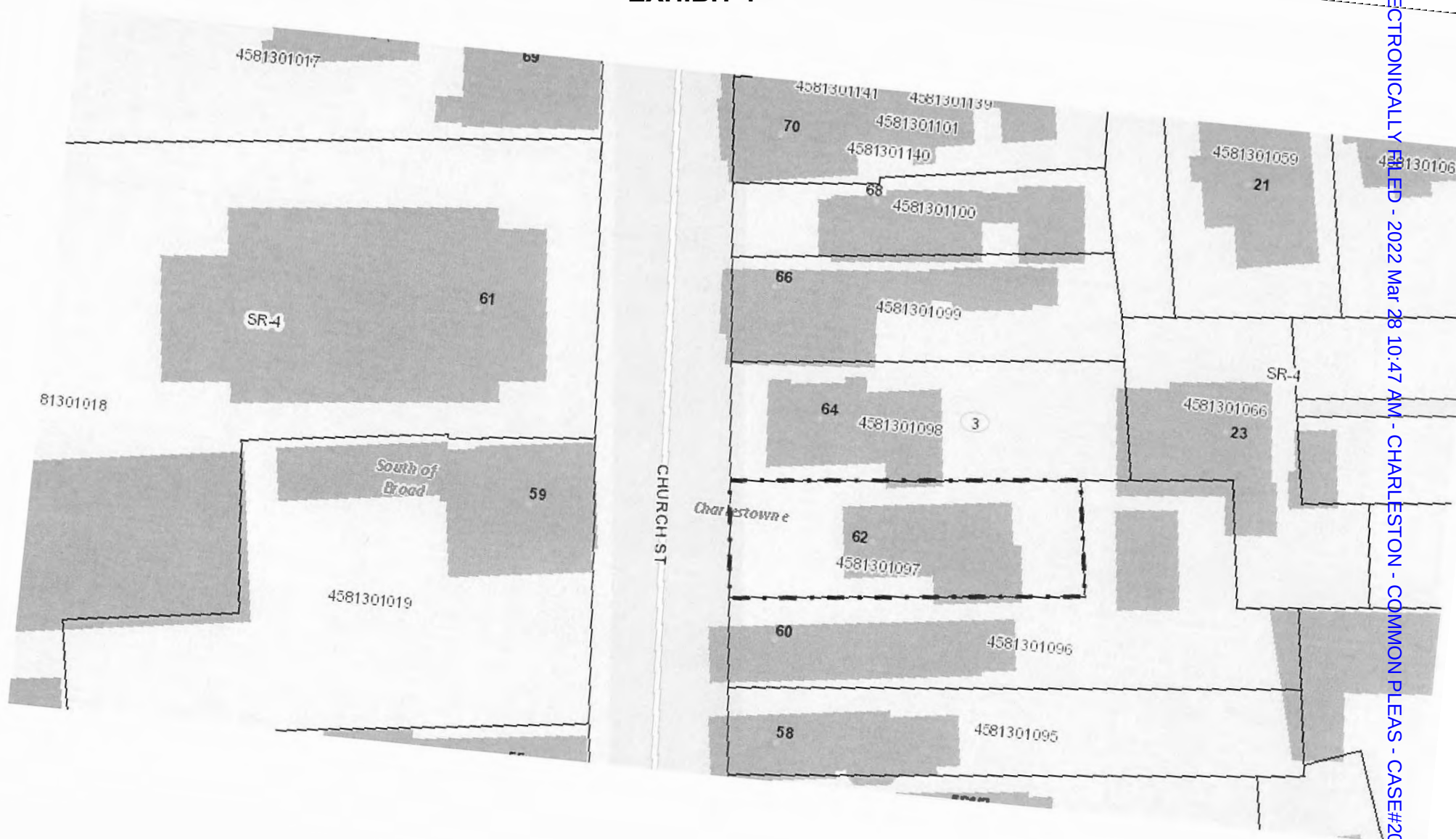
ELECTRONICALLY FILED - 2022 MAY 28 10:47 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

EXHIBIT 1



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EXHIBIT 1



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EXHIBIT 1

Application for Variance, Special Exception, Reconsideration, or Extension to the Board of Zoning Appeals – Zoning (BZA-Z) Page 1 of 2

City of Charleston

Instructions – This application, along with the required information and fee, must be submitted to the Permit Center at 2 George Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

- ☐ A Variance and/or Special Exception as indicated on page 2 of this application.
- ☒ Reconsideration of a decision of the Board or action of a zoning official (attach Appeal form)
- ☐ Extension of an unexpired Variance and/or Special Exception approval.

MEETING DATE REQUESTED: October 19, 2021

Property Address 62 Church Street **TMS #** 458-13-01-097

Property Owner Erika and George Wallace **Daytime Phone** 804-301-6120

Applicant Brian A. Hellman **Daytime Phone** 843-414-9753

Applicant's Mailing Address Hellman & Yates, PA, 105 Broad Street, Third Floor, Charleston, SC 29401

E-mail Address bh@hellmanyates.com

Relationship of applicant to owner (same, representative, prospective buyer, other) Attorney for 60 Church/Melhado

Zoning of property SR-4

Information required with application: (check information submitted)

- ☐ Scaled plans or plats, including elevations, showing the variance(s) or special exception(s) being requested (3 sets)
- ☐ For new construction or additions within a flood zone, show HVAC units and platform on scaled plans
- ☐ Scaled floor plans with rooms labeled and the total floor area for each dwelling unit noted are required for all density variances and building additions, unless exempted by the Zoning staff (3 sets)
- ☐ Plans or documents necessary to show compliance with special exception requirements (3 sets)
- ☒ Check, credit card or cash (make checks payable to the City of Charleston)
- ☐ YES or ☐ NO - Is this Property restricted by any recorded covenant that is contrary to, conflicts with or prohibits the proposed land use encompassed in this permit application? § 6-29-1145 of the South Carolina Code of Laws

Optional but very helpful information:

- ☐ Photographs
- ☐ Letters or petitions from neighbors or organizations directly affected by your request

I certify that the information on this application and any attachments is correct, that the proposed improvement(s) comply with private neighborhood covenants, if there are any, and that I am the owner of the subject property or the authorized representative of the owner. I authorize the subject property to be posted with a notice of the Board hearing and inspected.

Applicant Brian A. Hellman **Date** September 13, 2021

For office use only	
Date application received	Time application received
Staffperson	Receipt #



EXHIBIT 1

Appeal for Reconsideration to the
Board of Zoning Appeals - Zoning (BZA-Z)

Page 1 of 2

City of Charleston

Applicants appealing for reconsideration of a Board decision or decision of the zoning administrator must submit the following information with the BZA-Z application and fee, to the Permit Center at 2 George Street:

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary). **THE DEADLINE FOR SUBMITTING THIS APPEAL FORM WITH THE BZA-Z APPLICATION AND FEE IS THE CLOSE OF BUSINESS ON THE 5TH BUSINESS DAY FOLLOWING THE DATE OF THE BOARD DECISION BEING APPEALED.**

The Board of Zoning Appeals-Zoning misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board erred in its finding or disposition of the matter as follows:

1. Persons who had received confirmation as having registered as opposition speakers and were noted as present at the meeting were not afforded an opportunity to be sworn in or to speak.
2. The Board failed to consider the existing and future commercial uses of the property and only considered the residential use in granting the special exception and variance.
3. The Board failed to consider the impact on the portion of 60 Church Street at the rear (east property line) of 62 Church Street.
4. The Board permitted the applicant to provide the language of the motion for approval.
5. The Board misapplied the variance test as required by S.C. Code Section 6-29-800(A)(2).
6. The Board misapplied the special exception test as required City of Charleston Ordinance Section 54-110.f. and S.C. Code Section 6-29-800(A)(3).

In the case of an appeal for **reconsideration of a decision of the zoning administrator**, applicant shall state below the interpretation(s) of the Zoning Ordinance being appealed, how the applicant is aggrieved by the interpretation(s), and what the applicant contends is the correct interpretation of the Zoning Ordinance (add as an attachment if necessary):

Signature of Applicant: [Signature] Hellman + JAMES, PA Date 9/13/21

For office use only

Date application received 9.13.21 Time application received 4:25 Staffperson PA

Department of Planning, Preservation & Sustainability 2 George Street Charleston, South Carolina 29401
(843) 724-3781 www.charleston-sc.gov/zoning

EXHIBIT 1

CityofCharlestonBZA-ZMeeting10_19_2021

ELECTRONICALLY FILED - 2022 Mar 28 10:47 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

[00:08:33]

Chairman Robinson: Item number two is 62 Church Street, Charleston; request to reconsideration of the Board's decision on September 7, 2021 to approve special exception for a 2-story addition and lot occupancy variance with conditions in a SR-4 (single-Family Residential) zone district. Mr. Batchelder.

Lee Batchelder: So, just to refresh your memories on September 7th, we heard this request. It involves this property at 62 Church Street and – and which is a residential property and there was a proposal to construct an addition on the rear of the existing house. That was going to require the variance for the increase in the lot occupancy of the building on the lot and the special exception to extend a nonconforming building setback. The board heard this request and made the approval – made the motion for approval with conditions that was approved, I believe, unanimously by the board at that meeting and, and so these are just drawi-, the zoning map and other information about the property, but and this is the approval form listing the condition. The condition was that the approval was based on the applicant making best efforts to baffle or reduce the noise and reduce the noise emanating from the generator and HVAC units, that will be relocated up onto the roof of the proposed addition. So, that is the decision that was made. The appeal for reconsideration was filed in a timely manner and that is now before you and I have slides of the application form and the information that was submitted by the applicant requesting the reconsideration. And I also have slides that were submitted by the attorney Mr. Walker, who represents the property owner at 62 Church who requested this approval from the board on September 7th. I have all that information in slides and – and that concludes my presentation. I'll be happy to answer any questions the board has during the course of this discussion. And with that I'll, I'll turn it over to the Chair.

EXHIBIT 1

CityofCharlestonBZA-ZMeeting10_19_2021

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Chairman Robinson: Is the applicant present?

Lee Batchelder: And Pennye that would be Brian Hellman, correct?

Pennye Ashby: The applicant, yes, Brian Hellman.

Lee Batchelder: Brian, so Brian and Johnathan, did they both sign up to speak or just Brian?

Pennye Ashby: Yep, I think it's just Brian Hellman.

Lee Batchelder: Okay, so we should promote him.

Brian Hellman: Hi, Brian Hellman here. I hope everyone can here and see me.

Chairman Robinson: Mr. Hellman, would you please allow Mr. Batchelder to swear you in?

Brian Hellman: Yes.

Lee Batchelder: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Brian Hellman: I do.

Chairman Robinson: Please proceed.

Brian Hellman: Thank you Mr. Chairman. Hi, I'm Brian Hellman, 105 Broad Street, Charleston. I represent Dane Neller, the owner of 60 Church Street. Teresa Melhado, in this request for reconsideration of the approval that was granted on September 7th and the position of my clients is that the board misapprehended and misconceived the questions involved inherent in its findings and on the disposition of this matter and that was, there were six reasons why that was the case and I'll run through them and what my client's positions are in each one of them. First that persons who had received confirmation Ms. Melhado and Mr. Neller as having registered as opposition speakers and were noted as present were not afforded an opportunity to be, to be sworn

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1 in or to speak. Prior to the meeting both Ms. Melhado and Mr. Neller properly registered to testify
2 their presence and desire to testify was confirmed by Pennye Ashby via email, though they were
3 never sworn in or afforded an opportunity to testify. During the hearing, there were a number of
4 Zoom related computer issues in which I first could not be heard and then I could not be seen and
5 while experiencing those issues, I did notify the board that both Ms. Melhado and Mr. Neller were
6 present. After those Zoom related issues were corrected, I was the only one sworn in by Mr.
7 Batchelder. And after that presentation my presentation was completed, I was not able to speak to
8 remind the Board that Ms. Melhado and Mr. Neller were there. I was removed as a panelist and
9 therefore could not let the Board know that they were present with me and were prepared to testify
10 and had properly registered. So consequently, I had no ability to let the Board know that they had
11 no ability to testify, and we believe that denied them both of their procedural and substantive due
12 process rights.

13 Secondly, my clients believe that the Board failed to consider the existing and future
14 commercial uses of the property and only considered the residential use in granting this special
15 exception variance. At the conclusion of the Wallace's rebuttal, Chairman Robinson asserted the
16 existence of other uses that are occurring on the Wallace's property and said that those were not
17 before the Board, that the Board only addresses physical changes to the subject property, not other
18 uses of the subject property. Mr. Batchelder concurred with Mr. Robinson. The first element of
19 the . . . I apologize. The first element of the special exception test for, for this situation is the use
20 of the subject property, 54-110f. The Wallaces in their response acknowledged that Ms. Wallace
21 did in fact, work from the home as an interior designer. However, Ms. Wallace is not, as evidenced
22 by the Foyer request from the City of Charleston, the response from the City of Charleston. The
23 response is, the results of which were submitted and filed with the Board show that no application

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1 had been received or approved for a home occupation use as 54-211 would require. Consequently,
2 the Board erred as a matter of law when it determined the physical extension of the nonconforming
3 use is limited to extending or increasing the nonconforming use then in existence at the time of
4 adoption of Section 54-110 of the zoning ordinance as both the interior design and architectural
5 offices are non-residential in nature and have – have not been approved or permitted by the City
6 of Charleston. The Board failed to consider the third reason for the appeal. The Board failed to
7 consider the impact on the portion of 60 Church Street at the rear or East property line of 62
8 Church. Ms. Melhado and Mr. Neller were unable to testify. Had they been able to testify, they
9 would have been able to clarify the Wallaces' misstatement that Ms. Melhado and Mr. Neller are
10 to their South and all shadows are cast to the North. We believe the Board was confused as to the
11 extent of Ms. Melhado's property the impact, and the impact with the Wallaces' request would
12 have on the rear of 60 Church Street. In fact, Board member Grass inquired as to who the partly
13 owner was at the rear of the Wallaces' property. And the Wallaces failed to clarify that it was in
14 fact, Ms. Melhado. The Board, we believe, was again confused as to the ownership of this rear
15 property, the rear property and that's significant, because as to the impacts on light, air, noise and
16 fumes, all specific elements of 54-110.f are most damaging to 60 Church Street along the rear of
17 the property, where their pool and pool house are located. If the Board had allowed their testimony,
18 these impacts and harms resulting from the approved special exception and variance would have
19 been better understood by the Board. We believe a different result would have likely ensued.
20 Furthermore, number four; the fourth reason for our appeal. The Board permitted the applicant to
21 provide language for the motion of the approval. Either 6-29 and 820 (A) (2) (d) (ii) nor section
22 54-110.f provide that an applicant can provide the language as to the conditions for the motion for
23 approval, or for the motion for approval. Can we believe the Board improperly delegated these

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1 powers to the applicant, Mr. Wallace to create an ambiguous self-serving condition related to the
2 approval for variance and special exception? There is no provision enabling statutes or the zoning
3 ordinance that will allow for this delegation of power and consequently we believe this delegation
4 was an error of law by the Board. Fifth, the Board misapplied the variance test as required by
5 South Chronic Code Section 6-29-800(A)(2). In their response to the second statutory requirement
6 for variance the Wallaces claim that 62 Church Street is "Much smaller than neighboring
7 properties." However, this claim is clearly and unequivocally rebutted by the Wallaces' hearing
8 testimony and their exhibits, which clearly show the opposite to be true. The Wallaces provided
9 numerous exhibits, in addition to their hearing testimony. One of those exhibits was a map that
10 showed the lots sizes and lot coverages of a number of properties in the vicinity. Notably 62
11 Church Street, at 4795 square feet was larger than 50 Church, 52 Church, 54 Church, 66 Church,
12 68 Church, 70 Church, and 72 Church and only slightly smaller by just a few feet than 55 Church
13 and 64 Church, all properties that surrounded 62 Church. While the Wallaces' response states that
14 their presentation demonstrated that this property is much smaller than the neighboring properties,
15 this claim is evidenced by the Wallaces' own hearing testimony and exhibits as false. As the
16 second part of the statutory variance test has not been met, my clients believe the Board erred in
17 its approval of this variance request. Lastly, the sixth point of their appeal, the Board misapplied
18 the special exception test as required by Ordinance Section 54-110.f and S.C. Code Section 6-29-
19 800(A)(3). As set forth earlier, given the proposed expansion includes an enlarged office and that
20 neither Mr. Wallaces' architecture firm nor the Ms. Wallace's interior design firm have been
21 approved by the City of Charleston for home occupation uses either by application or business
22 license. The Board erred as a matter of law when it determined that the physical extension of the
23 nonconforming use is limited to extending or increasing the nonconforming use then in existence

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1 at the time of adoption of 54-110 of the zoning ordinance as 54-110.f requires. Furthermore, as
2 explained in section, as explained earlier today, the Board understood the impacts, had the board
3 understood the impacts of Ms. Melhado's property, which you can see in the – in the display that
4 Mr. Batchelder has up, that Ms. Melhado's property is L shaped and surrounds the rear, surrounds
5 and goes back to the rear. You can even see the shadows that are cast in this picture from the
6 County Assessor's Office GIS Map. Had the Board understood the impacts to the rear of Ms.
7 Melhado's property as the light and air, as the shadow show, noise and fumes as the air conditioner
8 compressor and generator will generate, each of the specific element, each specific elements of
9 54-110.f. light, air, noise, and fumes, we believe a different result would have ensued. And so for
10 the six reasons that I just went through, we believe that the Board erred and that this matter should
11 be – be remanded or sent back to go back to the Board if you will for a rehearing.

12 Chairman Robinson: Thank you very much. Is that it, Mr. Hellman?

13 Brian Hellman: That is, yes.

14 Chairman Robinson: Staff, is that 10-minute time period elapsed?

15 Pennye Ashby: Yes.

16 Lee Batchelder: No.

17 Pennye Ashby: It has elapsed.

18 Lee Batchelder: Oh, oh it has okay.

19 Pennye Ashby: Yes.

20 Lee Batchelder: As of right now, huh?

21 Pennye Ashby: As of right now.

22 Lee Batchelder: Yeah, okay.

EXHIBIT 1

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1 Chairman Robinson: Thank you very much. Is there a opposition to this, to this
2 application?

3 Lee Batchelder: Yes.

4 Pennye Ashby: Yes.

5 Lee Batchelder: Mr. Turnim Walker, I think he is . . .

6 Pennye Ashby: Yes, he has.

7 Chairman Robinson: Is Mr. Walker present?

8 Lee Batchelder: He is present and okay Mr. Walker, can you hear us?

9 Turnim Walker: Thank you, can you hear me?

10 Lee Batchelder: Yes.

11 Chairman Robinson: Mr. Walker would you please allow Mr. Batchelder to swear you in?

12 Turnim Walker: Yes.

13 Lee Batchelder: Do you swear to tell the truth, the whole truth, and nothing but the truth,
14 so help you God?

15 Turnim Walker: I do. And let me . . .

16 Chairman Robinson: Please proceed.

17 Turnim Walker: . . . let me see if I can get the video going, my apologies. I don't see the
18 button. I'll proceed, nonetheless. I'm Turnim Walker here with Jennifer Ivy on behalf of Skip
19 and Erica Wallace who own 60 Church Street. We are not gonna have a long presentation in
20 opposition, because it is clear that the applicant and opponent has not met the very high bar for
21 rehearing. The matter before you is whether or not the standard has been met for a rehearing,
22 which requires the Board to find that it misapprehended or misconceived the question or questions
23 involved; or that it erred in its finding or disposition of the appeal application or matter. All of

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CityofCharlestonBZA-ZMeeting10_19_2021

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1 you know that there was no misapprehension or misconception of the issues. The issues were
2 presented by both sides, exhaustively discussed, the motion was made and passed. The Board
3 correctly applied the test, and what's happened is that the opponents are using this request for a
4 rehearing to reargue the merits, which is improper. They haven't shown any misconception. What
5 they've done is to shoehorn their arguments into their motion to make them one more time. Briefly
6 going over their grounds, the first one dealt with the failure of Ms. Melhado and Mr. Neller to
7 testify. The applicant, excuse me, the opponent was given 10 minutes, the opponent chose how to
8 use those 10 minutes. Mr. Hellman spoke. There is nothing that Mr. Hellman said that would in
9 any way have been different, if those two had testified. He covered everything. So, there was no
10 procedural deprivation. The requirement is that the opponent has an opportunity to respond, and
11 the opponent had that opportunity. As for commercial use, there is no commercial use. I think
12 you heard that Mr. Wallace has an office in the confederate home where he practices to the extent
13 he does, his architectural practice and Ms. Wallace has a small office with no windows in the
14 house, where she does some work in her interior design business, but it's largely conducted onsite
15 out of her house. There is no proof of anybody driving up to the house, what she has is effectively
16 a home office, where she does receive mail for her business. She has no other office, but that does
17 not convert the property into commercial use. After the hearing on September 7th, she proceeded
18 to make her application and she does now have her business license and She is in full compliance
19 with the ordinance. The whole issue though is basically a sideshow that doesn't have to do with
20 the test applied by Board. As to the impact on the back, I think you saw in the photograph that
21 was attached to the response that was filed today, the rear of the Wallaces' property abuts a stand
22 of large fully matured trees and bushes. So that there is a complete opaque screen, any alleged
23 shadow from the houses is – is not going to fall onto the Wallaces' property. The shadows are

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CityofCharlestonBZA-ZMeeting10_19_2021

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1 caused by the trees that were planted many years ago. Again, that has no bearing on this. Also,
2 point out that they were talking about their pool house. As far as the owner suggesting conditions
3 for approval, the Board had complete discretion to say we don't agree. There's nothing that
4 prohibits the Board from getting a suggestion and there is no prohibition on an applicant working
5 out conditions with staff, it happens all the time. I can't tell you the number of instances where
6 conditions were agreed to in discussions with Mr. Batchelder that were presented to the Board and
7 the Board approved them, but the Board isn't required to do that. The Board has a mind of its
8 own. If it didn't like the condition, it could have changed it. There was no misapplication of the
9 variance test. If you look at the diagram that Mr. Batchelder put up at the beginning of this
10 presentation, you'll see the size of the Wallaces' lot in comparison to the ones around it. But it's
11 not the size of the lot in particular, that makes it unusual. As was stated at the hearing, it's fact
12 that the house is set back so far from the street, that means that the only place and the small edition
13 can go is on the back and the last thing was enlarging the office. There is no enlargement of the
14 office. Ms. Wallace has her office upstairs in a room. If she were to move and use some other
15 part of the house, that's not an expansion of her "Office." She can go anywhere she wants in the
16 house. That, again, is something that is not pertinent to the decision that was made by the Board.
17 What we have is a replay of what you heard five weeks ago packaged a little differently. We
18 would submit to you, respectfully, that the high bar for a rehearing has not been met, thank you
19 Mr. Chairman and Board members.

20 Chairman Robinson: Does Mr. Walker have any more time?

21 Lee Batchelder: I show six minutes.

22 Penny Ashby: Yes, Mr. Robinson he does, he has about five minutes.

23 Chairman Robinson: Mr. Walker, do you . . . does that complete your presentation?

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1 Turnim Walker: It does, Mr. Robinson.

2 Pennye Ashby: Okay.

3 Turnim Walker: The scope as I understand it of this is simply to respond to the motion
4 itself, or the application for rehearing as opposed to the merits. I think the Board has it, so I'm not
5 going to belabor what I've already said. Thank you for the opportunity.

6 Chairman Robinson: Thank you. Mr. Hellman in rebuttal, three-minute presentation.

7 Brian Hellman: Thank you, Mr. Chairman. So I'll, I'll keep my rebuttal brief, specifically
8 as to the misapplication of the variance test. As Mr. Walker pointed out, he said what's different
9 about this property is the way it's set back. But the issue with the variance test isn't the setback,
10 it's the lot coverage ratio. And as to the lot coverage ratio, the argument that was made was it it
11 was much smaller than neighboring properties. The fact is, it's not, and so therefore, given that
12 it's not smaller than all these neighboring properties as we have pointed out, and as their own
13 exhibit shows, that second prong of the test, the second prong of the test that these conditions do
14 not generally apply to other properties in the vicinity, just can't be met. And all of the elements
15 of the test have to be met.

16
17 Secondly, as it relates to the special exception test, the importance of these commercial
18 uses is 54-110.f says that the, the nonconforming use, if there is going to be a physical extension,
19 must be limited to extending or increasing the nonconforming use then in existence at the time of
20 the adoption of 54-110 zoning ordinance. There was no request for a change in the nonconforming
21 use. There was merely a request to extend or increase the nonconforming use then in existence at
22 the time of adoption of 54-110 and as Mr. Walker said tonight, Ms. Wallace just applied for a
23 license for this other nonconforming use, this interior design commercial use, which is a different

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1 use. That's the first prong of the test and again, we don't believe it was met and that the Board
2 mis-, misapplied the test and misapprehended the question and with that knowledge and with the
3 knowledge of the, Melhado's property going to the rear as Ms. Grass had asked that question
4 specifically of the Wallaces that, that these the light, air, noise, and fumes, the second prong of the
5 test, if those were applied we believe a different result would have ensued. That concludes my
6 presentation. Thank you.

7 Chairman Robinson: Thank you very much. That concludes the public hearing portion of
8 the meeting and now we'll open for the Board any discussion, any questions of anyone, any
9 comments, any motions?

10 Howell Morrison: I have one question to start please, Mr. Robinson. Do we . . . my
11 recollection is and it may be wrong that Mr. Walker's comment that Mr. Hellman used up the full
12 10 minutes, is what in fact happened, but I wonder if we have any record of that or if anybody has
13 any clear recollection or notation of that? This, of course, goes to the suggestion that we
14 accidentally prevented two witnesses signed up to speak from speaking.

15 Chairman Robinson: It's my understanding the City did listen to the tape and verified that
16 Mr. Morrison. I'll ask Mr. Batchelder if that's correct.

17 Lee Batchelder: I'm gonna refer to Ms. Ashby on this question and I don't recall exactly
18 what the time was. I think my timer, my start time on my timer was a little off that night. I didn't
19 quite get, get it started at the beginning of his presentation, but Ms. Ashby do you, do you have
20 any . . .

21 Penny Ashby: When – Mr. Batchelder, when I listened to the tape, Mr. Hellman had used
22 the entire 10 minutes allotted to him with no further mention of anyone else wanting to speak at
23 that time, but the 10 minutes that were allotted to him to speak, he did use those minutes.

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1 Howell Morrison: Mr. Batchelder just thank, thank you Pennye. I presume Mr. Hellman
2 is correct that once his time is up, the way the Zoom process works is he's effectively unable to
3 communicate anything further by virtue of how the technical aspects work.

4 Lee Batchelder: That's correct.

5 Howell Morrison: Okay.

6 Chairman Robinson: Any other questions, any comments from the Board?

7 Robben Richards: I believe that we did discuss, correct me if I'm wrong the, the impacts
8 to the rear of property, did we not? I mean was that discussion omitted from our, from that
9 meeting?

10 Chairman Robinson: Would you please repeat that Ms. Richards.

11 Robben Richards: I thought I remember that we did discuss the, the effects to the rear of
12 the property.

13 Geiza Vargas-Vargas: I thought we did also, and I do recall that there was a slide that had
14 an extensive drawing of how the light would fall. I don't know.

15 Robben Richards: Right.

16 Geiza Vargas-Vargas: I don't know if the Board members remember that, but I do believe
17 it was for this application.

18 Howell Morrison: I, I certainly realized it was an L-shaped lot next door.

19 Robben Richards: Yeah, I realized that too and I thought that we were discussing the
20 effects on both, on the entire property not just the south, north, south.

21 John Bennett: That was my understanding as well and I recall as well on some study of
22 some sort that was presented as well.

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1 Chairman Robinson: And I did mention as Mr. Hellman said, I did mention that the issue
2 of the commercial, so-called commercial use of the property was not propelling before the Board.
3 We're looking at a variance and a special exception for other reasons. Any other questions, any
4 comments? The Board is familiar with the statement. I think it was, it's been mentioned a couple
5 of times already in this case. In the case of an appeal for reconsideration of a Board decision,
6 applicant who is Mr. Hellman shall state below the grounds upon which it is considered that the
7 Board misapprehended or misconceived the question or questions involved on the ground or
8 grounds upon which it is considered that the Board has erred in its finding or disposition of the
9 appeal, application, or matter. So that's what we are here tonight to decide.

10 John Bennett: Mr. Chair would you, would you repeat, I apologize. I caught the
11 misapprehension and misconception of the question. I didn't catch the third condition.

12 Chairman Robinson: Or the ground or grounds upon which it is considered that the Board
13 has erred in its finding or disposition of the appeal, application, or matter.

14 John Bennett: Thank you.

15 Howell Morrison: Addressing another one of Mr. Hellman's points, number five that we
16 misapplied because Wallaces had claimed that their property is much smaller than neighboring
17 properties. I just don't recall for myself that being a factor one way or another in my decision in
18 September.

19 Chairman Robinson: Mr. Morrison I think, and please correct me if I misstated, but I think
20 we considered it due to the fact that the house sits so far back from the street and the front yard
21 has a very nice garden, and that leaves very little backyard to go, so that the area where an addition
22 can be made has to be in that backyard, which is much smaller than many of the other backyards.
23 Maybe not the entire lot itself, but the area where an addition may take place.

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1 Howell Morrison: Yeah, and I remember that. and what I meant . . . I wasn't very good
2 describing this, but what I meant was I don't recall relying on any suggestion by the applicant, by
3 the Wallaces that the totality of their lot, or the size of their lot, total square footage of their lot
4 was much smaller than their neighboring properties. That's the way it has been put to us I think,
5 in this application for rehearing. But what I think what we talked about is what you recall. I do
6 remember considering that.

7 Allie Grass: I agree with that too.

8 Chairman Robinson: Are there any other comments, or motions?

9 John Bennett: I just have one additional comment too and that is the suggestion of a
10 comment. I don't believe is a delegation of our authority or our power to the applicant. When I
11 say comment, I meant condition.

12 Howell Morrison: And I agree with that, we were talking about the same topics as a group
13 and – and all of us on the Board had to concur with the wording whoever articulated it of the
14 special condition, which we did.

15 Chairman Robinson: There are only so many ways to word a specific thing and I wrote
16 that you saw my handwriting. I wrote it at the end of the meeting and just recollected the use of
17 the language, I thought best suited what we talked about. I think we did the best job and if it
18 happened to coincide with what the applicant had said, a lot of that was just mere happenstance.

19 Questions? Comments? Motions?

20 Geiza Vargas-Vargas: I'll move to deny.

21 Chairman Robinson: That was Ms. Vargas-Vargas?

22 Geiza Vargas-Vargas: Yes sir.

23 Chairman Robinson: Thank you. Move to deny the reconsideration, is there a second?

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1 John Bennett: I will second that motion.

2 Chairman Robinson: Seconded by Mr. Bennett. All in favor signify by saying Aye. Mr.
3 Morrison?

4 Howell Morrison: Aye.

5 Chairman Robinson: Ms. Grass?

6 Allie Grass: Aye.

7 Chairman Robinson: Ms. Richards?

8 Robben Richards: Aye.

9 Chairman Robinson: Ms. Vargas-Vargas?

10 Geiza Vargas-Vargas: Aye.

11 Chairman Robinson: Mr. Bennett?

12 John Bennett: Aye.

13 Chairman Robinson: Mr. Robinson votes Aye. The motion is unanimously approved.
14 Thank you very much.

15 Pennye Ashby: Mr. Robinson, did you say the motion was approved or disapproved? I
16 mean the motion is approved . . .

17 Chairman Robinson: The motion was approved.

18 Pennye Ashby: . . . for denial.

19 Chairman Robinson: For denial, correct.

20 Pennye Ashby: Okay, all right thank you.

21 [43:53]

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Teresa Melhado and Dane Neller,

Appellants,

vs.

City of Charleston, City of Charleston
Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Hayes,
Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016,

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05255

**ADDITIONAL MATERIALS FROM CITY
OF CHARLESTON RELATIVE TO
APPEAL**

Owner's Return to Applicant's Appeal for Reconsideration of the Board's
September 7, 2021, Decision;

Applicant's Reply to Owners' Return to Applicant's Appeal for Reconsideration fo
the Board's September 7, 2021, Decision

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and City of Charleston Board of Zoning

Appeals

Charleston, South Carolina

March 28, 2022

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EXHIBIT 1

62 Church St. (Charlestowne) (TMS No. 458-13-01-097)
Appeal for Reconsideration to the Board of Zoning Appeals – Zoning (BZA-A)
Owners: George and Erika Wallace
Applicant: Brian A. Hellman
October 19, 2021 Agenda Item No. B.2

**Owners' Return to Applicant's Appeal for Reconsideration of the Board's
September 7, 2021 Decision**

George ("Skip") Wallace and Erika Wallace, the owners of 62 Church Street, offer this response in opposition to the Appeal for Reconsideration of the Board of Zoning Appeals – Zoning's (the "Board") decision on September 7, 2021, on the Wallaces' application for the variance and special exception necessary to construct a small addition at the rear of their house. The variance asked for an additional 103 SF of lot coverage to accommodate the addition, the special exception sought permission to encroach on the side yard setback along the south property line. After an hour of presentations, arguments, and deliberation, the Board unanimously approved these two requests with the condition of the "applicant making best efforts to baffle/reduce noise emanating from generator and hvac units."

Brian Hellman filed the Appeal for Reconsideration as "Attorney for 60 Church/Melhado." As the Board will remember, Ms. Melhado purchased 60 Church Street next door to the Wallaces around the time the Board was first scheduled to hear the Wallaces' application. The Wallaces deferred the Board's consideration of their application to allow consultation with their new neighbor who, it turns out, steadfastly objects to the small addition, despite the construction of a similar addition at the rear of her house a few years ago and her non-residency status.

Ms. Melhado is presenting the same substantive arguments she made at the meeting on September 7. Ms. Melhado's stated grounds for reconsideration are her contentions that that the Board did not properly apply the special exception and variance tests, failed to consider certain

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allegations, and did not afford opposition speakers the opportunity to speak at the September 7, 2021 meeting.

Ms. Melhado falls far short of making the showing necessary to entitle her to the extraordinary and highly unusual relief of reconsideration. Article III, Section 3 sets a high bar for obtaining reconsideration:

...To grant the appeal for reconsideration, the Board must find that it misapprehended or misconceived the question or questions involved, or that it erred in its finding or disposition of the appeal, application or matter....

Ms. Melhado has not demonstrated that the Board misapprehended or misconceived the question or questions involved. The discussion by Board members at the meeting clearly establishes that the Board fully apprehended and understood the nature of the Wallaces' application, the questions involved, and the arguments made by Ms. Melhado's attorney.

Nor has Ms. Melhado pointed to any legal error in the Board's decisions. She simply disagrees with the result and is using her Appeal to re-argue the questions presented by the Wallaces' application. Dissatisfaction with a decision does not equate to grounds for reconsideration. The burden is on her to demonstrate that the Board misapplied the law or there were no facts at all to support the discretionary decision of the Board, which she has not done.

The Board properly applied the special exception test in relation to the lot occupancy variance requested by the Owners. There are extraordinary and exceptional conditions pertaining to 62 Church Street (the "Property") that do not generally apply to other properties in its vicinity. The Power Point presentation made at the September 7, 2021 meeting by Zoning Administrator Lee Batchelder showed various maps and images of the Property, its features, and the surrounding area. The Property is a 213 year-old residence situated in the historic district and demonstrative of the Charleston Single architecture of the 18th and 19th centuries. The distinguishing feature of

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the Property is the significant distance the historic house is setback from Church Street. While most homes in the area abut the sidewalk and road, the Wallaces' house does not. The front portion of this Property is an acclaimed garden. Given the narrowness of the lot, the only location where an addition can be constructed is in the small rear courtyard.

Apart from the unique positioning of the residential structure on the lot, unlike many surrounding homes, the Property is small and has not been remodeled in a half a century (the last revision to the home was completed between 1973-1974). The Property is presently 2,442 SF of conditioned space on a lot that is roughly twice the size (4,795 SF). The Board was presented with a map of neighboring properties that set out the size of each lot, the square footage of conditioned space, and lot coverage ratio. This presentation demonstrated that this Property is much smaller than neighboring properties and the lot occupancy ratio, even as affected by the proposed addition, is in line and, in most cases, even less than other nearby properties.

Because of its small size, the house lacks a laundry room, storage areas, and closets. The Owners' proposed 2-story addition is a garden room (in keeping with the Property's character) on the first floor and functional utilities on the floor above. Many of the surrounding properties have been improved and modernized so that they can continue to be used as functional residences in the 21st century. Unlike this Property, most of the nearby properties have a sizeable outside area behind the houses that can accommodate an addition without any encroachment on a set-back. This was the case when the former owners of Ms. Melhado's house added a sitting room in the back a few years ago that looks into the Wallaces' small backyard. The Wallaces did not object to that addition and in fact supported it.

The Wallaces plan to further promote the historical garden-features of their back courtyard and add functional utilities. As the Board heard, this small addition is the product of a long and

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studied design process that included consultation with the Historic Charleston Foundation (“HCF”) that holds a conservation easement on the Property. HCF supported the Wallaces’ application at the meeting on September 7. Prohibiting this small addition by denying the variance because of the minimal amount the Property would exceed the maximum percentage of lot coverage would unreasonably restrict the utilization of the Property as a full-time residence.

Before the Board were letters from neighboring owners demonstrating the wide neighborhood support for this project. The Preservation Society joined the HCF in supporting the project. The *only* opponent was Ms. Melhado.

Ms. Melhado contends that the small rear addition *may* affect the sun and air on her property. The Wallaces dispute her assertion that their small addition will have any significant effect on the sunlight or air Ms. Melhado receives on her property. The Wallaces submitted a view angle analysis that was considered by the Board and showed a minimally affected light impact off the sitting room and porch next door (that is the same sunroom added by the addition the Wallaces supported). The “light and sun” issue, if there is indeed one, may be attributable to the heavy, evergreen tree canopy on Ms. Melhado’s own property. There is a huge live oak tree that has a canopy that extends the entire width of Ms. Melhado’s property and many other tall trees throughout her yard. If Ms. Melhado is so concerned about “sun and light,” she has the ability to trim the heavy foliage or remove some of the trees to control these factors from her own property. Regardless, as the Board is aware, there is no easement of view in South Carolina.

Consistent with the abundance of trees located in the back and side yards of 60 Church Street, Ms. Melhado in Point 3 of her request for an appeal cites that the Board “failed to consider the impact on the portion of 60 Church Street at the rear (east property line) of 62 Church Street.” Among the many trees noted above, there is a row of 5-6 trees, some as tall as 35 feet, that are

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planted on Ms. Melhado's side of the 9-foot brick wall that divides the two properties on the east (rear) property line. This border is completely shielded by this tall, compact line of trees that was probably originally planted by a former owner of Ms. Melhado's property to be a natural barrier between the two properties. The small, tiered two-story addition planned for 62 Church Street will be completely camouflaged from the east, or rear property line, by the allee of trees on Ms. Melhado's own property.

The Board also properly considered the Wallaces' request for a special exception under Section 54-110. The historic house on the Property currently encroaches very slightly into the required setback from the side property line of the Property. Ms. Melhado argues that the small additional encroachment --less than three feet into the required setback of nine feet -- to allow this proposed addition (an outdoor space and garden room on the first-floor level and walk-in closet, exercise space, linen closet, and laundry on the second floor) -- will result in an alleged unreasonable intensification of an alleged non-conforming commercial use.

The fundamental problem with this argument is there is no non-conforming use. The use remains and has always been residential. Moreover, Ms. Melhado's argument has no relevance to the requested variance and special exception.

Ms. Melhado asserts that Ms. Wallace's occasional work from home as an interior designer constitutes an unlawful commercial use. The Wallaces presented facts to the Board that Mrs. Wallace has a very small room in the attic of the house where she does her paperwork. Almost all of her work as a designer is outside the house. The City of Charleston Zoning Ordinance Section 54-211 governing home occupations specifically cites in Paragraph A, Section 1 that Interior Design is an allowable "Home Occupation Business" as long as all other stated conditions are met. Mrs. Wallace's interior design business meets all of the stated criteria. There is nothing in the

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zoning that prohibits an owner from having a home office if the owner meets the elements of the ordinance, as Ms. Wallace does. If that were not the case, every primary residence with an owner working at home during the Covid-shutdown would have been engaging in a non-permitted use. More important, whether Mrs. Wallace works at home has no bearing on the questions associated with requested variance and special exception. Nonetheless, Mrs. Melhado's argument was presented and considered by the Board and does not constitute a basis for reconsideration.

As to Ms. Melhado's supposed procedural objection, the Board afforded the opposition a full opportunity to present to the Board and make arguments. The Board conducted the meeting in total compliance with the Article II of the Rules and Regulations of the Board of Zoning Appeals – Zoning. As this Board will recall, after Mr. Batchelder made his presentation, counsel for the Wallaces spoke, the Wallaces spoke, and then Mr. Hellman, introduced his clients, Teresa Melhado and Dane Neller, as well as his partner Jonathan Yates. Mr. Hellman spoke at length and, on his own choosing, did not "pass the mike" to Teresa Melhado or Dane Neller. No clock was called on any party of interest and no one was denied an opportunity to be sworn in or speak.

The Wallaces would also point out that Ms. Melhado has not made any showing at all how the Board's conduct of the meeting affected the outcome. Ms. Melhado has not submitted an affidavit or statement from anyone who was prevented from speaking who would have presented important information that was not presented to the Board. Nor has she explained the reasons that person did not speak during the open session when the Board heard comments from the persons in opposition.

For the foregoing reasons, the Wallaces respectfully request the Board deny the Appeal for Reconsideration.

[SIGNATURE PAGE FOLLOWS]

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Respectfully submitted,

WALKER GRESSETTE FREEMAN & GRESSETTE, LLC

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62 Church St. (Charlestowne) (TMS No. 458-13-01-097)
Appeal for Reconsideration to the Board of Zoning Appeals – Zoning (BZA-A)
Owners: George and Erika Wallace
Applicant: Brian A. Hellman, as attorney for Teresa Melhado and Dane Neller
October 19, 2021 Agenda Item No. B.2

Applicant's Reply to Owners' Return to Applicant's Appeal for Reconsideration of the Board's September 7, 2021, Decision

Teresa Melhado and Dane Neller, by and through their counsel, Brian A. Hellman, as Applicant, submit the following Reply to the Return in Opposition to the Appeal for Reconsideration filed by G. Trenholm Walker, as attorney for George ("Skip") Wallace and Erika Wallace, the owners of 62 Church Street. Teresa Melhado sought the Appeal for Reconsideration for the reasons set forth therein, to wit: That the Board of Zoning Appeals-Zoning misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board erred in its finding or disposition of the matter as follows:

1. Persons who had received confirmation as having registered as opposition speakers and were noted as present at the meeting were not afforded an opportunity to be sworn in or to speak.

Prior to the meeting, both Ms. Melhado and Mr. Neller properly registered to testify at the hearing. Their presence and desire to testify was confirmed by Penny Ashby, via email, on September 7 at 10:57 AM. However, Ms. Melhado and Mr. Neller were never sworn in or afforded an opportunity to testify. During the hearing, there were Zoom-related computer issues in which Mr. Hellman first could not be heard and then could not be seen. While experiencing these Zoom-related issues, Mr. Hellman notified the Board that Ms. Melhado and Mr. Neller were also present. After the audio and video Zoom-related issues were finally corrected, Mr. Batchelder swore in Mr. Hellman only. After Mr. Hellman's presentation, he was immediately removed from the Zoom "panel" and was no longer able to speak or remind the Board that Ms. Melhado and Mr. Neller were not sworn in, and like Mr. and Mrs. Wallace, had properly registered to testify before the

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Board.¹ Consequently, as Mr. Hellman had no ability, it was not “on his own choosing, [that he] did not ‘pass the mike’ to Teresa Melhado or Dane Neller” as the Wallaces’ Response would seek to have this Board believe. The inability of Ms. Melhado and Mr. Neller to testify before the Board as to the relevant facts and grounds supporting their position for the Board to deny the Wallaces’ requests deprived them of both their procedural and substantive due process rights.

2. The Board failed to consider the existing and future commercial uses of the property and only considered the residential use in granting the special exception and variance.

At the conclusion of the Wallaces’ rebuttal, Chairman Robinson asserted the existence of other uses occurring on the Wallaces’ property are not properly before the Board, and the Board only addresses physical changes to the subject property, not other uses of the subject property. Mr. Batchelder concurred with Mr. Robinson. The first element of the special exception test is the use of the subject property.

The Wallaces, in their Response, acknowledged Mrs. Wallace did, in fact, work from the home as an interior designer.² However, Mrs. Wallace has not (as evidenced by a FOIA request to the City of Charleston, the results of which were submitted to the Board by Mr. Hellman) filed the required application or been approved for a Home Occupation Use as required under Section 54-211. Consequently, the Board erred as a matter of law when it determined that the physical extension of the non-conforming use is “limited to extending or increasing the non-conforming use then in existence” at the time of the adoption of Section 54-110 of the Zoning Ordinance, as

¹ The Wallace’s Reponse stated that “[n]o clock was called on any party of interest and no one was denied an opportunity to be sworn in or speak.” This clearly was not the case, as at the conclusion of Mr. Hellman’s presentation, his Zoom link immediately turned off his camera and microphone.

² The Wallaces’ Response is notably silent about Mr. Wallace’s architectural firm operating from 62 Church Street.

both the interior design and architectural office uses are non-residential in nature and have not been approved or permitted by the City of Charleston.

3. The Board failed to consider the impact on the portion of 60 Church Street at the rear (east property line) of 62 Church Street.

Ms. Melhado and Mr. Neller were unable to testify at the hearing as detailed above. Had they been able to testify at the hearing, they would have been able to clarify the Wallaces' misstatement that "[Ms. Melhado and Mr. Neller] are to our South and all shadows are cast to the North." The Board was clearly confused as to the extent of Ms. Melhado's property and the impact the Wallaces' requests would have on the rear of 60 Church Street.³

Boardmember Grass inquired as to who the property owner was at the rear of the Wallaces' property and the Wallaces failed to clarify that it was in fact Ms. Melhado. The Board was clearly confused as to the ownership of the rear property. This error is significant, as the impacts on light, air, noise, and fumes (specific elements of the 54-110.f. test) are most damaging to 60 Church Street along the rear. If the Board had allowed testimony from Ms. Melhado and Mr. Neller as to these impacts and the harms resulting from the approval of the special exception and variance, and understood the extent of Ms. Melhado's property, a different result would have likely ensued.

4. The Board permitted the applicant to provide the language of the motion for approval.

South Carolina Code Section 6-29-800(A)(2)(d)(ii), "the board may attach to [a variance] such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the

³ 60 Church Street, Ms. Melhado's property, is L-shaped and wraps around the Wallaces' property to both the South and East. It is the Wallaces' eastern property line that is the subject of the setback variance request, and it is along this property line where Ms. Melhado's pool house and swimming pool are adjacent to the Wallaces' property. *See also*, Exhibit A, attached hereto.

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surrounding area or to promote the public health, safety, or general welfare”. Additional powers are conferred to the Board under Section 54-110.f. of the Zoning Ordinance for the City of Charleston. However, the Board improperly delegated these powers to the applicant, Mr. Wallace, to create ambiguous, self-serving conditions related to the approval of the variance and special exception. There is no provision in the enabling statutes or Zoning Ordinance that allow for the delegation of this power of the Board to an applicant. Consequently, this delegation was an error of law by the Board.

5. The Board misapplied the variance test as required by S.C. Code Section 6-29-800(A)(2).

In their Response to the second statutory requirement for a variance, the Wallaces’ claim 62 Church Street is “much smaller than neighboring properties.” However, this claim is clearly and unequivocally rebutted by the Wallaces’ hearing testimony and exhibits, which clearly show the opposite to be true.⁴

The Wallaces provided numerous exhibits in addition to their hearing testimony. One of those exhibits was a map that showed the lot sizes and lot coverages of a number of properties in the vicinity. Notably, 62 Church Street (at 4,795 SF) was larger than 50 Church (4,185 SF), 52 Church (3,999 SF), 54 Church (4,270 SF), 66 Church (4,550 SF), 68 Church (3,900 SF), 70 Church (4,550 SF), and 72 Church (1,050 SF), and slightly smaller than 55 Church (4,810 SF) and 64 Church (5,280 SF). While the Wallaces’ Response states that their “presentation demonstrated that this Property is much smaller than neighboring properties” this claim, as evidenced by the

⁴ The second requirement of the four-part variance test requires the Board to make the following finding: These conditions do **not** generally apply to other property in the vicinity. (Emphasis added)

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Wallaces' own hearing testimony and exhibits, is false. As the second part of the statutory variance test has not been met, the Board erred in its approval of this variance request.

6. The Board misapplied the special exception test as required City of Charleston Ordinance Section 54-110.f. and S.C. Code Section 6-29-800(A)(3).

As set forth above, given that the proposed expansion includes an enlarged office, and that neither Mr. Wallace's architecture firm nor Mrs. Wallace's interior design firm have been approved by the City of Charleston for Home Occupation Uses, either by application or business license, the Board erred as a matter of law when it determined that the physical extension of the non-conforming use is "limited to extending or increasing the non-conforming use then in existence" at the time of the adoption of Section 54-110 of the Zoning Ordinance, as required by Section 54-100.f. Furthermore, as explained in Section 3, above, had the Board understood the impacts to the rear of Ms. Melhado's property as to light, air, noise, and fumes, each specific elements of the 54-110.f. test, a different result would have likely ensued.

Respectfully submitted,

s/ Brian A. Hellman

Brian A. Hellman, Esq.

Hellman & Yates, PA

105 Broad Street, Third Floor

Charleston, SC 29401

843-414-9753

bh@hellmanyates.com

EXHIBIT 1

Exhibit A

Melhado Property



EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Teresa Melhado and Dane Neller,

Appellants,

vs.

City of Charleston, City of Charleston
Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Hayes,
Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016,

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05255

**THIRD ADDITIONAL
MATERIALS FROM CITY OF
CHARLESTON RELATIVE TO APPEAL**

62 Church St (BZAZ Approval Documents 9-7-21) 1of 2; and
62 Church St (BZAZ Approval Documents 9-7-21) 2of 2;

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin

Bar No.: 65264

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: tdomin@clawsonandstaubes.com

Attorney for Respondents City of Charleston
and City of Charleston Board of Zoning
Appeals

Charleston, South Carolina
April 18, 2022

ELECTRONICALLY FILED - 2022 Apr 18 10:29 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255



Board of Zoning Appeals – Zoning
- Results -

Page 1 of 1

City of Charleston

PROPERTY LOCATION, TMS NUMBER(S) AND DESCRIPTION OF REQUEST(S):

62 CHURCH ST. (CHARLESTOWNE) (458-13-01-097)

Request special exception under Sec. 54-110 to allow a horizontal expansion (garden room) and vertical extension (hall/closet/exercise/laundry) that extends a non-conforming 6.2-ft. south side setback (9-ft. required).

Request variance from Section 54-301 to allow a 2-story addition having a 43% lot occupancy (35% limitation; existing lot occupancy 37%)

Zoned SR-4

Order on Special Exception Request

The Board of Zoning Appeals-Zoning held a public hearing to consider the above appeal for a special exception which may be permitted by the Board pursuant to the Zoning Ordinance for the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

☐ DENIED. The Board concludes that the standards in the Section(s) of the Zoning Ordinance listed above, which are applicable to the requested special exception(s), have not been met and therefore orders that the special exception(s) be denied.

☒ APPROVED. The Board concludes that the standards in the Section(s) of the Zoning Ordinance listed above, which are applicable to the requested special exception(s), have been met and therefore orders that the special exception(s) be granted, subject to the following conditions, if any: *Conditioned on application making best efforts to baffle/reduce noise emanating from generator and HVAC units*

Date issued:

9/7/21

Chairman

Michael Robinson

Order on Variance Request

The Board of Zoning Appeals-Zoning held a public hearing to consider an appeal for a variance from the strict application of the Zoning Ordinance for the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of facts and conclusions.

☐ DENIED. The Board concludes that the requirements for granting a variance have not been met and, therefore, orders that the variance be denied.

☒ APPROVED. The Board concludes that:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. Authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

THE BOARD, THEREFORE, finds that the applicant has an unnecessary hardship and orders that the variance be granted, subject to the following conditions, if any: _____

Date issued:

9/7/21

Chairman

Michael Robinson

Approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Section 54-962. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has lapsed.

1/09

EXHIBIT 1

EC-O.1

EXISTING
SITE PLANSCALE
-10'-0"

DATE 14 JUNE 20

ISLAND
ARCHITECTS

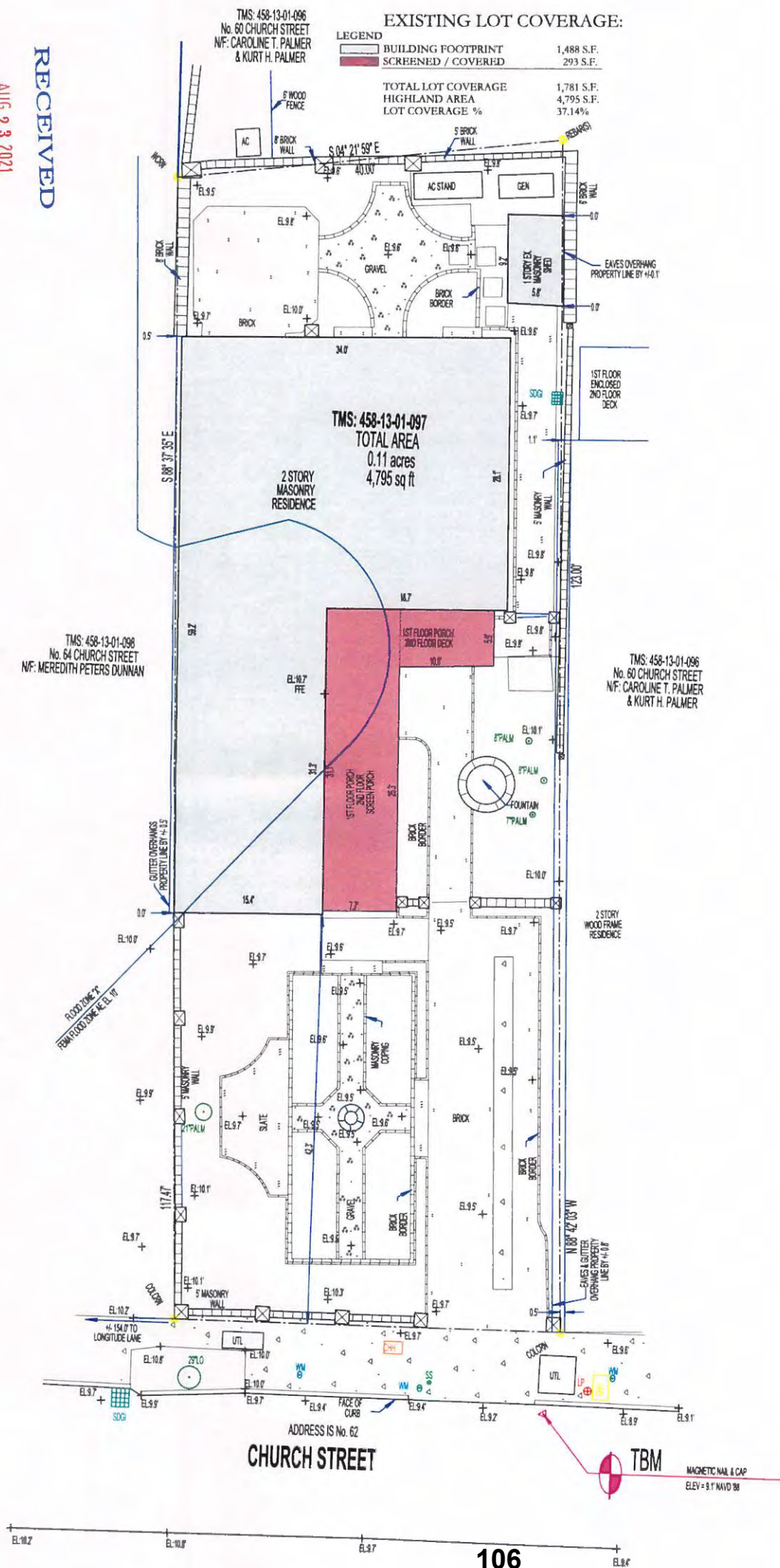
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

ADDITION & GARDEN
TERRACE AT
CHURCH STREET
82 CHURCH STREET
CHARLESTON, SC 29401

62 CHURCH STREET
CHARLESTON, SC 29401

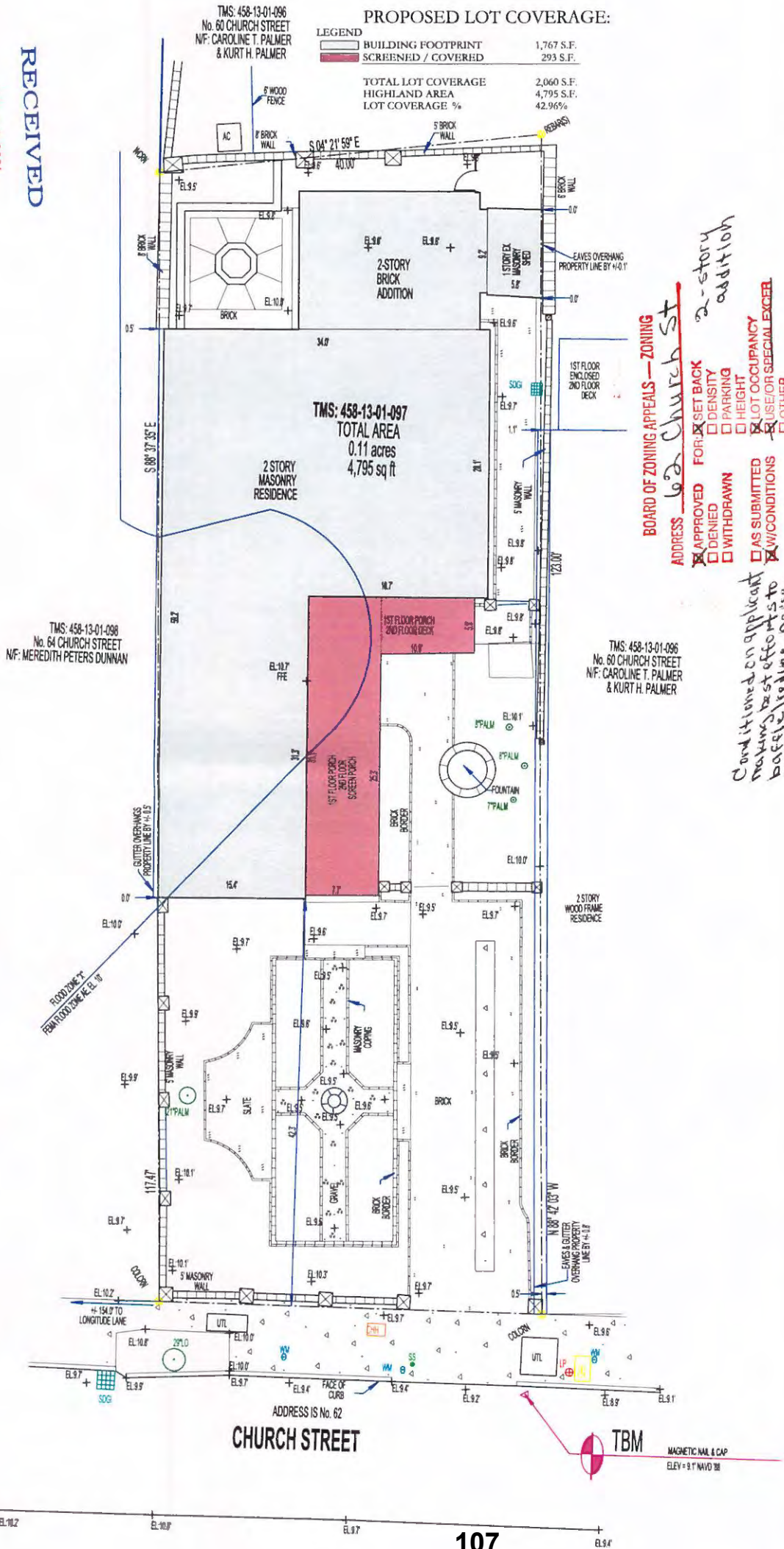
RECEIVED

AUG 23 2021



AUG 23 2021

RECEIVED



PROPOSED LOT COVERAGE:

LEGEND	
BUILDING FOOTPRINT	1,767 S.F.
SCREENED / COVERED	293 S.F.
TOTAL LOT COVERAGE	2,060 S.F.
HIGHLAND AREA	4,795 S.F.
LOT COVERAGE %	42.96%

BOARD OF ZONING APPEALS — ZONING

ADDRESS 62 Church St

☒ APPROVED	☒ SET BACK	☒ 2-story addition
☐ DENIED	☐ DENSITY	☐
☐ WITHDRAWN	☐ PARKING	☐
☐ AS SUBMITTED	☐ HEIGHT	☐
☐ W/CONDITIONS	☒ LOT OCCUPANCY	☒
☐	☒ USE OR SPECIAL EXCER	☐
☐	☐ OTHER	☐

Conditioned on applicant making best efforts to buffer noise from generator and building.

SCALE 1"=10'-0"

DATE 14 JUNE 2021

A-O.1

PROPOSED SITE PLAN

DATE 9/1/21

ZONING OFFICIAL

THIS APPROVAL EXPIRES WITHIN TWO YEARS UNLESS AN EXTENSION IS APPROVED IN ACCORDANCE TO SEC. 54-902

THIS DOES NOT CONSTITUTE APPROVAL

BY OTHER CITY BOARD OF ZONING APPEALS

ISLAND ARCHITECTS

62 CHURCH STREET | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

ADDITION & GARDEN TERRACE AT CHURCH STREET

62 CHURCH STREET CHARLESTON, SC 29401

EXHIBIT 1

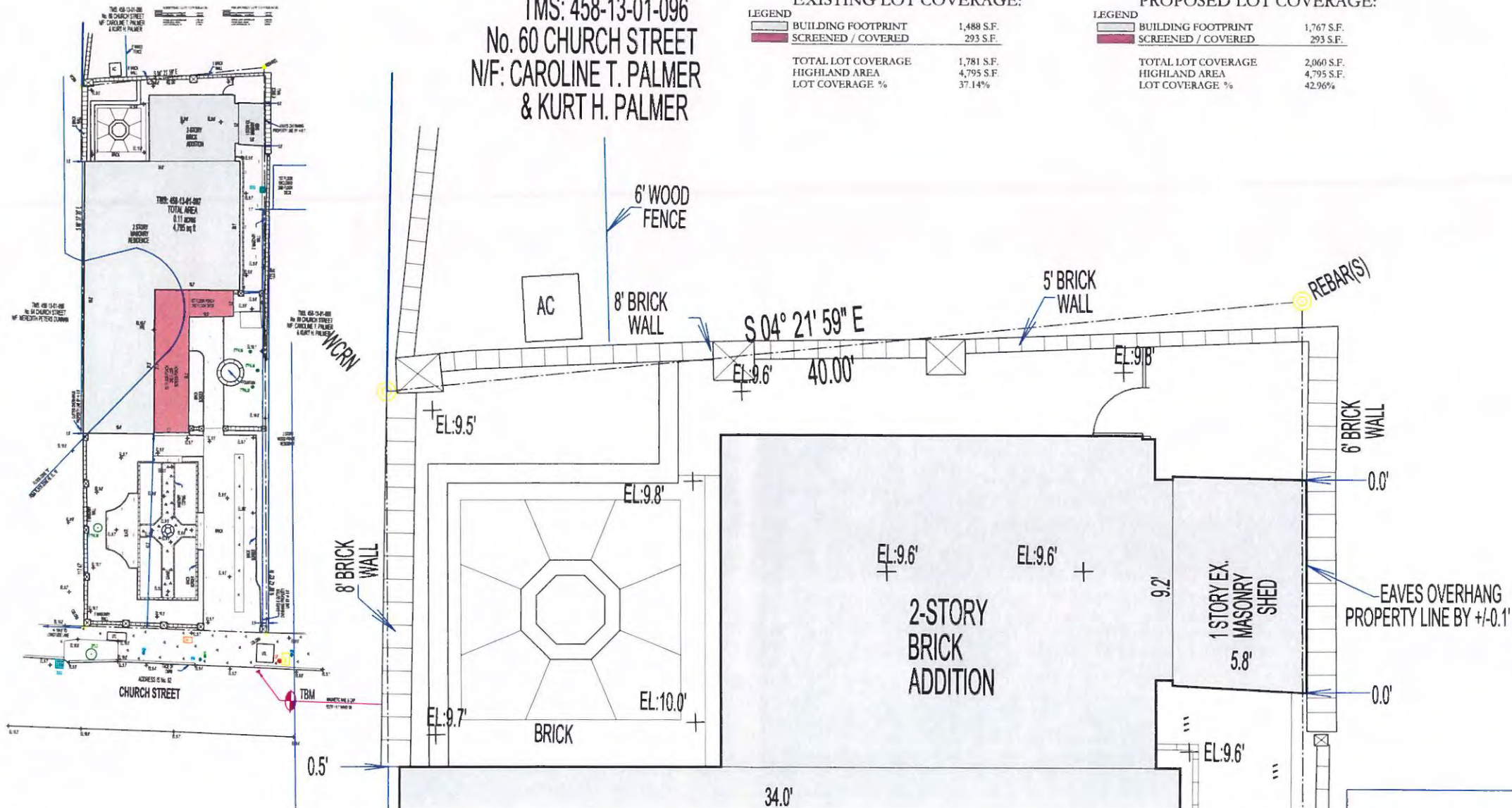
EXISTING LOT COVERAGE:

LEGEND	
	BUILDING FOOTPRINT 1,488 S.F.
	SCREENED / COVERED 293 S.F.
TOTAL LOT COVERAGE	1,781 S.F.
HIGHLAND AREA	4,795 S.F.
LOT COVERAGE %	37.14%

PROPOSED LOT COVERAGE:

LEGEND	
	BUILDING FOOTPRINT 1,767 S.F.
	SCREENED / COVERED 293 S.F.
TOTAL LOT COVERAGE	2,060 S.F.
HIGHLAND AREA	4,795 S.F.
LOT COVERAGE %	42.96%

TMS: 458-13-01-096
No. 60 CHURCH STREET
N/F: CAROLINE T. PALMER
& KURT H. PALMER



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED

AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

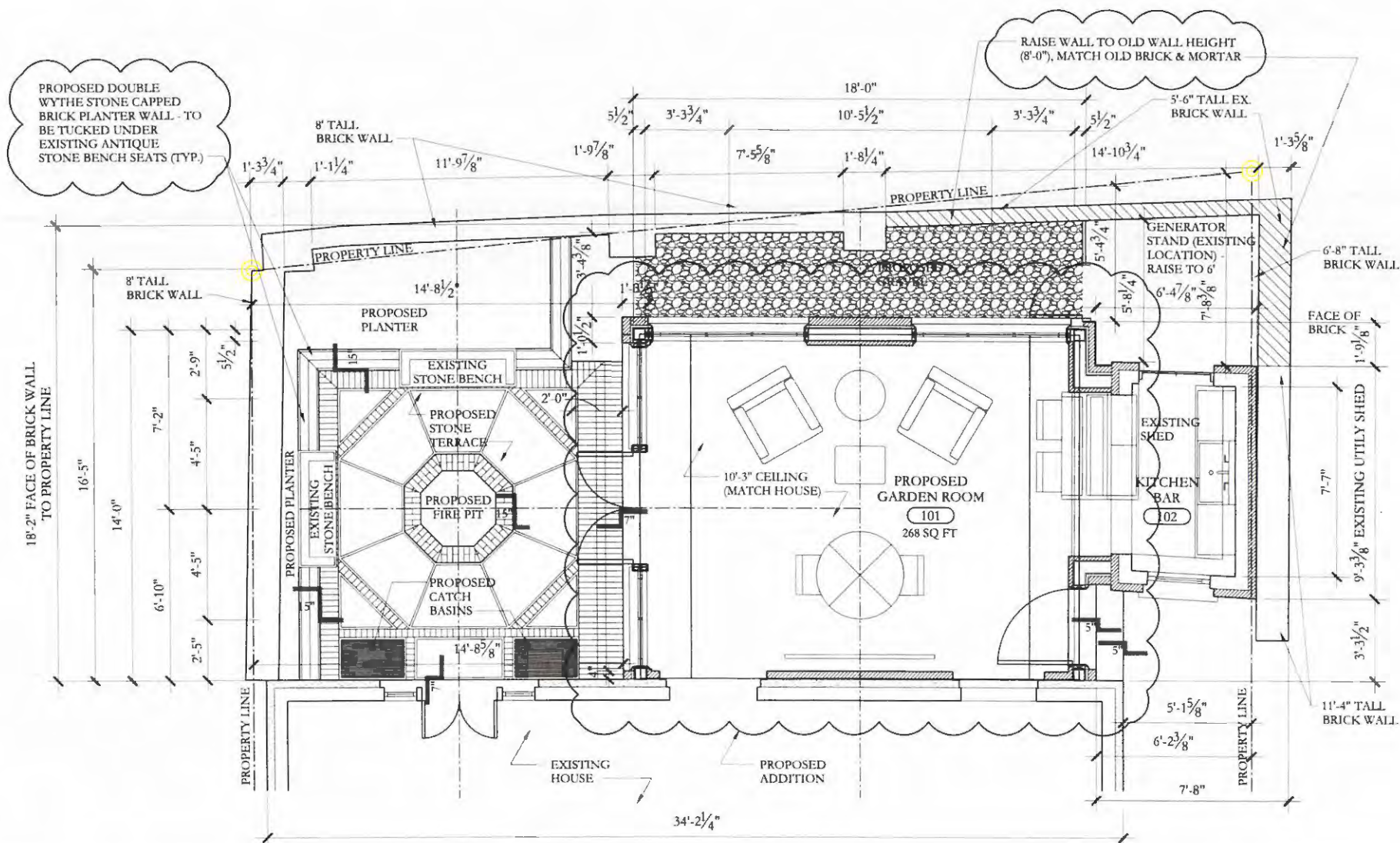
SCALE
1" = 20' 0"
 $\frac{1}{4}" = 1' 0"$

DATE
14 JUNE 2021

A-0.2

PROPOSED SITE PLAN DETAIL

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON SC 29401

RECEIVED

AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

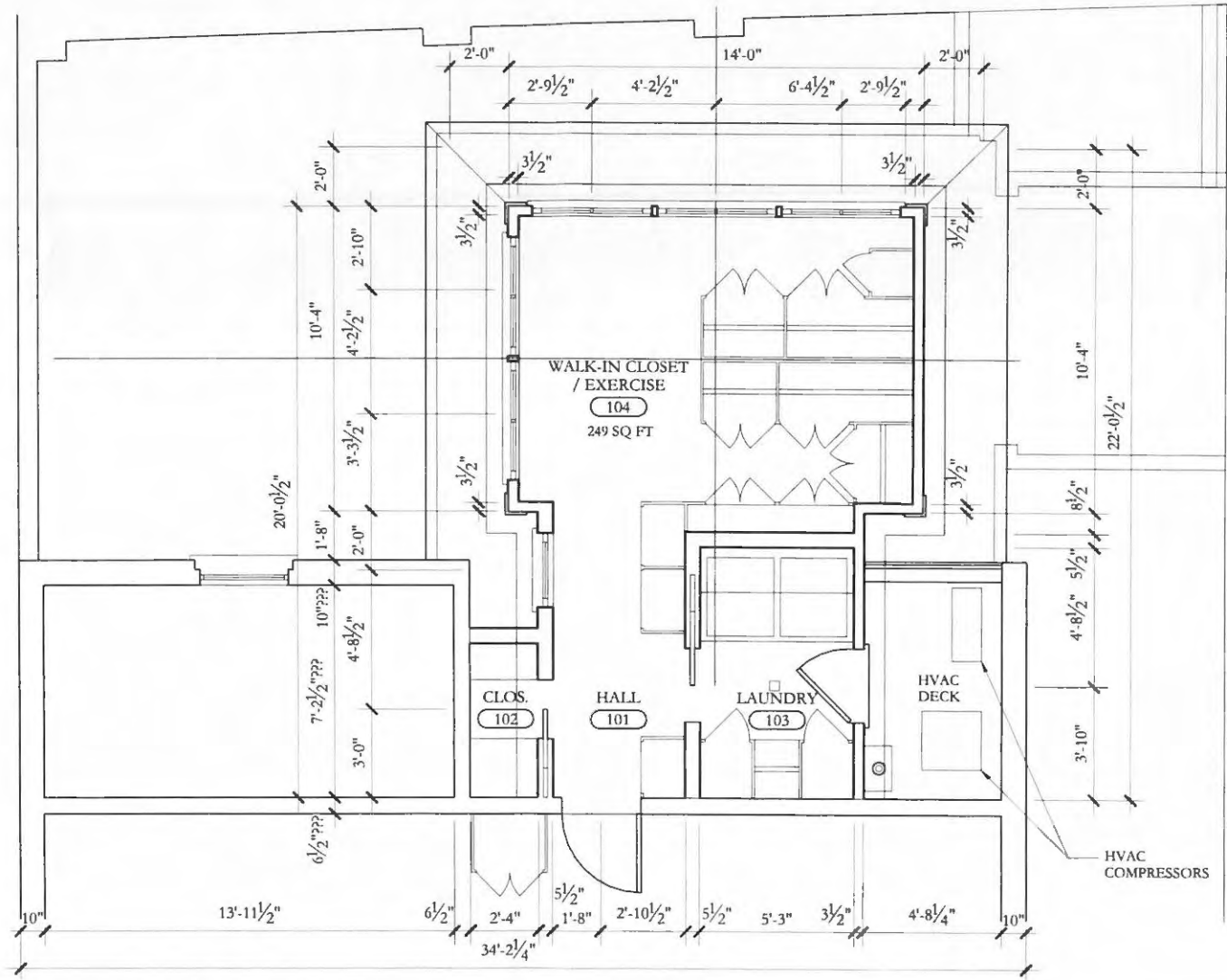
SCALE
1/4" = 1' 0"

DATE
14 JUN 2021

A-1

TERRACE &
GARDEN PLAN

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET I

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED

AUG 23 2021

I S L A N D
ARCHITECTS

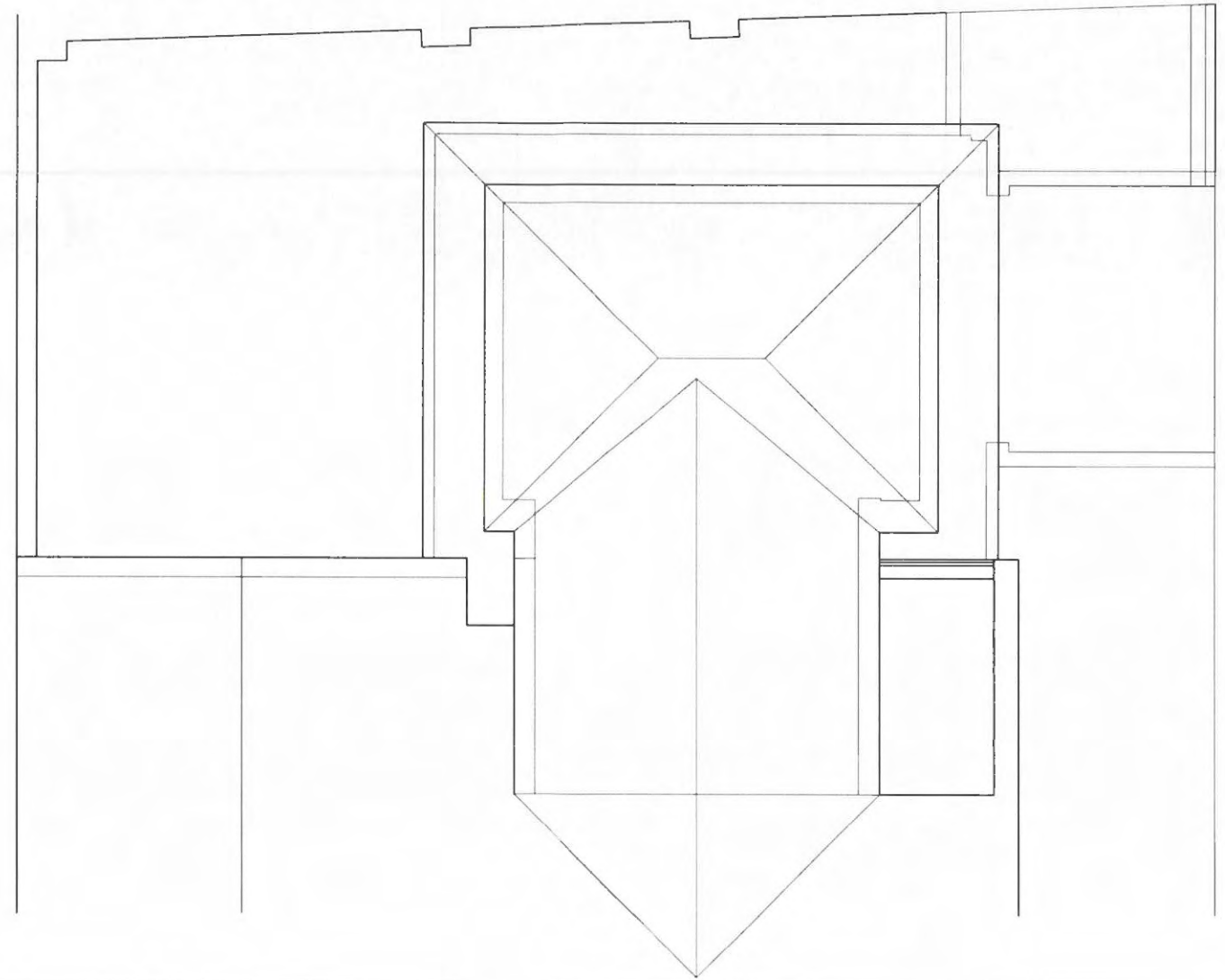
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4" = 1' 0"

DATE
14 JUNE 2021

A-2
UPPER FLOOR
PLAN

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET I

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED

AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

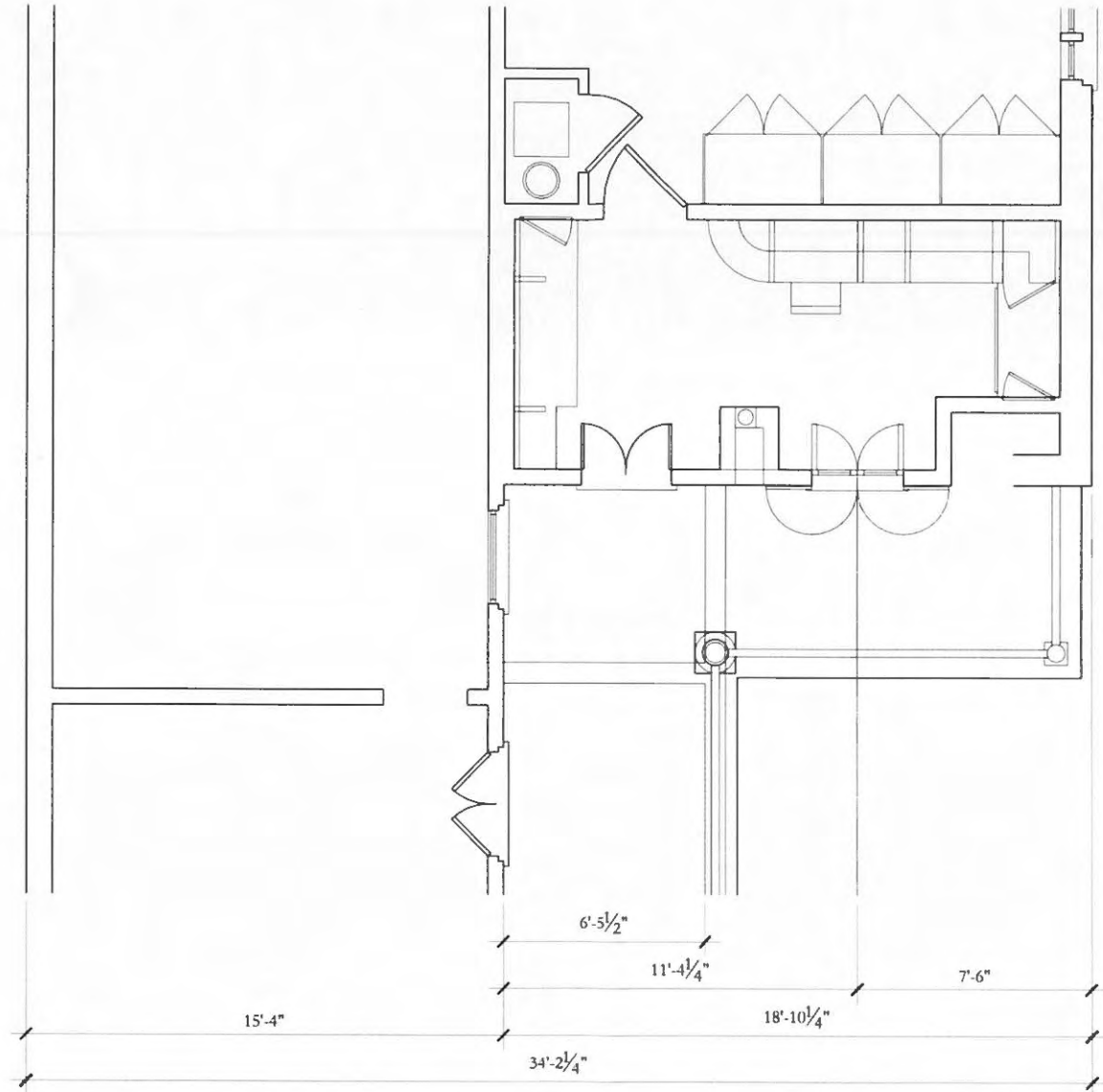
SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-3

ROOF
PLAN

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
A R C H I T E C T S

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4" = 1' 0"

DATE
14 JUNE 2021

A-4
UPPER FLOOR
OFFICE &
PORCH PLAN

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-5
BUILDING
SECTION

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4" = 1' 0"

DATE
24 AUG 2021

A-6
SOUTH
EXTERIOR
ELEVATION

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED

AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-7

SOUTH
EXTERIOR
ELEVATION

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-8
EAST
EXTERIOR
ELEVATION

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

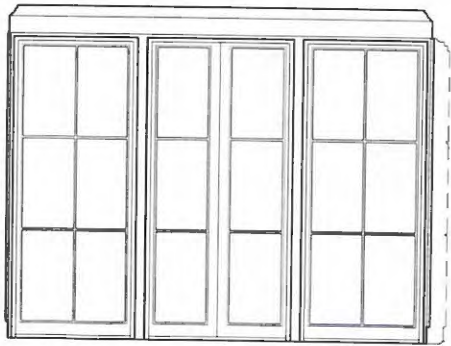
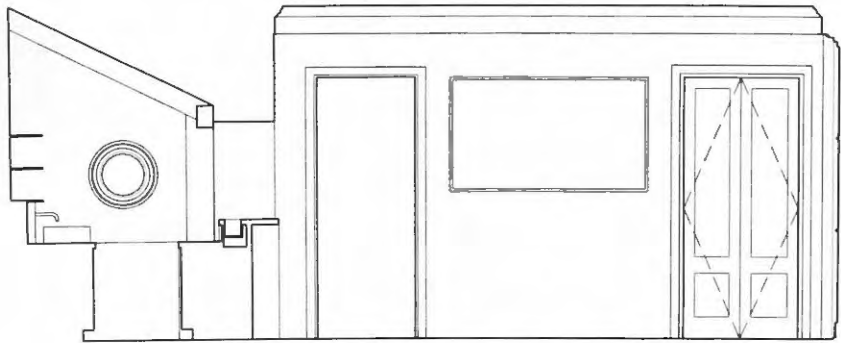
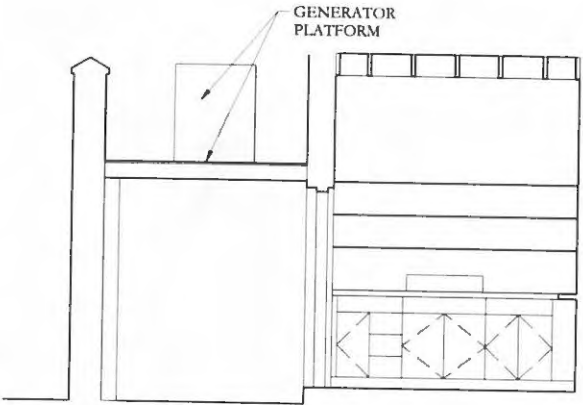
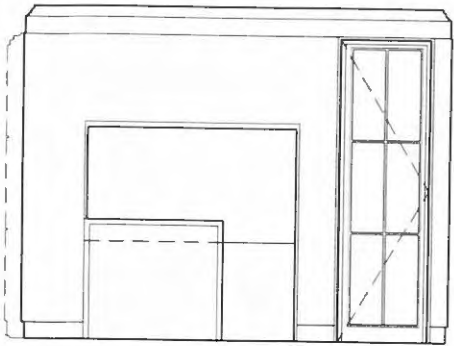
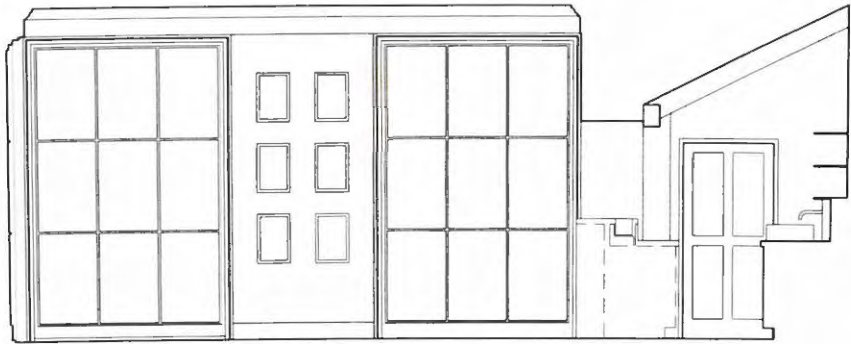
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1' 0"

DATE
14 JUNE 2021

A-9
NORTH
EXTERIOR
ELEVATION

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

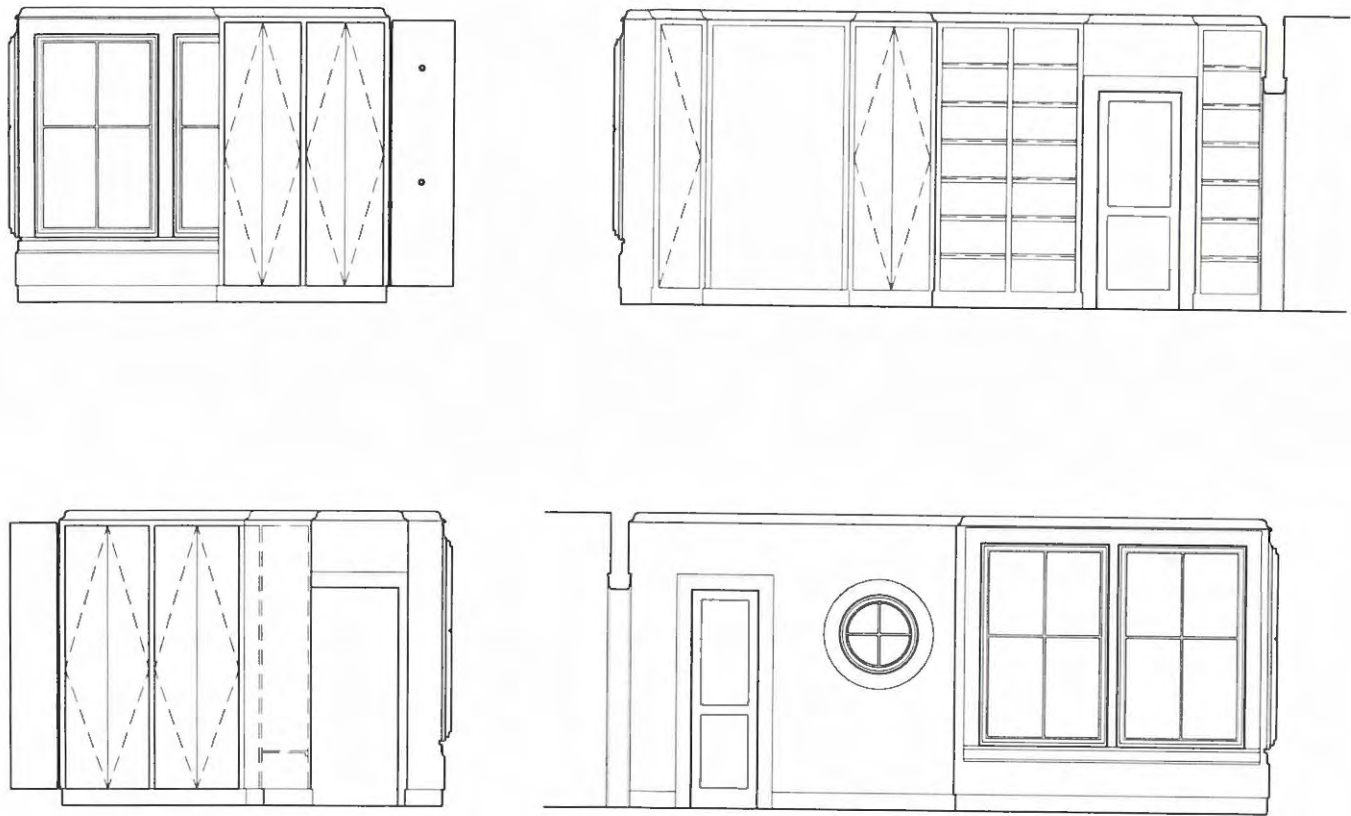
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-10
DEN
INTERIOR
ELEVATIONS

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

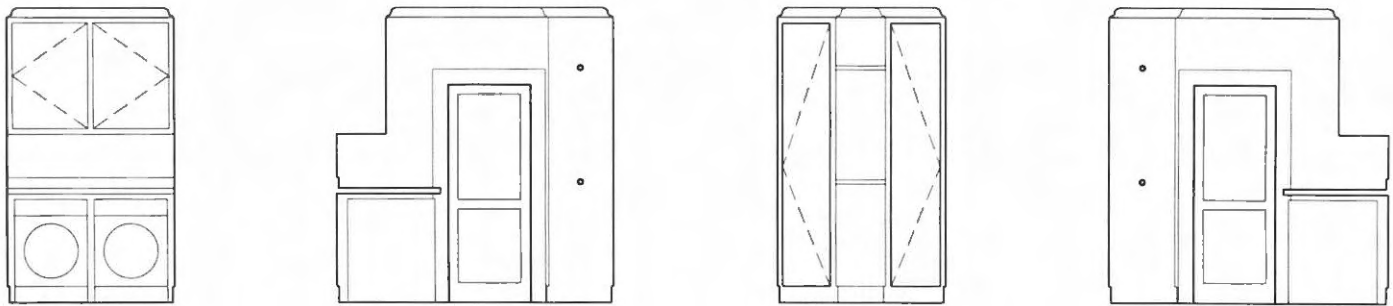
RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE 1/4"=1'-0"	A-11 WALK-IN CLOSET INT. ELEVATIONS
DATE 14 JUNE 2021	

EXHIBIT 1



ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

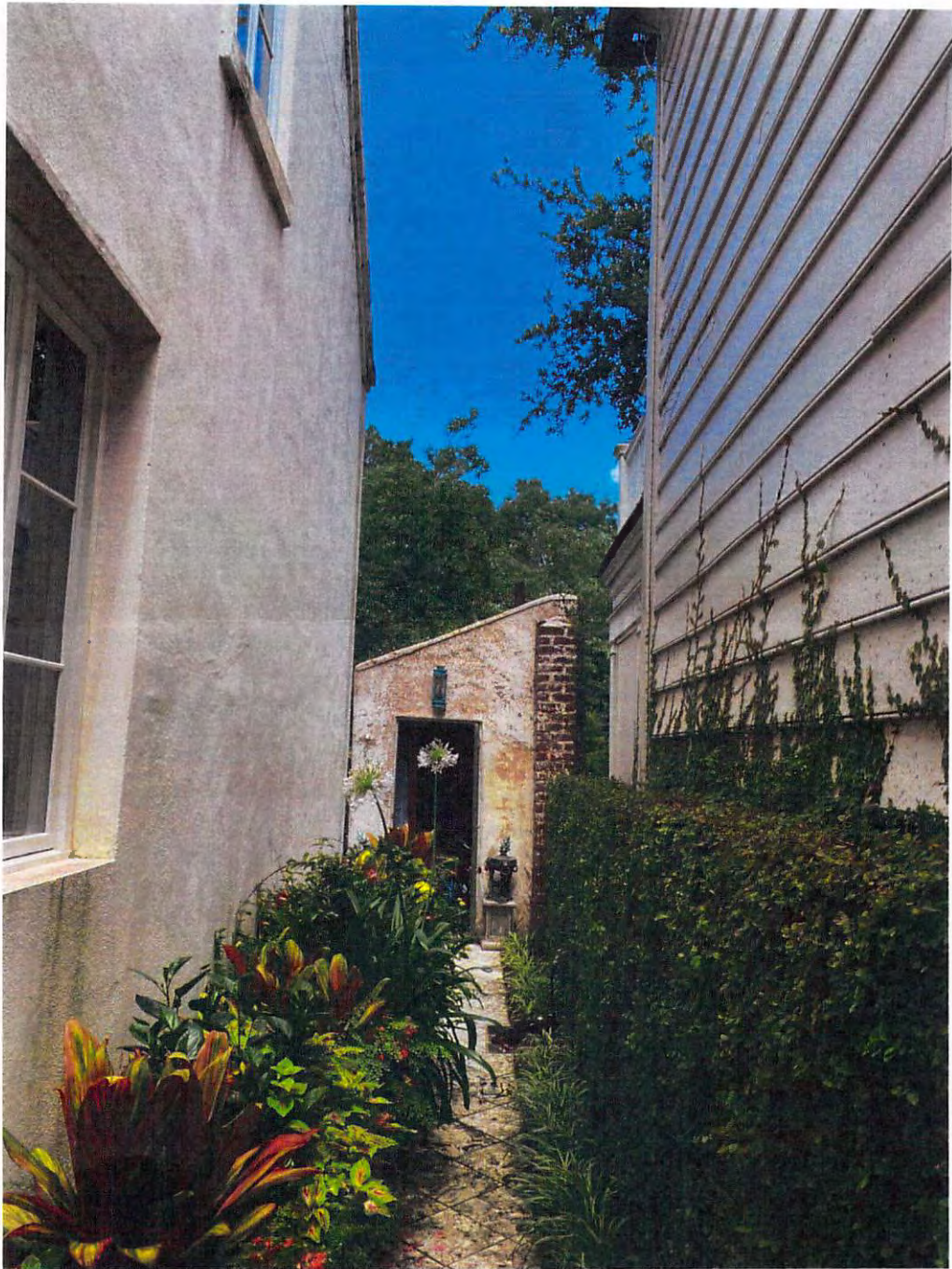
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-12
LAUNDRY
INTERIOR
ELEVATIONS

62 CHURCH STREET



Looking East down side alley to Tool Shed

RECEIVED
AUG 23 2021

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Teresa Melhado and Dane Neller,

Appellants,

vs.

City of Charleston, City of Charleston
Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Hayes,
Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016,

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05255

**FOURTH ADDITIONAL
MATERIALS FROM CITY OF
CHARLESTON RELATIVE TO APPEAL**

BZA Meeting Results 9-7-21;

BZAZ Decision 10-19-21;

View Angle Study for 60-62 Church St; and

Church St Lot Coverage Study Revised 8-18-21.

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin

Bar No.: 65264

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: tdomin@clawsonandstaubes.com

Attorney for Respondents City of Charleston

and City of Charleston Board of Zoning

Appeals

Charleston, South Carolina

April 18, 2022

ELECTRONICALLY FILED - 2022 Apr 18 10:38 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

EXHIBIT 1
MINUTES

ELECTRONICALLY FILED - 2022 Apr 18 10:38 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

AGENDA
BOARD OF ZONING APPEALS-ZONING
SEPTEMBER 7, 2021 5:15 P.M. "virtually via Zoom Webinar"
8:56 P.M.
MEMBERS PRESENT: MICHAEL ROBINSON, HOWELL MORRISON, ALLISON GRASS, WALTER JAUDON,
ROBBEN RICHARDS, JOHN BENNETT, GEIZA VARGAS-VARGAS
STAFF PRESENT: LEE BATCHELDER, PENNYE ASHBY, SCOTT VALENTINE

A. Review of Minutes and Deferred applications from previously advertised BZA-Z agendas. For information, call 724-3765.

1. REVIEW OF MINUTES OF THE AUGUST 17, 2021 BOARD MEETING APP. NO. 2109-07-A1

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: W.Jaudon SECOND: A.Grass VOTE: FOR 7 AGAINST 0

2. 62 CHURCH ST. (CHARLESTOWNE) (458-13-01-097) APP. NO. 2109-07-A2

Request special exception under Sec. 54-110 to allow a horizontal expansion (garden room) and vertical extension (hall/closet/exercise/laundry) that extends a non-conforming 6.2-ft. south side setback (9-ft. required).

Request variance from Section 54-301 to allow a 2-story addition having a 43% lot occupancy (35% limitation; existing lot occupancy 37%)

Zoned SR-4

Owner: Erika and George Wallace
Applicant: George Wallace

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval with conditions on applicant making best efforts to baffle/reduce noise emanating from generator and hvac units.

MADE BY: G.Vargas-Vargas SECOND: A.Grass VOTE: FOR 7 AGAINST 0

3. 42 HALSEY BLVD. (HARLESTON VILLAGE) 457-03-03-169 APP. NO. 2109-07-A3

Request variance from Sec. 54-301 to allow construction of a single-family residence with a 7.4-ft. south side setback, a 10.3-ft. total side setback, having a 44% lot occupancy (9-ft., 15-ft. required, 35% limitation)

Zoned DR-1

Owner: Lindsay Colbert and Garrett Voegeli
Applicant: AJ Architects, Ashley Jennings

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: R.Richards SECOND: W.Jaudon VOTE: FOR 5 AGAINST 2
*H.Morrison
*A.Grass

EXHIBIT 1

BOARD OF ZONING APPEALS—ZONING/SEPTEMBER 7, 2021
PAGE 2

B. New applications.

1. 1526 OCEAN NEIGHBORS BLVD. (OCEAN NEIGHBORS) APP. NO. 2109-07-B1
(431-00-00-039)

Request reconsideration of the Zoning Administrator's decision to deny an STR permit application based on the Ocean Neighbor's HOA covenants that prohibit this use.
Zoned SR-2

Owner: Heidi and Travis Kuyper
Applicant: Heidi Kuyper

APPROVED 0

WITHDRAWN 0

DISAPPROVED 0

DEFERRED XX

MOTION: Deferral until decision made by Court of Law on HOA specifications on STR use.

MADE BY: H.Morrison SECOND: A.Grass VOTE: FOR 7 AGAINST 0

2. 200-210 SPRING ST. (WESTSIDE) APP. NO. 2109-07-B2
(460-11-01-011 AND 460-11-01-013)

Request first one-year extension of a vested right that expires on October 1, 2021, pursuant to Sec. 54-962. Vested right pertains to a special exception granted under Sec. 54-220 on October 1, 2019 with conditions for a 152-unit accommodations use in a MU-2/WH (Mixed Use Work Force Housing) zone district.

Owner: 200 Spring Street Development, LLC and JJR Development, LLC
Applicant: Jeffrey Roberts, managing member JJR Development, LLC

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval with conditions to expire on October 1, 2022.

MADE BY: H.Morrison SECOND: J.Bennett VOTE: FOR 7 AGAINST 0

3. 10 CYPRESS ST. (EAST CENTRAL) (463-12-02-005) APP. NO. 2109-07-B3

Request variance from Sec. 54-317 to allow construction of an office building with 1,964sf of office space with 3 off-street parking spaces (4 spaces required).
Zoned LB

Owner: Maple Cypress Development Associates, LLC
Applicant: Patrick Head, Director of Development, JJR Development, LLC

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: W.Jaudon SECOND: A.Grass VOTE: FOR 7 AGAINST 0

EXHIBIT 1

BOARD OF ZONING APPEALS—ZONING/SEPTEMBER 7, 2021
PAGE 3

4. 430 MEETING ST. (EASTSIDE) (459-09-01-034) APP. NO. 2109-07-B4

Request special exception under Sec. 54-206 (y) to allow a late night use restaurant and bar within 500 feet of a residential zone district.
Zoned GB

Owner: Brendan Kirkpatrick
Applicant: Robbie Marty

APPROVED 0 WITHDRAWN XX
DISAPPROVED 0 DEFERRED 0

MOTION: Withdrawn.

MADE BY: _____ SECOND: _____ VOTE: FOR _____ AGAINST _____

5. 1625 SAMUEL RD. (GRIMBALL SHORES) (334-04-00-040) APP. NO. 2109-07-B5

Request variance from Sec. 54-824 to allow a subdivision to create two lots and to allow Lot A to not have frontage on a public right-of-way.
Zoned RR-1

Owner: James Tillman
Applicant: Mary Austin, Richard Heatherly, Carolina One

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: A.Grass SECOND: R.Richards VOTE: FOR 7 AGAINST 0

6. 106 COOPER ST. (EASTSIDE) (459-05-03-007) APP. NO. 2109-07-B6

Request special exception under Sec. 54-501 to allow construction of a single-family residence on a lot of insufficient size (Lot area 1,637sf; 2,500sf required).
Request variance from Sec. 54-301 to allow construction of a single-family residence with a 3.5-ft. west side setback, a 13-ft. total side setback having a 50.5% lot occupancy (9-ft. and 15-ft. required, 50% limitation).
Zoned GB

Owner: Mulberry Street Development
Applicant: Chamberlain Chesnut

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: R.Richards SECOND: G.Vargas-Vargas VOTE: FOR 7 AGAINST 0

7. 16 CHURCH ST. (CHARLESTOWNE) (457-16-04-047) APP. NO. 2109-07-B7

Request variance from Sec. 54-301 to allow a family room expansion/powder room and closet addition having a 38% lot occupancy (35% limitation; existing lot occupancy is 37%)
Zoned SR-4

Owner: Mike & Susan O'Neill
Applicant: Glenn Keyes Architects

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: G.Vargas-Vargas SECOND: J.Bennett VOTE: FOR 7 AGAINST 0

8. 30 F ST. (WESTSIDE) (463-16-03-049) APP. NO. 2109-07-B8

Request variance from Sec. 54-301 to allow two detached single-family residences with a 0-ft. north side setback (3-ft. required).
Zoned DR-2F

Owner: ELP Properties LLC
Applicant: David Richards, Architect

APPROVED 0 WITHDRAWN 0
DISAPPROVED 0 DEFERRED XX

MOTION: Deferred by applicant.

MADE BY: _____ SECOND: _____ VOTE: FOR _____ AGAINST _____

9. 511 RUTLEDGE AVE. (WESTSIDE) (460-07-02-220) APP. NO. 2109-07-B9

Request use variance from Sec. 54-203 to allow a barber shop on the ground floor with days of operation Monday-Saturday and hours of operation 7am-6pm in a DR-1F (Diverse-Residential) zone district.

Owner: Richard Fishman, c/o Agent William Olasov
Applicant: Cynthia A. Buhle

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: J.Bennett SECOND: H.Morrison VOTE: FOR 7 AGAINST 0

10. 24 SYCAMORE AVE. (MAGNOLIA) (418-09-00-005) APP. NO. 2109-07-B10

Request special exception under Sec. 54-110 to allow the expansion of an existing non-conforming use (daycare center) with a 1-story classroom addition.
Zoned SR-2

Owner: Roman Washington (Plymouth Church)
Applicant: LaQuinta Washington

WITHDRAWN 0

DEFERRED 0

MOTION: Approval.

MADE BY: H.Morrison SECOND: W.Jaudon VOTE: FOR 7 AGAINST 0

11. 31 EAST BATTERY ST. (CHARLESTOWNE) (457-16-04-064) APP. NO. 2109-07-B11

Request variance from Sec. 54-301 to allow a 3-story addition to main house and new 2-story detached garage having a 46% lot occupancy (35% limitation; existing lot occupancy 39%).
Zoned SR-3

Owner: Mr. John Streicker
Applicant: EE Fava Architects

WITHDRAWN 0

DEFERRED 0

MOTION: Approval.

MADE BY: H.Morrison SECOND: R.Richards VOTE: FOR 6 AGAINST 0
*J.Bennett recused, leaves at 8:36 p.m.

For more information, contact the Zoning and Codes Division Office at 724-3781
In accordance with the American with Disabilities Act, people who need alternative formats, ASL
(American Sign Language) Interpretation or other accommodation please contact Janet Schumacher
At (843) 577-1389 or email to schmacherj@charleston-sc.gov three business days prior to the meeting.

EXHIBIT 1

ELECTRONICALLY FILED - 2022 Apr 18 10:38 AM - CHARLESTON - COMMON PLEAS - CASE#2021CPI005255

For office use only

Property address: 62 Church Street (Charlestowne)

TMS # 458-13-01-094 Zoning SR-4

Request reconsideration of the Board's decision
on September 7, 2021 to approve special
exception for a 2-story addition and lot occupancy
variance with conditions in a SR-4
(Single-Family Residential) zone district

Board of Zoning Appeals-Zoning Order on Appeal

The Board of Zoning Appeals-Zoning held a public hearing on October 19, 2021 to consider the above appeal for reconsideration of a decision of the Board or the zoning administrator alleged to be erroneous by the appellant and affecting the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board makes the following findings of fact which are supported by the evidence:

2. The Board concludes the following:

☒ b. In the case of an appeal for **reconsideration of a decision of the Board**, the Board denies the appeal. --- grants the appeal, withdraws its decision, and agrees to hear the application de novo, as if no hearing, consideration or determination has been previously made or heard.

a. In the case of an appeal for **reconsideration of a decision of the zoning administrator**, the Board orders that the decision of the zoning administrator is affirmed reversed modified as follows:

6/15 Date 10/19/21 Chairman Michael Robinson 128

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Teresa Melhado and Dane Neller,

Appellants,

vs.

City of Charleston, City of Charleston
Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Hayes,
Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016,

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05255

**FIFTH ADDITIONAL
MATERIALS FROM CITY OF
CHARLESTON RELATIVE TO APPEAL**

View Angle Study for 60-62 Church St

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin

Bar No.: 65264

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: tdomin@clawsonandstaubes.com

Attorney for Respondents City of Charleston
and City of Charleston Board of Zoning
Appeals

Charleston, South Carolina
April 18, 2022

ELECTRONICALLY FILED - 2022 Apr 18 10:49 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

ELECTRONICALLY FILED - 2022 Apr 18 10:49 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

CIAL FLOOD HAZARD DARY MAPS.

10° 30'

EIGHT.
T.

2nd FLOOR ADDITION
TMS: 458-13-01-097
TOTAL AREA
0.11 acres
4,795 sq ft

2 APR 18 10:49 AM - CHARLESTON COMMON PLEAS - CASE#2021CP1005255

LOW POINT
PARAPET

CL2

SHING

SECTION

$\frac{1}{8}'' = 1'-0''$

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Teresa Melhado and Dane Neller,	)	Case No.: 2021-CP-10-05255
	)	
Appellants,	)	
	)	
v.	)	ORDER AFFIRMING DECISIONS
	)	OF BOARD OF ZONING APPEALS
	)	AND DISMISSING APPEAL
City of Charleston, City of Charleston	)	
Board of Zoning Appeals, George Wallace,	)	
and Erika R. Hayes, Trustee of the Ericka	)	
R. Hayes Revocable Trust u/a/d 8-4-2016,	)	
	)	
Respondents.	)	
	)	

This matter is before the Court on Appellants Teresa Melhado's and Dane Neller's appeal to the Circuit Court, pursuant to S.C. Code Ann. § 6-29-820, of the decision of the Board of Zoning Appeals-Zoning ("BZA") of the City of Charleston on September 7, 2021, granting a variance and special exception to Respondents George Wallace and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, who own 62 Church Street in downtown Charleston (the "Owners"). Appellants, who own the property next door at 60 Church Street, initiated their appeal after the BZA denied their Request for Reconsideration of its final decision. The Court conducted a hearing on the appeal by Webex® on April 20, 2022, in which the attorneys for the parties presented their respective positions.

After carefully considering the record of proceedings before the BZA, including the transcripts of the board's meetings, the board's written decisions, the Appellants' petition in

EXHIBIT 2

support of their appeal, the memorandums of law submitted by the parties, and the oral arguments by counsel, the Court hereby affirms the final decision of the BZA and dismisses the appeal.¹

STANDARD OF REVIEW

S.C. Code Ann. Section 6-29-840 charges a circuit court presented with an appeal of a zoning board's decision to "determine only whether the decision of the board is correct as a matter of law." The statute is deferential to a board's findings and equates them to a jury's findings. S.C. Code Ann. § 6-29-840(A) ("The findings of fact by the [zoning] board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence."). The circuit court shall not disturb the board's findings unless the record contains no evidence reasonably supporting the board's findings. *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *see also Venture Eng'g for DT LLC v. Horry Cnty. Zoning Bd. of Appeals*, 433 S.C. 419, 426, 858 S.E.2d 638, 642 (Ct. App. 2021) ("[T]he decision of a zoning board of appeals must not be disturbed if there is supporting evidence in the record."). "Further, a court must not substitute its judgment for that of the board, 'even if it disagrees with the decision.'" *Venture Eng'g*, 433 S.C. at 426 (quoting *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)).

The zoning board's decision should only be overturned where there is no evidence to support it, where it is based on an error of law, or where the board acts arbitrarily, capriciously, or has abused its discretion. *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018).

¹ The Court's ruling on the appeal renders moot the Appellants' Motion for Supersedeas and Stay of Matters Affected by This Appeal filed March 16, 2022.

EXHIBIT 2

LAW AND ANALYSIS

A review of the record filed with the Court demonstrates that the decision of the BZA was not erroneous as a matter of law and that there was evidence to support the board's decision to grant the variance and to grant the special exception subject to the conditions imposed by the BZA. Because the decision was supported by evidence and not erroneous as a matter of law, the decision was neither arbitrary nor capricious.

The transcript of the two meetings (the first on September 7, 2021, to consider the original application and the second on October 19, 2021, to consider Appellants' Request for Reconsideration) amply shows the factual matters relied upon and discussed by the board members in making their decision. The Owners' Memorandum in Opposition to the Appeal points to much of this evidence.

The written decision of the BZA on September 7, 2021, contains all the findings and conclusions required by the applicable ordinances and statutes to sustain both the variance and the special exception. Additionally, as noted in the parties' legal memorandums, our courts have determined that factual matters and statements in the transcript of a meeting of a municipal or county board of zoning appeals that support the findings and conclusions may be considered as the written decision or to supplement the written decision. *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) ("Generally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case."); *cf. Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004) (holding that reading the hearing transcript together with a letter informing the applicant of the board's decision provided a "sufficient basis for a reviewing court to determine whether the

EXHIBIT 2

decision was supported by the facts of the case” because the evidence was “clearly laid out in the transcript” and the issue raised to the board was limited to a narrow factual question).

The record establishes a factual basis in the evidence presented at the meeting on September 7, 2021, for the BZA’s findings and conclusions that there are extraordinary and exceptional conditions pertaining to 62 Church Street that do not generally apply to neighboring properties, including the location of the historic home on the lot (positioned well away from the street in comparison to the many houses abutting the street) and its lack of functional utilities and storage areas. Moreover, there is support within the record for the BZA’s finding that the denial of the variances would unreasonably restrict the utilization of the property and that the small addition to the rear of 62 Church Street would not be of substantial detriment to adjacent property, the character of the neighborhood, or the public good.

The Court also finds the BZA properly evaluated the Owners’ request for a special exception, and the board’s decision is supported by the record. The Owners’ historic house is physically non-conforming because it extends into the side setback that was created by an ordinance adopted after the house was constructed. There is no evidence that the Owners were seeking to use the small addition to their house for any business use, nor is the Owners’ request for a special exception from City Zoning Ordinance § 54-211, governing home occupations. The plans submitted by the Owners clearly show that no commercial space, storefront, parking lot, or even a home office is contemplated in this small addition to the rear of the house. Accordingly, as instructed by the ordinance, the board’s analysis properly focused on whether the small expansion to the house will cause an intensification or increase of traffic impacts, vehicular and pedestrian safety, parking impacts, potential impacts of light and noise, lighting, fumes or obstruction of air flow or light on adjoining property; impacts on the aesthetic character of the

EXHIBIT 2

environs, to include the possible need for screening. Mr. Batchelder's analysis as to the *minimal* light, view, and air obstruction the proposed addition may have on 60 Church Street, standing alone, fully supports the BZA's decision. The BZA addressed the Appellants' noise concern from the air conditioning units by imposing a condition on the special exception. It is well within the BZA's authority to approve the special exception subject to conditions that it considers will minimize the adverse effects, if any, upon the Appellants.

Having determined that the decision is factually supported and not legally erroneous, the Court will next address the Appellants' claim of a prejudicial procedural deficiency that was the focus of their oral argument at the hearing. Appellants contend the conduct of the meeting on September 7, 2021, deprived them of procedural due process because of the time limitations imposed by the BZA as well as the inability of the individual Appellants to comment after their attorney exhausted the entire 10 minutes allocated to their opposition of the Owners' application.

The Appellants maintain that if the subject meetings had been conducted in person they could have spoken in addition to their attorney and they could have responded in person to the comments of the Owners after the Owners short reply to the objection of Appellants. Appellants assert the BZA prevented them from doing so here via the participant control function on Zoom®. They argue that because the BZA did not hear more argument from them that they were deprived of their right to due process.

The Court finds and concludes that Appellants were not deprived of any procedural right. The procedures governing BZA meetings do not afford opponents the right to argue against the application more than ten minutes. The conduct of BZA meetings is governed by its Rules and Regulations. *See generally* Appendix C to City of Charleston Zoning Ordinances ("Rules and

EXHIBIT 2

Regulations of the Board of Zoning Appeals”). As stated in those rules of procedure, the normal order of hearings before the BZA is as follows:

- a. Presentation by the secretary or designated member of City staff of matter to be heard with a recommendation of the zoning administrator or his/her designated staff member (if the recommendation of the zoning administrator or his/her designated staff member is in favor of the application and no objection has been filed with the Board and no one is present to oppose the matter, the Board may approve the matter without further presentation);
- b. Presentation by applicant or appellant and others in support of the application or appeal (10-minute limit);
- c. Presentation by opponents (10-minute limit);
- d. Rebuttal by applicant (3-minute limit);
- e. The Board may question participants at any point in the hearing;
- f. Matters in which additional time is granted may be moved to the end of the agenda.

City of Charleston Zoning Ordinances at App. C, Art. IV, § 4 (“Conduct of Hearing”).

The transcript of the BZA meeting on September 7, 2021, shows that Chairperson Robinson made clear at the outset that these rules apply and stated them into the record. Opponents to an application are provided a 10-minute opportunity to present their objections. Opponents are not afforded any further participation unless a board member opts to direct a question directly to the opponents. Notably, the order of presentation is such that an opponent’s opportunity to make its arguments and/or objections is *after* staff has made its presentation and *after* the applicant as well as any supporters have stated their reasons for granting or supporting the application. Accordingly, to the extent an opponent has an objection to the testimony or documentary evidence an applicant has presented to the BZA, the opponent may expand on the objection during its presentation.

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The transcript of the BZA proceedings shows that the BZA gave the Appellants the full 10 minutes to make their presentation in opposition to the Owners' applications.² Appellants do not assert otherwise. Instead, they contend they should have received more time and were "gagged" by the remote technology.

I find that there is nothing about use of Zoom® that affected the order of these hearings or the Appellants' procedural due process rights. The Appellants had a full and fair opportunity to present the grounds for their objection to the Owners' application and any evidence they wanted to submit in opposition. The BZA's use of the universally accepted Zoom® platform to conduct the meeting did not deprive the Appellants of due process.

Additionally, Appellants have not submitted any affidavits nor set out what they would have said if they had been able to provide additional testimony. At the second meeting where the BZA heard the Appellants' Request for Reconsideration, Appellants' counsel was once again given ten minutes to make any argument or showing as to what objections or "proof" Appellants would have presented if they had spoken at the first meeting. As the transcript shows, the BZA considered all these arguments and rejected them. The Appellants have failed to show anything else they would have said at the meeting on September 7, 2021, would have affected the outcome. In being unable to do so, Appellants have failed to show that they were in any manner prejudiced by the conduct of the meeting. *See Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987) (holding that demonstration of substantial prejudice is required to establish a due process claim).

² The Appellants' arguments were made by their counsel, Brian Hellman. Mr. Hellman announced that his clients were sitting with him in his conference room. There is nothing in the Rules or Regulations that prevented Mr. Hellman, Ms. Melhado, and Mr. Neller from dividing their 10 minutes among them such that the Appellants could have spoken directly to the BZA.

EXHIBIT 2

The Appellants also lodged their procedural due process argument as a question of whether the general use of remote technology to conduct proceedings in this State is constitutional. The Appellants claim the Owners were able to present their case to the board without any cross-examination by the Appellants. According to Appellants' counsel, this case, which at its core is one neighbor objecting to the other's proposed rear addition, is an "important case of statewide significance" because remote videoconferencing technology allows the host to control participant participation. While there may be a case that presents a novel issue of due process in the context of remote proceedings, it is not this one.

"Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest." *Kurschner v. City of Camden Planning Com'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "Rather, due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 172, 350. The South Carolina Supreme Court was presented with similar due process arguments in the context of a planning commission's decision and flatly rejected the notion in *Kurschner v. City of Camden Planning Com'n*, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008). In this case, the Kurschners applied to the City of Camden Planning Commission for approval to subdivide their property into 8 lots. *Id.* at 169, 348. After the seven-member Commission unanimously voted to disapprove their application, they appealed, arguing the Commission "did not inform them of the opposing evidence prior to trial, considered hearsay evidence, deprived them of the opportunity to cross-examine adverse witnesses, and failed to allow them to conduct *voir dire* questioning of the members of the Commission." *Id.* at 171, 349.

In keeping with the Supreme Court's holding in *Kurschner*, the Court finds that "due process does not require the full gamut of rules and procedures" to which the Appellants claim

EXHIBIT 2

they were entitled. *Id.* at 172, 350. Administrative bodies exercising *discretionary* authority in the area of local planning and zoning afforded to them by the legislature do not have to conduct trial-type hearings. *Id.* Indeed, our Supreme Court has acknowledged the additional procedures requested by the Kurschners and the Appellants here would actually hinder, not aid, the ability of a board like this one to make an informed and reasoned decision and would intrude into their statutorily-granted discretion. *Id.* at 172, 350.

Based on the foregoing, I find the record shows that the BZA conducted its meetings in accord with its Rules and Regulations and gave interested parties notice of this procedure at the meeting on September 7, 2021, and that the Appellants were given a meaningful opportunity to be heard before the BZA at both the September 7, 2021 and October 19, 2021 meetings. The Appellants were afforded due process.

CONCLUSION

The record is replete with evidence reasonably supporting the BZA's decisions. Given the "any evidence" standard of review and deference that is to be afforded to a zoning board's decision, this Court must not substitute its or Appellants' judgment for the BZA's and must affirm the BZA's decisions to grant these requests. *See* S.C. Code Ann. § 6-29-840(A); *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *see also Venture Eng'g for DT LLC v. Horry Cnty. Zoning Bd. of Appeals*, 433 S.C. 419, 426, 858 S.E.2d 638, 642 (Ct. App. 2021). The Court has fully considered all the arguments made by Appellants in their Petition, in their other filings with the Court, and in the arguments of their counsel at the hearing. The Court rules on all other arguments and grounds for appeal not directly addressed herein and finds them also to be without merit, particularly in light of this Court's limited scope of review.

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IT IS, THEREFORE, ORDERED that the appeal by Appellants be, and the same is hereby, DENIED and DISMISSED and that the decision of the BZA under appeal is AFFIRMED.

IT IS SO ORDERED.

R. Markley Dennis, Jr.
Circuit Court Judge

Charleston, South Carolina
_____, 2022

EXHIBIT 2



Charleston Common Pleas

Case Caption: Teresa Melhado , plaintiff, et al VS Charleston City Of , defendant, et al
Case Number: 2021CP1005255
Type: Order/Dismissal

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2022-000973
Case No. 2021-CP-10-0555

RECEIVED
Jul 25 2022
SC Court of Appeals

Teresa Melhado and Dane Neller.....Appellants,

v.

City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Wallace, Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016 Respondents.

PROOF OF SERVICE

I certify that the foregoing **Return to Petition to Confirm Automatic Stay, or in the Alternative, for Writ of Supersedeas and Affidavit of George M. Wallace, Jr.** were served on the following counsel of record by electronic mail on this 25th day of July, 2022.

Brian A. Hellman
Jonathan L. Yates
Jason S. Smith
HELLMAN & YATES, PA
105 Broad Street, 3d Floor
Charleston, SC 29492-8144
bh@hellmanyates.com
jly@hellmanyates.com
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Timothy Domin
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Charleston, SC 29401
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/s/ Jennifer S. Ivey
Jennifer S. Ivey

From: [Jennifer Ivey](#)
To: [BRIAN A. HELLMAN \(bh@hellmanyates.com\)](#); [Jason Smith](#); [Jonathan Yates](#); [Tim Domin](#)
Cc: [Trenholm Walker](#); [Nancy Jane Dennis](#)
Subject: Melhado v. City of Charleston et al. - Wallace Return to Petition for Writ of Supersedeas
Date: Monday, July 25, 2022 4:25:00 PM

Counselors:

Please find Respondents Erika and George Wallaces' Return to Appellants' Petition to Confirm the Automatic Stay, or in the Alternative, for Writ of Supersedeas, Affidavit of George M. Wallace, Jr., and the supporting exhibits attached via the following link:

<https://wglfirm.box.com/s/93kp6r6hc5jjevoht069jb1q1a073g09>

Please let us know if you have trouble accessing any of the documents. As you may be experiencing, we are without internet in our office today.

Kindest regards,
Jennifer Ivey