

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY  
Circuit Court for the Eighth Judicial Circuit

Frank R Addy, Jr., Circuit Court Judge

App. Case No. 2022-000276

**RECEIVED**  
OCT 04 2022  
SC Court of Appeals

Allen L. Murray, Christy Worthy Brown, Michael Adam Brown,..... Appellants,

vs.

Newberry County, South Carolina,.....Respondent.

**RECORD ON APPEAL  
VOLUME II**

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I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material designated for this appeal.

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**STATE OF SOUTH CAROLINA**  
**COUNTY OF NEWBERRY**

Allen L. Murray, Christy Worthy Brown, and  
 Michael Adam Brown,

Plaintiffs,

v.

Newberry County, South Carolina,

Defendant.

**IN THE COURT OF COMMON PLEAS**  
**FOR THE EIGHTH JUDICIAL**  
**CIRCUIT**

**C.A. No.: 2017-CP-36-00385**

**MOTION TO DISMISS**  
**PURSUANT TO RULE 41(b)**  
**FOR FAILURE TO COMPLY**  
**WITH COURT'S ORDER**

For the reasons stated below, Defendant Newberry County moves for dismissal of this case pursuant to SCRCivP Rule 41(b), because of Plaintiffs' failure to comply with an order of this Court.

On January 4, 2019, Defendant Newberry County filed its motion to require Plaintiffs to make a more definite statement of the facts and claims attempted to be asserted in their Amended Complaint, pursuant to SCRCivP Rule 12(e) and Paradis v. Charleston Cty. Sch. Dist., 424 S.C. 603, 819 S.E.2d 147 (Ct. App. 2018). Defendant's memorandum in support of that motion, filed January 10, 2019, identified eighteen deficiencies in the Amended Complaint's specificity. For ease of reference, that portion of the memorandum is reproduced as Appendix A to the present Motion to Dismiss.

On December 6, 2019, Judge Walton J. McLeod IV held a hearing on the motion for a more definite statement. On December 18, 2019, Judge McLeod issued his Order granting the motion and requiring Plaintiffs to "amend their complaint by February 1, 2020 and provide more detailed factual allegations."



Pursuant to the Court's e-notice, Defendant Newberry County, on December 27, 2019, submitted to Chief Administrative Judge Eugene C. Griffith, Jr., (by e-filing and e-service on Plaintiffs' counsel) a status report, noting the Order and the February 1, 2020 deadline. Plaintiffs did not comply with the requirement for a status report and made no response to Defendant's status report.

Plaintiffs' Court-ordered deadline for amending their complaint to correct its deficiencies has come and gone. Plaintiffs are now eight weeks late. They have neither filed an amended complaint, nor sought an extension, nor communicated with Defendant's counsel regarding any reason or need for an extension. Plaintiffs have simply ignored the Order; and the deadline for discovery completion and trial readiness is now only five weeks away.

SCRCivP Rule 41(b) provides: "For failure of the plaintiff . . . to comply with . . . any order of court, a defendant may move for dismissal of an action or any claim against him." In McNair v. Fairfield County, 379 S.C. 462, 665 S.E.2d 830 (2008), South Carolina's Supreme Court upheld, under similar Rule 37(b)(2), the dismissal of an action for plaintiff's failure to correct deficiencies in discovery responses despite a court order to do so.

Under Paradis, *supra*, Defendant Newberry County was entitled to dismissal of this case even before the Order. Defendant, however, sought instead only to require a more definite statement in order to allow it to understand the vague and conclusory claims against it and to prepare an appropriate discovery plan and defense. Plaintiffs have, without justification, squandered the opportunity afforded them; and this case should now be dismissed.

*[signature page to follow]*

Respectfully submitted,

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March 27, 2020

## APPENDIX A

## MOTION FOR MORE DEFINITE STATEMENT

“[*South Carolina*] retains the Code Pleading standard ... rather than the more lenient notice pleading standard found in the federal rules.” *Gaskins v. S. Farm Bureau Cas. Ins.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93 (2nd ed. 1996)).

*Paradis v. Charleston Cty. Sch. Dist.*, 424 S.C. 603, 613, 819 S.E.2d 147, 153 (Ct. App. 2018), reh’g denied (Oct. 18, 2018). While recognizing that pleadings must be liberally construed, the *Paradis* Court reiterated that the plaintiff must “allege facts” [*emphasis supplied*], and that where “nothing more than legal conclusions” is pleaded, the complaint should be dismissed. *Id.*

The plaintiffs allege that the zoning ordinance “unreasonably restricts” the plaintiffs’ ability to use their land “for the business for which they are engaged” (Amended Complaint, ¶ 5) and is “arbitrary and unreasonable as written and enforced” (¶ 8); is the subject of representations by County officials that estop the County from enforcing the ordinance, at least insofar as it restricts “recreational vehicles, camper trailers and the like” (¶ 16); is contrary to the County’s “land use plan” (¶ 7); is overly broad (¶ 7); was passed in contravention of “procedures” and for “an improper purpose” (¶ 11); is being discriminatorily and selectively enforced (¶¶ 9-10); is “unconstitutional as written and enforced” (¶ 12); requires the plaintiffs “to stop using their land for the historical use” (¶ 6); interferes with the plaintiffs’ “vested interest in the property” and with their “right to continue using their property” (¶ 13); and constitutes an unconstitutional taking of property by inverse condemnation (¶¶ 20-21).

The Amended Complaint makes all those allegations in 2 pages (not counting the caption, conclusion, and signature block), and manages to fit them all into that confined space by the simple expedient of eliminating any specifics whatsoever. Missing are:

- The identification (by address, tax map number, or otherwise) of any property owned by any of the plaintiffs;
- The zoning classification of any parcel owned by any of the plaintiffs;
- The permitted uses, conditional uses, and/or special exception uses within any zoning classification affecting any parcel owned by any of the plaintiffs;
- The identification of any “business for which they are engaged” that requires a use of any parcel owned by any of the plaintiffs that is not permitted by the zoning ordinance;
- A description of any enforcement action taken pursuant to the zoning ordinance against any property owned by any of the plaintiffs;
- The initiation, status, or result of any administrative proceedings by any of the plaintiffs to obtain relief from any unduly burdensome aspect of the Ordinance;
- The aspects of the zoning ordinance that make it unreasonable and/or arbitrary, and why those aspects make it unreasonable and/or arbitrary;
- The content of any estopping representation(s) by County officials;
- Identification of the maker(s) of any estopping representation(s) by County officials;
- Identification of the recipient(s) of any estopping representation(s) by County officials;
- The intended referent of the phrase “the Newberry land use plan;”
- The aspect(s) of that “land use plan” that is/are contradicted by the zoning ordinance, and the aspect(s) of the zoning ordinance that create such contradiction(s);
- The aspect(s) of the zoning ordinance that is/are over-broad, and how is such over-breadth manifested;
- The identification, and authorizing source of “procedures” that were violated by the adoption of the zoning ordinance;
- The identification of “an improper purpose” that motivated the adoption of the zoning ordinance;
- The manner in which, and against whom, the zoning ordinance is being discriminatorily and selectively enforced;
- Description of “the historical use” of any parcel owned by any of the plaintiffs, and information as to when that use began and whether it was lawful at the time; and
- Identification of any vested rights or lawfully established non-conforming uses that are inversely condemned by any restriction(s) in the zoning ordinance.

Those absent items are key elements, at least some combination of which must be shown to support any of the relief requested by the plaintiffs. The bare, conclusory allegations of the Amended Complaint are wholly insufficient to support this or any other lawsuit, and fail to meet the standard of Paradis, supra.

Moreover, the complete lack of specificity with regard to what the plaintiffs are claiming is prejudicial to the defendant County. For example, the County reserved the right to modify its Answer/motion-for-more-definite-statement based on whatever clarification might be made. One of the missing pieces is what, exactly, are the alleged infirmities of the Ordinance. Because this action was filed (July 28, 2017) and served (November 17, 2017), long after the Ordinance was adopted (September 21, 2016 – see Exhibit 2 to Motion), it is critical to know the nature of the alleged infirmities in order to know whether to assert the statutory bar against such claims made more than sixty days after enactment of a zoning ordinance. S.C. Code § 6-29-760(D). If the alleged infirmities are such that that statute applies, it is a complete bar to the claim of invalidity. Quail Hill, LLC v. Cty. of Richland, 379 S.C. 314, 320–21, 665 S.E.2d 194, 197 (Ct. App. 2008), *aff'd in part, rev'd in part*, 387 S.C. 223, 692 S.E.2d 499 (2010).

For the foregoing reasons, the County is entitled to a dismissal of the Amended Complaint. Recognizing, however, the liberality with which leave to amend is granted, the County asks instead for a more definite statement under SCRCivP Rule 12(e).

HSB 6201319 v.1

|                                         |   |                              |
|-----------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS |
|                                         | ) |                              |
| COUNTY OF NEWBERRY                      | ) | C.A. No.: 2017-CP-36-00385   |
|                                         | ) |                              |
| Allan Murray; Christy Worthy Brown, and | ) |                              |
| Michael Adam Brown,                     | ) |                              |
|                                         | ) |                              |
| Plaintiffs,                             | ) |                              |
|                                         | ) |                              |
| vs.                                     | ) | <b>SUMMONS</b>               |
|                                         | ) |                              |
| Newberry County, South Carolina,        | ) |                              |
|                                         | ) |                              |
| Defendant.                              | ) |                              |
|                                         | ) |                              |

TO THE DEFENDANT ABOVE-NAMED;

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served up on you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office. 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the Complaint.

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*September 30, 2020*

|                                         |   |                               |
|-----------------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS  |
|                                         | ) |                               |
| COUNTY OF NEWBERRY                      | ) | C.A. No.: 2017-CP-36-00385    |
|                                         | ) |                               |
| Allan Murray; Christy Worthy Brown, and | ) |                               |
| Michael Adam Brown,                     | ) |                               |
|                                         | ) |                               |
| Plaintiffs,                             | ) |                               |
|                                         | ) |                               |
| vs.                                     | ) | <b>AMENDED COMPLAINT</b>      |
|                                         | ) | <b>(Jury Trial Requested)</b> |
| Newberry County, South Carolina,        | ) |                               |
|                                         | ) |                               |
| Defendant.                              | ) |                               |
| _____                                   | ) |                               |

The Plaintiffs above-named complaining of the Defendant herein alleges that:

FOR A FIRST CAUSE OF ACTION

1. Plaintiffs' are residents and citizens of Newberry County, South Carolina. Plaintiffs own property located in Newberry County, South Carolina.
2. The Defendant is a political subdivision of the state of South Carolina and is a county of the state of South Carolina.
3. This is an action for declaratory judgment and for injunctive relief.
4. The Plaintiffs have invested money in the property they own in Newberry County in anticipated use of their property for the placement of trouble trailers to be leased to various workers. Plaintiffs own adequate property for the placement of travel trailers and the property owned by the Plaintiffs is rural in nature. The property is suitable for the use intended. Plaintiffs have various permits from DHEC, the county and other contracts in anticipation of the proposed use. At least one of the Plaintiffs have been prosecuted criminally for using his property for a legitimate purpose and has been found not guilty. The county continues to threaten the use of criminal process against the Plaintiffs' and others like them.

5. The county of Newberry has recently passed an ordinance which unreasonably restricts the right of the Plaintiffs' to use their land for the business for which they are engaged. The ordinance in question unreasonably discriminates against a particular class of individuals. The ordinance is not consistent with the purpose of zoning ordinance in that it excludes a particular class of persons and does not prohibit a particular use of property. The ordinance is designed to discriminate against workers and the application and intent of the ordinance is to discriminate against a certain class of people. The individuals in question are law abiding citizens and the discrimination bears no interest to the free use of the land which would justify the disruption of the Plaintiffs' property rights.

6. The Defendant has told the Plaintiffs' to stop using their land for the historical use and has threatened the Plaintiffs' with fines and other punitive measures. The ordinance in question is arbitrary and unreasonable in that it allows others to use the property in the exact same way provided the property is not used by workers. Recreational use and hunting use can be made of the property by as many people as desire to use it as long as the people are not workers who are renting the property.

7. The zoning ordinance in question has been passed contrary to the Newberry land use plan. The ordinance has also been passed in a fashion where it is overly broad. The ordinance is arbitrary as it discriminates against a particular class of people. The ordinance is arbitrary in that it is not a legitimate use of the zoning authority of the county. The ordinance is unreasonably discriminatory against workers and people who own property desiring to lease to workers. The ordinance is patently unreasonable based upon its arbitrary and discriminatory nature. The ordinance as passed and as enforced is not a legitimate use of the zoning powers of the county as prescribed by the United States Constitution and the statutory law of the state of



South Carolina.

8. The ordinance as passed is arbitrary and unreasonable as written and as enforced.

9. Newberry County has engaged in a selective enforcement of the ordinance. Various individuals have been prosecuted under the alleged ordinance and found not guilty by Newberry County juries.

10. Newberry County has engaged in a discriminatory enforcement of the ordinance. Hunters and other recreational use have been favored as against occupancy of recreational vehicles by workers who desire to rent the units to live on a temporary or permanent basis.

11. The ordinance has been passed contrary to procedures and for an improper purpose. The purpose of the ordinance is to discriminate against workers and against people leasing to workers. Such an ordinance is not consistent with county zoning.

12. This court should declare the statute unconstitutional as written and as enforced.

13. This court should declare the Plaintiffs' have a vested interest in the property and have a right to continue using their property. The ordinance is not consistent with SC Code § 6-29-730 as the Plaintiffs' have a vested right to use their property. The Plaintiffs' have a right to use their property as a vested property right under the common law of South Carolina. The property in question equates to a non-conforming use pursuant to the zoning ordinance. This court should declare the Plaintiffs' have the right to use their property for the intended purpose.

FOR A SECOND CAUSE OF ACTION

14. Plaintiffs' hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

15. Newberry County in its official capacity has made various representations to various of the Plaintiffs' which have been relied upon. Permits have been issued by the county

and others. Plats have been approved. Zoning has been declared by the county officials to be valid. The Plaintiffs' have spent large sums of money and made significant efforts towards improving their party with the intent of placing recreational vehicle units on their property.

16. The Plaintiffs' have relied to their detriment on the representations of the county which were done in an official capacity.

17. Plaintiffs' have relied upon the zoning maps and zoning ordinances as they existed when they began planning to use their property for the intended purpose.

FOR A THIRD CAUSE OF ACTION

18. Plaintiffs' hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

19. The ordinance as written destroys vested property rights.

20. The property in question belongs to the Plaintiffs' and not to Newberry County.

21. The ordinance if it is appropriate amounts to a taking of Plaintiffs' rights to use their property as they have historically used it.

22. The ordinance in question amounts to an inverse condemnation.

23. As a direct and proximate result of the inverse condemnation of Plaintiffs' land, the Plaintiffs' have lost value in their land and Plaintiffs' are entitled to judgment against the Defendant for actual damages.

24. Pursuant to condemnation law as codified in the South Carolina statutes, Plaintiffs' is entitled to a reasonable sum as an attorney's fee.

WHEREFORE, Plaintiffs' pray for a declaration of the rights of the parties one to another; for declaration that the Newberry ordinance is passed and enforced in violation fo the due process clause of the South Carolina constitution; for an order estopping the county from

enforcing the ordinance; for declaration that the Plaintiffs' have a vested right to continue using their property; for actual damages; for a preliminary and permanent injunction; attorney's fees and costs; and for such other and further relief as this court might deem just and proper.

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*September 30, 2020*

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

Allen L. Murray, Christy Worthy Brown, and  
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Plaintiffs,

v.

Newberry County, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL  
CIRCUIT

C.A. No.: 2017-CP-36-00385

ANSWER TO  
[SECOND] AMENDED COMPLAINT

Defendant Newberry County, South Carolina (the "County") answers the [Second] Amended Complaint served by the Plaintiffs in this action by electronic filing on September 30, 2020, as follows. The County is simultaneously filing and serving a Motion to Dismiss pursuant to SCRCivP Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action and SCRCivP Rule 41(b) for failure to comply with this Court's Orders of December 18, 2019, and September 29, 2020.

*General Denial*

1. The County admits only those allegations of the [Second] Amended Complaint that are specifically reiterated by the recitation in Paragraphs 2 through 24 of this Answer. The County denies all allegations of the [Second] Amended Complaint that it does not thereby admit; that is, the County denies all allegations of the [Second] Amended Complaint that are not included in or that are not consistent with or that are either more or less specific or particular than the recitations in Paragraphs 2 through 24 of this Answer. The County bases the denial of each allegation either on information known to the County or on the County's

lack of knowledge sufficient to form a belief. If any assertions or conclusions of law contained in the [Second] Amended Complaint require a response, the County denies each such assertion or conclusion.

### *Background*

2. In response to the [First] Amended Complaint in this action, served on November 17, 2017, the County in its Answer to [First] Amended Complaint (specifically including but not limited to Paragraphs, 5, 11, and 12 thereof) noted numerous deficiencies in the [First] Amended Complaint and requested relief including but not limited to an order from the Court requiring that:

[t]he Plaintiffs make their [First] Amended Complaint more definite and certain, to include (i) the particular parcels as to which they complain; (ii) the use(s) on each parcel as to which they complain; (iii) the date on which they began each such use on each such parcel; (iii) the particular provision(s) of the Zoning Ordinance that they contend to be facially unlawful and, with respect to each such Zoning Ordinance provision, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates; (iv) each administration, interpretation, or enforcement of the Zoning Ordinance that they contend to be an unlawful application and, with respect to each such application, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates . . . .

3. Plaintiffs took no steps to correct the deficiencies in their [First] Amended Complaint.
4. On January 4, 2019, the County filed and served a motion ("Motion for More Definite Statement") pursuant to SCRCivP Rule 12(e), re-iterating its request for an order requiring the Plaintiffs to make a more definite statement of the conclusory allegations of the [First] Amended Complaint. In its Memorandum in Support, filed and served on January 10, 2019, the County set out eighteen (18) deficiencies in the [First] Amended Complaint; *viz.*,

- a) The identification (by address, tax map number, or otherwise) of any property owned by any of the plaintiffs;
- b) The zoning classification of any parcel owned by any of the plaintiffs;
- c) The permitted uses, conditional uses, and/or special exception uses within any zoning classification affecting any parcel owned by any of the plaintiffs;
- d) The identification of any "business for which they are engaged" that requires a use of any parcel owned by any of the plaintiffs that is not permitted by the zoning ordinance;
- e) A description of any enforcement action taken pursuant to the zoning ordinance against any property owned by any of the plaintiffs;
- f) The initiation, status, or result of any administrative proceedings by any of the plaintiffs to obtain relief from any unduly burdensome aspect of the Ordinance;
- g) The aspects of the zoning ordinance that make it unreasonable and/or arbitrary, and why those aspects make it unreasonable and/or arbitrary;
- h) The content of any estopping representation(s) by County officials;
- i) Identification of the maker(s) of any estopping representation(s) by County officials;
- j) Identification of the recipient(s) of any estopping representation(s) by County officials;
- k) The intended referent of the phrase "the Newberry land use plan;"
- l) The aspect(s) of that "land use plan" that is/are contradicted by the zoning ordinance, and the aspect(s) of the zoning ordinance that create such contradiction(s);
- m) The aspect(s) of the zoning ordinance that is/are over-broad, and how is such over-breadth manifested;
- n) The identification, and authorizing source of "procedures" that were violated by the adoption of the zoning ordinance;
- o) The identification of "an improper purpose" that motivated the adoption of the zoning ordinance;
- p) The manner in which, and against whom, the zoning ordinance is being discriminatorily and selectively enforced;

- q) Description of “the historical use” of any parcel owned by any of the plaintiffs, and information as to when that use began and whether it was lawful at the time; and
  - r) Identification of any vested rights or lawfully established non-conforming uses that are inversely condemned by any restriction(s) in the zoning ordinance.
5. At a hearing on the County’s Motion for More Definite Statement before the Hon. Walton J. McLeod IV on December 12, 2019, counsel for the Plaintiffs agreed to amend their [First] Amended Complaint to make a more definite statement; and Judge McLeod noted that agreement on the record (Hearing Transcript, p. 65). Judge McLeod then ordered the Plaintiffs to do so not later than February 1, 2020, by Order dated December 18, 2019 (“Judge McLeod’s Order”). Judge McLeod’s Order was served electronically in accordance with the rules and procedures of the South Carolina Judicial Department on December 18, 2019, on all counsel of record, including both counsel of record for the Plaintiffs, at the email addresses that all counsel had been using between themselves and with the Court throughout the course of this lawsuit.
  6. On December 26, 2019, at the direction of then-Chief Administrative Judge Eugene C. Griffith, Jr., the County electronically filed and served a status report (the “County’s Status Report”). The County’s Status Report recited that Judge McLeod’s Order required the Plaintiffs to file and serve an amended and more definite complaint by February 1, 2020. The Plaintiffs failed to comply with Judge Griffith’s direction to file status reports and did not respond to the County’s Status Report.
  7. The Plaintiffs failed to amend their [First] Amended Complaint on February 1, 2020; and on March 27, 2020, the County filed and served a motion to dismiss for failure to comply with Judge McLeod’s Order (“Motion to Dismiss”).

8. The Plaintiffs still made no attempt to comply, even belatedly, with Judge McLeod's Order.
9. At a hearing on the County's Motion to Dismiss before the Hon. R. Lawton McIntosh on September 29, 2020, one of the counsel of record for the Plaintiff stated that he had not received the Court's electronic service of Judge McLeod's Order and so was unaware of the need to file an amended and more definite complaint until he received the Motion to Dismiss. No mention was made at the hearing of whether the other counsel of record for the Plaintiffs had received Judge McLeod's Order or whether either of them had received the County's Status Report.
10. At the September 29, 2020, hearing on the County's Motion to Dismiss, Judge McIntosh gave the Plaintiffs until Friday, October 2, 2020, to comply with Judge McLeod's Order to file and serve an amended and more definite complaint.
11. The Plaintiffs electronically filed and served their [Second] Amended Complaint on Wednesday, September 30, 2020.
12. The [Second] Amended Complaint continues to suffer from the same deficiencies described in the County's Answer to the [First] Amended Complaint and in the County's Motion for More Definite Statement (including Memorandum in Support) and in its Motion to Dismiss (listed above).

***Facts and Defenses***

13. The County is a county and political subdivision of the State of South Carolina. It is governed by the duly-elected Newberry County Council ("County Council").



14. The County, acting through County Council, has the power under the general law of South Carolina, including in particular and without limitation S.C. Code § 6-29-310 *et seq.*, to adopt and enforce appropriate land use (that is, “zoning”) controls.
15. The County has exercised that power by the adoption of its Ordinance No. 06-11-16 (the “Zoning Ordinance,” also identified as Chapter 153 of the County’s Code of Ordinances). That adoption became effective upon third-reading approval given by County Council on September 21, 2016, following the observance of all requirements under South Carolina law for notice regarding and adoption of an ordinance of that type.
16. The Plaintiffs have not specified the parcels and uses to which their [Second] Amended Complaint relates. To the extent that those parcels are identified by Tax Map Numbers 503-36 and 742-5, zoned as “R2 – Rural District” under the Zoning Ordinance, and to the extent that those uses relate to rentals for occupancy of multiple recreational vehicles by temporary workers, the Zoning Ordinance does not permit those uses on those parcels without variances and/or special exceptions; and no such variances or special exceptions have been granted. The County reserves the right to address other parcels, zoning classifications, and uses once the Plaintiffs specify the parcels, zoning classifications, and uses intended to be covered by their [Second] Amended Complaint.
17. Before adoption of the Zoning Ordinance, the County had duly adopted and had in force prior zoning regulations that, to the extent the parcels and uses complained of in the [Second] Amended Complaint are those referred to in the preceding paragraph, would also not have permitted those uses on those parcels. The County reserves the right to address other parcels, prior zoning classifications and regulations, and uses once the Plaintiffs

specify the parcels, zoning classifications, and uses intended to be covered by their [Second] Amended Complaint.

18. The Zoning Ordinance is effective against claims of prior non-conforming use as of its first introduction on June 1, 2016, under South Carolina's Pending Ordinance Doctrine, Stratos v. Town of Ravenel, 297 S.C. 309, 376 S.E.2d 783 (1989), publicly invoked upon its first introduction.
19. The Zoning Ordinance is in conformity with all requirements of the United States federal and the South Carolina State Constitutions and the general laws of South Carolina.
20. The Zoning Ordinance is in all relevant respects substantially similar to the zoning ordinances of other similarly-situated counties in South Carolina.
21. The County's administration and enforcement of the Zoning Ordinance vis-à-vis the Plaintiffs is in conformity with all requirements of the United States federal and the South Carolina State Constitutions, the general laws of South Carolina, and the provisions of the Zoning Ordinance.
22. The Plaintiffs have not identified any particular parcels of land or any particular use or uses thereof as to which they claim unlawfully adverse treatment by or under the Zoning Ordinance.
23. The Plaintiffs have not identified any representations by the County or its officials on which they have relied and that were not true when made. Moreover, the authority to alter the requirements of the Zoning Ordinance belongs solely to County Council; misrepresentations regarding interpretation and implementation of the Zoning Ordinance

thus constitute misrepresentations of matters of law; and under South Carolina law, misrepresentations of matters of law (if any) do not give rise to an estoppel that would operate to prevent a local government from enforcing its zoning code as written. Quail Hill, LLC v. County of Richland, 387 S.C. 223, 692 S.E.2d 299 (2010).

24. Enforcement of validly enacted zoning regulations to prevent uses initiated after the date on which the zoning regulations were introduced does not interfere with any vested property rights.

#### *Additional and Affirmative Defenses*

25. Statute of Limitations. The Zoning Ordinance was adopted on September 21, 2016. S.C. Code § 6-29-760(D) provides that a “challenge to the adequacy of notice” or a “challenge to the validity of a [zoning] regulation or map, or amendment to it” must be made within sixty (60) days of the adoption. That sixty-day period expired on November 20, 2016. This lawsuit was commenced (at the earliest) by the Plaintiffs’ filing of a never-served complaint on July 28, 2017, challenging the Zoning Ordinance. Consequently, this lawsuit, to the extent that it challenges the validity of the Zoning Ordinance or any portion thereof, including by way of the procedures by which it was adopted, is time-barred.
26. Res Judicata with respect to pre-existing use of Plaintiff Ms. Brown’s property, Tax Map No. 503-36. Ms. Brown sought permission from the Newberry County Board of Zoning Appeals (the “Zoning Board”) to use her property for the purpose described in the [Second] Amended Complaint as a prior, non-conforming use. After a hearing on September 4, 2018, the Zoning Board issued its decision on November 6, 2018 (the “Zoning Board Decision”), concluding on that point (Zoning Board Decision, pp. 5-6) that the claimed use “was not a

lawfully-established use prior to the time the Zoning Ordinance acquired force under the Pending Ordinance Doctrine to preclude any further initiation of such use, and [*Plaintiff Ms. Brown's*] use would therefore not be allowed to continue under [*the*] Zoning Ordinance.” Plaintiff Ms. Brown appealed that decision to the Circuit Court in C.A. No. 2018-CP-36-00558. In that case, Judge Walton J. McLeod IV, after a hearing on December 12, 2019, and by Order filed and served electronically on December 18, 2019, affirmed the decision of the Zoning Board. Pursuant to S.C. Code § 6-29-850 and SCACR Rule 203(b)(1), Plaintiff Ms. Brown had thirty (30) days – until January 17, 2020 -- in which to appeal that Order affirming the Zoning Board Decision. She did not do so; and that Order is now final and binding. Consequently, her assertion of a right to continue a prior, non-conforming use is barred by the doctrine of *res judicata*. S.C. Pub. Interest Found. v. Greenville Cty., 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013).

27. Non-jury action. The [Second] Amended Complaint, in its caption, states “Jury Trial Requested.” The County has previously pointed out in correspondence with the Court and Plaintiffs’ counsel and in the County’s Memorandum in Support of the County’s Motion for More Definite Statement that this case is a non-jury matter. The [Second] Amended Complaint (§ 3) styles itself as an action “for declaratory judgment and for injunctive relief.” It seeks, in its first cause of action (§ 12), a declaration of the invalidity of the Ordinance for various reasons. Those questions of law are for the Court, and are not subject to jury determination. It also seeks, in its second cause of action (§ 16), an equitable estoppel against enforcement of the Ordinance against campers and recreational vehicles, due to representations by County officials. Those claims in equity are also not subject to jury determination. The [Second] Amended Complaint also alleges, in its third cause of action

(¶¶ 18-24), that the existence of the Ordinance, “if appropriate,” constitutes a taking and requests an award of damages and attorneys’ fees. The question of whether there has been such a regulatory taking, however, is also a non-jury question for the Court. In the regulatory taking context, the issue of whether a taking occurred is a question of law. Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (2011); Ex Parte Brown, 393 S.C. 214, 711 S.E.2d 899 (2011); Dunes W. Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013). The only question presented by this case that would be for determination by a jury would be the question of damages if the Court first finds that there has been a taking. Following the County’s pointing this out in correspondence, counsel for the Plaintiffs in an email to the Hon. William P. Keesley (in advance of a hearing that was subsequently postponed) wrote on January 10, 2019: “This case I agree should be non jury.”

For the foregoing reasons, the County asks that this Court:

- (a) Order that the [Second] Amended Complaint in this action be dismissed with prejudice pursuant to SCRCivP Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action and SCRCivP Rule 41(b) for failure to comply with this Court’s Orders of December 18, 2019, and September 29, 2020, and that all claims for relief by the Plaintiffs be denied;
- (b) In the alternative to (a) above, order (yet again) that the Plaintiffs make their [Second] Amended Complaint more definite and certain, to include:
  - i. the particular parcels as to which they complain;
  - ii. the intended but prohibited use(s) on each such parcel;
  - iii. the date on which they began each such use on each such parcel;

- iv. the particular provision(s) of the Zoning Ordinance that they contend to be facially unlawful and, with respect to each such Zoning Ordinance provision, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates;
  - v. the particular procedures that they contend were violated by the adoption of the Zoning Ordinance;
  - vi. the particular elements of the "Newberry land use plan" that they contend were contradicted by the Zoning Ordinance;
  - vii. the makers, contents, and recipients of each representation that they contend they have relied upon; and
  - viii. each administration, interpretation, or enforcement of the Zoning Ordinance that they contend to be an unlawful application and, with respect to each such application, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates;
- (c) Order that the County be allowed to supplement and amend this Answer in response to the Plaintiffs' response to (b) above;
  - (d) Order that the Zoning Ordinance is, on its face, Constitutionally and statutorily valid;
  - (e) Order that, as applied to the Plaintiffs and their complained-of parcels and uses, the administration, interpretation, and enforcement of the Zoning Ordinance have been Constitutionally and statutorily valid; and
  - (f) Order that all such other relief be granted to the Defendant Newberry County, South Carolina, as may be required or allowed by law.

Respectfully submitted,

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October 15, 2020

**STATE OF SOUTH CAROLINA**  
**COUNTY OF NEWBERRY**

Allen L. Murray, Christy Worthy Brown, and  
Michael Adam Brown,

Plaintiffs,

v.

Newberry County, South Carolina,

Defendant.

**IN THE COURT OF COMMON PLEAS**  
**FOR THE EIGHTH JUDICIAL**  
**CIRCUIT**

**C.A. No.: 2017-CP-36-00385**

**MOTION TO DISMISS**  
**PURSUANT TO RULES**  
**12(b)(6) AND RULE 41(b)**

For the reasons stated below, Defendant Newberry County (the “County”) moves for dismissal of this case pursuant to SCRCivP Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action and pursuant to SCRCivP Rule 41(b) for failure to comply with this Court’s Orders of December 18, 2019, and September 29, 2020.

***Background***

In response to the [First] Amended Complaint in this action, served on November 17, 2017, the County in its Answer to [First] Amended Complaint (specifically including but not limited to Paragraphs, 5, 11, and 12 thereof) noted numerous deficiencies in the [First] Amended Complaint and requested relief including but not limited to an order from the Court requiring that:

[t]he Plaintiffs make their [First] Amended Complaint more definite and certain, to include (i) the particular parcels as to which they complain; (ii) the use(s) on each parcel as to which they complain; (iii) the date on which they began each such use on each such parcel; (iii) the particular provision(s) of the Zoning Ordinance that they contend to be facially unlawful and, with respect to each such Zoning Ordinance provision, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates; (iv) each administration, interpretation, or enforcement of the Zoning Ordinance that they contend to be an unlawful application and, with respect to each such application, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates . . . .



Plaintiffs took no steps to correct the deficiencies in their [First] Amended Complaint.

On January 4, 2019, the County filed and served a motion (“Motion for More Definite Statement”) pursuant to SCRCivP Rule 12(e), re-iterating its request for an order requiring the Plaintiffs to make a more definite statement of the conclusory allegations of the [First] Amended Complaint. In its Memorandum in Support, filed and served on January 10, 2019, the County set out eighteen (18) deficiencies in the [First] Amended Complaint; *viz.*,

- a) The identification (by address, tax map number, or otherwise) of any property owned by any of the plaintiffs;
- b) The zoning classification of any parcel owned by any of the plaintiffs;
- c) The permitted uses, conditional uses, and/or special exception uses within any zoning classification affecting any parcel owned by any of the plaintiffs;
- d) The identification of any “business for which they are engaged” that requires a use of any parcel owned by any of the plaintiffs that is not permitted by the zoning ordinance;
- e) A description of any enforcement action taken pursuant to the zoning ordinance against any property owned by any of the plaintiffs;
- f) The initiation, status, or result of any administrative proceedings by any of the plaintiffs to obtain relief from any unduly burdensome aspect of the Ordinance;
- g) The aspects of the zoning ordinance that make it unreasonable and/or arbitrary, and why those aspects make it unreasonable and/or arbitrary;
- h) The content of any estopping representation(s) by County officials;
- i) Identification of the maker(s) of any estopping representation(s) by County officials;
- j) Identification of the recipient(s) of any estopping representation(s) by County officials;
- k) The intended referent of the phrase “the Newberry land use plan;”
- l) The aspect(s) of that “land use plan” that is/are contradicted by the zoning ordinance, and the aspect(s) of the zoning ordinance that create such contradiction(s);

- m) The aspect(s) of the zoning ordinance that is/are over-broad, and how is such over-breadth manifested;
- n) The identification, and authorizing source of “procedures” that were violated by the adoption of the zoning ordinance;
- o) The identification of “an improper purpose” that motivated the adoption of the zoning ordinance;
- p) The manner in which, and against whom, the zoning ordinance is being discriminatorily and selectively enforced;
- q) Description of “the historical use” of any parcel owned by any of the plaintiffs, and information as to when that use began and whether it was lawful at the time; and
- r) Identification of any vested rights or lawfully established non-conforming uses that are inversely condemned by any restriction(s) in the zoning ordinance.

At a hearing on the County’s Motion for More Definite Statement before the Hon. Walton J. McLeod IV on December 12, 2019, counsel for the Plaintiffs agreed to amend their [First] Amended Complaint to make a more definite statement; and Judge McLeod noted that agreement on the record. (Hearing Transcript, p. 65.) Judge McLeod then ordered the Plaintiffs to do so not later than February 1, 2020, by Order dated December 18, 2019 (“Judge McLeod’s Order”). Judge McLeod’s Order was served electronically in accordance with the rules and procedures of the South Carolina Judicial Department on December 18, 2019, on all counsel of record, including both counsel of record for the Plaintiffs, at the email addresses that all counsel had been using between themselves and with the Court throughout the course of this lawsuit.

On December 26, 2019, at the direction of then-Chief Administrative Judge Eugene C. Griffith, Jr., the County electronically filed and served a status report (the “County’s Status Report”). The County’s Status Report recited that Judge McLeod’s Order required the Plaintiffs to file and serve an amended and more definite complaint by February 1, 2020. The Plaintiffs failed

to comply with Judge Griffith's direction to file status reports and did not respond to the County's Status Report.

The Plaintiffs failed to amend their [First] Amended Complaint on February 1, 2020; and on March 27, 2020, the County filed and served a motion to dismiss for failure to comply with Judge McLeod's Order ("Motion to Dismiss").

The Plaintiffs still made no attempt to comply, even belatedly, with Judge McLeod's Order.

At a hearing on the County's Motion to Dismiss before the Hon. R. Lawton McIntosh on September 29, 2020, one of the counsel of record for the Plaintiff stated that he had not received the Court's electronic service of Judge McLeod's Order and so was unaware of the need to file an amended and more definite complaint until he received the Motion to Dismiss. No mention was made at the hearing of whether the other counsel of record for the Plaintiffs had received Judge McLeod's Order or whether either of them had received the County's Status Report.

At the September 29, 2020, hearing on the County's Motion to Dismiss, Judge McIntosh gave the Plaintiffs until Friday, October 2, 2020, to comply with Judge McLeod's Order to file and serve an amended and more definite complaint.

The Plaintiffs electronically filed and served their [Second] Amended Complaint on Wednesday, September 30, 2020.

The [Second] Amended Complaint continues to suffer from the same deficiencies described in the County's Answer to the [First] Amended Complaint and in the County's Motion for More Definite Statement (including Memorandum in Support) and in its Motion to Dismiss (listed above).

### MOTION FOR DISMISSAL UNDER RULE 12(b)(6)

“[*South Carolina*]’retains the Code Pleading standard ... rather than the more lenient notice pleading standard found in the federal rules.” *Gaskins v. S. Farm Bureau Cas. Ins.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93 (2nd ed. 1996)).

Paradis v. Charleston Cty. Sch. Dist., 424 S.C. 603, 613, 819 S.E.2d 147, 153 (Ct. App. 2018), reh’g denied (Oct. 18, 2018). While recognizing that pleadings must be liberally construed, the Paradis Court reiterated that the plaintiff must “allege facts” [*emphasis supplied*], and that where “nothing more than legal conclusions” is pleaded, the complaint should be dismissed. *Id.*

Initially, the County asked only for a more definite statement, despite being entitled to a dismissal. See Memorandum in Support of Motion to Dismiss, p. 5, filed and served on January 10, 2019. This Court has already ruled in Judge McLeod’s Order that the Plaintiffs’ [First] Amended Complaint was deficient under Paradis, and ordered the Plaintiffs to amend and make more definite. Despite having been given more than nine and a half months to make their amendments, the Plaintiffs have, in their [Second] Amended Complaint, simply added a few more merely conclusory allegations. (See **Exhibit A** to this Motion, that being a redlined comparison of the [First] Amended Complaint to the [Second] Amended Complaint, with deleted text in stricken-through red font and new text in underscored blue font.) The deficiencies listed above are still not remedied; the County still does not know what it is expected to defend against; and the County is still left in a position where it cannot formulate an appropriate and efficient plan of discovery to attempt its defense.

The Plaintiffs have had notice for two years and eleven months of the deficiencies in their pleading, yet have squandered repeated opportunities afforded to them by the County and by this Court to remedy those defects. It is time to bring this charade to a close; and this case should now be dismissed with prejudice.

**MOTION FOR DISMISSAL UNDER RULE 41(b)**

As specified above, the Plaintiffs have twice been ordered by this Court to remedy the defects in their pleading; and the Court has allowed them nearly ten months in which to do so. For the first nine months, the Plaintiffs did absolutely nothing. They neither filed an amended complaint, nor sought an extension, nor communicated with the County's counsel regarding any reason or need for an extension. Instead, Plaintiffs simply ignored Judge McLeod's Order. Finally, after the second order by Judge McIntosh, the Plaintiffs added a few additional conclusory allegations that still do not meet the requirements of Paradis.

SCRCivP Rule 41(b) provides: "For failure of the plaintiff . . . to comply with . . . any order of court, a defendant may move for dismissal of an action or any claim against him." In McNair v. Fairfield County, 379 S.C. 462, 665 S.E.2d 830 (2008), South Carolina's Supreme Court upheld, under similar Rule 37(b)(2), the dismissal of an action for plaintiff's failure to correct deficiencies in discovery responses despite a court order to do so.

In light of the Plaintiffs' repeated failures to prepare and serve a complaint that complies with the Rules of Civil Procedure, with the requirements of general precedent regarding the requirements for complaints, and even with orders of this Court directed specifically toward them, the Plaintiffs should be held to have exhausted the Court's patience and forfeited their ability to pursue this litigation; and this case should be dismissed with prejudice.

*[signature page to follow]*

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

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October 15, 2020

**EXHIBIT A**

|                                                                |   |                               |
|----------------------------------------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA                                        | ) | IN THE COURT OF COMMON PLEAS  |
|                                                                | ) |                               |
| COUNTY OF NEWBERRY                                             | ) | C.A. No.: 2017-CP-36-00385    |
|                                                                | ) |                               |
| Allan Murray; Christy Worthy Brown;<br>and Michael Adam Brown, | ) |                               |
|                                                                | ) |                               |
|                                                                | ) |                               |
| Plaintiffs,                                                    | ) |                               |
|                                                                | ) |                               |
| vs.                                                            | ) | <b>AMENDED COMPLAINT</b>      |
|                                                                | ) | <b>(Jury Trial Requested)</b> |
| Newberry County, South Carolina,                               | ) |                               |
|                                                                | ) |                               |
| Defendant.                                                     | ) |                               |
|                                                                | ) |                               |

The Plaintiffs above-named complaining of the Defendant herein alleges that:

FOR A FIRST CAUSE OF ACTION

1. Plaintiffs are residents and citizens of Newberry County, South Carolina. Plaintiffs own property located in Newberry County, South Carolina.

2. The Defendant is a political subdivision of the State of South Carolina and is a county of the State of South Carolina.

3. This is an action for declaratory judgment and for injunctive relief.

~~1. The Plaintiffs are in the business of leasing space for travel travelers. Plaintiffs have had their business for a significant period of time.~~

~~4. The County~~ The Plaintiffs have invested money in the property they own in Newberry County in anticipated use of their property for the placement of trouble trailers to be leased to various workers. Plaintiffs own adequate property for the placement of travel trailers and the property owned by the Plaintiffs is rural in nature. The property is suitable for the use intended. Plaintiffs have various permits from DHEC, the county and other contracts in anticipation of the proposed use. At least one of the Plaintiffs have been prosecuted criminally for using his property

for a legitimate purpose and has been found not guilty. The county continues to threaten the use of criminal process against the Plaintiffs' and others like them.

5. The county of Newberry has recently passed an ordinance (~~Chapter 153: Zoning Code, Section 153.001 through Definitions, Section 153.231~~) which unreasonably restricts the right of the Plaintiffs' to use their land for the business for which they are engaged. The ordinance in question unreasonably discriminates against a particular class of individuals. The ordinance is not consistent with the purpose of zoning ordinance in that it excludes a particular class of persons and does not prohibit a particular use of property. The ordinance is designed to discriminate against workers and the application and intent of the ordinance is to discriminate against a certain class of people. The individuals in question are law abiding citizens and the discrimination bears no interest to the free use of the land which would justify the disruption of the Plaintiffs' property rights.

6. The Defendant has told the Plaintiffs' to stop using their land for the historical use and has threatened the Plaintiffs' with fines and other punitive measures. The ordinance in question is arbitrary and unreasonable in that it allows others to use the property in the exact same way provided the property is not used by workers. Recreational use and hunting use can be made of the property by as many people as desire to use it as long as the people are not workers who are renting the property.

7. The zoning ordinance in question has been passed contrary to the Newberry land use plan. The ordinance has also been passed in a fashion where it is overly broad. The ordinance is arbitrary as it discriminates against a particular class of people. The ordinance is arbitrary in that it is not a legitimate use of the zoning authority of the county. The ordinance is unreasonably discriminatory against workers and people who own property desiring to lease to workers. The ordinance is patently unreasonable based upon its arbitrary and discriminatory nature. The



ordinance as passed and as enforced is not a legitimate use of the zoning powers of the county as prescribed by the United States Constitution and the statutory law of the state of South Carolina.

8. The ordinance, as passed, is arbitrary and unreasonable as written and as enforced.

9. Newberry County has engaged in a selective enforcement of the ordinance. Various individuals have been prosecuted under the alleged ordinance and found not guilty by Newberry County juries.

10. Newberry County has engaged in a discriminatory enforcement of the ordinance. Hunters and other recreational use have been favored as against occupancy of recreational vehicles by workers who desire to rent the units to live on a temporary or permanent basis.

11. The ordinance has been passed contrary to procedures and for an improper purpose. The purpose of the ordinance is to discriminate against workers and against people leasing to workers. Such an ordinance is not consistent with county zoning.

12. This court should declare the statute unconstitutional as written and as enforced.

13. This court should declare the Plaintiffs' have a vested interest in the property and have a right to continue using their property. The ordinance is not consistent with SC Code § 629-730 as the Plaintiffs' have a vested right to use their property. The Plaintiffs' have a right to use their property as a vested property right under the common law of South Carolina. The property in question equates to a non-conforming use pursuant to the zoning ordinance. This court should declare the Plaintiffs' have the right to use their property for the intended purpose.

#### FOR A SECOND CAUSE OF ACTION

14. Plaintiffs' hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

~~8.~~—Newberry County, in its official capacity, has made various representations to various of the Plaintiffs. Plaintiffs ~~Plaintiffs'~~ which have been relied upon these ~~representations.~~

~~15.~~—~~The County should be estopped from enforcing.~~ Permits have been issued by the ordinance against recreational county vehicles, camper trailers and the like.  
and others. Plats have been approved. Zoning has been declared by the county officials to be valid.  
The Plaintiffs' have spent large sums of money and made significant efforts towards improving their party with the intent of placing recreational vehicle units on their property.

16. The Plaintiffs' have relied to their detriment on the representations of the county which were done in an official capacity.

17. Plaintiffs' have relied upon the zoning maps and zoning ordinances as they existed when they began planning to use their property for the intended purpose.

#### FOR A THIRD CAUSE OF ACTION

~~16-18.~~ Plaintiffs' hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

~~17-19.~~ The ordinance as written destroys vested property rights.

~~18-20.~~ The property in question belongs to the Plaintiffs' and not to Newberry County.

~~19-21.~~ The ordinance, if it is appropriate, amounts to a taking of Plaintiffs' rights to use their property as they have historically used it.

~~20-22.~~ The ordinance in question amounts to an inverse condemnation.

~~21-23.~~ As a direct and proximate result of the inverse condemnation of Plaintiffs' land, the Plaintiffs' have lost value in their land and Plaintiffs' are entitled to judgment against the Defendant for actual damages.

~~22-24.~~ Pursuant to condemnation law as codified in the South Carolina statutes, ~~Plaintiffs~~  
~~are~~ Plaintiffs' is entitled to a reasonable sum as an attorney's fee.

WHEREFORE, Plaintiffs' pray for a declaration of the rights of the parties one to another;  
for declaration that the Newberry ordinance is passed and enforced in violation ~~off~~o the due  
process clause of the South Carolina constitution; for an order estopping the county from enforcing  
the ordinance; for declaration that the Plaintiffs' have a vested right to continue using their  
property; for actual damages; for a preliminary and permanent injunction; attorney's fees and  
costs; and for such other and further relief as this court ~~m~~ight deem just and proper.

**STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY**

Allen L. Murray, Christy Worthy Brown, and  
Michael Adam Brown,

Plaintiffs,

v.

Newberry County, South Carolina,

Defendant.

**IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL  
CIRCUIT**

**C.A. No.: 2017-CP-36-00385**

**SUPPLEMENT TO  
MOTION TO DISMISS  
FILED AND SERVED OCTOBER 15, 2020**

Defendant Newberry County (the “County”), on October 15, 2020, moved for dismissal of this case pursuant to SCRCivP Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action and pursuant to SCRCivP Rule 41(b) for failure to comply with this Court’s Orders of December 18, 2019, and September 29, 2020. This Supplement extends that Motion by including, with respect to SCRCivP Rule 41(b), this Court’s order of October 5, 2020.

***Additional Background***

Picking up chronologically where the Motion’s “Background” section concluded:

On October 5, 2020, Circuit Court Judge R. Lawton McIntosh entered a “Form 4” order based on the hearing that he conducted in this matter on September 29, 2020. A copy of that Form 4 order is attached to this Supplement as **Exhibit B**. In that Form 4 order, Judge McIntosh denied the County’s motion that was the subject of the hearing and directed counsel for Plaintiffs “to prepare a formal order.” It has now been two and a half months since that direction; the case is on the roster for non-jury trial on January 11, 2020; and counsel for Plaintiffs have still not complied: they have submitted no formal order, nor have they explained why they have not, nor have they suggested whether or when one might eventually be forthcoming.

This chronic refusal to comply with court orders is the same issue that led to the County's first motion to dismiss that Judge McIntosh denied (but for which he awarded attorneys' fees to the County) and to the County's currently pending Motion, to which this Supplement is an extension.

***Conclusion and Request for Relief***

As noted and more fully explained in the Motion, SCRCivP Rule 41(b) provides: "For failure of the plaintiff . . . to comply with . . . any order of court, a defendant may move for dismissal of an action or any claim against him." In light of the Plaintiffs' repeated failures to comply with the orders and directions of this Court directed specifically toward them, the Plaintiffs should be held to have exhausted the Court's patience and forfeited their ability to pursue this litigation; and this case should be dismissed with prejudice.

*[signature page to follow]*

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

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*Counsel for Defendant Newberry County, South  
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December 21, 2020  
HSB 6598862 v.1

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-36-00385

Allan Murray  
PLAINTIFF(S)

Newberry County  
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

DEFENDANT'S MOTION TO DISMISS IS DENIED. ATTORNEY'S FEES ARE AWARDED TO DEFENDANT. MR. MATTHEWS TO PREPARE AN AFFIDAVIT OF ATTORNEY'S FEES AND COSTS INCURRED IN PREPARATION OF THE MOTION. PLAINTIFF'S COUNSEL MAY REQUEST TO CROSS EXAMINE OPPOSING COUNSEL ABOUT THE AMOUNT OF ATTORNEY'S FEES BY FILING A WRITTEN REQUEST WITHIN 10 DAYS OF THIS ORDER. MR. MOORE TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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\_\_\_\_\_  
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Newberry Common Pleas

**Case Caption:** Allan Murray , plaintiff, et al VS Newberry County , defendant, et al  
**Case Number:** 2017CP3600385  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-10-05 13:05:53 page 3 of 3

ELECTRONICALLY FILED - 2020 Oct 05 11:11 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600385  
ELECTRONICALLY FILED - 2020 Dec 21 11:49 AM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600385

**STATE OF SOUTH CAROLINA**  
**COUNTY OF NEWBERRY**

Allen L. Murray, Christy Worthy Brown, and  
Michael Adam Brown,

Plaintiffs,

v.

Newberry County, South Carolina,

Defendant.

**IN THE COURT OF COMMON PLEAS**  
**FOR THE EIGHTH JUDICIAL**  
**CIRCUIT**

**C.A. No.: 2017-CP-36-00385**

**MEMORANDUM IN SUPPORT OF**  
**FINAL DISPOSITIVE MOTIONS**  
**OF DEFENDANT**  
**NEWBERRY COUNTY, SOUTH CAROLINA**

**NATURE AND BACKGROUND OF THE CASE**

This lawsuit is a multi-faceted attack on the comprehensive zoning ordinance (Zoning Ordinance No. 06-11-2016, the “**Zoning Ordinance**”) of defendant Newberry County (the “**County**”), adopted well over four years ago.<sup>1</sup> The Plaintiffs face a steeply uphill climb. “A strong presumption exists in favor of the validity and application of zoning ordinances.” Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230, 235, 489 S.E.2d 630, 632 (1997).

The background of the case is that the Plaintiffs, who own real property in the County, want to invalidate the Zoning Ordinance. The Plaintiffs want to rent out multiple spaces on each of their properties to non-County residents who have employment in or near the County and who own recreational vehicles (“**RVs**”), in order to allow those non-residents to park their RVs and

<sup>1</sup> Newberry County Code of Ordinances, Chapter 153 [[http://library.amlegal.com/nxt/gateway.dll/South%20Carolina/newberryco\\_sc/newberrycountysouthcarolinacodeofordinan?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newberryco\\_sc](http://library.amlegal.com/nxt/gateway.dll/South%20Carolina/newberryco_sc/newberrycountysouthcarolinacodeofordinan?f=templates$fn=default.htm$3.0$vid=amlegal:newberryco_sc) at Chapter 153]. Exhibit 3 to “Final Dispositive Motions of Defendant Newberry County, South Carolina” (the “**County’s Final Motions**”). Exhibits to the County’s Final Motions are referred to herein as “**CFM Ex. No. \_\_.**” Regarding self-authentication and judicial notice of documents cited herein that are on file with the Court or that appear in government websites, see fn. 21 below.

connect them to water, sewer, and electric services so that the RVs may serve as accommodations to the RV owners during their employment in or near the County. Especially while the now-terminated V.C. Summer nuclear construction project was still underway in neighboring Fairfield County, Plaintiffs believed that a more permissive zoning regulation would allow them to offer rental spaces to workers on that project and thus to realize more income. The Zoning Ordinance did substantially enlarge the ability of property owners zoned like the Plaintiffs to use their property in this way. The Zoning Ordinance did not, however, enlarge that ability as much as the Plaintiffs would like. Hence, this lawsuit.

#### **HISTORY OF ZONING ORDINANCE ADOPTION**

Prior to adoption of the Zoning Ordinance, the County's predecessor zoning ordinance, Ordinance No. 12-24-01 (the "**Prior Zoning Ordinance**"), was in effect, having been adopted on December 5, 2001. CFM Ex. No. 2 (County Council action); CFM Ex. No. 4 (as codified).

Unlike the current Zoning Ordinance, the Prior Zoning Ordinance did not provide any "conditional use" option for RVs. The Prior Zoning Ordinance would have allowed a use similar to the use that Plaintiffs want only if the property owner requested and received from the County Board of Zoning Appeals (the "**BZA**") affirmative approval of a special exception under § 153.069 of the Prior Zoning Ordinance, related to commercial campgrounds, under narrow conditions specified in that provision. § 153.148(D) of the Prior Zoning Ordinance otherwise allowed RVs in R2 districts only for temporary recreational use – not long-term quarters for rental income as the Plaintiffs wish. § 153.191(C) of the Prior Zoning Ordinance specified additional factors that the BZA was to consider on an application for a special exception. [Section references to the Prior Zoning Ordinance are to the as-codified version at CFM Ex. No. 4.]

None of the Plaintiffs ever sought a special exception under the Prior Zoning Ordinance. (Mrs. Brown did unsuccessfully seek a special exception and other relief under the current Zoning Ordinance. See discussion at fn. 3 below.)

The County had begun the process of considering a revision and update of the Prior Zoning Ordinance prior to March 5, 2014.<sup>2</sup> Pursuant to South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (as amended), S.C. Code § 6-29-710 *et seq.* (the “**Zoning Act**”), the draft revision to the Prior Zoning Ordinance was referred to and considered by the Newberry County Joint Planning Commission (the “**County Planning Commission**”) between February 16 and April 25, 2016.<sup>3</sup> Plaintiff Michael Brown, who is the husband of Plaintiff Christy Brown and the manager of her property apparently involved in this present case,<sup>4</sup> was a member of that County

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<sup>2</sup> See County Council minutes of that date at <https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-36.pdf>.

<sup>3</sup> Affidavit of Bridgett Fain, Secretary of the County Planning Commission (“**Fain Aff.**”), appearing in the records of this Court in Case No. 2018-CP-36-00558 (the “**Brown Appeal**”). The Brown Appeal was the appeal by Christy Worthy Brown (a Plaintiff in this present case) of a denial of her applications to the BZA for relief from the provisions of the Zoning Ordinance challenged in this present case. Fain Aff. appears as Exhibit 3 to the BZA hearing of September 4, 2018 (“**BZA Brown Hearing**”), and was filed on December 11, 2018, with the Clerk of Court by the BZA as part of its record (“**BZA Brown Record**”), as required by S.C. Code § 6-29-830. The Brown Appeal was denied and the judgment of the BZA (the “**BZA Brown Decision**,” also filed as part of the BZA Brown Record) was affirmed by order of Judge Walton J. McLeod, entered December 18, 2019; and Mrs. Brown did not take any appeal therefrom. [The formatting of the BZA Brown Record is explained in a letter to the Court dated April 3, 2019, and filed with the on-line records of the Brown Appeal at <https://publicindex.sccourts.org/Newberry/PublicIndex/PIImageDisplay.aspx?ctagency=36002&doctype=D&docid=1554385031755-198&HKey=57431017172688284697611911312211048544911211867109477251107111477110285711081065566708310450767354111.>]

<sup>4</sup> BZA Brown Record, BZA Brown Hearing Tr. p. 50, lines 13-18; p. 52, lines 2-4 [testimony of Plaintiff Christy Brown].

Planning Commission.<sup>5</sup> He recommended several changes that would have allowed the more expansive use for rentals to non-resident worker RVs that Plaintiffs want.<sup>6</sup> His recommended changes would have allowed RVs on smaller lots (the proposal was a minimum of 10 acres; Mr. Brown recommended 1 acre); would have allowed greater density of RV sitings (the proposal allowed one per acre with a maximum of five per parcel; Mr. Brown recommended siting three RVs per acre); and would have substantially reduced the proposal's required setbacks in order to allow denser RV sitings. The County Planning Commission did not recommend those changes to the County Council.<sup>7</sup>

The County Council adopted the Zoning Ordinance, also without making the changes recommended by Mr. Brown.<sup>8</sup> Its first reading was on June 1, 2016.<sup>9</sup> At that time, County Council also, by separate and unanimous vote, invoked the Pending Ordinance Doctrine established by Sherman v. Reavis, 273 S.C. 542, 257 S.E.2d 735 (1979), and Stratos v. Town of Ravenel, 297 S.C. 309, 376 S.E.2d 783 (Ct. App. 1989).<sup>10</sup> That doctrine cuts off the ability of a property owner to begin a "prior, non-conforming use" that would be grandfathered under a new zoning ordinance, even before final adoption of the new ordinance. Second reading approval was on June 15, 2016.<sup>11</sup>

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<sup>5</sup> BZA Brown Record, BZA Brown Hearing Tr. p. 56, line 20 - p. 57, line 7 [testimony of Plaintiff Michael Brown].

<sup>6</sup> Fain Aff. and attachment thereto.

<sup>7</sup> BZA Brown Record, BZA Brown Hearing Tr. p. 76, line 8 - p. 81, line 23 [testimony of Plaintiff Michael Brown].

<sup>8</sup> CFM Ex. No. 3.

<sup>9</sup> <https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-4574.pdf>

<sup>10</sup> <https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-4574.pdf> at page 8

<sup>11</sup> <https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-4690.pdf>

County Council held a public hearing on July 6, 2016;<sup>12</sup> and final adoption was on September 21, 2016.<sup>13</sup> The resulting County Council action appears at CFM Ex. No. 2; and the Zoning Ordinance as codified appears as CFM Ex. No. 3.

#### PROCEDURAL STATUS OF CASE

This lawsuit began (at the earliest) upon the filing of a never-served complaint on July 28, 2017, challenging the Zoning Ordinance. A second complaint (the “**First Amended Complaint**”), with a different and smaller group of Plaintiffs but otherwise identical, was served on November 17, 2017. The County in its Answer to the First Amended Complaint noted numerous deficiencies and requested an order that the Plaintiffs make a more definite and certain statement of their claims, to include:

(i) the particular parcels as to which they complain; (ii) the use(s) on each parcel as to which they complain; (iii) the date on which they began each such use on each such parcel; (iii) the particular provision(s) of the Zoning Ordinance that they contend to be facially unlawful and, with respect to each such Zoning Ordinance provision, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates; (iv) each administration, interpretation, or enforcement of the Zoning Ordinance that they contend to be an unlawful application and, with respect to each such application, the particular law (Constitutional provision, statutory provision, County land-use plan provision) that they claim it violates . . . .

Answer to First Amended Complaint, p. 4. Plaintiffs took no steps to correct the deficiencies in their First Amended Complaint.

On January 4, 2019, the County filed and served a motion (“**Motion for More Definite Statement**”) pursuant to SCRCivP Rule 12(e), re-iterating its request for an order requiring the

<sup>12</sup> <https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-4692.pdf>

<sup>13</sup> <https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-5916.pdf>

Plaintiffs to make a more definite statement of the conclusory allegations of the First Amended Complaint, and asking for summary judgment on or dismissal of several aspects of the First Amended Complaint. In its Memorandum in Support, the County specified 18 deficiencies in the First Amended Complaint, including and elaborating on those quoted above from its Answer.

Following a hearing on December 12, 2019, at which agreement was reached as to making the Complaint more definite and as to discovery, Judge Walton J. McLeod IV on December 18, 2019, ordered the Plaintiffs to make a more definite statement not later than February 1, 2020 (**“Judge McLeod’s Order”**). Judge McLeod’s Order was served electronically in accordance with the rules and procedures of the South Carolina Judicial Department, on all counsel of record, including both counsel of record for the Plaintiffs, at the email addresses that all counsel had been using between themselves and with the Court throughout the course of this lawsuit.

On December 26, 2019, at the direction of then-Chief Administrative Judge Eugene C. Griffith, Jr., the County electronically filed and served a status report (the **“County’s Status Report”**). The County’s Status Report recited that Judge McLeod’s Order required the Plaintiffs to file and serve an amended and more definite complaint by February 1, 2020. The Plaintiffs failed to comply with Judge Griffith’s direction to file status reports and did not respond to the County’s Status Report.

The Plaintiffs failed to amend their First Amended Complaint on February 1, 2020; and on March 27, 2020, the County filed and served a motion to dismiss for failure to comply with Judge McLeod’s Order (**“Motion to Dismiss”**). The Plaintiffs still made no attempt to comply, even belatedly, with Judge McLeod’s Order.

At a hearing before Judge R. Lawton McIntosh on September 29, 2020, one of the counsel of record for the Plaintiff stated that he had not received the Court’s electronic service of Judge

McLeod's Order and so was unaware of the requirement to file an amended and more definite complaint until he received the Motion to Dismiss. No mention was made at the hearing of whether the other counsel of record for the Plaintiffs had received Judge McLeod's Order or whether either of them had received the County's Status Report.

Judge McIntosh gave the Plaintiffs until October 2, 2020, to comply with Judge McLeod's Order, which the Plaintiffs did by serving their second amended complaint ("**Second Amended Complaint**") on September 30, 2020. Judge McIntosh also ordered Plaintiffs or their counsel to pay the County's legal fees incurred to enforce Judge McLeod's Order, which they also did.

The Second Amended Complaint had many of the same deficiencies described above with respect to the First Amended Complaint. Accordingly, the County filed a second motion to dismiss ("**Second Motion to Dismiss**"), both under SCRCivP Rule 12(b) for failure to allege facts sufficient to state a claim (citing Paradis v. Charleston Cty. Sch. Dist., 424 S.C. 603, 819 S.E.2d 147 (Ct. App. 2018), reh'g denied (Oct. 18, 2018)) and under SCRCivP Rule 41(b) for Plaintiffs' failure to comply with the Court's order that they make such a definite statement and other orders of the Court.

The Second Motion to Dismiss was heard by Judge Frank R. Addy, Jr., on January 15, 2021. Pursuant to Judge Addy's order of that date and the agreement of counsel at the hearing, the parties are to submit this case on written motions and briefing by 5:00 p.m., Wednesday, March 3, 2021, for final disposition by Judge Addy. The County has submitted the County's Final Motions simultaneously with this Memorandum in Support thereof.



### PLAINTIFFS

As originally filed, this action had eight plaintiffs. One of the original plaintiffs (Allan Murray) is apparently still a plaintiff (Allen L. Murray).<sup>14</sup> Another of the original plaintiffs (M.M. Brown) may also still be a plaintiff (Michael Adam Brown). A new plaintiff, Christy Worthy Brown, is the wife of plaintiff Michael Adam Brown. The other six original plaintiffs dropped, without explanation.

### PROPERTIES

None of the versions of the Complaint identifies what property each of the Plaintiffs owns in the County and which of those properties are, in the Plaintiffs' view, impermissibly restricted by the Zoning Ordinance. The properties below, so far as can be determined by a search of the County's on-line property assessment records, are the only properties owned by the Plaintiffs in the County.<sup>15</sup> Each of these properties is classified by the Zoning Ordinance as "R2."<sup>16</sup> The "R2" designation is described by the Zoning Ordinance as "primar[ily] rural." Zoning Ordinance § 153.067 (CFM Ex. No. 3).

The district is intended to be rural in nature, allowing low density residential uses including manufactured housing on individual properties, as well as home occupations, family daycare, agriculture, forestry, hunting, and religious uses, but also accommodating complementary and associated uses such as recreation, government services, and appropriate service, commercial and industrial uses.

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<sup>14</sup> The County is informed that Plaintiff Allen L. Murray (first name shown as "Allan" (in accordance with the original Complaint) in on-line records of Newberry County, Eighth Judicial Circuit - <https://publicindex.sccourts.org/Newberry/PublicIndex/PISearch.aspx>) died on January 28, 2021. The County is without information as to the heir(s) of Plaintiff Murray's property at issue in this case or as to the personal representative of his estate or the executor of his will, if any.

<sup>15</sup> CFM Ex. No. 5.

<sup>16</sup> CFM Ex. No. 1.

Zoning Ordinance § 153.068 [*emphasis added*]. The Zoning Ordinance separately defines “manufactured” homes and “recreational vehicles.” Recreational vehicles do not come within the definition of “manufactured” housing. Zoning Ordinance § 153.231.

MURRAY PROPERTY

Mr. Murray owns only one parcel of property in Newberry County, Tax Map No. 742-5. It is shown on the Tax Assessor’s records as “improved, owner-occupied.” This parcel consists of 3.823 acres.

MR. BROWN PROPERTY

Mr. Brown has a recorded interest in three parcels of property in Newberry County. In one, Tax Map No. 618-24, he appears to have a fee simple interest in 60 acres shown as vacant agricultural property. In another, Tax Map No. 383-2, he appears to share with his wife a fee simple interest in eight acres shown as “improved, owner occupied.” In the third, Tax Map No. 383-6, he appears to have the remainder interest (following a life estate held by James A. Brown, Jr.) in 60 acres shown as “improved, owner-occupied.” Although improvements on Tax Map No. 383-6 are valued at \$0, photographs indicate a manufactured home on the property. There is no evidence that these properties in which Mr. Brown had a direct interest were ever involved in or offered for the use that Plaintiffs wish to make of their property. It appears that Mr. Brown’s status in this case relates to Mrs. Brown’s property, described below, of which Mr. Brown is the manager.

MRS. BROWN PROPERTY

Mrs. Brown owns one parcel, Tax Map No. 503-36, in which she appears to have a fee simple interest. This parcel was the subject of the BZA Brown Decision and the Brown Appeal. This property consists of 1.63 acres.

It appears that only the Murray Property and the Mrs. Brown Property were ever offered or rented for RV use by out-of-county workers.

### RELEVANT PROVISIONS OF THE ZONING ORDINANCE

The stated purposes of the Zoning Ordinance include “promoting public health, safety, morals, convenience, order, appearance, prosperity, and general welfare; lessening congestion in the streets; securing safety from fire; providing adequate light, air, and open space; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the creation of a convenient, attractive and harmonious County; protecting and preserving scenic, historic, and ecologically sensitive area; and regulating development in harmony with the adopted Comprehensive Plan for Newberry County.” CFM Ex. No. 2.

Under the Zoning Ordinance, the use sought by Plaintiffs is allowed within their R2 zoning classification only if the conditions set forth in one of two options provided by the Zoning Ordinance are met.

The first such option is as a “conditional use as temporary accommodations for workers.” This provision is a new addition to the current Zoning Ordinance; there was no similar provision in the Prior Zoning Ordinance. A conditional use is a use that is allowed in a zoning district if certain conditions are met.<sup>17</sup> The Zoning Ordinance, at § 153.123(H), allows as a conditional use

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<sup>17</sup> The conditions for this conditional use include:

- The parcel must be 10 contiguous acres or larger.
- One such temporary RV may be allowed per acre, however RV units may be clustered as long as they comply with all other requirements of this section and the setbacks required in the R2 zoning district. No more than 5 temporary RVs shall be allowed for this use on 1 parcel.
- No portion of any RV may be located closer than 20 feet to any portion of another RV or from a permanent residence if one is on the parcel.
- Application must be made by the property owner for each temporary RV requested to be located on the property. Application for more than 1 temporary RV may be submitted for a property at the same time.

in R2 districts the renting of property for the siting of recreational vehicles used as temporary accommodations for persons working in or near Newberry County but who do not intend to relocate permanently to the County. If the conditions are met, there is no need for approval by the BZA.

The second option is through a “special exception as commercial campground or RV park.” The Zoning Ordinance, at § 153.053, will allow the use in specified zoning districts if certain

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- Such temporary RV shall be maintained in a manner which will facilitate and enable its removal by the expiration date of the permit.
  - The placement of the temporary RV must meet SCDHEC requirements for water and wastewater connections and Newberry County requirements for temporary electrical service. Each proposed temporary RV dwelling shall have individual water, sewer and electrical service and connections and may not share such services with other temporary RV dwellings or permanent dwellings.
  - A minimum setback of 100 feet is required between the perimeter of all RV sites and all property lines and the road right-of-way. A buffer of at least 50 feet in width is required along all side and rear property lines.

general<sup>18</sup> and certain specified<sup>19</sup> requirements regarding the use and the property are met. Relevant here is special-exception use as a commercial campground and RV park allowed by Zoning

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<sup>18</sup> The general requirements (§ 153.053(D)) for special exception use are:

- (D) No special exception permit shall be approved by the Board of Zoning Appeals unless the following general findings of fact are made concerning the proposed special exception:
  - (1) The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to the information submitted.
  - (2) The use complies with all regulations and standards of this chapter.
  - (3) The use will not substantially injure the value of adjoining properties, or the use is a public necessity.
  - (4) The location and character of the use, if developed according to the information as submitted and approved, will be in harmony with the area in which it is to be located.
  - (5) The use will not create traffic impacts that will endanger public safety, or create or contribute to congestion.
  - (6) The use will not create noise, light, glare, odor, or obstruction of air flow on adjoining properties.
  - (7) That the proposed use will not be in conflict with but will further the objectives of the Newberry County Comprehensive Plan for the area in which it is located.

<sup>19</sup> The special requirements (§ 153.041) for special exception as a commercial campground or RV park are:

Commercial campgrounds and recreational vehicle (RV) parks may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

- (A) Commercial Campground and RV Park facilities may include a residence for the owner/manager of the premises; utility hook-ups; accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities; and recreational vehicles (including travel trailers) in designated spaces.

Ordinance § 153.141. A property owner must obtain approval from the BZA prior to any use as a special exception. In order to grant a special exception, the BZA must find that all of the general and special requirements are met (Zoning Ordinance §§ 153.053(D) and 153.141).

Failure to meet any condition in either option can be excused by the BZA as a “variance” under Zoning Ordinance § 153.052 and S.C. Code of Laws § 6-29-800(A)(2).<sup>20</sup> However:

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- (B) All campground and RV park facilities, including structures, camping sites, RV camp/parking sites, and other facilities associated with the use shall be setback a minimum of 100 feet from all adjacent property lines, except where contiguous properties are zoned for commercial (LC or GC) and/or industrial (IND) uses.
  - (C) All campground and RV park facilities, including structures, camping sites, RV camp/parking sites, man-made uses, and other facilities associated with the use shall be surrounded by a minimum 50 foot wide buffer, which meets the applicable requirements of § 153.182 - Buffers. Such facilities shall be surrounded by an opaque screen which meets the requirements of § 153.183 - Screening.
  - (D) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use.
  - (E) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.
  - (F) The use will not substantially injure the value of adjoining properties.
  - (G) Additional conditions may be imposed to ensure that the use will not create a safety, health or traffic hazard.

<sup>20</sup> The requirements for granting a variance under the Zoning Ordinance and the statute are substantially identical. Those requirements, as stated in the Zoning Ordinance, are:

- (C) A variance may be granted if the Board [*the BZA*] makes and explains in a written order all of the following findings and conclusions:
  - (1) There are extraordinary and exceptional conditions pertaining to a particular piece of property;
  - (2) These conditions do not generally apply to other property in the vicinity or in that district;

In order to grant a variance, the Board must make the factual determination that each of the four elements above favor granting the variance. *See Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 418 S.E.2d 319 (Ct.App.1992). **Granting a variance is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions.** *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953).

*Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 214, 516 S.E.2d 442, 445 (1999) [*emphasis in underscored boldface added*].

The primary aspects of the Zoning Ordinance that prevent the Plaintiffs from qualifying for the newly-created conditional use and making their desired use of their properties are the requirements that the parcel be at least 10 acres and have certain setbacks and that the density on a parcel not exceed a certain level. This can be seen from the property descriptions at CFM Ex. No. 5 and from Plaintiff Michael Brown's proposed amendments to the Zoning Ordinance, set out in the Fain Aff., each of which related to the parcel size and number of RVs allowed on a parcel.

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- (3) Because of these conditions, the application of the chapter to a particular piece of property would effectively prohibit or unreasonably restrict use of the property;
  - (4) The authorization of the variance will not be a substantial detriment to adjacent property or to public good, and the character of the district will not be harmed by the granting of the variance; and
  - (5) The effect of the variance would not allow the establishment of a use not otherwise permitted in the zoning district; would not extend physically a nonconforming use of the land; would not change the zoning district boundaries shown on the official zoning map.
- (D) The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

## ARGUMENT<sup>21</sup>

At least since the decision of the U.S. Supreme Court in Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926), nearly a hundred years ago, zoning for land use has been one of the primary functions of local government throughout the United States, including in South Carolina. As authorized by S.C. Code §4-9-30(9) and the Zoning Act, and after extensive consideration and public input, the County adopted its Zoning Ordinance, in accordance with the procedures established by South Carolina law. Every zoning plan restricts every property owner from making some uses of his property that he might at some point like to make. Indeed, each aspect of every zoning plan restricts some property owners from making some use of their property that they might like to make.

The Zoning Ordinance's restrictions and conditions regarding placement of recreational vehicles on certain properties for certain purposes are a permissible way for the elected governing body of the County to address valid policy concerns relating to the possible proliferation of such placements.<sup>22</sup> The fact that these restrictions and conditions mean that some property owners may not make some uses of their property that they would like to make is simply a feature of zoning.

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<sup>21</sup> The facts with respect to County Council's adoption of the Prior Zoning Ordinance and the Zoning Ordinance, as well as the contents of those enactments, are legislative facts of which the Court may take judicial notice. *See* Rule 201, SCRE, reporter's comment. In addition, public records of governmental actions, the records of the Court, and materials at government websites are self-authenticating; and this Court may take judicial notice of their contents. *See* Rules 201, 803(8), and 902(5), SCRE. *See also* Lorraine v. Markel Am. Ins. Co., 241 F.R.D. 534, 551 (D. Md. 2007), and Paralyzed Veterans of America v. McPherson, 2008 U.S. Dist. LEXIS 69542, \*21-23 (N.D.Cal., September 8, 2008) (government website documents are self-authenticating under Rule 902(5), FRE, which is identical to Rule 902(5), SCRE).

<sup>22</sup> In the proceedings related to the BZA Brown Decision, Mrs. Brown had alleged that she had checked with her neighbors and that none objected to her intended use of the property. However, at the first hearing before the BZA, only two neighbors appeared. Both said that they like the Browns and thought that the current RV occupants were decent; but both also said that they were concerned about the long-term impact of this use of the property on the surrounding



The Plaintiffs allege (without specifics and in a much-less-than-clear manner) that the Zoning Ordinance “unreasonably restricts” the Plaintiffs’ ability to use their land “for the business for which they are engaged” (Second Amended Complaint, Paragraph 5); “is arbitrary and unreasonable in that it allows others to use the property in the exact same way provided the property is not used by workers. Recreational use and hunting use can be made of the property by as many people as desire to use it as long as the people are not workers who are renting the property” (Paragraph 6); “is arbitrary as it discriminates against a particular class of people,” “is unreasonably discriminatory against workers and people who own property’ desiring to lease to workers,” and “is overly broad” (Paragraph 7); is “arbitrary and unreasonable as written and enforced” (Paragraph 8); was passed in contravention of “procedures” and for “an improper purpose” (Paragraph 11 ); is the subject of representations by County officials that estop the County from enforcing the ordinance (Paragraphs 15-17); requires the Plaintiffs “to stop using their land for the historical use” (Paragraph 21); and constitutes an unconstitutional taking of property by inverse condemnation (Paragraph 22).

Based on argument in prior hearings in this case, the gravamen of the Plaintiffs’ claims appears to be the allegation that the Zoning Ordinance has the intent and effect of discriminating against long-term workers and/or some group of property owners and is therefore arbitrary and unreasonable. The argument below addresses that and other general validity arguments apparently being made by Plaintiffs under the rubric of “CFM First Motion.” Other issues are treated sequentially under the rubric of the relevant CFM Motion.

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area. In short, the policy concerns reflected in the Zoning Ordinance are shared by affected neighbors. *See* BZA Brown Record.

**CFM First Motion: The Plaintiffs have not shown (and cannot show) the Zoning Ordinance to be unreasonable, arbitrary, capricious, or discriminatory.**

No matter which way Plaintiffs turn or whether they look to federal or state law, they are met with a burden that, on the facts that they have alleged or of which this Court may take judicial notice, is impossibly high for them.

As noted at the outset of this Memorandum, the Plaintiffs face a steeply uphill climb in challenging the validity of the Zoning Ordinance, as “[a] strong presumption exists in favor of the validity and application of zoning ordinances.” Peterson Outdoor Advertising, 327 S.C. at 235, 489 S.E.2d at 632. Similarly, “there is a strong presumption in favor of the validity of municipal zoning ordinances, when within the municipal power as here.” Talbot v. Myrtle Beach Bd. of Adjustment, 222 S.C. 165, and 173, 72 S.E.2d 66, 69–70 (1952).

Judicial deference to legislative bodies on zoning matters is deeply entrenched.

One of the most firmly established principles in the field of constitutional law is that the wisdom of legislation is a matter exclusively for legislative determination. This principle has been applied to zoning laws, and courts have been declared to have nothing to do with the question of the wisdom, expediency, propriety, or good policy thereof. The courts may not interfere with the enactment or enforcement of zoning provisions for the sole reason that they may be considered unwise, as long as their requirements may not be classified as unreasonable, or as long as there is an apparent legal reason for the enacted requirements. The matter is largely within the discretion of the legislative authority, which is presumed to have investigated and found conditions such that the legislation which it enacted was appropriate, so that if the facts do not clearly show that the bounds of that discretion have been exceeded, the courts must hold that the action of the legislative body is valid. In this respect, it has been declared that the municipal governing bodies are better qualified because of their knowledge of the situation to act upon those matters than are the courts, which will not substitute their judgment for that of the legislative body.

Talbot, *supra*, 222 S.C. at 169-70, 72 S.E.2d at 68. And venerable federal precedent is in accord: “If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.” Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 388, 47 S. Ct. 114, 118, 71 L. Ed. 303 (1926).

### Substantive Due Process – The Arbitrary and Capricious Standard

The South Carolina Supreme Court dealt at length with just how heavy the Plaintiffs' burden is in Dunes W. Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013). In Dunes W., a golf course owner's request for residential rezoning was denied. On a challenge that (like here) alleged violations of Equal Protection, substantive Due Process, and the Takings Clause, the Supreme Court upheld a grant of summary judgment against the landowner. What the Plaintiffs must show, as established by the Dunes W. Court, is high-hurdle enough:

"The authority of a municipality to enact zoning ordinances, restricting the use of privately owned property is found in the police power." McMaster v. Columbia Bd. of Zoning Appeals, 395 S.C. 499, 505, 719 S.E.2d 660, 663 (2011). "In reviewing substantive due process challenges to municipal ordinances, a court must consider whether the ordinance bears a reasonable relationship to any legitimate interest of government." *Id.*

"In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." Harbit, 382 S.C. at 394, 675 S.E.2d at 782 (citing Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004)). "The State's deprivation of the property interest must fall so far beyond the outer boundaries of legitimate governmental authority that no process could remedy the deficiency." *Id.* "Every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution." McMaster, 395 S.C. at 504, 719 S.E.2d at 663.

"A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property." Harbit, 382 S.C. at 394, 675 S.E.2d at 782. "Courts cannot become city planners but can only correct injustices when they are clearly shown to result from municipal action." Knowles v. City of Aiken, 305 S.C. 219, 222, 407 S.E.2d 639, 642 (1991). "In order to successfully assault a city's zoning decision, a citizen must establish that the decision was arbitrary and unreasonable." *Id.* at 224, 407 S.E.2d at 642. "And in the context of a zoning action involving property, it must be clear that the state's action 'has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense.'" Sylvia Dev. Corp. v. Calvert County, 48 F.3d 810, 827 (4th Cir.1995) (quoting Nectow v. Cambridge, 277 U.S. 183, 187–88, 48 S.Ct. 447, 72 L.Ed. 842 (1928)).

*Id.*, 401 S.C. at 296–97, 737 S.E.2d at 609–10.

But it is not only what must be shown that precludes the Plaintiffs’ claims, but also the heightened standard by which they must show it:

“The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent on respondent to show the arbitrary and capricious character of the ordinance **through clear and convincing evidence.**” *Town of Scranton v. Willoughby*, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991). “[I]n cases requiring a heightened burden of proof ... **the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment.**” *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 330–31, 673 S.E.2d 801, 803 (2009).

*Id.*, 401 S.C. at 298, 737 S.E.2d at 610 [*emphasis in underscored boldface added*].

Here, the Zoning Ordinance by its own terms shows its reasonable, non-arbitrary, and non-capricious nature. It is an exercise of the police power authorized by the South Carolina Constitution (art. VIII, §§ 9 and 17; *see Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802 (1993)); by the Home Rule Act (S.C. Code §§ 4-9-25, 4-9-30(9) and (14)); and by the Zoning Act.

The Zoning Ordinance is on its face in full accord with the Zoning Act. CFM Ex. No. 2 shows the process used in adoption of the Zoning Ordinance, which complies with both the Home Rule Act and the Zoning Act.<sup>23</sup> The Zoning Ordinance carefully and specifically delineates what uses are permitted where within the unincorporated areas of the County, and under what conditions. The Plaintiffs have alleged no fact that would support a conclusion that any part of the Zoning Ordinance is irrational, arbitrary, or capricious. The Zoning Act permits and the Zoning Ordinance has adopted provisions allowing the continuance of a non-permitted use, where that use

<sup>23</sup> *See also* the self-authenticating, judicially-noticeable governmental records of the process by which the Zoning Ordinance was adopted, cited at fns. 9, 11, 12, and 13 above. *See* fn. 21 above, re judicial notice and self-authentication.

had been lawfully begun before the restrictions of the Zoning Ordinance became effective, either by final enactment or by the “Pending Ordinance Doctrine.” The Zoning Act permits and the Zoning Ordinance has adopted procedures by which property owners may request special exceptions and variances; and the Zoning Act authorizes property owners to make judicial appeals of adverse decisions of the administrative bodies.

Looking specifically at the Zoning Ordinance provisions that hamper the Plaintiffs – the ones related to lot size and density of RVs allowed – those provisions serve quite directly the stated purposes of the Zoning Ordinance: lessening congestion in streets, fire safety, prevention of overcrowding, avoiding undue concentration of population. They fit the elements of the R2 classification, which is intended for “low density residential uses.” The purposes as stated in the Zoning Ordinance and their congruence with the Zoning Ordinance provisions are an appropriate basis for determining a lack of arbitrariness and capriciousness. Bibco Corp. v. City of Sumter, 332 S.C. 45, 53, 504 S.E.2d 112, 116 (1998).

Minimum lot sizes for residential use are a commonplace of zoning regulations. And setbacks are not different. The South Carolina Supreme Court has declared in somewhat peremptory fashion:

The contention that the zoning ordinance is unconstitutional per se, is patently without merit. We cannot say that a zoning ordinance, which requires a front yard of 25 feet and a back yard of 15 feet for the development of office and institutional business, is arbitrary or unreasonable. Accordingly, we refuse to hold that the zoning ordinance is unconstitutional per se.

Dunbar v. City of Spartanburg, 266 S.C. 113, 118, 221 S.E.2d 848, 850 (1976) [*internal citations omitted*].

Equal Protection – The Rational Basis Standard

Turning from substantive Due Process – the arbitrariness and capriciousness issue – to Equal Protection – the discriminatory intent and effect issue – the Plaintiffs fare no better.

As an initial matter, to the extent that the alleged discrimination is against out-of-County workers, the three Plaintiffs here – all property owners and none of them out-of-County workers – lack standing to raise the issue. As standing is jurisdictional, these Plaintiffs' claim of discrimination against workers is inadequate as a matter of law to sustain this lawsuit. Lennon v. S.C. Coastal Council, 330 S.C. 414, 498 S.E.2d 906 (Ct. App. 1998) (one not suffering the injury does not have standing to bring the claim on behalf of others); *see also* Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 169, 485 S.E.2d 371, 373 (1997) (standing affects the court's ability to provide relief). So to the extent that relief is sought based on discrimination against workers, that claim by these Plaintiffs must be dismissed.

As an aside related to a hypothetical worker's claim, the County notes that a claim by workers would also face additional obstacles. Just because out-of-County workers cannot rent in R2 areas from owners whose properties do not qualify for the §153.123(H) conditional use does not prevent them from renting in R2 areas from owners whose properties do qualify. Nor does it prevent them from availing themselves of similar opportunities in other zoning classifications (for example, the RG classification intended for "higher population densities" which allows manufactured home parks as a special exception. Zoning Ordinance §153.068(B)(5)). Nor does it prevent them from making use of housing opportunities in R2 areas that do not involve RVs (for example, the manufactured home that was previously on Plaintiff Mrs. Brown's property (see discussion under "CFM Motion" Three below)). Nor does it prevent them from making other housing arrangements such as apartments, extended stay facilities, *etc.*

But even looking at discrimination against some ill-defined group of property owners, the law is against these Plaintiffs; and even if they were allowed to stand in the shoes of workers who are not parties to this lawsuit, it would not avail them as the standards described below would preclude claims on behalf of both groups.

If there is no suspect or quasi-suspect class and no fundamental right is involved, zoning ordinances should be tested under the “rational basis” standard. Haves v. City of Miami, 52 F.3d 918 (11th Cir.1995).

Bibco Corp., supra, 332 S.C. at 52, 504 S.E.2d at 116. The alleged discrimination here is against landowners who have less than 10 acres of land and/or workers on projects near the County who are seeking temporary housing. Neither of those are the sort of “discrete and insular minorities” for whom enhanced or strict scrutiny is required. United States v. Carolene Prod. Co., 304 U.S. 144, 153 at fn. 4 (1938). Bibco, which dealt with (and upheld) the exclusion of mobile homes from areas that permitted modular homes, found no suspect or quasi-suspect class. Similarly, Whaley v. Dorchester Cty. Zoning Bd. of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999), which upheld a prohibition against a long-haul trucker parking his own rig outside his own house, found no protected class, employed a “rational basis” rather than “strict scrutiny” test, and found no discrimination. And the United States Supreme Court, in Vill. of Belle Terre v. Boraas, 416 U.S. 1 (1974), upheld a zoning restriction on the number of unrelated (but not the number of related) persons who could occupy a housing unit. Rejecting numerous claims of protected status, including arguments like ones made by Plaintiffs here that the restriction infringed on the right to travel or to migrate freely, the Supreme Court noted that it was permissible for a local government, through a zoning law, to address the issues where “[m]ore people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds. A quiet space where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.” *Id.*, 416 U.S. at 9.

Under the rational basis test for equal protection applicable to economic/regulatory governmental actions, the Plaintiffs again have a very high hurdle to overcome.

The requirements of equal protection are satisfied if: (1) the classification created by an enactment bears a reasonable relationship to the legislative purpose; (2) the members of the class are treated alike under similar circumstances; and, (3) the classification rests on a rational basis. Robinson v. Richland County Council, 293 S.C. 27, 358 S.E. (2d) 392 (1987). The burden is upon those challenging the enactment to prove a lack of rational basis. Y.C. Ballenger Electric Contractors, Inc. v. Reach-All Sales, Inc., 276 S.C. 394, 279 S.E. (2d) 127 (1981)

Ex parte Yeargin, 295 S.C. 521 at 525, 369 S.E.2d 844 at 845-846 (S.C. 1988) (upholding a sewer tax imposed on a special taxing district rather than the entire county). As stated specifically with respect to zoning enactments:

There are three steps in determining whether an ordinance survives rational basis scrutiny under the Equal Protection Clause: (1) whether plaintiff was treated differently than others similarly situated; (2) whether defendant intentionally discriminated against plaintiff and had a rational basis for doing so; and (3) whether the discrimination/classification bears a rational relationship to a legitimate government purpose or goal. In determining whether there is a legitimate government purpose, the actual motivations of the enacting governmental body are entirely irrelevant. A reviewing court need only decide what goals the government body *could* have been pursuing [*and the Bibco Court looked at the purposes stated in the zoning ordinance in doing so*].

Bibco Corp., supra, 332 S.C. at 52-53, 504 S.E.2d at 116 [*internal citations omitted*]. Phrased a little bit differently in another zoning case (the truck-rig parking case), the Court stated:

Equal protection is satisfied if 1) the classification bears a reasonable relation to the legislative purpose sought to be effected; 2) the members of the class are treated alike under similar circumstances and conditions; and 3) the classification rests on some reasonable basis. The determination of whether a classification is reasonable is initially one for the legislative body and will be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it. "The fact that the classification may result in some inequity does not render it unconstitutional."

Whaley v. Dorchester, supra, 337 S.C. at 575-76, 524 S.E.2d at 408 [*internal citations omitted*].

Moreover:



A legislatively created classification will not be set aside as violative of the equal protection clause unless it is plainly arbitrary and there is no reasonable hypothesis to support the classification. [*Citations omitted.*]

Brown v. Horry County, *supra*, 308 S.C. at 186, 417 S.E.2d at 569.

And again, not only is the test itself difficult, the standard of proof is similarly high:

The burden of proving the invalidity of a zoning ordinance [*under the equal protection clause*] is on the party attacking it, and it is incumbent on the attacking party to show the arbitrary and capricious character of the ordinance through clear and convincing evidence.

Bibco Corp., *supra*, 332 S.C. at 52, 504 S.E.2d at 116 [*emphasis added*].

Here, the restrictions complained of are rationally related to the stated purposes of the Zoning Ordinance, treat similarly situated persons alike, and do not intentionally discriminate against Plaintiffs. Under Bibco and the other cases cited above, there is no impermissible discrimination imposed by the Zoning Ordinance.<sup>24</sup>

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<sup>24</sup> Plaintiffs also assert that the Zoning Ordinance is discriminatorily enforced. They have not, however, provided the requisite support for any such claim.

Whaley further maintains Dorchester County has selectively enforced the ordinance against “drivers of 18 wheelers,” but not against other commercial vehicles who are in violation of the ordinance. We disagree. “To prove that a statute has been administered or enforced discriminatorily, more must be shown than the fact that a benefit was denied to one person while conferred on another. A violation is established only if the plaintiff can prove that the state *intended* to discriminate.” Although Whaley presented eleven photographs of “other large commercial vehicles in the immediate area that were not subjected to any enforcement action” at the Board hearing, he failed to establish any purposeful discrimination on the part of the planning and zoning officials. (plaintiff did not establish Equal Protection claim where he failed to allege or set forth any facts which could establish purposeful or intentional discrimination). Accordingly, he has failed to establish the enforcement of Ordinance 96-09 violates equal protection.

Whaley v. Dorchester, *supra*, 337 S.C. at 576-77, 524 S.E.2d at 408-09 [*internal citations omitted*].

The Plaintiffs appear to be under the mistaken impression that the Zoning Ordinance restricts renting to out-of-County workers on a longer-term basis but does not restrict renting to persons in other categories such as recreational users. Second Amended Complaint, Paragraph 6. That is simply incorrect. The Zoning Ordinance allows “parking or recreational use of recreational vehicles.” Zoning Ordinance, § 152.123(B). It does not allow occupancy as a place of residence, nor does it allow renting space to a recreational vehicle for use as a place of residence. The allowed “parking or recreational use” is subject to the requirement “that no occupancy or use of such vehicle rise to the level of permanent occupancy or use, and that any use remains temporary in nature.” Zoning Ordinance, § 152.123(C) [*emphasis added*]; see also Zoning Ordinance, § 152.123(G)(1), reiterating the “temporary” requirement. For those purposes, “temporary” requires, among other things, that there can be “no permanent connection to electric power for the RV” (which out-of-County workers would, and did, have) and that “the RV may not be used as a fixed place of abode” (which the out-of-County workers would be doing). In other words, whether one is hunting, bird-watching, running a moonshine still, or enjoying a South Carolina version of Thoreau’s life on Walden Pond, one cannot, in R2 areas, rent space for and/or live in an RV on more lenient terms than can these Plaintiffs or any out-of-County workers. Simply put, there is no discrimination.

Indeed, the Zoning Ordinance actually improved the situation vis-à-vis property owners in R2 districts and out-of-County workers. By creating a new conditional use, the Zoning Ordinance allows owners who meet the conditions to rent to workers, without having to get the blessing of the BZA for a special exception. There is no similar new provision in the current Zoning Ordinance that eases requirements for longer-term renters in other, non-worker categories (including hunters and recreational users).

Alleged Procedural Defects – The Statute of Limitations Bar

Finally regarding the claimed invalidity of the Zoning Ordinance and as noted above, Plaintiffs allege that the adoption of the Zoning Ordinance was improper because it violated certain unspecified “procedures.” The Zoning Ordinance was adopted on September 21, 2016. S.C. Code § 6-29-760(D) provides that a “challenge to the adequacy of notice” or a “challenge to the validity of a [zoning] regulation or map, or amendment to it” must be made within sixty (60) days of the adoption. That sixty-day period expired on November 20, 2016. This lawsuit was commenced (at the earliest) by the Plaintiffs’ filing of a never-served complaint on July 28, 2017, challenging the Zoning Ordinance. That statute is a complete bar to the claim of invalidity due to a violation of procedures in its adoption. Quail Hill, LLC v. Cty. of Richland, 379 S.C. 314, 320–21, 665 S.E.2d 194, 197 (Ct. App. 2008), *aff’d in part, rev’d in part*, 387 S.C. 223, 692 S.E.2d 499 (2010).

For the foregoing reasons, it is apparent that the Plaintiffs’ requested declaration of unconstitutionality of the Zoning Ordinance cannot be granted under any set of facts that they could prove; there is thus no material issue of fact; and summary judgment denying the Plaintiffs’ requested relief of a declaration of invalidity of the Zoning Ordinance should be granted in favor of the County under SCRCivP Rule 56.

**CFM Second Motion: The Plaintiffs have not shown (and cannot show) any statement made by the County that would estop the enforcement of the Zoning Ordinance.**

Plaintiffs have made an unsupported, bare allegation that “Newberry County in its official capacity has made various representations to various of the Plaintiffs’ which have been relied

upon.”<sup>25</sup> Second Amended Complaint, Paragraph 14.<sup>26</sup> The Plaintiffs have not identified any representations by the County or its officials on which they have relied and that were not true when made. Moreover, the authority to alter the requirements of the Zoning Ordinance belongs solely to County Council; misrepresentations regarding interpretation and implementation of the Zoning Ordinance thus constitute misrepresentations of matters of law; and under South Carolina law, misrepresentations of matters of law (if any) do not give rise to an estoppel that would operate to prevent a local government from enforcing its zoning code as written.

*The public cannot be estopped, however, by the unauthorized or erroneous conduct or statements of its officers or agents which have been relied on by a third party to his detriment. [Emphasis in the original.]*

Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010), citing DeStefano v. City of Charleston, 304 S.C. 250, 257–58, 403 S.E.2d 648, 653 (1991). In Quail Hill, the Supreme Court was dealing, as here, with allegations that officials had mis-stated the impact of zoning regulations on a property. The Supreme Court reversed the Court of Appeals and cited a series of prior cases in holding that, nevertheless, the government body was not estopped to

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<sup>25</sup> Presumably, the Second Amended Complaint’s request for an injunction against enforcement of the Zoning Ordinance, insofar as it is based on estoppel, relates only to enforcement against the Plaintiffs themselves. “[J]ustifiable reliance upon the government’s conduct” is a necessary element of estoppel. Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 236–37, 692 S.E.2d 499, 506 (2010). Consequently, estoppel would not support enjoining enforcement against all recreational vehicle and similar use, but only such use by those who had received and relied upon the representations. There is no allegation of such receipt and reliance by anyone other than the Plaintiffs.

<sup>26</sup> The Plaintiffs also state in their Second Cause of Action that they “have relied upon the zoning maps and zoning ordinances as they existed when they began planning to use their property for the intended purpose.” Second Amended Complaint, Paragraph 17. That allegation is, however, simply irrelevant. There is no right to lock in a zoning regime simply by beginning to plan a particular activity. To the extent that the Plaintiffs intend this allegation to be a claim for grandfathering of a use that was established prior to the effectiveness of the Zoning Ordinance, see CFM Fourth Motion below.

enforce the regulations. Quail Hill, *supra*, 387 S.C. at 237-238, 692 S.E.2d at 506-507. Moreover, even in the rare instances where estoppel may lie against a government agency:

[A] relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position.

*Id.*, 387 S.C. at 236-37, 692 S.E.2d at 506. Here, however, the Plaintiffs have not alleged lack of knowledge. They have not alleged lack of the means of knowledge – the Quail Hill Court opined that public availability of the governing regulations constituted “means of knowledge,” which the Plaintiffs here had. Nor have they alleged that their claimed reliance was justifiable. In short, they have not even alleged the necessary elements of this claim, much less provided any supporting facts.

For the foregoing reasons, Plaintiffs’ requested estoppel relief cannot be granted under any set of facts that they could prove; there is thus no material issue of fact; and summary judgment denying the Plaintiffs’ requested relief of estoppel against enforcement should be granted in favor of the County under SCRCivP Rule 56.

**CFM Third Motion: *The Plaintiffs have not shown (and cannot show) that the Zoning Ordinance effects any impermissible taking or inverse condemnation of their property.***

The Plaintiffs have alleged in their Third Cause of Action that “the ordinance as written destroys vested property rights” [Second Amended Complaint, Paragraph 19]; “the ordinance if it is appropriate amounts to a taking of Plaintiffs’ rights to use their property as they have historically used it” [Paragraph 21]; and “the ordinance in question amounts to an inverse condemnation” [Paragraph 22]. Whether a taking has occurred is a question of law for the Court to decide.

[I]n the regulatory taking context, the issue of whether a taking occurred is a question of law for the Court. *See Carolina Chloride*, 394 S.C. 154, 171, 714 S.E.2d 869, 877 (2011) (“In an inverse condemnation case, the trial judge will determine

whether a claim has been established.”); Ex Parte Brown, 393 S.C. at 224, 711 S.E.2d at 904 (“The question of a taking is one of law.”).

Dunes W. Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 314, 737 S.E.2d 601, 619 (2013), concerning a claim that the Mount Pleasant zoning ordinance constituted a taking – a claim that the circuit court denied by summary judgment, in a decision that the Supreme Court affirmed.

In zoning matters, South Carolina’s Supreme Court has long recognized:

“[A] property owner is not entitled to have his property zoned for its most profitable use.” Hampton v. Richland County, 292 S.C. 500, 357 S.E.2d 463 (Ct.App.1987) (quoting 101A C.J.S. *Zoning and Land Planning* § 476 at 173 (1979)). **A zoning classification is not an unconstitutional, compensable taking simply because it denies to a landowner the highest and best use of his property.** See Board of County Com’rs. v. Mountain Air Ranch, 192 Colo. 364, 563 P.2d 341 (1977); Ohoopie Land Dev. Corp. v. Mayor & Council of Wrightsville, 248 Ga. 96, 281 S.E.2d 529 (1981); S.A. Healy Co. v. Town of Highland Beach, 355 So.2d 813 (Fla.Dist.Ct.App.1978); and Young v. City of Franklin, 494 N.E.2d 316 (Ind.1986).

Moore v. Sumter Cty. Council, 300 S.C. 270, 272 at fn. 2, 387 S.E.2d 455, 457 at fn. 2 (1990)

[*emphasis in underscored boldface added*]. More recently, in Dunes W. Golf Club, cited above, the Court held:

“Not all damages suffered by a private property owner at the hands of [a] governmental agency are compensable.” Carolina Chloride, 394 S.C. at 170, 714 S.E.2d at 877 (quoting Woods v. State, 314 S.C. 501, 504, 431 S.E.2d 260, 262 (Ct.App.1993)). Indeed, “[u]nder our system of government, one of the State’s primary ways of preserving the public weal is restricting the uses individuals can make of their property.” Keystone Bituminous, 480 U.S. at 491, 107 S.Ct. 1232. “While each of us is burdened somewhat by such restrictions, we, in turn, benefit greatly from the restrictions that are placed on others.” *Id.*

Dunes W. Golf Club, *supra*, 401 S.C. at 316, 737 S.E.2d at 620.

Although the Plaintiffs have not claimed a taking of any specified parcel or parcels of property (indeed, they have not even alleged ownership of any particular parcel or parcels of property), government records of which judicial notice may be taken can limit the universe of

parcels to be considered. Between them, the three Plaintiffs own five (5) parcels in Newberry County.<sup>27</sup> Each of those five parcels is zoned “R-2 Rural District.”<sup>28</sup>

The Plaintiffs have not specified what use they want to make of their properties. As described in “NATURE AND BACKGROUND OF THE CASE,” above, however, parts of the various versions of the Complaint and certain judicial records<sup>29</sup> make clear that they want to allow workers who come into the area temporarily for major projects (most notably and until recently, for the V.C. Summer nuclear construction project) to park recreational vehicles on their property and to connect them to water, sewer, and electric services, in order to provide accommodations for those workers while their projects continue. It appears that none of Plaintiffs’ parcels meet the Zoning Ordinance’s requirements for such use.

There are, however, multiple other uses available for permitted uses for R2 properties (without the need for approval of conditions or granting of special exceptions). The Zoning Ordinance, at § 153.073(D), spells them out. They include but are not limited to:

- duplex dwellings;
- single-family detached dwellings;
- post-1976 manufactured homes;
- rooming and boarding houses;
- various agricultural buildings;

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<sup>27</sup> CFM Ex. No. 5, and “PROPERTIES” above.

<sup>28</sup> CFM Ex. No. 2.

<sup>29</sup> For example, “travel travelers,” at original and First Amended Complaints, Paragraph 4; “recreational vehicles, camper trailers, and the like,” at original and First Amended Complaints, Paragraph 16; “use of their property for the placement of trouble trailers [*sic*] to be leased to various workers,” at Second Amended Complaint, Paragraph 4; the BZA Brown Record; and transcripts of earlier hearings in the present case.

- animal shelters/stables;
- private motor vehicle garages;
- private gardens and greenhouses; and
- certain recreational facilities; *etc.*

The foregoing list is remarkably similar in type to the list of alternative available uses cited by the Moore Court in holding that a landowner is not entitled to the highest and most profitable use of his land.

An exclamation point is put to the fact that other profitable uses remain for the Plaintiffs' property by the history of Plaintiff Christy Brown's property. Prior to attempting to rent to multiple (three) RV-owning workers, she had a tenant (only one) on that property, paying rent and living in a manufactured home that he owned.<sup>30</sup>

In considering a regulatory taking by zoning, as alleged here, South Carolina's Supreme Court has ruled:

[T]he only issue is whether the [*amendment to the zoning*] Ordinance deprived Appellant of "all economically beneficial uses" of its land, and therefore, amounted to a taking. *See [Lucas v. S.C. Coastal Council, 505 U.S.]* at 1019, 112 S.Ct. 2886. On these facts, we find there was no categorical taking because the [*Conservation Recreation Open Space zoning*] designation permits numerous recreation and conservation uses, and Appellant has failed to produce any evidence that those permitted uses are not economically beneficial. . . . Appellant has presented no evidence that this is the "extraordinary circumstance when *no* productive or economically beneficial use of land is permitted." Lucas, 505 U.S. at 1017, 112 S.Ct. 2886. Thus, we find the trial court properly granted summary judgment in favor of the Town as to Appellant's categorical taking claim.

Dunes W. Golf Club, *supra*, 401 S.C. at 31-314, 737 S.E.2d at 619.

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<sup>30</sup> BZA Brown Record, BZA Brown Hearing Tr. p. 74, line 12 - p. 75, line 8 [testimony of Plaintiff Michael Brown].



In light of the Dunes West/Lucas rule, and the fact that the Zoning Ordinance plainly permits multiple other uses of the Plaintiffs' R2-Rural District properties, the Plaintiffs cannot under any circumstances show that the Zoning Ordinance accomplishes a categorical, *per se* taking; and they have not alleged any specific facts and circumstances that would cause the Zoning Ordinance or any part to be "the functional equivalent of a classic taking." *Id.*

For the foregoing reasons, the Plaintiffs' request for a finding of a regulatory taking cannot be granted under any set of facts that they could prove; there is thus no material issue of fact; and summary judgment denying the Plaintiffs' requested takings relief should be granted in favor of the County under SCRCivP Rule 56.<sup>31</sup>

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<sup>31</sup> Neither Plaintiff Murray nor Plaintiff Michael Brown has made any application under the Zoning Ordinance for any use, by way of special exception, variance, or otherwise. Failure to exhaust administrative remedies precludes a takings claim against a zoning ordinance. South Carolina's Supreme Court has ruled:

The Circuit Court judge granted summary judgment to the respondent on the basis that the Moores had failed to exhaust their administrative remedies, and that their claim for judicial relief was therefore premature. We agree. The United States Supreme Court has held that, "[u]ntil a property owner has 'obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property,' 'it is impossible to tell whether the land retain[s] any reasonable beneficial use or whether [existing] expectation interests ha[ve] been destroyed.'" *Id.* (quoting Williamson Planning Comm'n. v. Hamilton Bank, 473 U.S. 172, 186, 190 n. 11, 105 S.Ct. 3108, 3116, 3118 n. 11, 87 L.Ed.2d 126 (1985)). Furthermore, this Court has stated, "[t]he impact of [a] zoning ordinance upon [a given] property cannot be determined [when] the landowner has failed to pursue his administrative remedies by applying for a variance." Dunbar v. City of Spartanburg, 266 S.C. 113, 221 S.E.2d 848 (1976).

Moore v. Sumter Cty. Council, 300 S.C. 270, 272–73, 387 S.E.2d 455, 457 (1990). A request for a variance (such as is allowed by the Zoning Ordinance, § 153.052, and by statute, S.C. Code § 6-29-800(A)(2)), is one of the available administrative remedies noted by the Court in Moore. Under the rule of Moore, neither Plaintiff Murray nor Plaintiff Michael Brown even has standing to raise a Takings Claim.

***CFM Fourth Motion: The Plaintiffs have not shown (and cannot show) any non-conforming use that was lawfully established at the time the Zoning Ordinance was adopted that would allow continuation. Moreover, they are prevented from attempting to make any such showing by the doctrines of res judicata and failure to exhaust remedies.***

The Plaintiffs have alleged in their First Cause of Action that the County, under the guise of the Zoning Ordinance, is requiring “the Plaintiffs’ to stop using their land for the historical use [Second Amended Complaint, Paragraph 6] and that “the property in question equates to a non-conforming use pursuant to the zoning ordinance” [Paragraph 13]. This appears to be an attempt to claim the protection of Zoning Ordinance, § 153.030(A)(2).

As permitted by S.C. Code § 6-29-730, the Zoning Ordinance, at § 153.030(A)(2), provides that a use that is non-conforming under the Zoning Ordinance will be allowed to continue if it was lawfully undertaken prior to adoption of the Zoning Ordinance. As noted above under “HISTORY OF ZONING ORDINANCE ADOPTION,” the Zoning Ordinance is effective against claims of prior non-conforming use as of its first introduction on June 1, 2016, under South Carolina’s Pending Ordinance Doctrine, Stratos v. Town of Ravenel, 297 S.C. 309, 376 S.E.2d 783 (1989), publicly invoked upon the Zoning Ordinance’s first introduction.

However, this protection is not available to the Plaintiffs here. First, for any of them to have lawfully established a prior non-conforming use under the Prior Zoning Ordinance, they would had to have obtained affirmative approval of the BZA, as noted under “HISTORY OF ZONING ORDINANCE ADOPTION.” “A use cannot be a nonconforming use if it was unlawful at the time of the amendment of the ordinance prohibiting the use.” Whaley v Dorchester, *supra*, 337 S.C. at 579, 524 S.E.2d at 410. There is no record of any application for such approval or of the granting of any such approval; and Plaintiffs have provided none.

Equally as dispositive is the fact that all three Plaintiffs are blocked from claiming grandfathered status.

With regard to Plaintiff Mrs. Brown's property, she sought permission from the BZA to use her property for the purpose herein as a prior, non-conforming use. The BZA Brown Decision ruled that she had not established such use prior to the effectiveness of the Zoning Ordinance. Mrs. Brown appealed; and Judge Walton J. McLeod IV affirmed the BZA Brown Decision on December 18, 2019. Pursuant to S.C. Code § 6-29-850 and SCACR Rule 203(b)(1), Plaintiff Mrs. Brown had thirty (30) days – until January 17, 2020 – in which to appeal that ruling. She did not do so; and that Order and the underlying BZA Brown Decision are now final and binding. Consequently, her assertion of a right to continue a prior, non-conforming use is barred by the doctrine of *res judicata*. S.C. Pub. Interest Found. v. Greenville Cty., 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013).

Neither Plaintiff Murray nor Plaintiff Mr. Brown has made any application under the Zoning Ordinance for recognition of a grandfathered use. As noted above:

[T]his Court has stated, “[t]he impact of [a] zoning ordinance upon [a given] property cannot be determined [when] the landowner has failed to pursue his administrative remedies by applying for a variance.” Dunbar v. City of Spartanburg, 266 S.C. 113, 221 S.E.2d 848 (1976).

Moore v. Sumter Cty. Council, 300 S.C. 270, 272–73, 387 S.E.2d 455, 457 (1990).

***CFM Fifth Motion: The Second Amended Complaint, like its predecessors, is inadequate as a matter of law, and should be dismissed for failure to allege facts.***

“[South Carolina]’retains the Code Pleading standard ... rather than the more lenient notice pleading standard found in the federal rules.” *Gaskins v. S. Farm Bureau Cas. Ins.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93 (2nd ed. 1996)).

Paradis v. Charleston Cty. Sch. Dist., 424 S.C. 603, 613, 819 S.E.2d 147, 153 (Ct. App. 2018), reh’g denied (Oct. 18, 2018). While recognizing that pleadings must be liberally construed, the

Paradis Court reiterated that a plaintiff must “allege facts” [*emphasis added*], and that where “nothing more than legal conclusions” is pleaded, the complaint should be dismissed. *Id.*

As noted in the County’s Motion for More Definite Statement and the supporting memorandum, a host of items conspicuously absent from the original and First Amended Complaints are key elements, at least some combination of which must be shown to support any of the relief requested by the Plaintiffs. The bare, conclusory allegations of the original and First Amended Complaints were wholly insufficient to support this or any other lawsuit, and failed to meet the standard of Paradis, *supra*.

Initially, the County asked only for a more definite statement, despite being entitled to a dismissal. This Court has already ruled in Judge McLeod’s Order that the Plaintiffs’ First Amended Complaint was deficient under Paradis, and ordered the Plaintiffs to amend and make more definite. Despite having been given more than nine and a half months to make their amendments, the Plaintiffs have, in their Second Amended Complaint, simply added a few more merely conclusory allegations. The deficiencies listed in the County’s Motion for More Definite Statement and the supporting memorandum are still not remedied.

The Plaintiffs have had notice for more than three years of the deficiencies in their pleading, yet have squandered repeated opportunities afforded them by the County and by this Court to remedy those defects. If summary judgment is not granted to the County in all respects, any remainder of this case should now be dismissed with prejudice.

## CONCLUSION

For the foregoing reasons, each of the motions of defendant Newberry County as described herein should be granted.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

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*Counsel for Defendant Newberry County, South  
Carolina*

March 3, 2021

HSB 6672647 v.4

**STATE OF SOUTH CAROLINA**  
**COUNTY OF NEWBERRY**

Allen L. Murray,<sup>1</sup> Christy Worthy Brown, and  
Michael Adam Brown,

Plaintiffs,

v.

Newberry County, South Carolina,

Defendant.

**IN THE COURT OF COMMON PLEAS**  
**FOR THE EIGHTH JUDICIAL**  
**CIRCUIT**

**C.A. No.: 2017-CP-36-00385**

**FINAL DISPOSITIVE MOTIONS**  
**OF DEFENDANT**  
**NEWBERRY COUNTY, SOUTH CAROLINA**

Pursuant to this Court's order of January 15, 2021, following the Court's direction and the agreement of counsel at a hearing earlier that same day, the parties are to submit this case on written motions and briefing by 5:00 p.m., Wednesday, March 3, 2021, for final disposition by the Hon. Frank R. Addy, Jr., Circuit Court Judge. Accordingly, Defendant Newberry County (the "County") submits the motions below and, simultaneously, a memorandum in support thereof.

The County respectfully makes its motions:

1. For summary judgment affirming the validity of the County's comprehensive zoning ordinance (the "Zoning Ordinance"), under the authority of SCRCivP Rule 56, Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230, 489 S.E.2d 630 (1997) and Quail Hill, LLC v. Cty. of Richland, 379 S.C. 314, 665 S.E.2d 194 (Ct. App. 2008), aff'd in part, rev'd in part, 387 S.C. 223, 692 S.E.2d 499 (2010) and other principles of law; and
2. For summary judgment denying the purported second cause of action alleging estoppel against enforcement of the Zoning Ordinance, based on unspecified reliance by plaintiffs on unspecified representations by County officials, under the authority of

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<sup>1</sup> Defendant Newberry County is informed that Plaintiff Allen L. Murray (first name shown as "Allan" in on-line records of Newberry County, Eighth Judicial Circuit - <https://publicindex.sccourts.org/Newberry/PublicIndex/PISearch.aspx>) died on January 28, 2021. Defendant Newberry County is without information as to the heir(s) of Plaintiff Murray's property(ies) at issue in this case or as to the personal representative of his estate or the executor of his will, if any.

SCRCivP Rule 56, Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 692 S.E.2d 499 (2010), and other principles of law;

3. For summary judgment denying the purported third cause of action alleging inverse condemnation and seeking damages and attorneys' fees, under the authority of SCRCivP Rule 56, Dunes W. Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013), the terms of the Zoning Ordinance, and other principles of law;
4. For summary judgment denying any claim that a plaintiff had established a lawful, non-conforming use prior to the effectiveness of the Zoning Ordinance and so has a right to continue that use post-effectiveness, because: (a) with respect to Plaintiff Christy Worthy Brown, that matter has been fully adjudicated and final judgment rendered against her in C.A. No. 2018-CP-36-00558 on December 18, 2019, and that judgment was not appealed, so that res judicata precludes her raising the issue again here; and (b) with respect to Plaintiffs Murray and Michael Adam Brown because neither has sought to have any such use recognized and confirmed as compliant with the Zoning Ordinance, §153.030, and so have failed to exhaust their administrative remedies as required by Dunbar v. City of Spartanburg, 266 S.C. 113, 221 S.E.2d 848 (1976); and
5. In the alternative to the foregoing motions for summary judgment, for dismissal under Rule 12(b)(6), for failure to allege facts rather than conclusions of law, as required by Paradis v. Charleston Cty. Sch. Dist., 424 S.C. 603, 613, 819 S.E.2d 147, 153 (Ct. App. 2018), reh'g denied (Oct. 18, 2018), and other principles of law

The following are cited in support hereof and are attached as exhibits to this Motion:

- Exhibit 1 - Affidavit of the County's Zoning Administrator establishing the zoning classifications under the Zoning Ordinance of properties owned by the plaintiffs in the County - previously filed in this action on January 4, 2019 as Exhibit 1 to the County's "Motion for Orders to Make More Definite Statement, Denying Estoppel Against Enforcement, Affirming Validity of Ordinance, and Dismissing Takings Claims" ("County's Motion for More Definite Statement":  
<https://publicindex.sccourts.org/Newberry/PublicIndex/PIImageDisplay.aspx?ctagenc y=36002&doctype=D&docid=1546636708151-409&HKey=116706655668183117110655182112119771211129712084861131207988110115978375711045579115110102121851188485103> ;
- Exhibit 2 - Affidavit of Assistant to the County Administrator of Newberry County, attaching true and correct copies of the acts of Newberry County Council adopting the Zoning Ordinance and its predecessor zoning ordinance - previously filed in this action on January 4, 2019); as Exhibit 2 to the County's Motion for More Definite Statement":  
<https://publicindex.sccourts.org/Newberry/PublicIndex/PIImageDisplay.aspx?ctagenc y=36002&doctype=D&docid=1546636708167-905&HKey=489849122100768889898149677566726576100906710469811158211654811085552525173801148911590884398103>

- Exhibit 3 - a copy of the Zoning Ordinance, as codified (previously filed in this action on January 4, 2019 as Exhibit 3 to the County's Motion for More Definite Statement: <https://publicindex.sccourts.org/Newberry/PublicIndex/PIImageDisplay.aspx?ctagency=36002&doctype=D&docid=1546636708182-923&HKey=8612212211811510810012197765556576889684972744798771038075861011167456106751161065298120977353708673>
- Exhibit 4 - a copy of its predecessor zoning ordinance, as codified (previously filed in this action on January 4, 2019 as Exhibit 4 to the County's Motion for More Definite Statement: <https://publicindex.sccourts.org/Newberry/PublicIndex/PIImageDisplay.aspx?ctagency=36002&doctype=D&docid=1546636708214-767&HKey=4378671091058956108858465491077455999769106749011055103801068411010210766836854991188474531228553111>
- Exhibit 5 - Affidavit of the undersigned counsel with September 10, 2018, downloads from website of Newberry County tax records identifying properties apparently owned by Plaintiffs in Newberry County;

Defendant Newberry County is filing and serving its Memorandum in Support of these motions simultaneously herewith.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

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*Counsel for Defendant Newberry County, South Carolina*

March 3, 2021  
 HSB 6672646 v.2



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

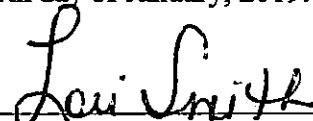
AFFIDAVIT

I, the undersigned Anne Peters, do hereby state as follows:

1. I am over the age of eighteen (18) and am competent to make this Affidavit.
2. I am the Zoning Administrator for Newberry County, South Carolina. My duties in that capacity include maintaining the official zoning map of Newberry County.
3. The following parcels, identified by tax map number, are all zoned as "R2-Rural District" under the Newberry County Zoning Ordinance, Ordinance No. 06-11-2016, codified at Newberry County, SC Code of Ordinances Chapter 153: Zoning Code – Tax Map Nos. 742-5; 618-24; 383-2; 383-6; and 503-36.

  
\_\_\_\_\_  
Anne Peters

Sworn to and subscribed before me this  
4th day of January, 2019.

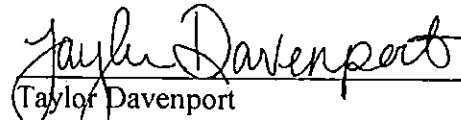
  
\_\_\_\_\_  
Notary Public for the State of South Carolina  
My commission expires: March 21,  
2023

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF NEWBERRY        )

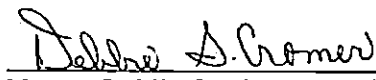
## AFFIDAVIT

I, the undersigned Taylor Davenport, do hereby state as follows:

1. I am over the age of eighteen (18) and am competent to make this Affidavit.
2. I serve as Assistant to the County Administrator of Newberry County, South Carolina. My duties in that capacity include maintaining the official records of the County Council of Newberry County, South Carolina, including records of its proceedings and ordinances adopted by it.
3. Attached hereto are true and correct copies of the following ordinances as they appear in the records of the County Council: Ordinance No. 06-11-2016, and Ordinance No. 12-24-2001.

  
Taylor Davenport

Sworn to and subscribed before me this  
4th day of January, 2019.

  
Notary Public for the State of South Carolina  
My commission expires: 10-15-\_\_\_\_\_,  
2024

**CHAPTER 153: ZONING CODE**

## Section

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- 153.001 Zoning ordinance published separately
- 153.002 Authority
- 153.003 Title
- 153.004 Purpose
- 153.005 Official zoning map
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- 153.033 Fences and walls
- 153.034 Light and glare
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- 153.047 County Administrator
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- 153.070 Official zoning map
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- 153.075 Overlay districts

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- 153.096 Garage apartments
- 153.097 Home occupations
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- 153.099 Junked vehicle storage
- 153.100 Child and adult day care centers
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- 153.102 Nursing homes
- 153.103 Fairs
- 153.104 Marina, public
- 153.105 Recreational day camps, shooting and archery ranges
- 153.106 Kennels and other pet care services
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- 153.109 Veterinary services
- 153.110 Warehousing and storage
- 153.111 Air transportation, public; and air transportation support
- 153.112 Air transportation, private
- 153.113 Bus terminals and rail terminals
- 153.114 Concentrated animal feeding operations
- 153.115 Helipads
- 153.116 Housing, accessory to agricultural use
- 153.117 Open outdoor storage
- 153.118 Transport containers as accessory storage
- 153.119 Contractor office and equipment shed
- 153.120 Manufactured home, emergency housing
- 153.121 Manufactured home, temporary during construction
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- 153.124 Solar farm
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- 153.198 Off-street parking table
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### *Definitions*

- 153.230 General terms
- 153.231 Definitions

## **AUTHORITY AND PURPOSE**

### **§ 153.001 ZONING ORDINANCE PUBLISHED SEPARATELY.**

The zoning ordinance shall be published in a separate volume, a copy of which shall be filed with the County Clerk to Council.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.002 AUTHORITY.**

This chapter is adopted pursuant to authority granted in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code §§ 6-29-310 *et seq.*

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.003 TITLE.**

This chapter may be cited as Newberry County zoning ordinance, or zoning ordinance.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.004 PURPOSE.**

The purpose of this chapter is to implement the land use element of the comprehensive plan and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of Newberry County.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.005 OFFICIAL ZONING MAP.**

The official zoning map shall be maintained in the Office of the Zoning Administrator. All zoning district boundaries shall be clearly shown on the zoning map, and amendments shall be recorded immediately after adoption. Official copies of the zoning map shall be dated and attested by the County Clerk to Council, and shall be available for public inspection. The official zoning map and any amendments adopted by County Council shall constitute the final authority for determination of zoning district boundaries. It shall be unlawful for any person to make unauthorized changes to the zoning map.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.006 AMENDMENTS TO THE OFFICIAL ZONING MAP.**

Amendments to the official zoning map shall be adopted as provided for by § 153.054 Amendments. Promptly after the adoption of an amendment the Zoning Administrator or his designee shall alter or cause to be altered the official zoning map to indicate the amendment and the effective date of the map amendment.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.007 SEVERABILITY.**

Should any specific section, standard or provision of this chapter, including any zoning district boundary that now exists or may exist in the future, be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the chapter as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.008 RELATION TO OTHER ORDINANCES.**

If the provisions of this chapter conflict with the provisions of any other validly enforceable ordinance(s), the most stringent provisions shall control.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.009 REPEAL OF CONFLICTING ORDINANCES.**

All ordinances and parts of ordinances in conflict herewith are repealed to the extent necessary to give this chapter full force and effect.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.010 EFFECTIVE DATE.**

These regulations shall become effective upon the date of their adoption by the County Council of Newberry County.

(Ord. 06-11-16, passed 9-21-2016)

**APPLICABILITY AND CONFORMITY****§ 153.017 JURISDICTION.**

The provisions of this chapter shall apply to all land and improvements within the unincorporated area of Newberry County, South Carolina.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.018 GENERAL APPLICABILITY.**

No building, structure, sign, or land shall be used, graded, excavated, occupied, or altered; nor shall any building, structure, or part thereof be erected, constructed, reconstructed, moved, removed, enlarged, or structurally altered; nor shall any changed use be established for any building, structure, or land, unless in conformity with the general provisions of this chapter and the specific provisions for the district in which it is located, except as otherwise provided by these regulations.

(A) Within each zoning district, the regulations set forth in this zoning ordinance shall apply uniformly to each class or kind of structure or land.

(B) In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.019 CONFORMITY.**

(A) *Scope of regulations.* Except as specifically provided in this zoning ordinance, no building, structure, or land shall be used, occupied, or altered; nor shall any building, structure, or part thereof be erected, constructed, reconstructed, moved, enlarged, or structurally altered; nor shall any use be established or changed for any building, structure, or land, unless in conformity with the requirements of this chapter.

(B) *Other laws.* No building, structure, or land shall be used, occupied, or altered; nor shall any building, structure, or part thereof be erected, constructed, reconstructed, moved, enlarged, or structurally altered; nor shall any use be established or changed for any building, structure, or land, unless in conformity with county, state and federal laws pertaining to such. Nothing herein shall require the County to check for conformity with the laws of other jurisdictions prior to issuing a local approval; however, demonstration of compliance may be required as part of the permit approval process. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards shall govern.

(Ord. 06-11-16, passed 9-21-2016)

**GENERAL REGULATIONS****§ 153.026 APPLICATION OF DEED RESTRICTIONS.**

Unless deed restrictions, covenants, or other contracts directly involve the county as a party in interest, the county shall have no administrative responsibility or authority for enforcing the deed restrictions or covenants.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.027 STREET ACCESS REQUIRED.**

Except as otherwise specifically provided, no building shall be located, used, or occupied on a lot without direct vehicular and pedestrian access to a public street, or a private street that meets the applicable requirements of Chapter 154 of the Newberry County Code of Ordinances. Direct access may be by either a private drive directly to the street or by a perpetual easement.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.028 ERECTION OF STRUCTURES ONLY ON LOTS OF RECORD.**

Any new structure erected after the effective date of this chapter shall be erected only on a lot of record.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.029 REDUCTION OF LOT AREA PROHIBITED.**

(A) No yard or lot existing on the effective date of this chapter shall be reduced in dimension or area below the applicable district minimum requirements.

(B) New lots or yards shall meet the applicable district minimum requirements.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.030 NONCONFORMITIES.**

(A) *In general.*

(1) Nonconformities as defined in this section are declared to be incompatible with permitted uses in the districts established by this chapter. It is the intent of this section to allow nonconformities to continue until they are removed, but not to encourage their proliferation.

(2) Any parcel of land, use of land, easement, building or structure lawfully existing on the date of any text change in this chapter, or on the date of a zoning map change that does not conform to the use or dimensional requirements of the district in which it is located may be continued and maintained in accordance with the provisions of this section and other applicable provisions of this chapter.

(3) A nonconformity shall not be changed to any other nonconformity unless the Board of Zoning Appeals finds that the new proposed nonconformity is more in character with the uses and development patterns in the zoning district in which it is located. In approving such a request, the Board of Zoning Appeals may require appropriate conditions and safeguards in accordance with the purpose of this section.

(4) A nonconformity shall only be extended, enlarged, or intensified in conformity with this section.

(5) Nonconforming off-premises advertising signs may be rebuilt provided all structural requirements detailed in this section are met.

(B) *Nonconforming lots.*

(1) *Vacant lots.* Vacant lots for which plats or deeds have been recorded in the Office of the Clerk of Court for Newberry County, which fail to comply with the minimum area or other dimensional requirements of the districts in which they are located may be used for any of the uses permitted in the district in which it is located, provided that:

(a) Where the lot area is not more than 20% below the minimum specified in this chapter, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a certificate of zoning compliance.

(b) Where the lot area is more than 20% below the minimum specified in this chapter, or other dimensional requirements cannot be met, the Board of Zoning Appeals may, in its discretion, approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

(2) Recombination of nonconforming vacant lots. When the owner of a nonconforming vacant lot also owns land adjacent to the nonconforming lot, and the adjacent land or portion thereof can be combined with the nonconforming vacant lot to create a conforming lot or a more conforming lot (without creating other nonconformities), such owner shall, before selling or beginning any construction thereon, so combine the nonconforming lot and the adjacent land to create such lot.

(3) Nonconforming occupied lots. Nonconforming lots occupied by buildings or structures that fail to comply with the dimensional requirements for the district in which they are located may continue to be used, provided the specific nonconformity is not increased. The minimum yard requirements of this chapter shall not be construed as prohibiting the conversion of an existing building that does not meet the minimum yard requirements to another permitted use, so long as no further encroachment is made into the required yards.

(C) *Nonconforming uses.*

(1) Nonconforming uses of land or structures may continue only in accordance with the provisions of this section.

(2) A nonconforming use shall not be expanded. Expansion shall include an intensification of use, a



physical expansion that results in increased capacity or activity associated with the use, an extension of the hours of operation or number of days of activity and any similar change in activity or location. A nonconforming use of land outside a building shall not be extended, enlarged, or intensified on additional land after the effective date of this chapter.

(3) A nonconforming use shall not be moved from one location on a site to another location on the same site unless the property owner can demonstrate to the satisfaction of the Zoning Administrator that the relocation of the use will not increase the impacts of such use on the public, will not adversely affect adjacent properties, and will not have the effect of making the nonconformity more permanent.

(4) A nonconforming use shall not be changed to any other use unless the new use conforms to the standards of the zoning district in which it is located. Once a nonconforming use is changed to a conforming use, a nonconforming use shall not be re-established.

(5) Where a nonconforming use is discontinued or abandoned for a period of 180 days, then the use shall not be re-established or resumed and any subsequent use of the land or structure shall conform to the requirements of these regulations; provided, however, that commercial and industrial businesses established at the time this chapter is adopted or amended are exempt from this provision. Owners of manufactured homes that have been abandoned for a period not less than 6 months, and which are older than June 15, 1976, shall remove them permanently from all land/lots of Newberry County unless the owner can demonstrate to the satisfaction of the Board of Zoning Appeals that they will take significant steps to bring the unit into compliance with this chapter.

(6) No structural changes shall be made in any structure occupied by a nonconforming use except as follows:

(a) Those structural changes ordered by an authorized official in order to ensure the safety of the structure shall be permitted.

(b) Maintenance and repairs to keep a structure in sound condition shall be permitted.

(c) Structural changes necessary to convert the nonconforming use to a conforming use shall be permitted.

(d) An existing nonconforming residential structure may be enlarged or altered provided that no additional dwelling units result. Any such enlargement or alterations shall be in compliance with all yard requirements of the district and/or use.

(e) The structure and its accompanying use may be moved to another location on the lot so long as the structure meets all applicable requirements of the district.

(f) Any nonconforming use may be extended throughout any parts of a structure that were manifestly arranged or designed for the use at the time of adoption or amendment of this chapter.

**(D) *Nonconforming structures.***

(1) A nonconforming structure, devoted to a use permitted in the zoning district in which it is located, may continue in accordance with the provisions of this section.

(2) Normal repair and maintenance may be performed to allow the continuation of a nonconforming structure.

(3) Enlargement of a nonconforming structure for its current use on any property less than 2 acres in size may be allowed, provided that the following conditions shall apply:

(a) The original lot size must not be increased in order to accommodate the enlargement.

(b) The enlargement must not create or require additional on-site parking, and must not intensify the nonconforming use such that it creates peripheral off-site parking needs.

(c) The enlargement must not create additional noise, exterior lighting, or odor.

(d) The enlargement must not be accompanied by or made in conjunction with changes in operating hours.

(e) The enlargement must not create or be accompanied by changes in dimensions for lot access or signage.

(f) The enlargement must not violate yard or setback requirements for the existing district.

(4) Structural changes necessary to convert the nonconforming use to a conforming use shall be

permitted.

(5) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located.

(6) A nonconforming structure may be rebuilt, altered, or repaired in its pre-existing location after sustaining damage other than demolition, provided, however, that the structure is not expanded beyond the previous square footage unless in compliance with all other provisions of this section. A manufactured home may be replaced on the same lot with one that meets HUD standards and is of equal or larger square footage, provided that the unit must be replaced within 6 months of the destruction or removal.

(7) A nonconforming structure shall not be demolished and rebuilt as a nonconforming structure.

(8) Nonconforming signs, if present anywhere on the site, shall be removed prior to issuance of a change of use permit, issuance of a grading permit, or commencement of new construction on the site.

(E) Additional requirement for nonconforming accessory uses and structures. No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, discontinuance, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located.

(F) Additional requirements for nonconforming manufactured home parks.

(1) Nonconforming manufactured home parks may not be expanded or increased in size which shall include adding spaces to the park;

(2) When a site at a nonconforming manufactured home park is vacated, another manufactured home may not be placed on that site;

(G) Changes of tenancy and/or ownership. There may be a change in tenancy or ownership of an existing nonconforming use or structure provided there is no change in the nature or character of such nonconforming use or structure except as provided herein and all other applicable requirements of this chapter are met (e.g., parking, screening, landscaping, etc.).

(H) *Temporary nonconformances.* A temporary use permit may be issued by the Zoning Administrator for an appropriate period of time not to exceed a 12-month period for nonconforming structures such as manufactured homes, modular units, and storage containers incidental to building construction or land development, provided that the owner of the temporary nonconforming use agrees to remove the temporary nonconforming use upon expiration of the permit. The temporary use permit may be renewed by the Zoning Administrator for 1 additional 12-month period or for a total of 24 months for both permit and extension combined, whichever is greater.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.031 LOT COVERAGE.**

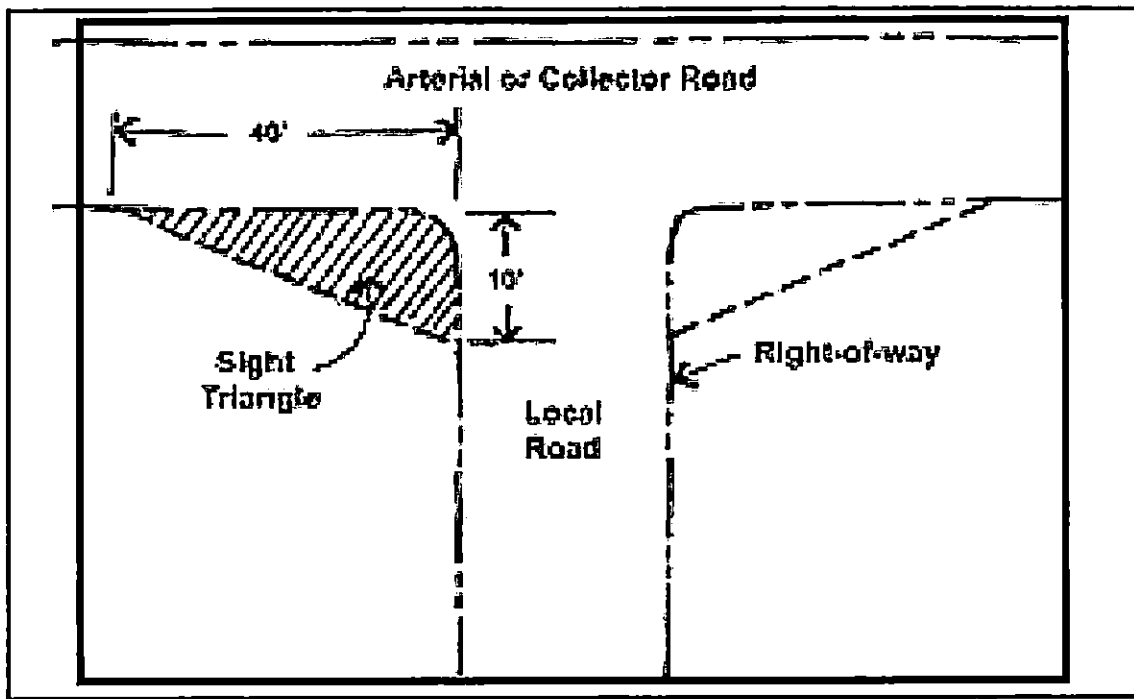
Any terrace, balcony, breezeway, porch, or portion thereof, or any solar collection device or related apparatus not included as floor area of the building shall not be included in computing lot coverage.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.032 VISIBILITY REQUIREMENTS, SIGHT TRIANGLE.**

No planting shall be placed or maintained and no fence, building, wall or other structure or obstruction shall be constructed or placed in such a manner as to obstruct visibility between a height of 3 feet and 10 feet measured from the upper face of the nearest curb or pavement within any required sight triangle.

(A) *Street intersections, corner lots.* Sight triangles shall be maintained at all street intersections (corner lots). These sight triangles shall be defined as a triangle bounded on 2 sides by the edge of pavement or curb of the streets and on the third side by a straight line connecting the endpoints of the other 2 sides. Along major roads, including arterial and collector roads, the length of the side of the sight triangle parallel to the road shall be at least 40 feet. Along all other roads, the length of the side of the sight triangle parallel to the road shall be at least 10 feet.



## Sight Triangle Diagram

(B) *Driveways.* Sight triangles shall be maintained where driveways intersect streets. These sight triangles shall be defined as a 10 by 10 foot triangle bounded on 1 side by the edge of pavement or curb of the street, side by the edge of driveway, and on the third side by a straight line connecting the endpoints of the other 2 sides. In the event that a driveway crosses a sidewalk, then the edge of sidewalk furthest from the street shall be used as a side in place of edge of pavement or curb.

(Ord. 06-11-16, passed 9-21-2016)

### § 153.033 FENCES AND WALLS.

(A) *In general.* The following standards shall apply to all fences and walls in all zoning districts unless otherwise noted.

- (1) Fences and walls shall be maintained in good order by the owner.
- (2) Fences shall not contain advertising, signs, or logos on the exterior of the fence unless deemed necessary by the Zoning Administrator.
- (3) Fences and walls shall be installed and maintained so as not to interfere with the sight distance requirements of this chapter or the sight distance needs of drivers in parking areas, at entrance and exit locations, and at street intersections.
- (4) Fences and walls shall be constructed such that the "finished" part of the fence or wall is located to the exterior of the property.
- (5) Nothing in this subsection shall preclude the installation of temporary fences around construction works, erected or maintained pursuant to the Building Code, soil erosion and sedimentation requirements, or tree conservation requirements.

(B) *Material and design.* The following standards shall apply to all fences and walls in all zoning districts, unless otherwise noted.

(1) Fences and walls within a development must be compatible in design, materials, and construction.  
 (2) Walls and fences shall be constructed of masonry, stone, wood, vinyl or similar material commonly used for fence construction.

(3) Walls and fences used for required screening shall be similar in composition and appearance as the principal building. Such walls and fences shall be opaque or shall be of a design approved by the Zoning Administrator, and must meet the requirements of § 153.183 - Screening.

(C) *Maintenance and safety.* Walls and fences shall be erected and maintained in a safe manner. Walls and fences not erected or maintained in a safe manner through neglect, lack of repair, manner of construction method of placement, or otherwise deemed unsafe by the county shall be repaired, replaced, or removed by the owner. Fences shall be maintained by the property owner.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.034 LIGHT AND GLARE.**

(A) *Applicability.* The provisions of this section shall apply to any and all exterior artificial light sources not otherwise having specific regulations.

(B) *Exemptions.* The following are exempted from the requirements of this section.

(1) Lighting fixtures and standards required by federal, state, county or city agencies, including street lights within public rights-of-way.

(2) Outdoor lighting fixtures used or required by law enforcement, fire and emergency services, transportation or similar governmental agencies to perform emergency or construction repair work, or to perform nighttime road construction on major thoroughfares.

(C) *Lighting.* Exterior lighting of buildings, properties, developments, signs or other features, and for any use, including, but not limited to, residential, commercial and industrial uses, shall meet the following requirements.

(1) All exterior light fixtures shall be fully shielded and installed in such a way that no light spills over onto adjacent properties or rights-of-way.

(2) Because of their unique requirement for nighttime visibility and their limited hours of operation, stadiums, ball fields, playing fields and tennis courts are exempted from the general standards of this section. However, lighting for these outdoor recreational uses shall be shielded to minimize light and glare trespass onto adjacent and nearby properties.

(3) No flashing lights shall be permitted.

(4) No installation or erection of any lighting which may be confused with warning signals, emergency signals or traffic signals shall be permitted.

(D) *Glare.* There shall be no direct or reflected glare, whether from floodlights, high temperature processing, combustion, welding, or otherwise, so as to be visible at the property line or right-of-way.

(1) *Safety hazard.* Any artificial light source which creates glare observable within the normal range of vision from any public walk or thoroughfare under normal weather conditions is considered a safety hazard and is prohibited.

(2) *Nuisance.* Any artificial light source which creates glare observable within the normal range of vision, under normal weather conditions, from any property other than the property where the light source is located is considered a nuisance and is prohibited.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.035 PARKING OF COMMERCIAL VEHICLES.**

To preserve the integrity of county roads, the following conditions shall apply to the overnight or regular parking of commercial vehicles weighing more than 10 tons within the County.

(A) No commercial vehicle shall be permitted to park on any county road right-of-way.

(Ord. 06-11-16, passed 9-21-2016)

### **ADMINISTRATION AND ENFORCEMENT**

#### **§ 153.046 ZONING ADMINISTRATOR.**

(A) This zoning ordinance shall be administered and enforced by the Zoning Administrator who shall

have all powers and duties authorized by statute and ordinance for a Zoning Administrator.

(B) The duties of the Zoning Administrator shall include:

- (1) Interpretation of terms and provisions of this chapter;
- (2) Administration of this chapter by the issuance of zoning permits and certificates of compliance, including the collection of authorized fees;
- (3) Review and issuance of administrative waivers per the requirements of § 153.051.
- (4) Processing applications for appeals to the Board of Zoning Appeals from the decision of the Zoning Administrator, variances, and special exceptions;
- (5) Preparation of the record for appeal to the circuit court from the decisions of the Board of Zoning Appeals;
- (6) Maintenance of the official zoning map, amendments to the zoning ordinance, and all public records related to zoning and planning;
- (7) Administration and enforcement of the zoning ordinance, and investigation and resolution of zoning complaints;
- (8) Serve as staff and provide administrative assistance to the Board of Zoning Appeals and the Joint Planning Commission with regard to their functions under this chapter; and
- (9) Any other duties as may be authorized by this chapter.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.047 COUNTY ADMINISTRATOR.**

The County Administrator shall appoint the Zoning Administrator and shall have the authority to exercise any and all duties and authorities assigned to such.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.048 ELECTED AND APPOINTED BOARDS AND COMMISSIONS.**

(A) *County Council.* The County Council shall have the following duties related to this chapter:

- (1) To review and from time to time initiate changes to this chapter.
- (2) To decide upon any application or request for amendment to this chapter or the official zoning maps.
- (3) To take any other action not otherwise delegated to staff, the Joint Planning Commission or the Board of Zoning Appeals as the County Council may deem desirable and necessary to implement the provisions of this chapter.

(B) *Joint Planning Commission.* The Joint Planning Commission, as established in §§ 33.15 through 33.21 of the Newberry County Code of Ordinances, shall have certain duties related to this chapter including but not limited to, the following:

- (1) To review and from time to time initiate changes to this chapter.
- (2) To review and make recommendations on applications for changes to this chapter or the zoning maps.

(C) *Board of Zoning Appeals.*

(1) *Board established.* A Board of Zoning Appeals is hereby established which shall consist of 7 members appointed by County Council. Members shall serve a 4-year staggered term to coincide with the terms of the council member making the appointment. A vacancy shall be filled for the unexpired term in the same manner as the original appointment. Members of the Board may be removed by Council for cause.

(2) *Elections and appointments.* The Board shall elect or re-elect 1 of its members as Chairperson for a term of 1 year. The Board may elect other officers as provided by its rules of procedure. The Board shall appoint a Secretary who may be an officer of the county approved by the County Administrator.

(3) *Rules of procedure.* The Board shall adopt rules of procedure and bylaws for the conduct of its meetings and hearings in accordance with S.C. Code § 6-29-790.

(4) *Quorum.* A quorum shall be required to take any official action. A majority of the Board members shall constitute a quorum.

(5) *Meetings.* Meetings of the Board shall be held at the call of the Chairperson or at such times as the Board may determine. Public notice of all hearings shall be published in a newspaper of general circulation in the county. Furthermore, notices for meetings involving variances or special exceptions as well as appeals

from a determination of the Zoning Administrator that have a site specific effect on a particular piece of property, shall be posted on or adjacent to property affected with at least 1 notice visible from each public street abutting the property, and shall be sent by first class mail to all adjacent property owners and the applicant. The Chairperson may administer oaths and compel attendance of witnesses by subpoena. The Board shall keep minutes of its proceedings, showing the vote of each member of each question, or if absent or failing to vote by reason of conflict, and shall keep records of its examinations and other official actions filed in the Office of the Secretary of the Board as public records.

(6) *Powers and duties.* The Board of Zoning Appeals has the following powers and duties.

(a) *Appeal from Zoning Administrator.* Any person aggrieved by any order, requirement, decision, or determination made by the Zoning Administrator pertaining to this chapter may appeal that decision to the Board of Zoning Appeals. Such an appeal must be made in writing on a form provided by the Zoning Administrator within 15 days after actual notice of the order, requirement, decision, or determination. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after notice of appeal shall have been filed with him, that by reason of facts stated in the appeal a stay would, in his opinion, cause imminent peril to life or property. The Board may affirm or reverse, wholly or in part, or may modify the decision by a written order separately stating findings of fact and conclusions of law.

(b) *Variances.* The Board may grant variances from the terms of this chapter according to the standards and procedures prescribed in § 153.052 Variances.

(c) *Special exceptions.* The Board may permit uses by special exception subject to the terms and conditions set forth for such uses by this chapter.

(7) *Decisions of the Board of Zoning Appeals.*

(a) In exercising the above powers, the concurring vote of the majority of the members present shall be required to reverse or affirm, wholly or in part, or modify any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which is required to pass under this chapter, and to that end, shall have the powers of the officer from whom the appeal is taken and may direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and, in case of contempt, may certify such fact to the circuit court having jurisdiction.

(b) All final decisions and orders of the Board must be in writing and be permanently filed in the Newberry County Planning and Zoning Department as public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board, and must be delivered to the parties of interest by certified mail or in person with verification of receipt.

(8) *Appeals from a Decision of the Board of Zoning Appeals.* A person who may have a substantial interest in any decision of the Board of Zoning Appeals, or an officer or agent of the county authorized by County Council, may appeal to circuit court in and for Newberry County by filing with the Clerk of Court a petition in writing setting forth plainly, fully and distinctly why the decision is contrary to law. The appeal must be filed with the Clerk of Court and Secretary of the Board within 30 days after the decision of the Board is mailed. Within 30 days after receipt of the notice of filing a petition, the Zoning Administrator or Secretary of the Board, with assistance of the County Attorney, shall file with the Clerk of Court a certified copy of the Board proceedings, including a transcript of evidence and findings and conclusions of the Board. Alternatively, a property owner whose land is the subject of a decision of the Board of Zoning Appeals may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with S.C. Code §§ 6-29-825 through 6-29-850.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.049 ZONING PERMITS.**

(A) *Permit required.* No building or land shall hereafter be used or occupied, and no building, sign, or structure shall be erected, moved, expanded, altered, or demolished without a zoning permit issued by the Zoning Administrator. No permit shall be issued by the Zoning Administrator except for a use which is in conformity with the provision of this chapter or for a use authorized by order of the Board of Zoning

Appeals.

(B) *Purpose of the permit.* The process of applying for and receiving a zoning permit serves to determine that the work and use as planned will meet the requirements of the zoning ordinance if conducted and completed according to the description provided by the applicant in the permit application. A zoning permit shall be required prior to issuance of building permits or any other work on or use of the land as described in division (A) above.

(C) *Fees for permits.* A fee established by regulation of County Council shall be paid for each zoning permit or certificate of zoning compliance issued by the Zoning Administrator.

(D) *Application requirements for permits.*

(1) Applications for zoning permits shall be accompanied by a site plan drawn to scale of all included parcels showing, at a minimum, the dimensions and shape of all parcels drawn to scale. A copy of the most recently recorded plat of the included properties drawn to scale with parcel dimensions is also required.

(2) The application shall include any other information as may be required by the Zoning Administrator to determine conformance with this chapter, including, but not limited to, existing or proposed buildings or alterations, existing or proposed uses of buildings and land, number of families, housekeeping units, rental units, existing conditions on adjacent property. Application requirements may be found on the County's website or obtained from the Zoning Administrator.

(3) The copy of the site plan shall be returned to the applicant with the signed approval or disapproval of the Zoning Administrator noted on the zoning permit application at the time of issuance.

(E) *Expiration of permits.* If the work described in a zoning permit has not begun within 6 months from the date of the permit and no valid building permit is outstanding for the work authorized by the zoning permit, or within the time specified by a special exception, the permit shall expire and be null and void. Once a zoning permit has expired, construction on the property in question cannot proceed until a new zoning permit has been issued.

(F) *Right of appeal.* If a request for a zoning permit from the Zoning Administrator is disapproved or if a ruling of the Zoning Administrator is questioned, the aggrieved party may appeal such ruling to the Board of Zoning Appeals in accordance with § 153.048(C)(6)(a).

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.050 CERTIFICATES OF ZONING COMPLIANCE.**

(A) *Certificates required.* It shall be unlawful for any person to use, occupy, or permit the use or occupancy of any building or property created, erected, changed, converted, altered, or enlarged, in whole or in part, until a certificate of zoning compliance has been issued by the Zoning Administrator stating the proposed use conforms to the requirements of this chapter.

(B) *Purpose of the certificate of zoning compliance.* The process of requesting and receiving a certificate of zoning compliance serves to determine that the work as completed and the use as established does, at the time the certificate is issued, meet the requirements of the zoning ordinance.

(C) *Temporary uses.* Certificates of zoning compliance may be issued and renewed by the Zoning Administrator for permitted temporary uses for the times permitted by the zoning district regulations. (Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.051 ADMINISTRATIVE WAIVERS.**

A zoning permit or certificate of zoning compliance may be issued for otherwise permitted uses by the Zoning Administrator without an application for a variance to the Board of Zoning Appeals under the following conditions:

(A) If a setback waiver of less than 18 inches is desired:

(1) The adjoining property owner affected certifies in writing his or her agreement to the requested waiver; and

(2) The adjoining property is vacant and undeveloped, or there exists double the required setback between all buildings on the adjoining property and the immediately adjoining property lines to the property whose owner is requesting the waiver.

(B) If a minimum lot width waiver of less than 3% of the required lot width is desired:

- (1) The waiver request is for only 1 new lot on any present lot of record;
- (2) The waiver request is for a platted subdivision containing not more than 2 planned lots in total, 1 of which will meet the required lot width;
- (3) The adjoining property owners affected certify in writing their agreement to the requested waiver; and
- (4) The adjoining properties are vacant or there exists double the required lot width on both adjoining properties.

(C) If a minimum lot size waiver of less than 5% of the required lot size is desired:

- (1) The waiver request is for only 1 new lot on any present lot of record;
- (2) The waiver request is for a platted subdivision containing not more than 2 potentially planned lots in total, all but 1 of which will meet the required lot width;
- (3) The adjoining property owners affected certify in writing their agreement to the requested waiver; and
- (4) The adjoining properties are vacant or there exists double the required lot size on both adjoining properties.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.052 VARIANCES.**

(A) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of this chapter, the Board of Zoning Appeals shall have the power to vary or modify any of the regulations or provisions of this chapter relating to the use, construction or alteration of buildings or structures or the use of the land so the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done.

(B) Anyone requesting a variance shall file such with the Zoning Administrator on a form provided by the Zoning Administrator. Applications shall be filed at least 28 days prior to the board of zoning appeals meeting at which it will be heard. Posting and notification requirements for hearings are provide in § 153.048(C)(5). At the hearing, any party may appear in person or by agent or attorney.

(C) A variance may be granted if the Board makes and explains in a written order all of the following findings and conclusions:

- (1) There are extraordinary and exceptional conditions pertaining to a particular piece of property;
- (2) These conditions do not generally apply to other property in the vicinity or in that district;
- (3) Because of these conditions, the application of the chapter to a particular piece of property would effectively prohibit or unreasonably restrict use of the property;
- (4) The authorization of the variance will not be a substantial detriment to adjacent property or to public good, and the character of the district will not be harmed by the granting of the variance; and
- (5) The effect of the variance would not allow the establishment of a use not otherwise permitted in the zoning district; would not extend physically a nonconforming use of the land; would not change the zoning district boundaries shown on the official zoning map.

(D) The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

(E) In granting a variance, the Board may attach to it the conditions regarding the location, character, or other features of the proposed building, structure or use as the Board may consider advisable to protect establish property values in the surrounding area, or to promote the public health, safety, or general welfare.

(F) Failure to begin or complete an action for which a variance is granted within the time limit specified as a condition of the variance shall void the variance.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.053 SPECIAL EXCEPTIONS.**

(A) A property owner or authorized agent may appeal to the Board of Zoning Appeals for a special exception for a use permitted by zoning district regulations as a special exception after review, subject to applicable criteria.

(B) A request for a special exception may be made by the owner of the property in question or an



authorized agent of the property owner, on a form provided by the Zoning Administrator.

(C) The Board shall review the request to determine compliance with this chapter and all applicable regulations within the County's planning jurisdiction.

(D) No special exception permit shall be approved by the Board of Zoning Appeals unless the following general findings of fact are made concerning the proposed special exception:

(1) The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to the information submitted.

(2) The use complies with all regulations and standards of this chapter.

(3) The use will not substantially injure the value of adjoining properties, or the use is a public necessity.

(4) The location and character of the use, if developed according to the information as submitted and approved, will be in harmony with the area in which it is to be located.

(5) The use will not create traffic impacts that will endanger public safety, or create or contribute to congestion.

(6) The use will not create noise, light, glare, odor, or obstruction of air flow on adjoining properties.

(7) That the proposed use will not be in conflict with but will further the objectives of the Newberry County Comprehensive Plan for the area in which it is located.

(E) In considering special exceptions, the Board may prescribe appropriate requirements and additional conditions deemed necessary to remove danger to health and safety, relieve or reduce adverse impact of a special exception, and to protect adjacent properties and the character of the area.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.054 AMENDMENTS.**

(A) *Authority.* This chapter, including the official zoning map, may be amended from time to time by the County Council as herein specified, but no amendment shall become effective unless it shall have first been submitted to the Planning Commission for review and recommendation.

(B) *Initiation of amendment.*

(1) An amendment to the official zoning map may be initiated by adopted motion of County Council, adopted motion of the Joint Planning Commission, the Zoning Administrator, the owner of the property affected, or an authorized agent with written authorization from the property owner.

(2) A request for a zoning map amendment by a property owner or their agent shall be initiated by submittal of a completed application form provided by the Zoning Administrator, accompanied by a copy of the most recently recorded plat for each included parcel and any other relevant supporting information for inclusion in the agenda packet for the Joint Planning Commission, and a filing fee established by resolution of County Council.

(3) An amendment to the zoning ordinance text may be initiated by adopted motion of County Council or adopted motion of the Joint Planning Commission. Any citizen may make a request for a text amendment to either body. Should the Council or Commission choose to act on such request, it shall direct the Zoning Administrator to study the request and present a recommendation at their next regular meeting. At that time, if the Council or Commission chooses to pursue the amendment, it shall direct the Zoning Administrator to prepare the amendment for their consideration at a later meeting.

(4) An identical amendment to the district designation of the same or a portion of the same property for which a rezoning has been denied shall not be initiated more often than once in each 12-month period after denial unless the Joint Planning Commission determines either:

(a) There has been a substantial change in the character of the area; or

(b) Evidence or factors exist which were not considered in the previous deliberations which might substantially alter the basis for the Joint Planning Commission recommendation.

(5) A complete application for amendment must be received at least 2 weeks prior to the Joint Planning Commission meeting in order to be considered at the meeting.

(C) *Minimum district size.* No amendment shall be initiated which would create a new zoning district with an area of less than 2 acres; except that the minimum area for a PDD (Planned Development District) district

shall be 10 acres. The minimum requirement does not apply to extension of an existing district, or addition of any commercial or industrial district to any other commercial or industrial district.

(D) *Amendment procedure.* The following procedural steps are required for adoption of a text or map amendment; amendments shall be initiated pursuant to division (B).

(1) Amendment ordinance shall be prepared in written form required by County Code.

(2) The proposed amendment shall be referred to Joint Planning Commission for review and recommendation.

(3) Property owners whose land is the subject of a proposed amendment shall be allowed to present oral or written comments to the Joint Planning Commission. If oral or written comments are to be presented by the property owner, the Commission shall give other interested members of the public, including adjoining property owners, 10-days' notice and allow them to comment in the same manner.

(4) Joint Planning Commission review shall include a determination of whether the proposed amendment is in conformity with the Newberry County Comprehensive Plan.

(5) The Joint Planning Commission shall file with County Council its report and recommendation on the proposed amendment within 30 days after receipt. If the Commission does not make a recommendation to approve, approve with conditions, deny, or defer a decision on a proposed amendment within 30 calendar days after the petition has been referred to it, then the Commission shall be considered to have recommended approval of the proposed amendment.

(6) Notice of a public hearing before County Council shall be published in a newspaper of general circulation in the County at least 15 days prior to hearing.

(7) Notices of public hearing shall be posted on or adjacent to property to be rezoned at least 15 days prior to the hearing, with 1 notice visible from each street bordering the property. Posted notices shall contain letters not less than 1 inch in height.

(8) Notice of public hearing shall be mailed at least 15 days prior to the hearing to adjacent landowners and groups which have filed a written request for notices.

(9) County Council may introduce an amendment ordinance for first reading and hold a public hearing on the same date. Joint Planning Commission recommendation shall be reviewed and considered.

(10) County Council, after receiving the recommendation of the Joint Planning Commission, shall within a reasonable time either reject the proposed amendment or approve the proposed amendment, with or without modifications, or defer action until it has time to consider any new evidence. County Council may adopt or reject the amendment ordinance per the requirements of § 31.57 of the Newberry County Code of Ordinances. Map amendments may be adopted or rejected for all or any portion of the property; however, a zoning district designation which was not included in the public notices shall not be adopted. An amendment may be withdrawn in writing by the initiator at any time prior to final action by County Council. A withdrawn amendment is not subject to the 12-month limitation in division (B)(4).

(11) Following action by County Council, any necessary changes per the amendment shall be made to the copy of the zoning ordinance maintained by Zoning Administrator and in the official copy of the County Code maintained by the County Clerk to Council. All adopted map amendments shall be reflected on the official zoning map.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.055 ENFORCEMENT.**

(A) *Penalties generally.* Where any building, structure or sign is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure, sign or land is or is proposed to be used in violation of this chapter, the Zoning Administrator may in accordance with the provisions of S.C. Code § 56-7-80, as amended, issue an ordinance summons, or institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use; or to correct or abate the violation or to prevent the occupancy of the building, structure or land. Each day such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use continues shall be deemed a separate offense.

(B) *Specific remedies.* Specific remedies for the violation of any provision of this chapter include the

following:

(1) *Permit revocation.* The Zoning Administrator may revoke any zoning permit issued by staff after written notification to the permit holder when violations of this chapter have occurred, when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or site plan, or a permit has been mistakenly issued in violation of this chapter.

(2) *Misdemeanor; penalties.* It shall be unlawful for any person to use property, or to construct, alter, enlarge, or demolish any structure without a permit or permits required by this chapter. Conviction for violation of this chapter is punishable as a misdemeanor under the general penalty provisions of the county code.

(3) *Withholding of permits.* The Zoning Administrator shall deny a zoning permit for any use or work which fails to comply with this chapter. The Zoning Administrator or other appropriate official shall withhold all other county permits for work which violates this chapter.

(4) *Stop-work orders.* The Zoning Administrator is authorized to issue a stop work order pursuant to S.C. Code § 6-29-950(B) requiring work to cease until specific code violations are corrected. Failure to comply with a stop work order of the Zoning Administrator is a misdemeanor punishable under the general provisions of the county code. Issuance of a stop work order may be appealed to the Board of Zoning Appeals.

(5) *Criminal penalties.* Any person violating any provision of this chapter shall upon conviction be guilty of a misdemeanor and shall be fined as determined by the court for each offense.

(6) *Injunction.* Enforcement of the provisions of this chapter may also be achieved by injunction. When a violation occurs, the Zoning Administrator may, either before or after the institution of other authorized action, apply to the appropriate division of court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

(7) *Order of abatement.* In addition to an injunction, the Zoning Administrator may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:

- (a) Buildings or other structures on the property be closed, demolished, or removed;
- (b) Fixtures, furniture or other moveable property be moved or removed entirely;
- (c) Improvements, alterations, modifications or repairs be made; or
- (d) Any other action be taken that is necessary to bring the property into compliance with this chapter.

(C) *Complaints.* A written complaint specifying facts showing a violation of this chapter filed by any person shall be investigated by the Zoning Administrator. Upon determination that a violation has occurred, the Zoning Administrator shall take appropriate enforcement action authorized by this chapter.

(D) *Ordinance summons.* The Zoning Administrator is authorized to issue an ordinance summons pursuant to county code provisions for violations of this chapter.

(Ord. 06-11-16, passed 9-21-2016)

## ZONING DISTRICT REGULATIONS

### § 153.067 ESTABLISHMENT OF ZONING DISTRICTS.

The following zoning districts are hereby established.

| <i>District</i>                 | <i>Primary Uses</i>       | <i>Minimum Residential Lot Size*</i> |
|---------------------------------|---------------------------|--------------------------------------|
| <i>Primary Zoning Districts</i> |                           |                                      |
|                                 | Rural                     | 1 acre                               |
| RS                              | Single-Family Residential | 20,000 sq. ft.                       |
| RSV                             | Single-Family Residential | 20,000 sq. ft.                       |
| RSM                             | Single-Family Residential | 15,000 sq. ft.                       |
| RG                              | General Residential       | 10,000 sq. ft.                       |

|                                          |                                      |      |
|------------------------------------------|--------------------------------------|------|
| LC                                       | Limited Commercial                   | None |
| GC                                       | General Commercial                   | None |
| IND                                      | Industrial                           | None |
| PDD                                      | Planned Development District         | None |
| <i>Overlay Districts</i>                 |                                      |      |
| CPO                                      | Corridor Protection Overlay District | None |
| AP                                       | Airport Overlay District             | None |
| * Or per applicable SC DHEC requirements |                                      |      |

(Ord. 06-11-16, passed 9-21-2016)

## § 153.068 PURPOSE OF DISTRICTS.

### (A) *Generally.*

(1) The zoning districts established in this chapter are for the purposes of guiding development in accordance with existing and future needs and promoting public health, safety, morals, convenience, order, appearance, prosperity, and general welfare, and all of the purposes set forth in S.C. Code §§ 6-29-710 *et seq.* This section sets forth the general purposes of the various zoning districts, however the specific regulations relating to permitted uses, conditional uses, and special exceptions are set forth in § 153.073 - Zoning District Table of Permitted uses, §§ 153.088 *et seq.* - Conditional Uses, and §§ 153.136 *et seq.* - Special Exceptions.

(2) The residential district regulations are designed to encourage a stable and healthy environment for residential purposes and to discourage encroachment by commercial, industrial, or other uses adversely affecting the residential character of the district. Any reference to residential districts in this chapter includes only the RS, RSV, RSM and RG districts.

(B) *Primary zoning districts.* Each primary use district serves a different purpose and imposes its own set of requirements and restrictions on the use of land in addition to the general requirements and restrictions imposed on all land or uses within the county.

(1) *R2 - Rural District.* The district is intended to be rural in nature, allowing low density residential uses including manufactured housing on individual properties, as well as home occupations, family day care, agriculture, forestry, hunting, and religious uses, but also accommodating complementary and associated uses such as recreation, government services, and appropriate service, commercial and industrial uses.

(2) *RS - Single-Family Residential District.* The RS District is intended to be residential with single-family, site-built dwellings and low population densities. Compatible uses such as home occupations, K-12 education, limited recreation, and religious uses are also allowed. Manufactured homes and businesses are not permitted.

(3) *RSV - Single-Family Residential District.* The RSV District is intended to be residential with detached single-family, site-built dwellings, typically in platted subdivisions, with low population densities. Compatible uses such as home occupations, K-12 education, limited recreation, religious uses, and limited use of recreational vehicles on a temporary basis for recreation are also allowed. Manufactured homes are not permitted.

(4) *RSM - Single-Family Residential District.* The RSM District is intended to be residential with detached single-family dwellings, including manufactured homes on individual properties, and low population densities. Compatible uses such as home occupations, K-12 education, and limited recreation and religious uses are also allowed.

(5) *RG - General Residential District.* The RG District is intended to accommodate a wide range of residential uses including detached single-family (site-built and manufactured homes), duplexes, multi-family, townhouses, and patio homes at higher population densities. Compatible uses such as home occupations, K-12 education, day care, recreation, and religious uses are also allowed. Manufactured home parks may be permitted as a special exception.

(6) *LC - Limited Commercial District.* The LC District is intended to accommodate a range of residential and lower intensity non-residential uses including office, institutional, single-family and multi-family residential, healthcare, food service, accommodations, and neighborhood commercial and service uses. The district is generally characterized by a mixture of residential and business uses along major thoroughfares.

(7) *GC - General Commercial District.* The GC District is intended to accommodate a variety of general commercial and non-residential uses characterized primarily by retail, including shopping centers; wholesale offices; educational institutions; healthcare, including hospitals; arts and entertainment; and service establishments in commercially-oriented areas.

(8) *IND - Industrial District.* The IND District is established to accommodate a wide variety of industrial uses involving research, manufacturing, processing, assembly, warehouses, and mining.

(9) *PDD - Planned Development District.* PDDs are individually designated by Council by zoning amendment, for which an approved development plan constitutes the district regulations. The district is intended to use the factors of efficiency, economy, flexibility, creative site design, improved appearance, mixture of uses, and maximize benefits from open space, safe and efficient vehicular and pedestrian access in a development characterized by a unified site design for mixed uses. A Planned Development District must include a mixture of residential and non-residential uses, and may be proposed in any part of the county.

(C) *Overlay Districts.* Overlay districts are established to provide for certain additional requirements or to establish special development requirements for permitted uses. Where overlay districts exist and there is a conflict between the requirements specified between the overlay and the underlying (primary) district, the standards of the overlay district shall prevail. Otherwise, the standards of the underlying (primary) district shall also be in effect for any area additional zoned as an overlay district.

(1) *CPO - Corridor Protection Overlay District.* The corridor protection overlay district is designed to preserve and enhance the overall visual appearance and quality of important roadway corridors within the county in order to preserve property values, promote economic development, and protect the image of Newberry County.

(2) *AP - Airport Land Use and Height Restriction Overlay District.* The purpose of the Airport Land Use and Height Restriction Overlay District (Airport Overlay District) is to promote compatibility between airport operations and neighboring land uses and to protect public health and safety by preventing the establishment of obstructions and hazards to aircraft in the vicinity of the Newberry County Airport. (Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.069 DISTRICT BOUNDARIES ON OFFICIAL ZONING MAP.**

The boundaries of the zoning districts established by this chapter are hereby established on a map or maps entitled official zoning map of Newberry County, SC, which map or maps is declared to be a part of this zoning ordinance.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.070 OFFICIAL ZONING MAP.**

The official zoning map shall be maintained by the Zoning Administrator. All zoning district boundaries shall be clearly shown on the Zoning Map, and amendments shall be recorded as soon as practicable after adoption. The official Zoning Map shall be available for public inspection in the Office of the Zoning Administrator. The official zoning map and any amendments adopted by County Council shall constitute the final authority for determination of zoning district boundaries. It shall be unlawful for any person to make unauthorized changes to the official zoning map.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.071 INTERPRETATION OF ZONING DISTRICT BOUNDARIES.**

(A) *Generally.* Where uncertainty exists as to the boundaries of any zoning district, the following general rules of interpretation shall apply. It is the duty of the Zoning Administrator to interpret the location of zoning district boundaries. An appeal from an interpretation of finding of the Zoning Administrator may be taken to the Board of Zoning Appeals as specified in § 153.048(C)(6)(a).

(B) *General rules of interpretation.*

(1) District boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow the center lines.

(2) District boundaries indicated as approximately following platted property lines shall be construed as following the property lines.

(3) District boundaries indicated as approximately following county limits shall be construed as following the county limits.

(4) District boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

(5) District boundaries indicated as following center lines of stream beds or other bodies of water shall be construed to follow the center lines.

(6) Supplementary flood plain and floodway boundaries indicated as following the U.S. Army Corps of Engineers 100-year flood plain line or the floodway line shall be construed to follow such lines.

(7) District boundaries indicated as approximately parallel to, or extensions of, features indicated in this section shall be so construed and at the distance therefrom as indicated on the official zoning map. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.

(8) Where a district boundary line as appearing on the official zoning map divides a lot in single ownership at the time of adoption of this chapter or subsequent amendment into 2 different zoning districts, the district least restrictive in the opinion of the owner shall be deemed to apply to the whole thereof. Provided, however, that in no case shall a zoning district boundary line dividing the lot be extended into either district in excess of 50 feet beyond the district boundary line dividing the lot.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.072 LOT DIVIDED BY ZONING DISTRICT BOUNDARIES.**

No structure or accessory use may be placed, structurally altered, or have a change in use where the structure or use is or would be included within 2 or more zoning districts unless the structure or use conforms to the requirements of all applicable districts.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.073 ZONING DISTRICT TABLE OF PERMITTED USES.**

(A) *Establishment of table.* The uses permitted in the residential, mixed use and non-residential zoning districts established by § 153.067 are set forth in the table of permitted uses provided in division (D).

(B) *Determination of use category.*

(1) The North American Industry Classification System (NAICS), 2012, as amended, is the basis for determining the use of property permitted in the various zoning districts. The Zoning Administrator shall make a determination as to whether or not any proposed use is permitted within the County's zoning jurisdiction based on the uses listed in division (D) of this section. Whenever it is not clear whether a proposed use is or is not permitted, the Zoning Administrator shall consult the 2012 North American Industrial Classification System (NAICS) to help make a determination. Any use not specifically listed in this section and any proposed use not substantially similar to a listed use as determined by the Zoning Administrator after consultation with the County Administrator and County Attorney shall be deemed to be prohibited.

(2) Uses not listed in the NAICS codes are identified by the symbol "NA" (Not Applicable) in the NAICS column.

(3) Where the symbol "P" is shown, the use to which it refers is permitted as a use by right in the indicated district, provided it complies fully with all applicable development standards of this chapter.

(4) Where the symbol "C" is shown, the use to which it refers is conditionally permitted in the indicated district, subject to applicable conditions and requirements provided in §§ 153.088*et seq.* Conditional uses are subject to all other applicable regulations of this zoning ordinance.

(5) Where the symbol "SE" is shown, the use to which it refers may be permitted only if reviewed and approved as a special exception, in accordance with the special exception provisions in §§ 153.136 - Special Exceptions and upon compliance with the general conditions provided in that section. Special exception uses are subject to all other applicable regulations of this zoning ordinance.

(6) Where a dash (-) is shown on the table, the use to which it refers is not permitted in the indicated district.

(C) *Determination of principal use.* When multiple principal uses are proposed for a development site, each principal use shall be classified separately by the Zoning Administrator and shall be subject to all applicable regulations for that use.

(D) *Zoning district table of permitted uses.*

| ZONING DISTRICT TABLE OF PERMITTED USES                              |            |        |        |             |             |        |        |        |         |                   |  |
|----------------------------------------------------------------------|------------|--------|--------|-------------|-------------|--------|--------|--------|---------|-------------------|--|
| Description of Use                                                   | 2012 NAICS | R<br>2 | R<br>S | R<br>S<br>V | R<br>S<br>M | R<br>G | L<br>C | G<br>C | IN<br>D | C/SE<br>Reference |  |
| RESIDENTIAL                                                          |            |        |        |             |             |        |        |        |         |                   |  |
| Cluster Development, Single-Family                                   | NA         | C      | C      | C           | C           | C      | -      | -      | -       | § 153.090         |  |
| Dwelling, Above Non-residential Use                                  | NA         | C      | -      | -           | -           | -      | C      | C      | -       | § 153.091         |  |
| Dwelling, Duplex                                                     | NA         | P      | -      | -           | -           | P      | P      | -      | -       |                   |  |
| Dwelling, Multi-Family                                               | NA         | -      | -      | -           | -           | S<br>E | -      | -      | -       | § 153.138         |  |
| Dwelling, Single-Family Attached<br>- Patio Home<br>- Townhouse      | NA         | -      | -      | -           | -           | C      | -      | -      | -       | § 153.092         |  |
| Dwelling, Single-Family Detached                                     | NA         | P      | P      | P           | P           | P      | P      | -      | -       |                   |  |
| Dwelling, Zero Lot Line                                              | NA         | -      | -      | -           | C           | C      | C      | -      | -       | § 153.093         |  |
| Equestrian Subdivision Development                                   | NA         | C      | -      | -           | -           | -      | -      | -      | -       | § 153.094         |  |
| Manufactured Home (built after June 15, 1976) on individual property | NA         | P      | -      | -           | P           | P      | -      | -      | -       |                   |  |
| Manufactured Home Park                                               | 531190     | -      | -      | -           | -           | S<br>E | -      | -      | -       | § 153.139         |  |
| Mobile Home (built before June 15, 1976)                             | NA         | -      | -      | -           | -           | -      | -      | -      | -       |                   |  |
| Rooming and Boarding House                                           | 721310     | P      | -      | -           | -           | -      | P      | P      | -       |                   |  |
| ACCESSORY USES TO RESIDENTIAL USES                                   |            |        |        |             |             |        |        |        |         |                   |  |
| Barns, Silos, Outbuildings for Agricultural Use and Equipment        | NA         | P      | -      | -           | -           | -      | -      | -      | -       |                   |  |
| Boat Dock, Private                                                   | NA         | P      | P      | P           | P           | P      | P      | -      | -       |                   |  |
| Boat Dock, Community (non-commercial)                                | NA         | P      | P      | P           | P           | P      | P      | -      | -       |                   |  |
| Domestic Animal Shelters                                             | NA         | P      | P      | P           | P           | P      | P      | -      | -       |                   |  |
| Family Day Care Home                                                 | 624410     | C      | C      | -           | C           | C      | C      | -      | -       | § 153.095         |  |
| Garage Apartment, Accessory to                                       | NA         | P      | C      | C           | C           | C      | -      | -      | -       | § 153.096         |  |

|                                                                                                                         |        |   |   |   |   |   |   |   |   |           |
|-------------------------------------------------------------------------------------------------------------------------|--------|---|---|---|---|---|---|---|---|-----------|
| Single-family Dwelling                                                                                                  |        |   |   |   |   |   |   |   |   |           |
| Garage for Motor Vehicle, Private                                                                                       | NA     | P | P | P | P | P | P | - | - |           |
| Garden and Greenhouse, Private (non-commercial)                                                                         | NA     | P | P | P | P | P | P | - | - |           |
| Home Occupation                                                                                                         | NA     | C | C | C | C | C | C | - | - | § 153.097 |
| Horse Stables, Horses for Personal Recreational Use                                                                     | NA     | P | C | C | C | C | P | - | - | § 153.098 |
| Junked Vehicle Storage                                                                                                  | NA     | C | C | C | C | C | C | C | C | § 153.099 |
| Open Parking Area for 1 Commercial Motor Vehicle per DU                                                                 | NA     | P | - | - | P | P | P | - | - |           |
| Private Swimming Pool with Deck, Bath House or Cabana                                                                   | NA     | P | P | P | P | P | P | - | - |           |
| Private Tennis Court, picnic facilities, Other Outdoor Recreation                                                       | NA     | P | P | P | P | P | P | - | - |           |
| Private Residential Community Recreation, Community Center, Common Area, or Storage Area (within residential community) | NA     | P | P | P | P | P | P | - | - |           |
| Structure for Storage of Building or Lot Maintenance Equipment                                                          | NA     | P | P | P | P | P | P | - | - |           |
| EDUCATION                                                                                                               |        |   |   |   |   |   |   |   |   |           |
| College or University                                                                                                   | 6113   | C | - | - | - | - | P | P | - | § 153.089 |
| Community or Junior College                                                                                             | 6112   | C | - | - | - | - | P | P | - | § 153.089 |
| Elementary, Intermediate or Middle School, Public and Private                                                           | 6111   | P | P | - | P | P | P | P | - |           |
| Kindergarten, Private                                                                                                   | 6111   | P | P | - | P | P | P | P | - |           |
| Other Schools and Places of Instruction                                                                                 | 6116   | C | - | - | - | - | P | P | - | § 153.089 |
| Preschool                                                                                                               | 624410 | P | P | - | P | P | P | P | - |           |
| Professional School                                                                                                     | 6114   | C | - | - | - | - | - | P | - | § 153.089 |
| High School, Public and Private                                                                                         | 6111   | P | P | - | P | P | P | P | - |           |
| Vocational, Technical and Trade School                                                                                  | 6115   | C | - | - | - | - | - | P | P | § 153.089 |
| HEALTH CARE AND SOCIAL SERVICES                                                                                         |        |   |   |   |   |   |   |   |   |           |
| Ambulance and EMS Services                                                                                              | 62191  | C | - | - | - | - | P | P | - | § 153.089 |
| Community Care and Assisted Living                                                                                      | 62331  | C | - | - | - | - | P | P | - | § 153.089 |

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|                                                              |                      |        |   |   |   |   |   |        |   |                        |
|--------------------------------------------------------------|----------------------|--------|---|---|---|---|---|--------|---|------------------------|
| Facilities for the Elderly                                   |                      |        |   |   |   |   |   |        |   |                        |
| Day Care Centers, Child and Adult                            | 624410<br>624120     | C      | C | - | C | C | C | C      | - | § 153.089<br>§ 153.100 |
| Home Health Care services                                    | 6216                 | C      | - | - | - | - | P | P      | - | § 153.089              |
| Hospital, General                                            | 6221                 | C      | - | - | - | - | - | C      | - | § 153.089<br>§ 153.101 |
| Hospital, Psychiatric and Substance Abuse                    | 6222                 | C      | - | - | - | - | - | C      | - | § 153.089<br>§ 153.101 |
| Hospital, Other Specialty                                    | 6223                 | C      | - | - | - | - | - | C      | - | § 153.089<br>§ 153.101 |
| Laboratory, Medical and Diagnostic                           | 6215                 | C      | - | - | - | - | - | P      | - | § 153.089              |
| Nursing Home                                                 | 6231                 | C      | - | - | - | - | C | C      | - | § 153.089<br>§ 153.102 |
| Other Ambulatory Health Care Services                        | 6219                 | C      | - | - | - | - | P | P      | - | § 153.089              |
| Outpatient Care Centers                                      | 6214                 | C      | - | - | - | - | P | P      | - | § 153.089              |
| Physician, Dentist, Other Health Care<br>Practitioner Office | 6211<br>6212<br>6213 | C      | - | - | - | - | P | P      | - | § 153.089              |
| Social Services and Assistance                               | 624                  | C      | - | - | - | - | P | P      | - | § 153.089              |
| GOVERNMENT                                                   |                      |        |   |   |   |   |   |        |   |                        |
| Correctional Institution, County                             | 922140               | C      | - | - | - | - | - | P      | - | § 153.089              |
| Correctional Institution, Other                              | 922140               | S<br>E | - | - | - | - | - | S<br>E | - | § 153.137<br>§ 153.140 |
| Executive, Legislative, General<br>Government                | 921                  | C      | - | - | - | - | P | P      | P | § 153.089              |
| Fire Services                                                | 92216                | C      | - | - | - | - | P | P      | P | § 153.089              |
| Judicial Building                                            | 922110               | C      | - | - | - | - | P | P      | P | § 153.089              |
| Police Services                                              | 922120               | C      | - | - | - | - | P | P      | P | § 153.089              |
| Post Office                                                  | 491                  | P      | - | - | - | - | P | P      | P |                        |
| ARTS, ENTERTAINMENT AND RECREATION                           |                      |        |   |   |   |   |   |        |   |                        |
| Amusement Arcade                                             | 713120               | -      | - | - | - | - | - | P      | - |                        |
| Amusement Ride                                               | 713990               | -      | - | - | - | - | - | P      | - |                        |
| Ball Field                                                   | 713990               | P      | - | - | - | - | - | -      | - |                        |
| Botanical Garden                                             | 712130               | P      | - | - | - | - | P | P      | - |                        |
| Bowling Center                                               | 713950               | -      | - | - | - | - | - | P      | - |                        |
| Campground & RV Parks, Commercial                            | 7212                 | S<br>E | - | - | - | - | - | -      | - | § 153.139<br>§ 153.141 |

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|                                                                                   |        |        |   |   |   |   |   |        |    |                        |
|-----------------------------------------------------------------------------------|--------|--------|---|---|---|---|---|--------|----|------------------------|
| Driving Range, Standalone                                                         | 713990 | P      | - | - | - | - | - | -      | -  |                        |
| Fairs                                                                             | 711310 | C      | - | - | - | - | - | -      | C  | § 153.103              |
| Fishing, Hunting and Trapping                                                     | 114    | P      | - | - | - | - | - | -      |    |                        |
| Fitness and Recreational Sports Center                                            | 713940 | C      | - | - | - | - | - | P      | -  | § 153.089              |
| Golf Course                                                                       | 713910 | P      | P | P | P | P | - | -      | -  |                        |
| Hunting Preserve                                                                  | 114210 | P      | - | - | - | - | - | -      | -  |                        |
| Marina, Public                                                                    | 713930 | P      | - | - | - | - | - | C      | -  | § 153.104              |
| Miniature Golf                                                                    | 713990 | C      | - | - | - | - | - | P      | -  | § 153.089              |
| Museum                                                                            | 712110 | C      | - | - | - | - | - | P      | -  | § 153.089              |
| Nature Park                                                                       | 712190 | P      | - | - | - | - | P | P      | -  |                        |
| Park with Playground                                                              | 713990 | P      | P | P | P | P | - | -      | -  |                        |
| Park and Recreation Facilities                                                    | 713990 | P      | - | - | - | - | - | -      | -  |                        |
| Performing Arts Facilities                                                        | 7111   | -      | - | - | - | - | - | S<br>E | -  | § 153.089<br>§ 153.142 |
| Racetracks                                                                        | 711212 | S<br>E | - | - | - | - | - | -      | SE | § 153.089<br>§ 153.142 |
| Recreational Day Camp                                                             | 611620 | C      | - | - | - | - | - | -      | -  | § 153.105              |
| Shooting or Archery Range                                                         | 713990 | C      | - | - | - | - | - | -      | -  | § 153.105              |
| Spectator Sport Complex                                                           | 71121  | S<br>E | - | - | - | - | - | -      | SE | § 153.137<br>§ 153.142 |
| Stadium                                                                           | 711310 | -      | - | - | - | - | - | -      | SE | § 153.089<br>§ 153.142 |
| Swimming                                                                          | 713940 | P      | P | P | P | P | P | -      | -  |                        |
| Tennis                                                                            | 713940 | P      | P | P | P | P | P | -      | -  |                        |
| Zoo                                                                               | 712130 | S<br>E | - | - | - | - | - | -      | SE | § 153.137<br>§ 153.143 |
| <b>RELIGIOUS AND RELATED USES</b>                                                 |        |        |   |   |   |   |   |        |    |                        |
| Educational Building, Religious (not including Preschool, School or Daycare uses) | 8131   | P      | P | P | P | P | P | P      | -  |                        |
| Parsonage or Parish House, Accessory to Religious Use                             | NA     | P      | - | - | - | - | - | P      | P  | -                      |
| Places of Worship                                                                 | 8131   | P      | P | P | P | P | P | P      | P  |                        |
| Recreation Facility, Accessory to Religious Use                                   | 8131   | P      | - | - | - | - | - | P      | P  | -                      |

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|                                                                                                                                                           |                |   |   |   |   |   |   |        |   |                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---|---|---|---|---|---|--------|---|------------------------|
| Religious Organizations                                                                                                                                   | 8131           | P | P | P | P | P | P | P      | - |                        |
| <b>SERVICE ORGANIZATIONS</b>                                                                                                                              |                |   |   |   |   |   |   |        |   |                        |
| Clubs, Civic and Social                                                                                                                                   | 8134           | - | C | - | - | - | - | P      | - | § 153.089              |
| Clubs, Civic and Social - no alcohol sales                                                                                                                | 8134           | P | - | - | - | - | P | P      | - |                        |
| <b>ACCOMMODATION AND FOOD SERVICES</b>                                                                                                                    |                |   |   |   |   |   |   |        |   |                        |
| Bed & Breakfast Inn                                                                                                                                       | 721191         | C | - | - | - | - | P | P      | - | § 153.089              |
| Drinking Places, Bars                                                                                                                                     | 7224           | C | - | - | - | - | P | P      | - | § 153.089              |
| Hotels and Motels                                                                                                                                         | 72111          | C | - | - | - | - | - | P      | - | § 153.089              |
| Restaurant, full service                                                                                                                                  | 722511         | C | - | - | - | - | P | P      | - | § 153.089              |
| Restaurant with drive-thru                                                                                                                                | 722513         | C | - | - | - | - | P | P      | - | § 153.089              |
| Special Food Service                                                                                                                                      | 7223           | C | - | - | - | - | P | P      | - | § 153.089              |
| <b>OTHER SERVICES</b>                                                                                                                                     |                |   |   |   |   |   |   |        |   |                        |
| Automotive Service, Repair and Maintenance                                                                                                                | 8111           | C | - | - | - | - | P | P      | - | § 153.089              |
| Car Wash                                                                                                                                                  | 811192         | C | - | - | - | - | P | P      | - | § 153.089              |
| Cemetery                                                                                                                                                  | 81222          | C | - | - | - | - | C | -      | - | § 153.125              |
| Dry Cleaning and Laundry                                                                                                                                  | 8123           | C | - | - | - | - | P | P      | - | § 153.089              |
| Funeral Home, Crematories                                                                                                                                 | 81221<br>81222 | C | - | - | - | - | P | P      | - | § 153.089              |
| Kennel, Other Pet Care Services                                                                                                                           | 812910         | C | - | - | - | - | C | C      | - | § 153.089<br>§ 153.106 |
| Landscaping Service                                                                                                                                       | 561730         | C | - | - | - | - | - | -      | - | § 153.089              |
| Large Animal Processing                                                                                                                                   | 311611         | C | - | - | - | - | - | -      | - | § 153.089<br>§ 153.126 |
| Personal Care Services (including Barber & Beauty shops, Nail Salons, Day Spas), excluding Tattoo Parlors and Sexually Oriented Businesses (NAICS 812199) | 8121           | C | - | - | - | - | P | P      | - | § 153.089              |
| Repair, Electronic and Precision Equipment, Commercial and Industrial Machinery and Equipment                                                             | 8112<br>8113   | C | - | - | - | - | P | P      | - | § 153.089              |
| Repair, Personal and Household Goods                                                                                                                      | 8114           | C | - | - | - | - | P | P      | - | § 153.089              |
| Sexually Oriented Business                                                                                                                                | 812199         | - | - | - | - | - | - | S<br>E | - | § 153.144              |
| Social Advocacy, Business, Professional and Similar Organizations                                                                                         | 8133<br>8139   | C | - | - | - | - | P | P      | - | § 153.089              |

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|                                                                                          |              |   |   |   |   |   |   |   |   |                        |
|------------------------------------------------------------------------------------------|--------------|---|---|---|---|---|---|---|---|------------------------|
| Tattoo or Body Piercing Establishment                                                    | 812199       | - | - | - | - | - | - | P | - |                        |
| Taxidermy                                                                                | 71510        | C | - | - | - | - | - | C | - | § 153.089<br>§ 153.127 |
| COMMERCIAL - RETAIL                                                                      |              |   |   |   |   |   |   |   |   |                        |
| Automotive Parts, Accessories and Tire Stores                                            | 4413         | C | - | - | - | - | - | P | - | § 153.089              |
| Beer, Wine and Liquor Store                                                              | 4453         | C | - | - | - | - | - | P | - | § 153.089              |
| Building Materials and Supplies                                                          | 4441         | C | - | - | - | - | - | P | - | § 153.089              |
| Clothing and Accessories Store                                                           | 448          | C | - | - | - | - | P | P | - | § 153.089              |
| Convenience Store with fuel pumps                                                        | 447110       | C | - | - | - | - | P | P | - | § 153.089              |
| Convenience store, without fuel pumps                                                    | 445120       | C | - | - | - | - | P | P | - | § 153.089              |
| Courier Services                                                                         | 492          | C | - | - | - | - | P | P | P | § 153.089              |
| Furniture, Home Furnishings, Electronics, Appliance Store                                | 442<br>443   | C | - | - | - | - | P | P | - | § 153.089              |
| Gasoline Station, without convenience store                                              | 447190       | C | - | - | - | - | P | P | - | § 153.089              |
| General Merchandise Stores                                                               | 452          | C | - | - | - | - | P | P | - | § 153.089              |
| Grocery and Beverage Store                                                               | 445          | C | - | - | - | - | P | P | - | § 153.089              |
| Health and Personal Care Store                                                           | 446          | C | - | - | - | - | P | P | - | § 153.089              |
| Jewelry Store                                                                            | 448310       | C | - | - | - | - | P | P | - | § 153.089              |
| Manufactured Home Dealer                                                                 | 453930       | C | - | - | - | - | - | P | - | § 153.089              |
| Mini-warehouse and Commercial Personal Storage                                           | 531130       | C | - | - | - | - | - | C | C | § 153.089<br>§ 153.107 |
| Motor Vehicle Dealers                                                                    | 4411<br>4412 | C | - | - | - | - | - | P | - | § 153.089              |
| Non-store Retailers                                                                      | 454          | C | - | - | - | - | P | P | - | § 153.089              |
| Nursery, Lawn/Garden Equipment and Supplies, Farm Supplies                               | 4442         | C | - | - | - | - | P | P | - | § 153.089              |
| Roadside Fruit and Vegetable Markets                                                     | 445230       | P | - | - | - | - | P | P | - | § 153.089              |
| Sporting Goods, Hobby, Music, Book Store                                                 | 451          | C | - | - | - | - | P | P | - | § 153.089              |
| Store Retailers, Other Miscellaneous (excluding NAICS 453930 - Manufactured Home Dealer) | 453          | C | - | - | - | - | P | P | - | § 153.089              |

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|                                                                                                                         |                 |        |        |        |        |        |   |   |    |                        |
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| Vending Machine Operators                                                                                               | 4542            | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| <b>COMMERCIAL - WHOLESALE</b>                                                                                           |                 |        |        |        |        |        |   |   |    |                        |
| Chemical and Allied Products, Wholesale                                                                                 | 424690          | -      | -      | -      | -      | -      | - | - | SE | § 153.145              |
| Durable and Nondurable Goods, Wholesale Trade (excluding NAICS 424690, 42393, 424710, 423140)                           | 42              | C      | -      | -      | -      | -      | - | P | -  | § 153.089              |
| Petroleum Bulk Stations and Terminals, Wholesale                                                                        | 424710          | -      | -      | -      | -      | -      | - | - | SE | § 153.145              |
| Salvage and Scrap Operations; Recyclable Materials Merchant, Wholesale; Used Motor Vehicles Parts, Wholesale; Junkyards | 42393<br>423140 | S<br>E | -      | -      | -      | -      | - | - | SE | § 153.137<br>§ 153.146 |
| <b>INFORMATION</b>                                                                                                      |                 |        |        |        |        |        |   |   |    |                        |
| Broadcasting and Telecommunication (except NAICS 5172 communications towers)                                            | 515<br>517      | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| Information and Data Processing                                                                                         | 518<br>519      | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| Motion Picture Production (except 512131 and 512132)                                                                    | 5121            | C      | -      | -      | -      | -      | - | - | P  | § 153.089              |
| Movie Theater (not drive-in)                                                                                            | 512131          | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| Movie Theater (drive-in)                                                                                                | 512132          | S<br>E | -      | -      | -      | -      | - | - | -  | § 153.137<br>§ 153.147 |
| Newspaper and Software Communications and publishing                                                                    | 511             | C      | -      | -      | -      | -      | P | P | P  | § 153.089              |
| Communication Tower, Cell and Antennas                                                                                  | 5172            | C      | S<br>E | S<br>E | S<br>E | S<br>E | C | C | C  | § 153.108<br>§ 153.148 |
| <b>PROFESSIONAL AND OFFICE</b>                                                                                          |                 |        |        |        |        |        |   |   |    |                        |
| Contractors, All Types                                                                                                  | 23              | C      | -      | -      | -      | -      | - | - | P  | § 153.089              |
| Finance and Insurance                                                                                                   | 52              | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| Pawn Shops                                                                                                              | 522298          | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| Professional, Scientific and Technical Services and Offices (excluding NAICS 54194 Veterinary Services)                 | 54              | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| Real Estate, Rental and Leasing                                                                                         | 53              | C      | -      | -      | -      | -      | P | P | -  | § 153.089              |
| Veterinary Services                                                                                                     | 541940          | C      | -      | -      | -      | -      | C | C | -  | § 153.089<br>§ 153.109 |
| <b>INDUSTRIAL - PROCESSING, MANUFACTURING, WAREHOUSING, DISTRIBUTION</b>                                                |                 |        |        |        |        |        |   |   |    |                        |

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|                                                                                     |                                                                                                             |        |   |   |   |   |   |   |   |    |                        |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|--------|---|---|---|---|---|---|---|----|------------------------|
| Fuel dealer                                                                         | 454310                                                                                                      | -      | - | - | - | - | - | - | - | P  |                        |
| Manufacturing, Limited, combination of structures is 3,000 sq. ft. or less          | 3112, 3114, 3115, 3118, 3119, 3121, 315, 3162, 3169, 323, 32711, 327999, 332, 333314, 334, 336991, 337, 339 | C      | - | - | - | - | - | - | - | P  | § 153.089              |
| Manufacturing, Limited, combination of structures exceeds 3,000 sq. ft.             | 3112, 3114, 3115, 3118, 3119, 3121, 315, 3162, 3169, 323, 32711, 327999, 332, 333314, 334, 336991, 337, 339 | S<br>E | - | - | - | - | - | - | - | P  | § 153.137              |
| Manufacturing, All Types (excluding NAICS 324 and 32592)                            | 31, 32, 33                                                                                                  | -      | - | - | - | - | - | - | - | P  |                        |
| Manufacturing, Petroleum & Coal Products                                            | 324                                                                                                         | -      | - | - | - | - | - | - | - | SE | § 153.149              |
| Manufacturing, Explosives                                                           | 325920                                                                                                      | -      | - | - | - | - | - | - | - | SE | § 153.149              |
| Warehousing and Storage                                                             | 493                                                                                                         | C      | - | - | - | - | - | - | C | P  | § 153.089<br>§ 153.110 |
| <b>TRANSPORTATION</b>                                                               |                                                                                                             |        |   |   |   |   |   |   |   |    |                        |
| Air Transportation, Public (including NAICS 48111 Air Traffic Control)              | 4811                                                                                                        | -      | - | - | - | - | - | - | - | C  | § 153.111              |
| Air Transportation, Private (including associated hangers and runways)              | 48121                                                                                                       | C      | - | - | - | - | - | - | - | C  | § 153.112              |
| Air Transportation Support                                                          | 4881                                                                                                        | -      | - | - | - | - | - | - | - | C  | § 153.111              |
| Bus and Rail Terminals                                                              | 488490<br>488210                                                                                            | -      | - | - | - | - | - | - | C | P  | § 153.113              |
| Transportation Support Activities (excluding NAICS 4881, 488490, 488210)            | 488                                                                                                         | C      | - | - | - | - | - | - | P | P  | § 153.089              |
| <b>UTILITIES AND INFRASTRUCTURE</b>                                                 |                                                                                                             |        |   |   |   |   |   |   |   |    |                        |
| Compost Facilities                                                                  | 562219                                                                                                      | C      | - | - | - | - | - | - | - | -  | § 153.089              |
| Electric Power Generation, not including solar farm (NAICS 221114)                  | 22111                                                                                                       | C      | - | - | - | - | - | - | - | P  | § 153.089              |
| Landfill, Class One and Two                                                         | 562212                                                                                                      | S<br>E | - | - | - | - | - | - | - | -  | § 153.137<br>§ 153.150 |
| Renewable Power Generation, Non-commercial, not including solar farm (NAICS 221114) | NA                                                                                                          | C      | - | - | - | - | - | - | - | P  | § 153.089              |
| Sewage Treatment Facilities                                                         | 22132                                                                                                       | C      | - | - | - | - | - | - | - | P  | § 153.089              |
| Solar Farm                                                                          | 221114                                                                                                      | -      | - | - | - | - | - | - | - | C  | § 153.124              |
| Waste Management and Remediation                                                    | 562                                                                                                         | S      | - | - | - | - | - | - | - | P  | § 153.137              |

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|------------------------------------------------------------------------------------------------------------------|-----------------------|--------|---|---|---|---|---|---|----|---|--|-----------|
| Services (excluding NAICS 562212)                                                                                |                       | E      |   |   |   |   |   |   |    |   |  | § 153.151 |
| Water Treatment Plants                                                                                           | 22131                 | C      | - | - | - | - | - | - | -  | P |  | § 153.089 |
| Utility, Public Utility Office or Operations Center only                                                         | 22                    | C      | - | - | - | - | P | P | -  |   |  | § 153.089 |
| <b>NATURAL RESOURCES - AGRICULTURE, FORESTRY, MINING/EXTRACTIVE</b>                                              |                       |        |   |   |   |   |   |   |    |   |  |           |
| Agricultural Support Activities                                                                                  | 115                   | P      | - | - | - | - | - | - | -  |   |  |           |
| Agriculture, Related Structures                                                                                  | 111<br>112            | P      | - | - | - | - | - | - | -  |   |  |           |
| Animal Production (except as otherwise listed)                                                                   | 112                   | P      | - | - | - | - | - | - | -  |   |  |           |
| Concentrated Animal Feeding Operations, all except Swine                                                         | 112<br>112112<br>1123 | C      | - | - | - | - | - | - | -  |   |  | § 153.114 |
| Concentrated Animal Feeding Operations, Swine                                                                    | 1122                  | S<br>E | - | - | - | - | - | - | -  |   |  | § 153.152 |
| Aquaculture                                                                                                      | 1125                  | P      | - | - | - | - | - | - | -  |   |  |           |
| Auctions, Livestock Wholesale                                                                                    | 424520<br>424590      | S<br>E | - | - | - | - | - | - | -  |   |  | § 153.153 |
| Cattle Ranching and Farming                                                                                      | 112111                | P      | - | - | - | - | - | - | -  |   |  |           |
| Crop Production                                                                                                  | 111                   | P      | - | - | - | - | - | - | P  |   |  |           |
| Horses and Other Equine Production                                                                               | 11292                 | P      | - | - | - | - | - | - | -  |   |  |           |
| Farmer's Markets per DHEC                                                                                        | 445230                | P      | - | - | - | - | - | - | -  |   |  |           |
| Forestry and Logging                                                                                             | 113                   | P      | - | - | - | - | - | - | P  |   |  |           |
| Mining                                                                                                           | 212                   | S<br>E | - | - | - | - | - | - | SE |   |  | § 153.154 |
| Mining Support Activities                                                                                        | 213                   | S<br>E | - | - | - | - | - | - | SE |   |  | § 153.154 |
| Nursery and Tree Production (including retail of plants grown on and offsite and associated compatible products) | 111421                | P      | - | - | - | - | - | - | -  |   |  |           |
| Poultry Hatcheries                                                                                               | 112340                | P      | - | - | - | - | - | - | -  |   |  |           |
| Slaughterhouse Operation                                                                                         | 112                   | S<br>E | - | - | - | - | - | - | -  |   |  | § 153.152 |
| <b>ACCESSORY USES TO NON-RESIDENTIAL USES</b>                                                                    |                       |        |   |   |   |   |   |   |    |   |  |           |
| Agritourism as defined in the S.C. Code of Laws, Accessory to Agricultural Uses                                  | NA                    | P      | - | - | - | - | - | - | -  |   |  |           |
| Completely Enclosed Building for Storage of Supplies or Merchandise for Use in the                               | NA                    | P      | - | - | - | - | P | P | P  |   |  |           |

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| Principal Business or Industry                                                   |        |        |        |        |        |        |   |   |   |   |           |
|----------------------------------------------------------------------------------|--------|--------|--------|--------|--------|--------|---|---|---|---|-----------|
| Helipad, Accessory to Commercial and Industrial Uses                             | 488119 | C      | -      | -      | -      | -      | - | - | C | C | § 153.115 |
| Housing, Accessory to Agricultural Use                                           | NA     | C      | -      | -      | -      | -      | - | - | - | - | § 153.116 |
| Junked Vehicle Storage                                                           | NA     | C      | C      | C      | C      | C      | C | C | C | C | § 153.099 |
| Open Outdoor Storage                                                             | NA     | C      | -      | -      | -      | -      | - | C | C | C | § 153.117 |
| Shed for Storage of Building or Lot Maintenance Equipment for Nonresidential use | NA     | P      | -      | -      | -      | -      | - | P | P | P |           |
| Solar Farm, Accessory Use                                                        | 221114 | -      | -      | -      | -      | -      | - | - | - | C | § 153.124 |
| Storage, Transport Container                                                     | NA     | C      | -      | -      | -      | -      | - | - | C | P | § 153.118 |
| <b>TEMPORARY USES</b>                                                            |        |        |        |        |        |        |   |   |   |   |           |
| Contractor office and equipment shed - temporary                                 | 23     | C      | C      | C      | C      | C      | C | C | C | C | § 153.119 |
| Manufactured Home, Emergency Housing                                             | NA     | C      | C      | C      | C      | C      | - | - | - | - | § 153.120 |
| Manufactured Home, Temporary Assistance                                          | NA     | S<br>E | S<br>E | S<br>E | S<br>E | S<br>E | - | - | - | - | § 153.155 |
| Manufactured Home, Temporary during Construction                                 | NA     | C      | C      | C      | C      | C      | - | - | - | - | § 153.121 |
| Portable On-demand Container (POD), as Temporary Storage                         | NA     | C      | C      | C      | C      | C      | C | C | C | C | § 153.122 |
| Recreational Vehicle, as Temporary Accommodation                                 | NA     | C      | -      | C      | -      | -      | - | - | - | - | § 153.123 |
| Recreational Vehicle, for Recreational Use Only                                  | NA     | P      | P      | -      | P      | P      | - | - | - | - |           |
| P = Permitted C = Conditional SE = Special Exception Dash (-) = Not Permitted    |        |        |        |        |        |        |   |   |   |   |           |

(Ord. 06-11-16, passed 9-21-2016)

#### § 153.074 PDD - PLANNED DEVELOPMENT DISTRICTS.

##### (A) *Planned Development Districts.*

(1) Planned development districts shall permit a mixture of different types of housing with compatible commercial uses, shopping centers, office parks and other mixed use developments.

(2) Flexibility in design, character, and quality of development and preservation of natural and scenic features are made possible through the approval of a plan which describes the specific uses, densities, setbacks, and other requirements for a planned development district.

(3) The approved plan shall constitute the district regulations for a particular planned development district.

(B) *PDD Requirements.* The following regulations shall apply in all PDD districts. Whenever there is a



conflict between these regulations and any other regulations in this chapter, the most stringent shall prevail.

(1) *Permitted uses in PDDs.* Any combination (mix) of uses meeting the objectives of this section may be established in a PDD upon review and approval by the Planning Commission and County Council. Once approved, these uses and no others shall be permitted. Said uses shall be identified as listed per § 153.073(D) - Zoning District Table of Permitted Uses. The list of approved uses shall be binding on the applicant and any successor in title, so long as PDD zoning applies to the land, unless otherwise amended by chapter.

(2) *Mixture of uses required.* For PDDs that are or are planned to be primarily residential, a minimum of 10% of the total gross area of the PDD must be reserved for office, retail, service, live-work units and other non-residential uses that serve the needs of project residents and others in the vicinity of the development. For PDDs that exist or are planned to be primarily non-residential, a minimum of 10% of the total gross area of the PDD must be reserved for residential uses.

(3) *Establishment of PDD Districts.*

(a) PDDs shall be established on the official zoning map by the same procedure as for amendments generally as provided in § 153.054 and in accordance with the requirements of this section.

(b) The developer/applicant shall arrange for preliminary meetings with the Zoning Administrator prior to submitting an application for rezoning.

(c) The Planning Commission will review the conceptual plan and text to ensure conformity with this section and applicable requirements of the Newberry County Subdivision Regulations, Chapter 154; to consider the comments of the staff review; and to obtain and consider public comments concerning the proposed PDD.

(d) Upon approval by County Council, the conceptual plan along with all supporting documentation and text shall constitute the PDD ordinance.

(4) *Infrastructure.* The developer is authorized to begin construction of streets and infrastructure following verification that the preliminary plat complies with all requirements specified by County Council, the Planning Commission, SC DHEC, Chapter 154 - Subdivision Regulations, and other approved conditions including recording of restrictive covenants.

(5) *Plat approval.* Preliminary and final plat approval shall also comply with Chapter 154 - Subdivision Regulations.

(6) *Mapping.* Each PDD shall be identified on the zoning map and in the zoning ordinance by a prefix and number indicating the particular district, as for example "PDD-1," together with whatever other identification appears appropriate.

(7) *Conceptual plan and text requirements.*

(a) A conceptual plan meeting the requirements for site plans contained in § 153.049(D) - Application requirements for permits shall be submitted along with a conceptual land use plan for the entire site. A complete application shall also include the following:

1. Additional site plan information provided to scale including: topography, vegetation, drainage, flood plains, wetlands, waterways, landscaping, open spaces, walkways, means of ingress and egress, vehicular circulation, utility services, structures and buildings, signs and lighting, berms, buffers, setbacks, screening devices, surrounding development, and any other information that may reasonably be required for review.

2. Proposed restrictive covenants and property owners' association documents to be recorded to ensure the establishment of any property owners association required to maintain common areas and to verify that no conflicts exist between the requirements of the PDD and those contained within the restrictive covenants. Notwithstanding this provision, Newberry County has no authority or responsibility to enforce deed restrictions.

3. A preliminary development schedule for the completion of roads, infrastructure, buffer yards, and any other proposed improvements for general use.

(b) The Planning Commission may establish additional requirements for conceptual plan approval and, in special cases, may waive a particular requirement if, in the opinion of the Planning Commission, the inclusion of that requirement is not essential to a proper assessment of the project.

(8) *Minimum area required.* Minimum area requirements for establishing a PDD shall be 10 contiguous acres in all districts.

(9) *Development standards.*

(a) *Density and height requirements.* Residential density, setbacks, impervious surface ratios, and building heights shall be based on the scale of the project in relation to its surroundings and its impact on existing and proposed support facilities. A 20-foot setback will be required along the perimeter of all property lines. The setback from any existing street shall be the lesser of 35 feet or the average setback of existing adjacent houses that front on the same street within 100 feet in either direction of the proposed building. Maximum density is 8 units per acre. Maximum impervious surface ratio is 70%.

(b) *Overall site design.* The overall site design shall be consistent and compatible with adopted plans and policies for the area in which the project is located and with adjacent residential neighborhoods and coordinated with existing infrastructure such as roads and sidewalks.

(c) *Parking and loading.* Off-street parking and loading spaces for each PDD shall comply with the requirements of §§ 153.197 *et seq.* - Parking and Loading Regulations, as applicable, for the various uses proposed for the PDD. Dense development may require supplemental parking areas or wider streets to allow on-street parking in addition to off-street parking requirements.

(d) *Buffers.* A buffer area at least 20 feet in width shall be provided along the exterior perimeter property line. Buffers are not required in the interior of the PDD.

(e) *Streets and infrastructure.* Streets within a PDD must meet the design and construction standards required by the Subdivision Regulations in Chapter 154 of the Newberry County Code of Ordinances.

(f) *Signage.* Signage permitted shall be consistent, appropriately scaled and aesthetically compatible with the proposed PDD and shall comply with the requirements of §§ 153.213 *et seq.* - Sign Regulations.

(g) *Open space.* The site design shall include designated common open space at a percentage appropriate for the size and configuration of the development. Such open space shall comply with the requirements of § 153.185 - Open Space.

(10) *Financial guarantees.* Where public improvements and/or common amenities or infrastructure are proposed, such improvements shall be installed in accordance with a development schedule to be approved as part of the PDD Plan and designed to specifications as required by Chapter 154 Subdivision Regulations. Whenever a land subdivision, as regulated by Chapter 154, is required to implement a PDD, a preliminary plat shall be prepared for review that conforms to all of the requirements of the PDD approval, including the approved conceptual plan and development schedule. No development shall take place onsite until such plat has been approved by the county.

(11) *Administrative action.* Building and zoning permits shall not be issued until the PDD is approved by County Council, and approved plats, the approved plan, and all required restrictive covenants are filed for record with the Clerk of Court for Newberry County, and all required bonds are posted with the Clerk to Council.

(12) *Changes in approved PDD plans.* Except as provided below, approved PDD plans shall be binding on the owner and any successor in title.

(a) *Minor changes.* Changes proposed in writing by the applicant which do not alter district boundaries and which involve revision or minor characteristics of the PDD such as revision of floor plans, facades, landscaping, drainage structures, and features which do not substantially alter the approved plan concept, anticipated offsite impacts, or violate any applicable regulations may be approved by the Zoning Administrator. The authority given to the Zoning Administrator to grant such minor changes shall be construed to be permissive and not mandatory and the Zoning Administrator may decline to allow such change. In the event this occurs, the applicant shall have the right to request a major change to the PDD as stipulated in division (b) below.

(b) *Major changes.* Changes proposed in writing by the applicant which alter district boundaries or which substantially alter the characteristics of the PDD shall be submitted under normal zoning amendment procedures applicable to establishment of the PDD.

(13) *Expiration of time limits on PDD Amendments.* The final approved plan for a PDD shall be in effect

for a period of 2 years or other specified development schedule. The owner of an approved PDD may apply in writing before the end of the 2-year approval period or other specified development schedule to the Newberry County Planning Commission for an annual 1-year extension. The Planning Commission may approve applications for up to 5 annual extensions of the approval period if a timely and proper written application has been filed with the Planning Commission. If no such application is made, the approval period or extension shall expire at the end of the approval or extension period.

(14) *Failure to begin; failure to progress; failure to complete.* If the responsible party fails to begin, fails to progress, or fails to complete development as agreed in the descriptive statement, County Council may charge the developer with violation of the zoning ordinance, may rezone the property, or may take any combination of these actions. In any event, if the planned development is not initiated within 2 years of its establishment, the Planning Commission shall initiate the rezoning of the property to an appropriate district classification in conformity with the comprehensive plan.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.075 OVERLAY DISTRICTS.**

(A) *Requirements.* The requirements of this section shall apply to the following districts established by § 153.067.

(1) **CPO.** Corridor Protection Overlay District.

(2) **AP.** Airport Height and Land Use Protection Overlay District (Airport Overlay District).

(B) *Establishment.* Overlay districts shall be established on the official zoning map by the same procedure as amendments generally, as provided in § 153.054 by defining the boundaries of each district.

(C) *Permitted uses.* Within overlay districts, permitted uses are determined by the "underlying" or primary zoning district. Where such districts overlay a Residential Zoning District, for example, only those uses permitted in the Residential Zoning District shall be permitted in the overlay district, subject to the additional requirements and standards of this section.

(D) *Corridor Protection Overlay District (CPO).* The corridor protection overlay district is designed to preserve and enhance the overall visual appearance and quality of important roadway corridors within the county in order to preserve property values, promote economic development, and protect the image of Newberry County. All regulations and requirements in the underlying zoning districts still apply within the overlay district except that the following uses shall be prohibited: junkyards, landfills, salvage and scrap operations, outdoor storage of any number of junked vehicles, CAFOs, manufactured home parks, commercial campgrounds and RV parks, communications towers, and sexually-oriented businesses. Landscaped road buffers along all road corridors in the CPO are required for new and expanded industrial and commercial uses and large subdivisions as provided in § 153.182 - Buffers and § 153.184 - Landscaping.

(E) *Airport Height and Land Use Protection Overlay District (AP).* The Newberry County Airport Height and Land Use Protection Overlay District (Airport Overlay District) establishes height and land use requirements for airport safety within the vicinity of the Newberry County Airport and provides for the administration, enforcement and amendment thereof.

(1) *Authority.* These provisions are adopted under authority granted by S.C. Code §§ 55-9-240 and 55-9-260.

(2) *Jurisdiction.* This chapter shall be applicable to the area designated within Newberry County in the vicinity of the Newberry County Airport. Graphic representation of the designated area and the requirements of the Airport Land Use and Height Restriction Overlay Zone may be reviewed at the Newberry County Planning and Zoning Department.

(3) *Phrases and abbreviations.* The following phrases and abbreviations pertaining specifically to the regulation of height and land use in the Newberry County Airport Height and Land Use Protection Overlay District shall have the meanings respectively ascribed to them by this division.

**AIRPORT.** The Newberry County Airport (EOE).

**AIRPORT COMMISSION.** The Newberry County Airport Commission.

**AIRPORT ELEVATION.** The highest point of an airport's usable landing area measured in feet (tenths) from mean sea level.

**AIRPORT OBSTRUCTION.** means any living or man-made structure or tree which obstructs the aerial approaches of the airport exceeding the maximum height of structures permitted in the airport operation area or is otherwise hazardous to its use for landing or taking off.

**AIRPORT OPERATION AREA.** Refers to all zones established in the Airport Overlay District.

**AIRPORT OVERLAY DISTRICT.** The Newberry County Airport Height and Land Use Protection Overlay District.

**AVIGATION EASEMENT.** Ownership of the right of imposition upon such property of overflight, excessive noise, vibration, smoke, dust, vapors, and particulates due to the operation of aircraft to and from the airport. Also includes the right to remove airport obstructions on said property.

**CONDITIONAL USE.** The associated land use groups are at a level of intensity or density, or location which is not considered to present a significant risk to the safety of persons on the ground or to persons in aircraft over flying the proposed use, contingent upon attainment of conditions presented (refer to 'C' Conditional Uses in the Airport Overlay District Land Use Matrix Table).

**DIMENSIONAL NONCONFORMITY.** A situation that occurs when the lot line does not conform to the regulations applicable to the zone in which the property is located.

**FAA.** The Federal Aviation Administration.

**FAR.** Federal Aviation Regulation.

**HEIGHT.** The vertical distance from the ground elevation to the highest point of a structure or tree, including any appurtenance thereon expressed as feet.

**HEIGHT LIMITATIONS.** No structure or tree shall be erected, altered, allowed to grow or maintained in any airport surface zone, with a height in excess of the height established for such zone. An area located in more than 1 of the Airport Overlay District zones is considered to be only in the zone with the more restrictive height limitation.

**LAND USE COMPATIBILITY.** The use of land adjacent to the Newberry County Airport that does not endanger the health, safety, or welfare of the owners' occupants, or users of the land.

**OPEN SPACE.** An area, land or water, generally lacking in man-made structures and reserved for enjoyment in its unaltered state.

**PERMITTED USE.** The associated land use groups are at a level of intensity or density, or location, which is not considered to present a significant risk to the safety of persons on the ground or to persons in aircraft over flying the proposed use (refer to 'P' Permitted Uses in Airport Overlay District Land Use Matrix Table).

**PRECISION INSTRUMENT RUNWAY.** A runway end having instrument approach procedure utilizing air navigation facilities with horizontal and vertical guidance, or area type navigation equipment, for which a straight-in precision instrument approach procedure has been approved or planned.

**PROHIBITED USE.** The associated land use groups are at a level of intensity or density, or location, which presents a significant risk to the safety of persons on the ground or to persons in aircraft over flying the proposed use (refer to Uses Not Permitted 'Dash (-)' in Airport Overlay District Land Use Matrix Table).

**RUNWAY END.** Existing physical end of the hard-surfaced asphalt runway, having a defined coordinate and elevation.

**STRUCTURE.** Any object, constructed or installed by human labor, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(4) *Height restrictions and limitations.*

(a) *Height restriction zones established.* In order to carry out this chapter, certain zones are hereby created and established by FAR Part 77, which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surface, and conical surface as they apply to the Newberry County Airport, for the existing runway configurations as per the Airport Layout Plan approved by the FAA on June, 15 2012. Graphic representation of these zones is provided as designated in § 153.075(E)(2). An area located in more than 1 of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones, for both the existing and ultimate runway configurations, are hereby established and defined as follows:

1. Part 77 airspace zones:

A. *Approach zones.* The approach zones are the areas beneath the Part 77 approach surfaces, as defined by 14 C.F.R. Part 77, § 77.19(d), or in successor federal regulations.

B. *Primary zone.* The primary zone is that area of the primary surface, as defined by 14 C.F.R. Part 77, § 77.19(c), or in successor Federal regulations.

C. *Transitional zones.* The transitional zones are the areas beneath the Part 77 transitional surfaces as defined by 14 C.F.R. Part 77, § 77.19(e), or in successor federal regulations.

D. *Horizontal zone.* The horizontal zone is the area beneath the Part 77 horizontal surfaces, as defined by 14 C.F.R. Part 77, § 77.19(a), or in successor Federal regulations.

E. *Conical zone.* The conical zone is the areas beneath the Part 77 conical surfaces, as defined by 14 C.F.R. Part 77, § 77.19(b), or in successor federal regulations.

(b) *Height limitations.* No structure or tree shall be erected, altered, allowed to grow or maintained in the height restriction zones to a height in excess of the height limit as determined by the airspace surface limitations, including dimensional and slope definitions, appearing on the maps referred to in Section 50 of this Document. The property owner of a tree, determined to be an airport hazard, shall be responsible for bringing such tree into conformance with this chapter.

(5) *Land use restrictions and limitations.*

(a) *Land use restriction zones established.* In order to carry out the requirements of this Airport Overlay District, certain zones are hereby created and established, which include land lying beneath the Airport Land Use Restriction Zones as they apply to the Newberry County Airport. Graphical representation of these zones is provided as designated in § 153.075(E)(2). An area located in more than 1 of the zones described herein is considered to be only in the zone with the more restrictive limitation. There are hereby created and established the following Airport Land Use Restriction Zones:

1. *Zone A.* Zone A is the Runway Protection Zone, as defined in the FAA Advisory Circular 150/5300-13A, Section 310, or in successor FAA advisory circulars.

2. *Zone B1.* Zone B1 is that portion of the Approach Zone, from the outer edge of Zone A to where each approach surface is 150 feet of height above their respective runway end elevations.

3. *Zone B2.* Zone B2 is that portion of the Approach Zone, from the outer edge of Zone B1 to the end of the Approach Zone, or 10,000 feet from inner edge of the Approach Zone, whichever it reaches first.

4. *Zone C.* Zone C is formed by offsetting the primary surface edge outward by 1,050 feet, and extending each of its ends to its respective runway end's approach zone, or extended and squared off at the outer edge of Zone B1, whichever that extension reaches first.

5. *Zone D.* Zone D is those areas of the Transitional and Horizontal Zones not part of Zones A, B1, B2, or C.

6. *Zone E.* Zone E is identical in area, dimensions, and location to the Conical Zone. Each zone is defined geographically for both the existing and ultimate runway configurations, as per the FAA-approved Airport Layout Plan dated June 15, 2012, and the zones are composited into the single Airport Land Use Restriction Zones map such that the most restrictive zone and criteria are applied. The order of the zones from most restrictive to least is A, B1, C, B2, D, and E.

(b) *Land use limitations.* Such applicable land use limitations are hereby established for each of the Airport Land Use Restriction Zones in order to prevent incompatible land uses which would compromise aeronautical activity at the Newberry County Airport, to protect people and property on the ground in case of an accident, to limit population and building density in the runway approach areas, to create sufficient open space, and to restrict those uses which may be hazardous to the operational safety of aircraft operating to and from the Newberry County Airport, and minimize injury to the occupants of aircraft involved in accidents. The land use limitations within Zones A, B1, B2, C, D, and E as provided in § 153.075(E)(5)(c) Newberry County Airport Overlay District Land Use Matrix Table shall apply to those portions of the parcel contained within the underlying Airport Overlay District zones as indicated on the attached Newberry County Airport Land Use Restriction Zones Map.

(c) *Newberry County Airport Overlay District Land use Matrix Table.* Refer to § 153.075(E)(5)(d) for

conditional uses as referenced in this table.

| <i>Newberry County Airport Overlay District - Land Use Matrix Table</i> |               |                |                |               |               |               |
|-------------------------------------------------------------------------|---------------|----------------|----------------|---------------|---------------|---------------|
| <i>Airport Land Use Restriction Zone Designation</i>                    | <i>Zone A</i> | <i>Zone B1</i> | <i>Zone B2</i> | <i>Zone C</i> | <i>Zone D</i> | <i>Zone E</i> |
| <b>RESIDENTIAL</b>                                                      |               |                |                |               |               |               |
| Dwelling, Single-Family Detached                                        | -             | -              | C7             | -             | C7            | P             |
| All Other Dwellings, including Temporary Housing                        | -             | -              | -              | -             | C2, C6, C7    | P             |
| <b>PUBLIC FACILITIES - INSTITUTIONS, UTILITIES</b>                      |               |                |                |               |               |               |
| Auditorium, Civic-Use Convention Center, Concert Hall                   | -             | -              | -              | -             | C1, C2        | P             |
| Cemeteries                                                              | -             | P              | P              | -             | P             | P             |
| Churches, Day Care Centers, Libraries, Museums, Social/Civic Clubs      | -             | -              | -              | -             | C1, C2        | P             |
| Convalescent Facilities, Group Homes, Nursing Homes                     | -             | -              | -              | -             | C2, C6, C7    | P             |
| Correctional Facilities, Hospitals, Schools                             | -             | -              | -              | -             | C1, C2        | P             |
| Electric Power Plants and Overhead Transmission Lines                   | -             | C1, C2         | C1, C2         | -             | C1, C2        | C1, C2        |
| Public Utilities (Excludes Electric Power Plants, Lines)                | -             | C1, C2         | C1, C2         | -             | C1, C2        | C1, C2        |
| Recycling, Solid Waste Transfer Stations                                | -             | C2, C3         | C2, C5         | C2            | C2            | C2            |
| Solid-Hazardous Waste, Landfills (excludes Transfer Stations)           | -             | -              | -              | -             | -             | -             |
| <b>RECREATION AND ENTERTAINMENT</b>                                     |               |                |                |               |               |               |
| Amusement Parks, Carnivals, Fairs, Outdoor Theaters                     | -             | -              | -              | -             | C6            | P             |
| Arcades, Bowling Alleys, Dance and Pool Halls, Skating Rinks            | -             | -              | C5             | -             | C6            | P             |
| Athletic fields, Parks, Picnic Areas, Playgrounds                       | -             | -              | -              | -             | C1, C2        | P             |
| Golf Courses, Tennis Courts                                             | -             | -              | P              | -             | P             | P             |
| Gyms, Health Spas                                                       | -             | -              | C5             | -             | C6            | P             |
| Swimming Pools, Water Park, Water Slides                                | -             | -              | P              | -             | P             | P             |
| <b>COMMERCIAL - BUSINESS, RETAIL, SERVICES, OFFICES</b>                 |               |                |                |               |               |               |
| Aeronautical Businesses                                                 | -             | -              | P              | P             | P             | P             |
| Animal Hospital, Kennels, Pet Boarding, Veterinary Clinic               | -             | C3             | C5             | -             | P             | P             |
| Appliance and Equipment Repair Facilities, Vehicle Wash                 | -             | C3             | C5             | C4            | P             | P             |

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|                                                                                                                            |   |        |    |    |    |   |
|----------------------------------------------------------------------------------------------------------------------------|---|--------|----|----|----|---|
| Banks, Financial Institutions                                                                                              | - | -      | C5 | -  | C6 | P |
| Bed and Breakfast, Hotels, Motels                                                                                          | - | -      | C4 | -  | C6 | P |
| Broadcast Studios                                                                                                          | - | -      | P  | -  | P  | P |
| Building & Lumber Materials, Vehicle Sales                                                                                 | - | -      | C5 | -  | P  | P |
| Camping Areas, RV Parks                                                                                                    | - | -      | C4 | -  | P  | P |
| Convenient Stores, General Retail Stores/Complexes, Restaurants                                                            | - | -      | P  | -  | P  | P |
| Food and/or Beverage Sales                                                                                                 | - | -      | C5 | -  | P  | P |
| Gasoline Service Stations                                                                                                  | - | -      | P  | -  | P  | P |
| General Offices, Executive Offices, Research Facilities                                                                    | - | C3     | C5 | C4 | P  | P |
| Home Improvement Centers                                                                                                   | - | -      | C5 | -  | C6 | P |
| Indoor Theaters                                                                                                            | - | -      | C5 | -  | C6 | P |
| Mass Transit Facility / Depot                                                                                              | - | -      | C5 | P  | C6 | P |
| Modular Self-Storage Facilities, Mini Storage Units                                                                        | - | C3     | C5 | C2 | P  | P |
| Personal Health Clinics, Personal Care Facilities                                                                          | - | -      | C5 | -  | P  | P |
| Shopping Malls, Shopping Centers                                                                                           | - | -      | C5 | -  | C6 | P |
| <b>INDUSTRIAL - PROCESSING, MANUFACTURING, WAREHOUSING AND DISTRIBUTION</b>                                                |   |        |    |    |    |   |
| Manufacturing, All Types (excluding those under Manufactured, Limited; and Petroleum and Chemical Products and Explosives) | - | -      | C5 | -  | C6 | P |
| Manufacturing, Limited (see Zoning District Table of Permitted Uses for NAICS references)                                  | - | C3     | C5 | C4 | C6 | P |
| Manufacturing and Bulk Storage of Petroleum and Chemical Products and Explosives, Fuel Dealer                              | - | C3     | C5 | -  | C6 | P |
| <b>NATURAL RESOURCES - AGRICULTURE, FARMING &amp; ANIMAL KEEPING, MINING</b>                                               |   |        |    |    |    |   |
| Animal Commodity Sales Yards, Other Animal Feed Lots, Stockyards                                                           | - | C2     | C2 | -  | P  | P |
| Animal Processing and Packaging                                                                                            | - | C2, C3 | P  | -  | P  | P |
| Concentrated Animal Feeding Operations (Commercial Hogs, Dairies)                                                          | - | P      | P  | -  | P  | P |
| Concentrated Animal Feeding Operations (Commercial Poultry)                                                                | - | P      | -  | -  | P  | P |

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|                                                                                                 |           |        |        |           |        |        |
|-------------------------------------------------------------------------------------------------|-----------|--------|--------|-----------|--------|--------|
| Crop Processing and Packaging, Wineries                                                         | -         | P      | P      | -         | P      | P      |
| Crop Production - Dry and Irrigated Farming                                                     | C1,<br>C2 | P      | P      | C1,<br>C2 | P      | P      |
| Equestrian Facilities, Exotic Animals                                                           | -         | C3     | C5     | -         | P      | P      |
| Farmer's Markets, Roadside Stands, Truck Farming                                                | -         | C2, C3 | C2, C5 | -         | P      | P      |
| Fish Farming, Game Preserves                                                                    | -         | N      | C2     | -         | P      | P      |
| Landscape Materials, Nurseries/Greenhouses, Specialty Crops                                     | -         | P      | P      | -         | P      | P      |
| Pasture and Rangeland Grazing                                                                   | -         | P      | P      | P         | P      | P      |
| Mining - Sand, Gravel, Fill Dirt                                                                | -         | -      | C1, C2 | -         | C1, C2 | C1, C2 |
| P = Permitted C = Conditional Dash (-) = Not Permitted *                                        |           |        |        |           |        |        |
| * Note: Reference Newberry County Airport Land Use Restriction Zones Map for Location of Zones. |           |        |        |           |        |        |

(d) *Conditional uses.* For all land uses shown as conditional in § 153.075(E)(6)(c) - Land Use Matrix Table, the following conditions apply, as applicable.

1. **C1.** Allowed only if use does not interfere with normal airport operations (as defined by the FAA/South Carolina Aeronautics Commission).
2. **C2.** Prohibits uses that constitute a hazard to flight, including but not limited to tall physical objects, glare, dust, or other visual or electric interference to a pilot and aircraft, and uses that may attract hazardous wildlife.
3. **C3.** Use intensity restricted to 5 or less persons per acres; or equivalent per household.
4. **C4.** Use intensity restricted to 15 or less persons per acre; or equivalent per household.
5. **C5.** Use intensity restricted to 25 or less persons per acre in structures/buildings; and 50 or less persons per acre outdoors.
6. **C6.** Use intensity restricted to 100 or less persons per acre.
7. **C7.** Residential land uses permitted, with residential fair disclosure required.

(e) *Other land use requirements.* Future applications made to Newberry County requesting approval manmade structures, which also require filing a notice with the FAA as per 14 C.F.R. Part 77, § 77.9, or in successor federal regulations, shall first submit a FAA form 7460-1, Notice of Proposed Construction or Alteration, to the FAA for a review of impacts to airspace in the vicinity of the Airport, prior to placing of the request on the Planning Commission meeting agenda. If the FAA determines an adverse impact to the airport's airspace may occur, the FAA decision should serve as governing height limitation for such a man-made structure.

(7) *Nonconformities.*

(a) 1. *Nonconformities - regulations not retroactive.* This regulation shall not be construed to require the alteration of any lot or removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this chapter, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, or intended use of any property or structure for which the construction or alteration was started or for which a building permit was acquired prior to the effective date of this chapter.

2. Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to allow the installations operation and maintenance thereon of such markers and lights as shall be deemed necessary by the Newberry County Airport Commission to indicate to the operators of aircraft in the vicinity of the airport the presence of such obstruction. Such markers and



lights shall be installed, operated and maintained at the expense of the Newberry County Airport. Reference FAA Advisory Circular 70-7460-1K, or successor advisory circulars, for further guidance.

(b) Existing structures in Airport Overlay District. Except as specifically provided in this section, it is not permissible for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. Physical alteration of structures or the placement of new structures on open land is unlawful if they result in an increase in the total amount of space devoted to a nonconforming use or greater nonconformity with respect to land use limitation.

1. *Abandoned structures.* Whenever the Newberry County Building and Inspection Department Manager determines that a nonconforming structure has been abandoned or more than 80% torn down (or damaged more than 80% of the current county tax value), physically deteriorated, or decayed, no permit shall be granted that would allow such structure to otherwise deviate from the height and land use regulations.

2. *Temporary structures.* Temporary structures constructed or erected incidental to a development, and solely used for the designated purpose, can only remain while needed and for a maximum of 1 year. (Ord. 06-11-16, passed 9-21-2016)

## **CONDITIONAL USE REGULATIONS**

### **§ 153.088 APPLICATION OF CONDITIONAL USES.**

The requirements of this subchapter shall apply to all conditional uses listed in § 153.073(D) - Zoning District Table of Permitted Uses, as applicable. A request for a conditional use shall be submitted to the Zoning Administrator who shall approve the use if all the conditions and requirements herein are satisfied. (Ord. 06-11-16, passed 9-21-2016)

### **§ 153.089 RURAL DISTRICT CONDITIONAL USES.**

In addition to single-family residential and agricultural uses, certain light commercial and industrial and substantially similar uses including uses in the healthcare, government, information, professional/office, transportation, and utilities use categories are considered to be appropriate for a rural area and as such may be allowed in the R2 district as listed in § 153.073(D) - Zoning District Table of Permitted Uses, provided the following conditions are met. These conditions do not apply to single-family residential and agricultural uses.

(A) Such uses may be associated with, but secondary to, a single-family residential use on the same property.

(B) Such uses must comply with conditions associated with the use, as provided in §§ 153.088*et seq.* - Conditional Uses and any applicable performance or other requirement as provided in this chapter, in addition to the following conditions. Where requirements differ, the more restrictive requirement shall apply.

(C) If the single structure or combination of structures to be included in the proposed non-residential, non-agricultural use exceeds 3,000 square feet in gross floor area, it must be permitted by special exception as provided in § 153.137 - R2 Rural District Special Exceptions.

(D) Where permitted, such uses shall meet the following conditions:

(1) A buffer of at least 100 feet shall be required from adjoining property lines of existing single-family residential uses and adjacent residentially zoned properties. Such buffer shall comply with the applicable requirements for buffers provided in § 153.182. If a different buffer width is required for an individual use the larger buffer shall apply. For uses requiring a special exception permit, the Board of Zoning Appeals may require a larger buffer after finding that potential offsite impacts warrant the increase.

(2) Maneuvering of associated vehicles of any size must be accommodated by and occur on the associated property.

(3) No uncovered open storage of waste materials shall be permitted in public view.

(4) Any manufacturing process shall be completely contained inside the permitted structure(s).

(5) *Performance standards.* Such uses must comply with the following performance standards:

(a) *Light.* As required by § 153.034 - Light and Glare.

(b) *Glare.* As required by § 153.034 - Light and Glare.

(c) *Odor.* There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive to a person of normal sensibilities at the property line or right-of-way.

(d) *Vibration*. A person may not cause or permit, beyond the property line of a source, vibration of sufficient intensity to cause another person to be aware of the vibration by such direct means as sensation of touch or visual observation of moving objects. The observer shall be located at or within the property line of the receiving property when vibration determinations are made.

(e) *Noise*. As required by §§ 90.01 through 90.99 - Noise of the Newberry County Code of Ordinances.

(6) *Exceptions to performance standards*. The following are exempted from the performance requirements of this division.

(a) Any exemptions provided by other regulations cited in this chapter.

(b) Vibration emanating from construction activities between the hours of 7:00 a.m. and 9:00 p.m. pursuant to a current building permit issued by Newberry County.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.090 CLUSTER DEVELOPMENT, SINGLE-FAMILY RESIDENTIAL.**

To encourage open space, residential cluster subdivisions are permitted in all zoning districts allowing single-family residential uses in accordance with the following conditions.

(A) Only single-family, site-built residential dwellings shall be allowed in a residential cluster subdivision.

(B) The minimum size of a residential cluster subdivision shall be 5 acres.

(C) Residential subdivisions are permitted to cluster lots and to reduce lot sizes in order to compensate for the minimum open space requirements established herein; however, density shall not exceed 3 dwelling units per acre.

(D) For lots along the exterior boundary of a cluster subdivision, setbacks for yards adjacent to such exterior boundaries shall be not less than 2 times the setbacks required for the district in which the subdivision is proposed to be located.

(E) A minimum of 25% of the development site shall be designated as open space and shall be so arranged as to mitigate the impacts of clustering on adjoining properties. Such open space shall meet the requirements of § 153.185 - Open Space.

(F) The minimum lot size and interior lot setbacks may not be reduced to less than 50% of the minimum lot size and setbacks for the district in which the cluster subdivision is located. However, zero lot-line development is allowed in residential cluster developments.

(G) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(H) The development shall be in compliance with Chapter 154 - Subdivision Regulations of the Newberry County Code of Ordinances, except as provided in this division.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.091 DWELLING, ABOVE NON-RESIDENTIAL USE.**

Dwellings above non-residential uses shall meet the following requirements where conditionally permitted.

(A) Use of the upper floors of commercial buildings may be converted or used for residential purposes where conditionally permitted, provided that the portion of the ground floor of the building which faces the sidewalk or other public road right-of-way continues to be used or dedicated for business or commercial use. A portion of the ground floor may also be used for residential garage or storage space, so long as the garage or storage space is located in the rear of the building.

(B) The dwelling unit must have access to a street as required by building and fire codes.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.092 DWELLING, SINGLE-FAMILY ATTACHED.**

Single-family attached dwellings (3 or more units), including townhouses and patio homes, shall meet the following requirements where conditionally permitted.

(A) No more than 6 contiguous housing units shall be built in a row.

(B) A minimum setback of 50 feet is required from all property lines abutting the development site.

(C) A minimum setback of 50 feet is required from all road rights-of-way abutting the development site. A minimum setback of 25 feet is required from all interior roads within the development site.

(D) A buffer of at least 25 feet in width is required along the side and rear property lines of the development site.

(E) No portion of a housing unit or accessory structure in or related to 1 group of contiguous housing units shall be closer than 20 feet to any portion of a housing unit or accessory structure related to another group, or to any building outside of the development.

(F) Maneuvering of associated vehicles of any size must be accommodated by and occur on the associated property.

(G) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site. (Ord. 06-11-16, passed 9-21-2016)

**§ 153.093 DWELLING, ZERO LOT LINE.**

Zero lot line dwellings shall meet the following requirements where conditionally permitted.

(A) A minimum setback of 50 feet is required from all property lines abutting the development site.

(B) A minimum setback of 50 feet is required from all road rights-of-way abutting the development site. A minimum setback of 25 feet is required from all interior roads within the development site.

(C) A buffer of at least 25 feet in width is required along the side and rear property lines of the development site.

(D) Maneuvering of associated vehicles of any size must be accommodated by and occur on the associated property.

(E) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(F) Where a unit is to be constructed at or on a property line, a 7-foot private maintenance easement shall be provided on the adjoining lot.

(G) At least 1 side yard extending not less than 7 feet from the property line shall be provided for each dwelling unit. Where a second side yard is provided, though not required, it shall also have a minimum width of 7 feet.

(H) All other setback requirements for the development, including front and rear yards for individual dwellings, shall be as provided for single-family detached dwellings, unless otherwise provided as part of a cluster subdivision.

(I) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site. (Ord. 06-11-16, passed 9-21-2016)

**§ 153.094 EQUESTRIAN SUBDIVISION.**

Equestrian subdivisions shall meet the following requirements where conditionally permitted.

(A) The development shall include only detached single-family units.

(B) Maximum density for such developments shall be 1 dwelling unit per 5 acres. However, minimum lot size for individual dwelling units may be less than 5 acres if the following requirements are met:

(1) The required maximum density of 1 dwelling unit per 5 acres for the development site as a whole is not exceeded; and

(2) In no case shall the minimum lot size for any individual dwelling unit be less than 2 acres.

(C) Minimum size of residential lots with accessory facilities for the keeping of farm animals shall be no less than 5 acres.

(D) A minimum of 30% of the development site area shall be open space as calculated per the requirements of § 153.185 - Open Space.

(E) The development shall be in compliance with Chapter 154 - Subdivision Regulations of the Newberry County Code of Ordinances, except as provided in this division.

(F) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(G) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site. Any access drives to structures shall be of sufficient width to allow access by emergency vehicles.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.095 FAMILY DAY CARE HOME.**

Family day care homes accessory to residential use shall meet the following requirements where

conditionally permitted.

(A) Care is limited to 6 children/adults, including those children or adults living in the home and children or adults received for day care that are related to the resident caregiver.

(B) The facility meets the minimum standards set forth by the S.C. Department of Social Services (children), the S.C. Department of Health and Environment Control (adults), and any other applicable licensing agencies.

(C) The child/adult day care function shall be clearly incidental and secondary to the occupied residential use of the building and there shall be no advertising of the family day care function on the site or structure.

(D) Child/adult care services utilize not more than 25% of the total heated floor area of the dwelling.

(E) Child/adult day care duties shall be conducted only by persons residing on the premises.

(F) Drop-off and pick-up of clients and associated parking must be accommodated and conducted on-site. The family day care home operation shall not generate any parking or traffic congestion.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.096 GARAGE APARTMENTS.**

Apartments above garages and accessory to a single-family dwelling, where conditionally permitted, shall meet the following requirements:

(A) The apartment cannot exceed 50% of the gross floor area of the principal dwelling or contain more than 2 bedrooms.

(B) The apartment must be a complete living space with kitchen and bathroom facilities separated from the principal unit.

(C) A garage apartment may be accessory only to a detached single-family dwelling, and not more than 1 apartment shall be allowed per dwelling or lot.

(D) The apartment shall meet all setback requirements.

(E) One additional off-street parking space will be provided on the dwelling property for the accessory apartment.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.097 HOME OCCUPATIONS.**

Customary home occupations accessory to residential use shall meet the following requirements where conditionally permitted.

(A) The home occupation shall be carried on wholly within the principal residence or accessory structure.

(B) The floor area dedicated to such use shall not exceed 25% of the floor area of the principal residence or 50% of an accessory building.

(C) No activity shall be conducted out of doors, and no associated outdoor storage, display, or refuse area shall be allowed in the yard.

(D) No merchandise or articles shall be displayed so as to be visible from outside the principal residence.

(E) No person not residing in the principal residence shall be employed on the premises.

(F) No traffic shall be generated in an amount above that normally expected in a residential neighborhood and no traffic hazard shall be caused by the home occupation.

(G) There is no alteration whatsoever of the residential character of the building(s) and/or premises.

(H) The occupation, profession, or trade shall not generate any health, safety or traffic hazard; or any noise, glare, heat, vibration, smoke, dust, or odor perceptible to adjacent uses.

(I) No display, rental, or sale of wholesale or retail goods or other commodity other than those prepared on the premises shall be allowed on the premises.

(J) The occupation shall not be used for receptions, parties, etc. in which the resident receives a fee or compensation.

(K) Signage for the home occupation shall be limited to 1 wall-mounted, non-illuminated wall sign with a maximum sign surface area of 2 square feet.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.098 HORSES AND HORSE STABLES, HORSES FOR PERSONAL RECREATIONAL USE, ACCESSORY TO RESIDENTIAL.**

Horses for personal recreational use and horse stables, barns or other shelters for horses accessory to a single-family residential dwelling, where conditionally permitted, shall meet the following requirements.

- (A) Horses and/or stables must be located upon the same property as the residential use.
- (B) Horses must be contained on the property by adequate fencing. Such fencing must meet the requirements of § 153.033 - Fences and Walls.
- (C) The minimum size of the property, including the dwelling, shall be 2 acres.
- (D) Stables or other structures housing horses shall be setback at least 100 feet from the nearest property line of any existing residential use or adjacent residentially zoned property.
- (E) Manure piles shall be located no closer than 50 feet to any adjacent property line.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.099 JUNKED VEHICLE STORAGE.**

To preserve property values and promote a positive community image, the following conditions shall apply to all junked vehicle storage that is accessory to any use within the county. For the purposes of this section, junked vehicle shall be defined as any vehicle, automotive or marine, that is mechanically inoperable, including any vehicle that is wrecked or partially dismantled, and has been unregistered for a period longer than 30 days.

- (A) No junked vehicles may be stored on any multi-family residential property.
- (B) No more than 2 junked vehicles may be stored outside an enclosed structure and such vehicles shall be screened from view of the primary public road right-of-way by an opaque screen as provided in § 153.183 - Screening.

(C) Any junked vehicle storage determined to be a primary use of the property shall comply with all regulations provided in § 153.146 - Salvage, Scrap and Recycling Operations.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.100 CHILD AND ADULT DAY CARE CENTERS.**

Child and adult day care centers shall meet the following requirements where conditionally permitted.

- (A) Care is provided to 7 or more children and/or adults.
- (B) The facility is licensed by the S.C. Department of Social Services (children) or the S.C. Department of Health and Environmental Control (adults) and meets the minimum standards set forth by that department and any other applicable licensing agencies.
- (C) The property upon which the day care center is located must be a minimum of 1 acre in size.
- (D) All structures shall be setback a minimum of 25 feet from any existing adjacent residential property or adjacent residentially zoned property.
- (E) No play area for a day care center shall be closer than 20 feet to any residential lot line.
- (F) An area adequate for loading and unloading children and/or adults shall be provided, and the area shall not be located within any public right-of-way.

(G) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.101 HOSPITALS.**

General hospitals, psychiatric and substance abuse hospitals, and other specialty hospitals shall meet the following requirements where conditionally permitted.

- (A) A minimum setback of 50 feet is required from any adjacent property with an existing residential use or adjacent residentially zoned property.
- (B) A buffer of at least 25 feet shall be required from any adjacent property with an existing residential use or adjacent residentially zoned property, per the requirements of § 153.182 - Buffers.
- (C) Primary vehicular access to the facility must be from a paved road with sufficient capacity to accommodate hospital traffic.

(D) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.102 NURSING HOMES.**

Nursing homes shall meet the following requirements where conditionally permitted.

(A) The property upon which the nursing home is located must be a minimum of 2 acres in size.

(B) All structures shall be setback at least 50 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(C) A buffer of at least 25 feet shall be required from any adjacent property with an existing residential use or adjacent residentially zoned property, per the requirements of § 153.182 - Buffers.

(D) Primary vehicular access to the facility must be from a paved road with sufficient capacity to accommodate traffic associated with the nursing home.

(E) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.  
(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.103 FAIRS.**

Fairs, fairgrounds, carnivals, circuses and concerts shall meet the following requirements where conditionally permitted.

(A) All structures, whether permanent or temporary, shall be setback a minimum of 100 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(B) Primary vehicular access to such uses must be from a paved arterial or collector road.

(C) Such uses shall operate no later than 11:00 p.m.

(D) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(E) These provisions are not applicable to fairs, carnivals, circuses, concerts or other events conducted within stadiums, arenas and other fully enclosed permanent facilities specially designed to accommodate such activities and events.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.104 MARINA, PUBLIC.**

Marinas for public use shall meet the following requirements where conditionally permitted.

(A) Minimum size of the property shall be 1 acre.

(B) A minimum setback of 50 feet is required from any adjacent property with an existing residential use or adjacent residentially zoned property.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.  
(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.105 RECREATIONAL DAY CAMPS, SHOOTING AND ARCHERY RANGES.**

Recreational day camps and shooting or archery ranges shall meet the following requirements where conditionally permitted.

(A) All recreational day camps and shooting or archery ranges, including structures, ranges, camp sites, and other facilities associated with these uses shall be setback a minimum of 100 feet from all adjacent property lines, except where contiguous properties are zoned for commercial (LC or GC) and/or industrial (IND) uses.

(B) All recreational day camps and shooting or archery ranges, including structures, ranges, camp sites, and other facilities associated with these uses shall be surrounded by a minimum 50 foot wide buffer, which meets the applicable requirements of § 153.182 - Buffers. Such facilities shall be surrounded by an opaque screen which meets the requirements of § 153.183 - Screening.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.  
(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.106 KENNELS AND OTHER PET CARE SERVICES.**

Commercial kennels and other pet care services shall meet the following requirements where conditionally permitted.

(A) Structures and animal enclosures shall be setback a minimum of 100 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(B) Animals shall be kept inside buildings at night.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.  
(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.107 MINI-WAREHOUSES AND COMMERCIAL PERSONAL STORAGE.**

In districts where conditionally allowed, mini-warehouses and other commercial personal storage facilities must meet the following conditions.

(A) *Size.* Mini-warehousing or commercial personal storage sites shall not exceed 4 acres in size.

(B) *Vehicles and parking.* Adequate vehicular maneuvering and parking must be accommodated.

(1) Vehicular ingress-egress shall be limited to 1 point for each side of the property abutting any street right-of-way.

(2) At least 4 parking spaces, designed to meet the requirements of § 153.200 - Parking Space Design Requirements, shall be provided in the vicinity of the leasing office.

(3) Drive aisles adjacent to all exterior storage unit doors shall be a minimum of 27 feet wide.

(4) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(C) *Buffers.* Property buffers shall meet the requirements of § 153.182 - Buffers.

(D) *Uses not allowed.*

(1) Outdoor storage shall be limited to licensed boats on trailers and licensed recreational vehicles. If such storage is to be provided, adequate parking must be provided to accommodate such vehicles.

(2) No retail or wholesale uses, residential activities, and storage of hazardous materials, or any other use other than personal storage shall be conducted within or from the storage units. Notice of such prohibition shall be provided to customers by a conspicuous sign posted at the entrance of the property or by provisions in the lease agreement, or both.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.108 COMMUNICATIONS TOWERS AND ANTENNAS.**

Communications towers and/or antennas shall meet the following requirements where conditionally permitted.

(A) *Permit required.*

(1) In all districts, any antenna co-located on an existing legally conforming structure that meets the conditions specified in division (C) below and all other applicable zoning requirements shall be permitted by right upon issuance of a valid zoning permit from the Zoning Administrator.

(2) In residential districts RS, RSV, RSM and RG a new antenna on an existing tower meeting the conditions specified herein, division (C), shall be a permitted use. New free-standing monopoles with a height not exceeding 100 feet are a permitted special exception upon issuance of and in accordance with the limitations of a special exception permit pursuant to § 153.053.

(3) In commercial districts LC and GC, a free-standing or guyed tower with a height not exceeding 180 feet is a permitted conditional use.

(4) In the rural district R2 and the IND industrial district, free-standing or guyed towers with height not exceeding 360 feet is a permitted conditional use.

(5) In Planned Development Districts, towers with height specified in an approved plan are permitted under conditions set forth in the plan.

(6) In districts in which communication towers and antennas are permitted, except in the Planned Development Districts, free-standing or guyed towers and antennas exceeding height limitations may be permitted by the Board of Zoning Appeals as a special exception upon issuance of and in accordance with the limitations of a special exception permit as detailed in § 153.053.

(B) *Application requirements.* The applicant for a conditional use zoning permit for construction of a communications tower or placement of a commercial telecommunication antenna on an existing structure other than a tower previously permitted must file with the Zoning Administrator an application accompanied by the applicable fee, as shown in the most recently adopted fee schedule, and the following documents:

(1) One copy of typical specifications for proposed structures and antennae, including description of design characteristics and material;

(2) A site plan, drawn to scale, showing property boundaries, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, and existing land uses on adjacent property;

(3) A current map, or update for an existing map on file, showing locations of applicant's antennae,

facilities, existing towers, and proposed towers which are reflected in public records, serving any property within the county;

(4) A report from a structural engineer registered in South Carolina showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with ANSI/EIAMA 222 (latest version) standards;

(5) Identification of the owners of all antennas and equipment to be located on the site;

(6) Written authorization from the site owner for the application;

(7) Evidence that a valid FCC license for the proposed activity has been issued;

(8) A line of sight analysis showing the potential visual and aesthetic impacts on adjacent residential districts;

(9) A written agreement to remove the tower and/or antenna within 90 days after cessation of use;

(10) Evidence that applicable conditions in division (C) are met; and

(11) Additional information required by the Zoning Administrator for determination that all applicable zoning regulations are met.

(C) *Conditions.* Applicant must show that for all permits all applicable conditions are met.

(1) The proposed communications tower, antenna, or accessory structure will be placed in a location that will minimize the visual impact on the surrounding area and allow the facility to function in accordance with minimum standards imposed by applicable communications regulations and applicant's technical design requirements.

(2) Applicant must show that a proposed antenna and equipment cannot be accommodated and function as required by applicable regulations and applicant's technical design requirements, without unreasonable modifications on any existing structure or tower owned by the applicant or any other structure owned by a private or public entity.

(3) Applicant for a permit in a residential district must show that the area cannot be adequately served by a facility placed in a nonresidential district for valid technical reasons.

(4) Applicant must show that a new tower is designed to accommodate additional antennae equal in number to applicant's present and future requirements and must submit a statement that they will act in good faith in negotiating use of the tower by other entities.

(5) Applicant must show that all applicable health, nuisance, noise, fire, building, and safety code requirements are met.

(6) A communications tower must not be painted or illuminated unless otherwise required by state or federal regulations or division (11)(c) below.

(7) A permit for a proposed tower site within 1,000 feet of an existing tower shall not be issued unless the applicant certifies that the existing tower does not meet applicant's structural specifications and applicant's technical design requirements, or that a collocation agreement could not be obtained.

(8) Applicant must show by certificate from a registered engineer that the proposed facility will contain only equipment meeting FCC rules, and must file with the Zoning Administrator a written indemnification of the County and proof of liability insurance (Comprehensive General Liability) or financial ability to respond to claims up to \$1,000,000 in the aggregate which may arise from operation of the facility during its life, at no cost to the county, in form approved by the county attorney. Co-locators proposing to locate on an existing structure are exempt from this requirement.

(9) Where a telecommunication tower is to be located on a lot with an existing principle use, the tower shall be located in the rear yard only. In addition, a recorded easement for an access road at least 12 feet wide shall be maintained by the property owner and applicant from a public street to the tower for use by service and emergency vehicles.

(10) Towers are prohibited on the tops of buildings or structures in all residential and business zoning districts.

(11) In the IND - Industrial Zoning District, towers may be permitted on roofs or walls after submittal of a report by a qualified and licensed professional engineer indicating the existing structure's suitability to accept the antenna, and the proposed method of affixing the antennae to the structure.



(a) Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated, for review by the county.

(b) Towers on roofs may be allowed when the tower height:

1. Does not exceed more than 30% of the height of the building; or
2. Is no more than 30 feet above the building/structure, whichever is less.

(c) Towers on roofs or walls shall be screened, constructed, and/or colored to match the structure to which they are attached.

(12) Applicants building new towers shall plan the fence and landscaping per the requirements of divisions (13) and (14) to accommodate all future providers on the site such that the fence and landscaping materials surround the land designated for all future equipment buildings and the tower.

(13) *Fencing.* A minimum 6-foot high chain link fence is required immediately around the telecommunications tower and any equipment building(s) since the tower can be considered an attractive nuisance. Barbed wire shall be used along the top of the fence and access to the tower area and equipment buildings shall be through a locked gate.

(14) *Landscaping.* A landscaped buffer 20 feet in depth shall be required along the outside area of the perimeter-fenced area(s) to mitigate the visual impacts of the tower and equipment buildings from nearby viewers.

(a) Landscape materials shall be planted within the required buffer and shall consist of 12 trees (1/3 shall be evergreen) and 20 shrubs required per 100 feet of buffer strip, planted at reasonable intervals to ensure plant health. Evergreen shrubs should be of a size expected to reach a minimum of 6 feet in height at maturity. Accommodations for reasonable access and use may be incorporated as necessary.

(b) All landscaping shall be irrigated and maintained to ensure good health and vitality.

(c) Screening requirements shall not apply to telecommunications providers who have camouflaged (stealth towers) towers or who have located antennas within another structure (such as a steeple), or who have co-located on an existing tower. Nor shall screening apply when an antenna will be mounted on an electrical transmission tower or on structures such as a water tower/tank, grain silos, etc. or similar structure.

(15) Land development regulations, visibility, landscaping, access, lot size, exterior illumination, sign, storage, and all other general zoning district regulations except setback and height, shall apply to the use. Setbacks, landscaping and screening, parking, fencing and height conditions shall be as specified in division (C) herein.

(16) A tower must be a minimum distance equal to 1/2 of the height of the tower from property officially designated historic or architecturally significant, and must be set back from all property lines distances equal to the district setback requirements or 25% of the tower height, whichever is greater. Notwithstanding the foregoing, all towers shall be a minimum of 300 feet from the nearest existing residential dwelling unit.

(17) The county recognizes that telecommunications facilities (both towers and co-locators) cannot be prohibited, nor can a request for a telecommunications tower be denied on the basis of environmental or health concerns relating to radio emissions if the telecommunications equipment and facility complies with the federal radio frequency emission standards. The county requires that each applicant must provide sealed documentation proving that their telecommunications equipment complies with the federal radio frequency emission standards.

(18) Any planned increase in tower height greater than 180 feet in total for an existing approved telecommunication tower shall require the provider to apply for a special exception permit in accordance with § 153.053.

(19) *Signs.* Freestanding signs in association with this use are prohibited. Wall signs shall be installed and/or mounted on the perimeter fence, or on the tower at its base. Wall signs shall be limited to:

(a) Identification signage allowed on equipment structures or fences surrounding the telecommunication tower/structure provided it does not exceed 9 square feet in size; and

(b) "No trespassing" signs, "danger - high voltage" signs, and other similar warning signs installed to discourage trespassing by unauthorized persons.

(20) Prior to issuing a permit, the county may consult with a communications expert for technical review to determine that the standards herein are met.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.109 VETERINARY SERVICES.**

Facilities providing veterinary services, both with and without boarding kennels, shall meet the following requirements where conditionally permitted.

(A) Structures and animal enclosures shall be setback a minimum of 100 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(B) Animals shall be kept inside buildings at night.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.110 WAREHOUSING AND STORAGE.**

Warehousing and storage facilities shall meet the following requirements where conditionally permitted.

(A) All structures shall be setback a minimum of 100 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(B) Site design shall ensure safe, predictable vehicular parking, access and movement onto and off of the site.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.111 AIR TRANSPORTATION, PUBLIC; AND AIR TRANSPORTATION SUPPORT.**

Public air transportation facilities (NAICS 4811), including structures, runways and other facilities associated with the use, and air transportation support facilities (NAICS 4881) shall meet the following requirements where conditionally permitted.

(A) Any public airport or other air transportation facility and any applicable air transportation support facility must meet the requirements provided in § 153.075(E) - Airport Overlay District.

(B) All applicable state and federal regulations are met and required approvals and permits have been obtained.

(C) Site design shall ensure safe, predictable vehicular parking, access and movement onto and off of the site.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.112 AIR TRANSPORTATION, PRIVATE.**

Private air transportation facilities (NAICS 48121), including hangers, runways and other facilities associated with the use, shall meet the following requirements where conditionally permitted.

(A) Any private air transportation facility must meet the applicable requirements provided in § 153.075(E) - Airport Overlay District.

(B) All applicable state and federal regulations are met and required approvals and permits have been obtained.

(C) All runways shall be setback a minimum distance of 500 feet from any adjacent property line and the road right-of-way.

(E) All structures, facilities and other improvements associated with the use shall be setback a minimum of 25 feet from any adjacent property line and the road right-of-way.

(F) Site design shall ensure safe, predictable vehicular parking, access and movement onto and off of the site.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.113 BUS TERMINALS AND RAIL TERMINALS.**

Bus terminals and rail terminals shall meet the following requirements where conditionally permitted.

(A) All structures shall be setback a minimum of 100 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(B) Site design shall ensure safe, predictable vehicular parking, access and movement onto and off of the site.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.114 CONCENTRATED ANIMAL FEEDING OPERATIONS.**

(A) Concentrated animal feeding operations (CAFOs) as defined by this chapter shall meet the following requirements where conditionally permitted.

(B) All applicable state and Federal regulations are met and required approvals and permits have been obtained. All requirements for CAFOs, except for new Swine CAFOs as defined by this chapter and as provided by § 153.152 - Concentrated Animal Feeding Operations for Swine, Slaughterhouse Operations, established and enforced by SC DHEC, per S.C. Code §§ 46-45-10 through 46-45-80, as amended.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.115 HELIPADS.**

Helipads accessory to commercial operations and industrial uses shall meet the following requirements where conditionally permitted. Helipads to be used for public safety purposes such as police, fire, hospitals, and emergency medical services are exempt from these standards.

(A) All applicable state and federal regulations are met and required approvals and permits have been obtained.

(B) The surface of the heliport shall be of such material that dust, dirt, or other objectionable matter will not be blown onto adjoining properties by helicopter operations.

(C) Helipads shall be setback a minimum of 500 feet from any adjacent property line and the road right-of-way.

(D) Any helipad must meet any applicable requirements provided in § 153.075(E) - Airport Overlay District.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.116 HOUSING, ACCESSORY TO AGRICULTURAL USE.**

The use of dwellings as accessory to agricultural uses to house farm workers shall meet the following requirements where conditionally permitted.

(A) Such dwellings must be permanent, site-built single-family, duplex or multi-family structures, or manufactured homes, and must be permitted per the regulations of Newberry County.

(B) Such dwellings must meet all applicable setbacks and buffers for the type of dwelling as required by this zoning ordinance.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.117 OPEN OUTDOOR STORAGE.**

Open outdoor storage of materials used in assembly, fabrication or processing and of waste materials as accessory to a commercial, industrial, institutional or other non-residential use shall meet the following requirements where conditionally permitted.

(A) Such open storage shall not occupy more than 25% of the buildable area of the property.

(B) Such open storage shall be screened from public view as detailed in § 153.183(F) - Screening Required for Features.

(C) Open storage shall not be located in any required setback or buffer area.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.118 TRANSPORT CONTAINERS AS ACCESSORY STORAGE.**

The use of transport containers as storage as accessory to a principal use shall meet the following requirements where conditionally permitted.

(A) Such use of transport containers shall require a zoning permit.

(B) Such container shall be screened from public view per the requirements of § 153.183(G) -Features for which screening is required.

(C) Such container shall not be located in any setback or buffer area.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.119 CONTRACTOR OFFICE AND EQUIPMENT SHED.**

The temporary use of contractor offices and equipment sheds shall meet the following requirements where conditionally permitted.

(A) The use must be associated with construction on the premises.

(B) Site design shall ensure safe, predictable vehicular parking, access and movement onto and off of the site.

(C) Use may continue for up to 1 year after permit is issued and the permit for temporary use may be renewed once.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.120 MANUFACTURED HOME, EMERGENCY HOUSING.**

The temporary use of a manufactured home as emergency housing following damage to a permanent dwelling by fire or natural disaster shall meet the following requirements where conditionally permitted.

(A) The manufactured home must meet the requirements of §§ 150.25 through 150.99 of the Code of Laws of Newberry County.

(B) Temporary use of the manufactured home may continue for up to 1 year after the permit is issued while repairs are being made to the permanent dwelling that was damaged.

(C) The permit for such temporary use may be renewed for an additional 6 months, provided repairs are in progress and are scheduled for completion by the expiration of the 18-month period. No additional extension past the 18-month period shall be granted.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.121 MANUFACTURED HOME, TEMPORARY DURING CONSTRUCTION.**

The temporary use of a manufactured home as housing by the owner of the property during construction of a permanent single-family residence shall meet the following requirements where conditionally permitted.

(A) The manufactured home must meet the requirements of §§ 150.25 through 150.99 of the Code of Laws of Newberry County.

(B) The manufactured home shall be occupied by the owner of the property who is constructing the permanent residence.

(C) The manufactured home shall be located on the same lot of record as the permanent residence that is under construction.

(D) Proof of ownership of the property in the form of a copy of a plat and a deed of the property upon which the residence is being built and the manufactured home is located shall be submitted to the Zoning Administrator.

(E) The applicant will remove the manufactured home from the property within 30 days of the issuance of a certificate of occupancy for the permanent residence.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.122 PORTABLE ON-DEMAND CONTAINER (POD) AS TEMPORARY STORAGE.**

The temporary use of portable on-demand storage containers shall meet the following requirements where conditionally permitted.

(A) *Permit required.* Use of such container for more than 7 consecutive days shall require a temporary zoning permit. However, use of such container for any period of time shall meet the requirements of this section.

(B) *Duration.* The structure may be located as a temporary structure for a period not to exceed 30 consecutive calendar days in duration from the date of issuance of the permit until the date of removal of the container. A 30 day extension may be granted by the Zoning Administrator if substantial evidence of need is provided in writing, which sets forth the reason the extension is needed. No more than 3 30-day extensions may be granted within any twelve month period.

(C) *Number of units.* No more than 2 PODs may be located on any property at 1 time.

(D) *Location.* PODs shall only be placed upon approved parking areas such as driveways and parking lots, or if space is available in the side or rear of the property.

(1) A POD shall be located no closer than 10 feet to any adjacent property line unless placed on an existing impervious driveway or surface and shall not obstruct sight distance for a driveway or road as required by § 153.032 - Visibility Requirements, Sight Triangle. PODs shall not be placed within any public right-of-way.

(2) POD units may not displace required parking spaces.

(E) *Size.* PODs located in residential zoning districts shall not exceed 8 feet in height, 8 feet in width and 16 feet in length.

(F) *Maintenance and safety.* The owner and operator of any property on which a POD is placed shall be responsible for ensuring that the unit is maintained in good condition, free from evidence of deterioration, graffiti, or other structural problems, at all times. It shall be the obligation of the owner or operator of such structure to secure it in a manner that does not endanger the safety of persons or property in the vicinity of the structure.

(G) *Storage allowed.* No retail or wholesale uses; residential activities; and storage of hazardous or illegal materials, solid or liquid waste, and construction or demolition debris; or any other use other than the temporary storage of materials shall be conducted within or from the POD unit.

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.123 RECREATIONAL VEHICLES AS TEMPORARY ACCOMMODATION.**

The temporary use of recreational vehicles as temporary accommodations shall meet the following requirements where conditionally permitted.

(A) No recreational vehicle (RV) subject to state licensing and/or registration which does not display a current license plate or decal shall be stored in any real estate parcel in the R2, RS, RSV, RSM, and RG zoning districts.

(B) Except as otherwise regulated by the state and the requirements of this zoning ordinance for commercial campgrounds and RV Parks, there is no restriction on the parking or recreational use of recreational vehicles in the R2, RS, RSM, and RG zoning districts.

(C) It is the intent of division (B) above with respect to the unrestricted use of recreational vehicles, that no occupancy or use of such vehicle rise to the level of permanent occupancy or use, and that any use remains temporary in nature.

(D) The legal owner(s) of any property on which an RV is located is responsible for any violation of this code.

(E) Any owner of the property where the RV is to be used, and/or the user of the RV, if different, is responsible for compliance with any SCDHEC regulations which apply to the use and occupancy of recreational vehicles otherwise permitted in this section.

(F) Notwithstanding the foregoing, in those zoning districts that allow a manufactured home to be used as a temporary residence by the owner of the property during the construction of a permanent residence on the same property, recreational vehicles may be used for the same purpose under the same conditions, restrictions, and regulations required for the manufactured home. This provision does not apply to the RSV district.

(G) *Conditions specific to the RSV zoning district.*

(1) It is the intent of this subsection that any occupancy or use of a recreational vehicle in the RSV zoning district be temporary and for recreational purposes only. Temporary use of a recreational vehicle (RV) is characterized by, but is not limited to the following:

- (a) No permanent connection to electric power for the RV.
- (b) No occupational or commercial use shall be associated with the RV.
- (c) The RV may not be used as a fixed place of abode or as a temporary abode during a period of employment or work as an independent contractor.
- (d) No permanent foundation is provided for the RV.
- (e) No porches, patios or storage buildings affixed or in close proximity to the RV.
- (f) The RV must be mechanically ready to be moved at all times under the motive power for which such unit is designed.

(2) No recreational vehicles shall be parked or stored on any real estate parcel or right-of-way in the RSV district for more than 24 hours, except in accordance with the temporary use restrictions set forth in § 153.123(G)(3) below.

(3) The temporary use of recreational vehicles in the RSV zoning district shall be subject to the following restrictions.

(a) The use of recreational vehicles shall be allowed only by permit, which shall be issued by the Newberry County Planning and Zoning Department only to property owner(s) of record, with each recreational vehicle requiring a separate permit for each permitted use period. Accurate vehicle licensing and registration information shall be provided for each vehicle permitted under these provisions as a condition of permit issuance.

(b) A maximum of 20 calendar days of recreational vehicle use may be allowed for each individual property in any calendar quarter, with each day for each recreational vehicle constituting 1 day's use (e.g., 2 recreation vehicles used on a given real estate parcel simultaneously for 10 calendar days constitutes 20 calendar days of recreational vehicle use for the individual property).

(c) For each calendar quarter, calendar days of recreational vehicle use not permitted shall expire (i.e., shall not accumulate or roll over) at the end of that calendar quarter. Calendar quarters 1 through 4 shall end at midnight on March 31, June 30, September 30, and December 31, respectively.

(d) No recreational vehicle use permit shall be issued for more than 10 consecutive calendar days, and no fewer than 2 calendar days shall elapse between permitted use periods, though overlapping permits for separate recreational vehicles may be continued as long as no unit is permitted for more than 10 calendar days consecutively, and provided that the use will not result in more than 20 calendar days having been permitted for the individual property in the calendar quarter.

(e) All property owners applying for permits for recreational vehicle use must pay an annual, non-refundable fee of \$25 at or prior to the first such permitted use in any calendar year. Annual fees paid for this purpose expire at midnight on December 31 of each calendar year, regardless of the date of permit issuance.

(f) Permits must be prominently displayed on recreational vehicles throughout permitted use periods.

(g) Recreational vehicle use permits shall be issued only during normal working hours of the Newberry County Planning and Zoning Department. Property owners are responsible for ensuring that applications for permits are submitted timely and should make such applications no less than 3 working days prior to the first date of intended use.

(h) Except as provided for in § 153.123(G)(2) above, no recreational vehicle shall be located on an individual property in an RSV zoning district without a recreational vehicle use permit first being issued by the Newberry County Zoning Office to the property owner. Failure to display a current recreational vehicle use permit shall be punishable by a fine assessed against the property owner, not to exceed \$500 per day.

(i) Property owners desiring more than 24 hours of recreational vehicle parking or storage may apply for permits under this section.

*(H) Conditions specific to the R2 zoning district.*

(1) *Purpose.* The purpose of this section is to enable limited use of recreation vehicles (RVs) as temporary accommodations for workers who will be working for a period of time in or near the County, but do not intend to permanently relocate to the area. This section does not apply to a single temporary RV as otherwise allowed by this zoning ordinance.

(2) *Conditions.* A property owner may apply for a temporary RV accommodation permit in the R2 zoning district shall meet the following conditions:

(a) The parcel must be 10 contiguous acres or larger.

(b) One such temporary RV may be allowed per acre, however RV units may be clustered as long as they comply with all other requirements of this section and the setbacks required in the R2 zoning district. No more than 5 temporary RVs shall be allowed for this use on 1 parcel.

(c) No portion of any RV may be located closer than 20 feet to any portion of another RV or from a permanent residence if one is on the parcel.

(d) Application must be made by the property owner for each temporary RV requested to be located on the property. Application for more than 1 temporary RV may be submitted for a property at the same time.

(e) Such temporary RV shall be maintained in a manner which will facilitate and enable its removal by the expiration date of the permit.

(f) The placement of the temporary RV must meet SCDHEC requirements for water and wastewater

connections and Newberry County requirements for temporary electrical service. Each proposed temporary RV dwelling shall have individual water, sewer and electrical service and connections and may not share such services with other temporary RV dwellings or permanent dwellings.

(g) A minimum setback of 100 feet is required between the perimeter of all RV sites and all property lines and the road right-of-way. A buffer of at least 50 feet in width is required along all side and rear property lines.

(3) *Application.* To apply for a temporary RV housing permit, the property owner shall submit the following information:

(a) A site plan drawn to a scale large enough to allow determination of the following:

1. The size and boundaries of the property;
2. The size and location of access, including driveways and access easements, from the parcel to a county, state or other public road;

3. The approximate location and size of all existing structures on the property; and

4. The proposed location and maximum size of all proposed temporary RV sites.

(b) Application and fees for electrical hookup for each proposed temporary RV as required by Newberry County.

(c) Approval for water and sewer service from the appropriate agency for each proposed temporary RV.

(4) *Permit term, renewal and revocation.*

(a) *Term.* A temporary RV housing permit issued to an applicant based on compliance with the requirements of this section shall be valid for a period not to exceed 12 months unless renewed according to the requirements of this section.

(b) *Renewal.* A request for renewal of a valid temporary RV accommodation permit shall be submitted by the applicant at least 45 days prior to the expiration of the temporary permit. Such request shall be made in writing to the Zoning Administrator.

(c) *Revocation.* If the Zoning Administrator determines that any of the requirements or conditions of this section or additional conditions imposed by the Board of Zoning Appeals have not been met, the Board of Zoning Appeals may revoke the temporary RV accommodation permit after notice to the property owner. If the permit holder fails to demonstrate to the satisfaction of the Board of Zoning Appeals that no grounds for revocation exist within 30 days, then the permit may be revoked.

(d) *Expiration.* Occupancy of the temporary RV shall cease immediately upon expiration of a temporary RV accommodation permit or within 14 days after mailing, by certified mail, of notice of revocation, whichever event shall occur first. All utilities shall be disconnected and the temporary RV dwelling shall be removed within 30 days after expiration or revocation of the temporary RV accommodation permit. An unoccupied RV may be stored on the property with all utilities disconnected as long as it meets the setback requirements for a manufactured home on an individual parcel, and any other applicable provision of this section or this zoning ordinance.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.124 SOLAR FARM.**

New solar farms or solar farms proposed to be expanded by more than 10% of original footprint shall meet the following requirements where conditionally permitted.

(A) *Site plan required.* A site plan drawn to scale shall be submitted to the Zoning Administrator by the applicant demonstrating compliance with the Solar Farm and all other applicable sections of this zoning ordinance. At a minimum, the plan must include:

- (1) Name of the project, names and addresses of the owner(s), engineers, and surveyors.
- (2) Date, scale and accurate north arrow.
- (3) Property boundaries, including dimensions and size.
- (4) Required setbacks and buffers.
- (5) Location of all proposed facilities, including solar collectors and proposed structures
- (6) Horizontal and vertical (elevation) to-scale drawings with dimensions that show the location of the

solar collectors and system.

(7) Any existing or proposed signs, fencing, lighting, parking areas, driveways, easements, fencing, gates, vegetative screening, and applicable landscaping.

(8) Adjacent property lines, noting properties that include existing residential uses or residentially zoned properties and other adjacent land uses.

(9) Adjacent roads and road rights-of-way.

(10) Required landscaping, as applicable.

(B) *Setback.* A minimum setback of 100 feet is required from all road rights-of-way and all adjacent property lines.

(C) *Buffer.* A buffer of at least 50 feet shall be required from any adjacent property with an existing residential use or adjacent residentially zoned property line and a buffer of 25 feet is required for all other adjacent property lines including road rights-of-way, per the requirements of § 153.182 - Buffers.

(D) *Screening.* Screening per the requirements of § 153.183 - Screening shall be provided for any adjacent property with an existing residential use or adjacent residentially zoned property line.

(E) *Height.* Systems, equipment and structures shall not exceed 20 feet in height, with the exclusion of associated electric transmission lines and utility poles.

(F) *Fencing.* A security fence at least 6 feet in height shall be provided around the perimeter of the solar farm facility and shall meet the requirements of § 153.033 - Fences and walls, however the security fence may be chain link for this use.

(G) *Preservation of existing vegetation.* Where possible, existing vegetation shall be protected and preserved in the required buffer and setback areas to provide natural screening for the use. If screening is required, existing vegetation may be used to meet screening requirements as provided in § 153.183(C)(2) - Natural Areas. Such preservation does not include areas designated for roads, driveways, or required parking areas.

(H) *Glare.* Solar collection equipment shall be installed so that no reflected glare is visible at the property line or right-of-way as required by § 153.034 - Light and Glare.

(I) *Decommissioning plan.* The applicant must provide a decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) that describes the anticipated life of the solar farm, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the solar farm project will be decommissioned and the site restored to its condition prior to the development of the solar farm.

(1) Decommissioning will be required following a continuous 6 month period in which no electricity is generated by the facility.

(2) The permit holder will have 12 months to complete decommissioning of the solar farm. Decommissioning shall include removal of solar panels, foundations, structures, cabling, electrical components, conduit, and any other associated facilities as described in the decommissioning plan.

(3) Prior to issuance of zoning permit, the applicant must provide the county with a performance guarantee in the form of an irrevocable letter of credit in the amount of 125% of the estimated decommission cost minus the salvageable value or \$50,000, whichever is greater. Estimates shall be determined by an engineer licensed to practice in South Carolina.

(J) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site, and shall accommodate safe access to the property by emergency vehicles.

(Ord. 06-11-16, passed 9-21-2016)

#### § 153.125 CEMETERIES.

Cemeteries, including gravesites, mausoleums, crematoriums, and columbariums, shall meet the following requirements where conditionally permitted.

(A) Minimum size of the property shall be 2 acres.

(B) The use, including gravesites, must meet all setback requirements for the applicable zoning district.

(C) One non-illuminated sign not over 30 square feet in area or 10 feet in height is allowed.

(Ord. 06-11-16, passed 9-21-2016)



**§ 153.126 LARGE ANIMAL PROCESSING.**

The processing of large animals including deer, but not including slaughterhouses as defined by this chapter and the State of South Carolina, shall meet the following requirements where conditionally permitted.

(A) Animal carcasses and any processing activities related to the use must be screened from view from road rights-of-way and adjacent property lines, either by storage in an enclosed structure or by an opaque screen as provided in § 153.183 - Screening.

(B) All animal remains must be discarded per applicable state regulations.  
(Ord. 06-11-16, passed 9-21-2016)

**§ 153.127 TAXIDERMY.**

(A) Animal carcasses and any processing activities related to the use must be screened from view from road rights-of-way and adjacent property lines, either by storage in an enclosed structure or by an opaque screen as provided in § 153.183 - Screening.

(B) All animal remains must be discarded per applicable state regulations.

(C) All hazardous materials associated with the use must be stored in an enclosed structure.

(D) There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive to a person of normal sensibilities at the property line or right-of-way.  
(Ord. 06-11-16, passed 9-21-2016)

**SPECIAL EXCEPTION REGULATIONS****§ 153.136 APPLICATION OF SPECIAL EXCEPTIONS.**

The requirements of this subchapter shall apply to all special exceptions listed in § 153.073(D) - Zoning District Table of Permitted Uses, as applicable. Requests for a special exceptions shall be submitted to the Zoning Administrator and reviewed by the Board of Zoning Appeals, per the requirements of § 153.053 - Special Exceptions. Conditions imposed on conditional uses shall also be imposed on special exceptions, where applicable, for the same use and in the same manner.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.137 R2 RURAL DISTRICT SPECIAL EXCEPTIONS.**

In addition to single-family residential and agricultural uses, certain light commercial and industrial and substantially similar uses including uses in the healthcare, government, information, professional/office, transportation, and utilities use categories are considered to be appropriate for a rural area and as such may be allowed in the R2 district as listed in § 153.073(D) - Zoning District Table of Permitted Uses, provided the conditions as listed in § 153.089 - R2 Rural Conditional Uses are met. If the single structure or combination of structures to be included in the proposed non-residential use exceeds 3,000 square feet in gross floor area, it must be permitted by special exception, provided the Board of Zoning Appeals finds that the conditions provided in § 153.089 - R2 Rural District Conditional Uses are met, in addition to applicable considerations as provided in division (A).

(A) Additional considerations for approval by special exception shall include, but are not limited to:

- (1) Proposed size of the structure;
- (2) Proposed location of the structure;
- (3) Type of and classification of use proposed;
- (4) Distance to existing residences or residentially zoned properties;
- (5) Hours of operation, to include deliveries and shipping;
- (6) Projected number of employees for largest shift.
- (7) Probable sensory impacts to neighboring properties including, but not limited to: noise, odor, vibration, light and glare;
- (8) Primary vehicular access on a paved arterial or collector road; and
- (9) Traffic impacts including, but not limited to: deliveries, shipping, customers, and workers.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.138 DWELLING, MULTI-FAMILY.**

Multi-family buildings and developments shall meet the following requirements where permitted by special exception.

- (A) A minimum setback of 100 feet is required from all property lines and the road right-of-way.
- (B) A buffer of at least 50 feet in width is required along the side and rear property lines.
- (C) Primary vehicular access to the multi-family building/development must be from a paved arterial or collector road.
- (D) Maneuvering of associated vehicles of any size must be accommodated by and occur on the associated property.
- (E) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site. Access drives to all dwellings shall be of sufficient width to allow access by emergency vehicles.
- (F) All off-street parking areas and driveways must be paved with asphalt, concrete, brick pavers, or permeable pavements including interlocking paving systems and porous pavement as approved by the Zoning Administrator.
- (G) A minimum of 20% of the development site area shall be designated as open space and shall meet the requirements of § 153.185 - Open Space.
- (H) The use will not substantially injure the value of adjoining properties.
- (I) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.
- (J) Additional conditions may be imposed to ensure that the use will not create a safety, health or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.139 MANUFACTURED HOME PARKS.**

Manufactured home parks may be permitted by special exception in the RG zoning district, provided the Board of Zoning Appeals finds that the following conditions are met.

- (A) Manufactured home parks shall meet the requirements specified in the Chapter 154 -Subdivision Regulations of the Newberry County Code of Ordinances.
- (B) *Area.* A manufactured home park shall contain a minimum of 8 acres.
- (C) *Density.* Maximum density for a manufactured home park is 5 units per acre.
- (D) *Unit space.* A minimum of 7,500 square feet is required per each manufactured home space.
- (E) *Space size.* Each manufactured home space shall be a minimum of 50 feet in width and 150 feet in length, indicated by permanent flush markers at each corner.
- (F) *Open space.* There shall be at least 2,500 feet of common open space for each acre or major fraction of an acre in the park, as provided in § 153.185 - Open Space.
- (G) *Access road.* All home spaces shall be accessible by an interior roadway at least 66 feet wide, with unobstructed access to a public road. Roads shall comply with Chapter 154 - Subdivision Regulations of the Newberry County Code of Ordinances and with the Newberry County road acceptance ordinance.
- (H) *Parking.* Two parking spaces per unit shall be provided on or adjacent to each manufactured home space, with car stops for head-in parking, in addition to adequate turn-around space. Parking space may be provided on 1 side of a private driveway at least 34 feet in width, and on both sides of a private driveway at least 43 feet in width.
- (I) *Site design.* Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.
- (J) *Setback for manufactured home parks.* All manufactured home sites and other facilities associated with the manufactured home site shall be setback a minimum of 100 feet from all property lines and the road right-of-way.
- (K) *Unit setbacks and clearances.* Each manufactured housing unit shall have the following setbacks:
  - (1) Front yard: 25 feet.
  - (2) From abutting driveway: 15 feet.
  - (3) From adjacent units: 20 feet on the side and rear.
  - (4) Accessory structures shall be at least 4 feet from the unit space line and 20 feet from common buildings such as offices or laundry facilities.

(L) *Buffers.* A buffer of at least 50 feet in width is required along the rear and side property lines of all manufactured home parks.

(M) *Screening.* Manufactured home parks shall be screened along the side and rear park property lines by an opaque wall or fence of commercial grade at least 5 feet high per the requirements of § 153.183 - Screening. The screen shall be installed within the required buffers along the side and rear park property lines.

(N) *Park occupancy.* Construction of required driveways, utilities, unit spaces and other improvements shall be completed for at least 25 percent of the manufactured home spaces shown on the site plan before any part of the park is occupied.

(O) *Site plan required.*

(1) A site plan drawn to scale of 1 inch to 40 feet or larger, showing the details of development, shall be submitted with an application for a manufactured home park showing compliance with all conditions imposed by this chapter. The site plan shall include the following information:

- (a) Total park area, including shape and dimensions of the site and a north arrow;
- (b) Location and dimensions of access roads, proposed driveways, entrances, exits, walkways, unit spaces, stands, parking areas, refuse receptacles, recreation areas, open space, screening and landscaping;
- (c) The plan for sewage disposal and water, gas, and electrical supply;
- (d) Tax map number and zoning district; and
- (e) Owners and zoning districts of adjoining properties.

(2) The site plan must comply with all applicable regulations before a permit can be issued.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.140 CORRECTIONAL INSTITUTIONS.**

Correction institutions, not including county or municipal facilities, may be permitted by special exception in the R2 and GC zoning districts provided the Board of Zoning Appeals finds that the following conditions are met.

(A) All structures, outdoor exercise areas, or any other facilities associated with the use shall be setback a minimum of 500 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(B) Primary vehicular access to such use must be from a paved arterial or collector road.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(D) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use in the R2 zoning district.

(E) The use will not substantially injure the value of adjoining properties.

(F) Additional conditions may be imposed to ensure that the use will not create a safety, health or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.141 CAMPGROUNDS AND RECREATIONAL VEHICLE (RV) PARKS, COMMERCIAL.**

Commercial campgrounds and recreational vehicle (RV) parks may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

(A) Commercial Campground and RV Park facilities may include a residence for the owner/manager of the premises; utility hook-ups; accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities; and recreational vehicles (including travel trailers) in designated spaces.

(B) All campground and RV park facilities, including structures, camping sites, RV camp/parking sites, and other facilities associated with the use shall be setback a minimum of 100 feet from all adjacent property lines, except where contiguous properties are zoned for commercial (LC or GC) and/or industrial (IND) uses.

(C) All campground and RV park facilities, including structures, camping sites, RV camp/parking sites, man-made uses, and other facilities associated with the use shall be surrounded by a minimum 50 foot wide buffer, which meets the applicable requirements of § 153.182 - Buffers. Such facilities shall be surrounded by an opaque screen which meets the requirements of § 153.183 - Screening.

(D) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for

this use.

(E) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(F) The use will not substantially injure the value of adjoining properties.

(G) Additional conditions may be imposed to ensure that the use will not create a safety, health or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.142 RACETRACKS, STADIUMS, SPECTATOR SPORTS COMPLEXES, PERFORMING ARTS FACILITIES.**

Racetracks, spectator sports complexes, stadiums and performing arts facilities may be permitted by special exception as provided in § 153.073(D) - Zoning District Table of Permitted Uses, provided the Board of Zoning Appeals finds that the following conditions are met.

(A) Minimum size of the property is 1 acre.

(B) All structures, fields of play, racetracks, and performance or exhibit areas shall be setback a minimum of 100 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(C) Primary vehicular access to such uses must be from a paved arterial or collector road.

(D) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(E) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use in the R2 zoning district.

(F) The use will not substantially injure the value of adjoining properties.

(G) Additional conditions may be imposed to ensure that the use will not create a safety, health or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.143 ZOOS.**

Zoos may be permitted by special exception as provided in § 153.073(D) - Zoning District Table of Permitted Uses, provided the Board of Zoning Appeals finds that the following conditions are met.

(A) Minimum size of the property is 5 acres.

(B) All structures, pens, enclosures, and any other area of primary activity associated with the use shall be setback a minimum of 200 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(C) Additional conditions may be imposed to ensure that the use will not create a safety, health or traffic hazard.

(D) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(E) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use in the R2 zoning district.

(F) The use will not substantially injure the value of adjoining properties.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.144 SEXUALLY-ORIENTED BUSINESSES.**

Sexually oriented businesses may be permitted by special exception in the GC zoning district, provided the Board of Zoning Appeals finds that the following conditions are met.

(A) *Purpose.* It is the purpose of this section to regulate sexually-oriented businesses to promote the health, safety, morals, and general welfare of the citizens of Newberry County, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually-oriented businesses within the county. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials including sexually-oriented materials. Similarly, it is not the intent or effect of this chapter to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

(B) *Description and Additional Regulation.* For the purposes of defining and describing the types of

establishments and activities regulated by this section, the description and definitions found in Chapter 111 of the Newberry County Code of Ordinances § 111.01 shall apply. All sexually-oriented businesses shall be subject to all requirements as set out in Chapter 111 in addition to regulations stipulated in this chapter.

(C) *Applicability.* Sexually-oriented businesses include, but are not limited to those listed in Chapter 111 and any other establishment which contains activities characterized by the performance, depiction, or description of nudity or state of nudity, semi-nudity or state of semi-nudity, specified sexual activities, or specified anatomical areas. Each sexually-oriented business is considered a separate business regardless of ownership and must meet all zoning requirements including location.

(D) *Qualification and Inspections Required.* Prior to the issuance of a certificate of zoning compliance required for a certificate of occupancy, the applicant must be qualified by the Sheriff's Department and pass all inspections as set forth in Chapter 111. In addition, the applicant shall submit evidence that the premises have been found to be in compliance with applicable laws administered by the Health Department, Fire Department, and Building Official.

(E) *Location.* Sexually-oriented businesses shall be located only in accordance with the following standards:

(1) At least 1,000 feet from any residential use, church, day-care center, retirement center, nursing care facility, hospital, public or private elementary or secondary education school, public park, public library, cemetery, or family-oriented recreation facility, including, but not limited to, a public swimming pool, a roller skating rink, or a motion picture establishment which shows G-rated or PG-rated movies to the general public on a regular basis, regardless of jurisdiction.

(2) At least 1,000 feet from any other sexually-oriented business, regardless of jurisdiction. Only 1 sexually-oriented business is permitted per structure. Each sexually-oriented business is considered a separate business regardless of ownership.

(F) *Measurements of distance.* Separation shall be in a straight line from the closest points of the building or outdoor areas in which the sexually-oriented business activity takes place to either:

(1) The closest point of the building in which the residential use, public library, motion picture establishment, or other sexually-oriented business is located; or

(2) The closest point of the property line of a church, day-care center, public or private elementary or secondary education school, public park, or cemetery.

(G) *Signage and exterior decoration/design.*

(1) It shall be unlawful for the owner or operator of any sexually-oriented business or any other person to erect, construct, or maintain any sign other than as provided herein.

(2) Signs and exterior decoration/design shall contain no photographs, silhouettes, drawings, titles, graphic or pictorial representations in any manner of nudity or state of nudity, semi-nudity or state of semi-nudity, specified sexual activities, or specified anatomical areas.

(3) Each sexually-oriented business must display at least 1 sign, easily discernible prior to entering the establishment, which identifies it as such by using the word adult (for example, adult bookstore, adult cabaret, adult entertainment, and the like).

(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.145 CHEMICAL AND ALLIED PRODUCTS WHOLESALERS, PETROLEUM BULK STATIONS AND TERMINALS, WHOLESALE.**

Chemical and allied products wholesalers (NAICS 424690) and petroleum bulk stations and terminals (NAICS 424710) may be permitted by special exception in the Industrial (IND) zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

(A) The property on which the use will be located must be at least 1 acre in size.

(B) All chemical and allied products facilities and petroleum bulk stations and terminals facilities used in the storage, sale, transfer, production of or in any other way associated with these products must be setback at least 500 feet from any existing residential uses or residentially zoned properties and 100 feet from all other adjacent properties and any road right-of-way and a 50 foot buffer shall be provided around the perimeter of the site.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(D) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(E) The use will not substantially injure the value of adjoining properties.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.146 SALVAGE, SCRAP AND RECYCLING OPERATIONS.**

Salvage and scrap operations, recyclable materials wholesalers, junkyards, and similar used motor vehicle parts wholesalers may be permitted by special exception as provided in § 153.073(D) - Zoning District Table of Permitted Uses, provided the Board of Zoning Appeals finds that the following conditions are met.

(A) The use shall be setback at least 100 feet from any adjoining property line and the public right-of-way and a 50 foot buffer shall be provided around the perimeter of the site.

(B) Primary vehicular access to the use is from a paved arterial or collector road.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(D) No material shall be placed in open storage in such a manner that it is capable of being transferred out by wind, water, or other causes.

(E) All paper, rags, cloth and other fibers, and activities involving the same other than loading and unloading shall be within fully enclosed buildings.

(F) All materials and activities not within fully enclosed buildings shall be enclosed by an opaque screen at least 8 feet in height, excluding points of ingress or egress. Such screening shall adhere to the requirements of § 153.183 - Screening.

(G) Open dumping of garbage shall be prohibited.

(H) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use in the R2 district.

(I) Additional conditions may be imposed to ensure that the use will not create a safety, health, or traffic hazard.

(J) The use will not substantially injure the value of adjoining properties.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.147 MOVIE THEATERS, DRIVE-IN.**

Drive-in movie theaters may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals find that the following conditions are met.

(A) All structures, the projection screen, parking for viewing, and any other area of primary activity associated with the use shall be setback a minimum of 100 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

(B) Primary access, including all public access, to this use shall be from paved arterial or collector roads.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(D) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use.

(E) The use will not substantially injure the value of adjoining properties.

(F) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.148 COMMUNICATIONS TOWERS AND ANTENNAS.**

(A) *Purpose.* Approval for new towers, poles, and antennas in the RS, RSV, RSM and RG districts as well as exceptions to height in other districts and waivers to fencing and landscaping requirements may be permitted by special exception granted by the Board of Zoning Appeals after public hearing and findings of fact required.

(B) *Consultation.* Prior to approving a permit by special exception, the Board of Zoning Appeals may consult with a communication expert for technical review to determine that the standards herein are met.

(C) *Conditions.* All towers, poles and antennas permitted by special exception shall, in addition to any other reasonable conditions placed upon the permit by the Board of Zoning Appeals, meet all conditions

required in § 153.108(C) except that height, fencing and landscaping may be established on a case-by-case basis through the issuance of the special exception permit.

(D) *Limitations on special exception permits.*

(1) If additional tower height is required, total tower height will not exceed 150% of the maximum height permitted in the district as a conditional use.

(2) The Telecommunications Act of 1996 requires that a denial of permit be supported by substantial evidence; therefore, the Board shall make appropriate findings based upon the evidence submitted outlining the reason for denial.

(3) The Board of Zoning Appeals may only waive fencing requirements if it determines that the fencing serves no useful purpose.

(4) The Board of Zoning Appeals may waive any or all of the screening requirements only upon determining that the existing topography or existing natural materials on site will screen the property as effectively as the required screening, provided that the spirit and intent of this subsection are met. The Board may also waive screening on those sides of the proposed tower that are located adjacent to undevelopable property. Such a waiver may not be sought to relieve the screening requirement for towers to be located adjacent to vacant properties or along any public right-of-way. Undevelopable property shall constitute any such property or land that is unable to be used as a building site (e.g., a floodplain, etc.) or public access.

(5) The Board may not grant a variance or waiver from the standards imposed for a communication tower or antenna in connection with granting a special exception, except as permitted expressly in § 153.148(A) above.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.149 MANUFACTURING, PETROLEUM AND COAL PRODUCTS AND EXPLOSIVES.**

The manufacturing of petroleum and coal products (NAICS 324) and explosives (NAICS 32592) may be permitted by special exception in the Industrial (IND) zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

(A) The property on which the use will be located must be at least 1 acre in size.

(B) Any petroleum or coal production facilities or facilities used in the production of explosives must be setback at least 500 feet from any existing residential uses or residentially zoned properties and 100 feet from all other adjacent properties and any road right-of-way and a 50 foot buffer shall be provided around the perimeter of the site.

(C) All materials and activities not within fully enclosed buildings shall be enclosed by an opaque screen at least 8 feet in height, excluding points of ingress or egress. Such screening shall adhere to the requirements of § 153.183 - Screening.

(D) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.150 LANDFILL, CLASS ONE AND TWO.**

Class One and Two landfills as defined by SC DHEC may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

(A) All applicable state and federal regulations are met and required approvals and permits have been obtained.

(B) Any Class One or Two landfill structures or facilities associated with such use must be setback a minimum of 500 feet from any adjacent property lines and a 100-foot buffer shall be provided around the perimeter of the site.

(C) The landfill site, including all materials and activities not within fully enclosed buildings, shall be enclosed by an opaque screen at least 8 feet in height, excluding points of ingress or egress. Such screening shall adhere to the requirements of § 153.183 - Screening.

(D) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(E) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(F) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.151 WASTE MANAGEMENT AND REMEDIATION SERVICES.**

Waste management and remediation services (NAICS 562) may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

(A) Containers and other structures or facilities associated with the use shall be setback a minimum of 30 feet from any adjacent property lines and a 100-foot buffer shall be provided around the perimeter of the site.

(B) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use.

(C) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(D) All materials and activities not within fully enclosed buildings shall be enclosed by an opaque screen at least 8 feet in height, excluding points of ingress or egress. Such screening shall adhere to the requirements of § 153.183 - Screening.

(E) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.152 CONCENTRATED ANIMAL FEEDING OPERATIONS FOR SWINE, SLAUGHTERHOUSE OPERATIONS.**

Concentrated animal feeding operations (CAFO) for swine and slaughterhouse operations as defined by this zoning ordinance may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

(A) All applicable state and federal regulations are met and required approvals and permits have been obtained. Requirements for CAFOs shall be as required by SC DHEC, per the S.C. Code §§ 46-45-10 through 46-45-80, as amended, unless otherwise provided in this section.

(B) Site design shall ensure safe, predictable vehicular parking, access and movement onto and off of the site.

(C) New CAFOs for swine and new slaughterhouse operations as defined by this zoning ordinance must meet the following requirements, when not superseded by more stringent DHEC requirements.

(1) New CAFOs for swine shall be separated from another swine CAFO by a distance of no less than 5 miles.

(2) The use shall not be injurious to the use or enjoyment for permitted uses of adjacent property.

(3) The use will not discourage or negate the use of surrounding property for permitted uses.

(4) The use will not substantially injure the value of adjoining properties.

(5) Additional conditions may be imposed to ensure that the use will not constitute a nuisance or a safety, health, or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.153 AUCTIONS, LIVESTOCK WHOLESALE.**

Wholesale auctions of livestock (NAICS 424520 and 424590) may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

(A) Structures and animal enclosures shall be setback a minimum of 500 feet from any adjacent property line and a 100-foot buffer shall be provided around the perimeter of the site.

(B) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.

(C) The use will not substantially injure the value of adjoining properties.

(D) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.154 MINING AND MINING SUPPORT ACTIVITIES.**

(A) All applicable state and federal regulations are met and required approvals and permits have been obtained.



(B) Any mining facilities or facilities used for mining support activities must be setback a minimum of 500 feet from any existing residential uses or residentially zoned properties and a 100-foot buffer shall be provided around the perimeter of the site.

(C) The use will not substantially injure the value of adjoining properties.

(D) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.155 MANUFACTURED HOME, TEMPORARY ASSISTANCE.**

The temporary use of a manufactured home as housing for a family member who is elderly, infirm, otherwise in need of assistance, or is to be the caregiver for a family member in need of such assistance may be permitted by special exception provided the Board of Zoning Appeals finds that the following conditions are met.

(A) The manufactured home meets the requirements of §§ 150.25 through 150.99 of the Code of Laws of Newberry County.

(B) Such temporary residence shall be either on the same lot of record or on an adjacent lot of record as the permanent residence in which either the caregiver or infirm relative lives.

(C) If such temporary residence is to be located on the same lot of record, the building lot shall be of sufficient size to permit the location of the manufactured home so that all minimum setback requirements are met without encroaching on the setback requirements of the permanent residence.

(D) The manufactured home shall be occupied by a family member who is infirm, elderly, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance.

(E) The Board of Zoning Appeals may grant conditional renewal of the permit for the manufactured home every 2 years if the applicant provides proof of hardship to the permitted occupant of the manufactured home or the individual being cared for, based on medical conditions that are supported by a signed physician's statement, setting forth the physician's opinion of the medical necessity for the issuance of the permit.

(F) The temporary permit is issued for the use of the manufactured home by a particular individual and is not transferable. If continued use of the manufactured home for or by another family member or caregiver is requested, a new application must be filed in a timely manner and a new permit granted.

(G) The applicant shall remove the manufactured home from the property or shall undertake appropriate measures to make the manufactured home an allowed use through subdivision or other means provided by county and state regulations:

(1) Within 30 days after the manufactured home is vacated by the individual in need of assistance or the caregiver of such person;

(2) Within 30 days of the expiration of the temporary permit or any extension thereof granted per the requirements of division (E); or

(3) Within 30 days of the expiration of a new permit issued for the manufactured home for another family member or caregiver per the requirements of division (F).

(H) Additional conditions may be imposed to ensure that the use will not constitute a safety, health, or traffic hazard.

(Ord. 06-11-16, passed 9-21-2016)

### **AREA, SETBACK AND DIMENSIONAL REQUIREMENTS**

#### **§ 153.165 PURPOSE, INTENT AND APPLICABILITY.**

In order to ensure that new development, renovations, and reconstructions are designed, sized, and sited to complement the area in which they are located and the character of the county in general; and to protect existing development and property values through the promotion of high standards of compatibility; the following standards are hereby adopted.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.166 CONFORMANCE.**

All permitted, conditional, and accessory uses and uses permitted by special exception shall conform to the

area, height, density and dimensional requirements as provided in this section for the district in which the use is located.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.167 MODIFICATION OF REQUIREMENTS.**

The requirements of this chapter may be further modified by other applicable sections of this zoning ordinance, including, but not limited to, those provided in §§ 153.088*et seq.* - Conditional Uses and §§ 153.136*et seq.* - Special Exceptions. Where requirements differ, the more restrictive requirement shall apply.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.168 SETBACK FROM THE LAKE SHORE.**

All principal and accessory structures shall be set back no less than 50 feet from the 360 contour line on Lake Murray and the 440 contour line on Lake Greenwood. However, where adjacent lake properties on both sides of a property are developed, the setback shall not be less than the average of the setback from the 360 contour on Lake Murray or the 440 contour on Lake Greenwood of the principal structures on the adjacent lake properties. Mapping and survey data as provided by the Newberry County Geographic Information System (GIS) will be used by the Zoning Administrator to determine the original location of the 360 or 440 contour lines. Local, state, or federal setback requirements from the lake shore may also apply.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.169 ORIENTATION OF REQUIRED YARDS.**

(A) *Generally.* In interpreting requirements related to establishment of required yards, the Zoning Administrator shall apply the following interpretation to the orientation of the yards.

(1) *Through lots.* If both the front and rear yards of a lot abut public streets, then the rear building line shall respect the alignment of buildings on the back street while the front building line shall respect the alignment of buildings on the fronting street.

(2) *Corner lots with 2 frontages.* In the case of corner lots with 2 frontages, a front yard of the required depth shall be provided on the frontage of the street having the higher traffic volume. Where the traffic volumes on both streets are approximately equal, the required depth shall be provided on the street frontage having the minimum lot width. A second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

(3) *Corner lots with more than 2 frontages.* In the case of corner lots with more than 2 frontages, the Zoning Administrator shall determine the front yard requirements, subject to the following limitations:

(a) At least 1 front yard shall be provided having full depth required generally in the district; and

(b) No other front yard on the lot shall have less than half of the full depth required for a front yard.

(4) *Irregularly shaped lots.* On irregularly shaped lots, the location of required front, side, and rear yards will be determined by the Zoning Administrator. The determination will be based on the spirit and intent of this chapter to achieve an appropriate spacing of buildings and orientation to the street(s). The rear lot line of triangular or otherwise irregularly shaped lots shall be a line at least 10 feet in length and entirely within the lot, parallel to and at a maximum distance from the front lot.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.170 STRUCTURES AND PROJECTIONS INTO REQUIRED YARDS AND RIGHTS-OF-WAY.**

(A) No principal building or structure shall be located within any required setback or yard.

(B) No principal building or structure shall be located within any required buffer.

(C) Permitted fences and walls, retaining walls, security gates, paths, walkways, handicap ramps, mailboxes, utility poles, signs, lighting fixtures, patios at grade, and similar features may be located in a required setback or yard, so long as the sight triangle on corner lots and at driveway intersections is protected.

(D) Ornaments, eaves, cornices, gutters, window sills, awnings, canopies, and other minor architectural features projecting less than 18 inches from the main portion of a building shall be allowed to project into any required yard or setback.

(E) Steps and open porches without roofs shall be permitted in any required yard or setback.

(F) Permitted signs may be placed in required yards and setbacks per the requirements set forth in §§ 153.213 *et seq.* - Signs. However, permitted signs may not extend into or over any existing public right-of-way.

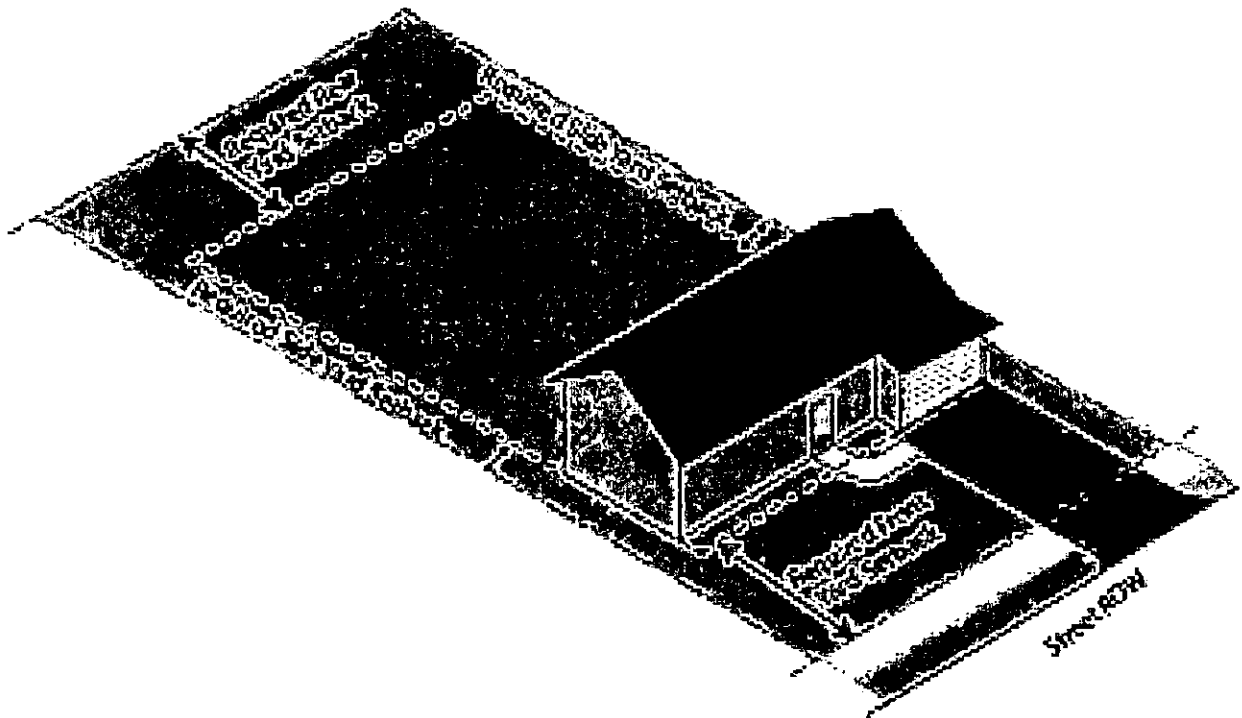
(G) In GC and IND Districts, guard/entry structures, vehicle scales, and roofs over such structures and devices are permitted within required front yards, provided that they do not constitute a substantial impediment to visibility across the yards which would contribute to the creation of traffic hazards, and further provided that servicing operations in connection therewith can be conducted so as not to interfere with public use of adjacent sidewalks or public streets.

(H) Above-ground sewer backflow prevention devices are expressly prohibited in the established front yards of buildings.

(Ord. 06-11-16, passed 9-21-2016)

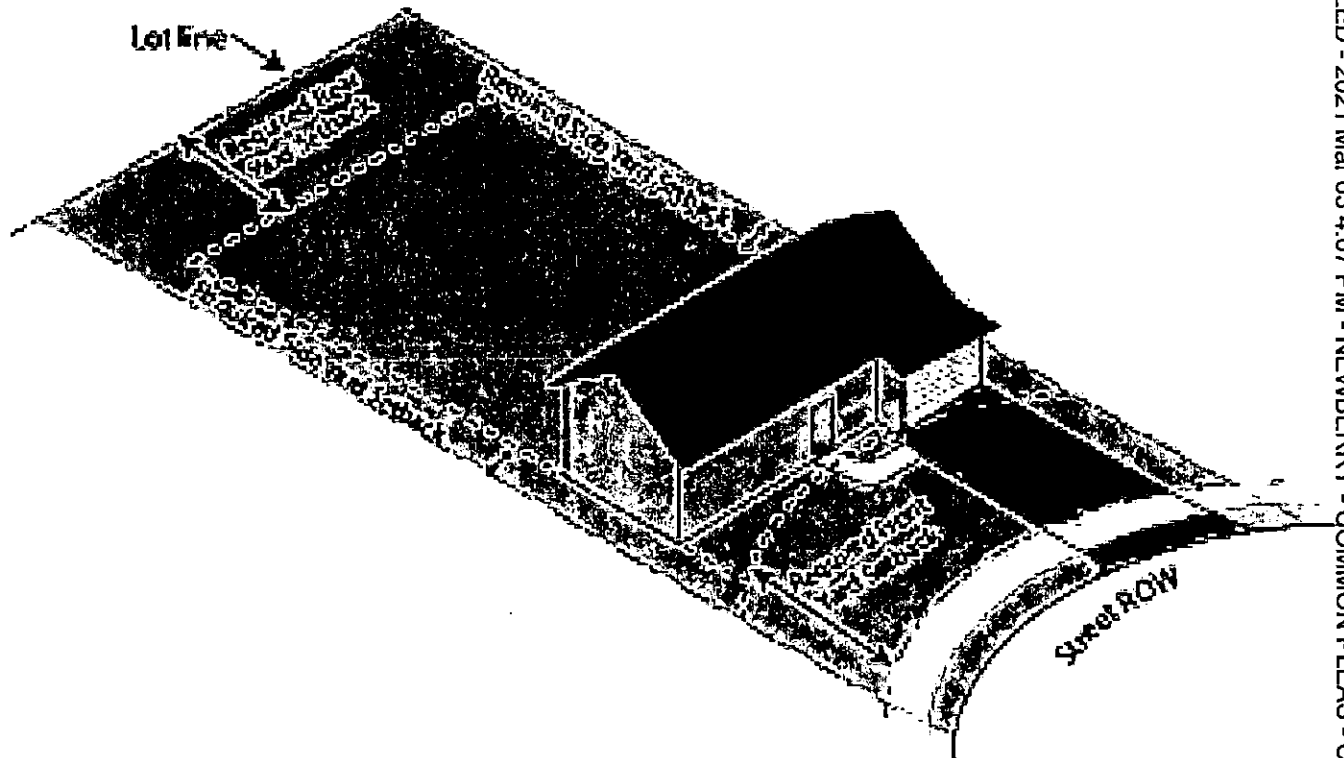
**§ 153.171 SETBACK AND YARD MEASUREMENTS, BUILDABLE AREA.**

(A) *General setback and yard measurements.* The required front, side and rear setbacks (yards) for individual properties, as set forth for the particular zoning district within which a given property is located, shall be measured inward toward the center of said property from all points along the front, side and rear property lines of the property. Once the required yard areas of a given lot have been established, the remaining area of the lot which is not included in any required front, side or rear lot shall be known as the buildable area within which the approved structure(s) shall be placed. Where a property abuts a street right-of-way or access easement, the setback shall be measured from the edge of the right-of-way line or access easement.



## Setbacks and Buildable Area Diagram

(B) *Setback measurement on cul-de-sacs.* The front setback for lots on cul-de-sacs shall be measured parallel to the arc of the street right-of-way and inward toward the center of the lot, as illustrated in the following diagram.



## Front Setback Measurement on Cul-de-Sacs Diagram

(Ord. 06-11-16, passed 9-21-2016)

### § 153.172 LOT AREA, WIDTH, SETBACK REQUIREMENTS TABLE.

| Zoning Districts | Lot Area (sq. ft.)         |                                | Lot Width Front Bldg. Line (ft.) | Yard and Building Setbacks (ft.)          |                      |           |                                      |
|------------------|----------------------------|--------------------------------|----------------------------------|-------------------------------------------|----------------------|-----------|--------------------------------------|
|                  | Residential <sup>A</sup>   | Non-Residential <sup>A,E</sup> |                                  | Front Yard from Street ROWD, <sup>F</sup> | Principal Structures |           | Accessory Structures Side/Rear Yards |
|                  |                            |                                |                                  |                                           | Side Yard            | Rear Yard |                                      |
| R2               | 1 acre SFB<br>5,000/DU MFB | 1 acre                         | 100 feet                         | 25 feet res.<br>50 feet nonres.           | 7 feet               | 20 feet   | 7 feet                               |
| RS               | 20,000                     | 1 acre                         | 70 feet                          | 25 feet                                   | 7 feet               | 20 feet   | 7 feet                               |
| RSV              | 20,000                     | 1 acre                         | 70 feet                          | 25 feet                                   | 7 feet               | 20 feet   | 7 feet                               |
| RSM              | 15,000                     | 1 acre                         | 70 feet                          | 25 feet                                   | 7 feet               | 20 feet   | 7 feet                               |

|     |                            |        |          |                                 |          |          |          |
|-----|----------------------------|--------|----------|---------------------------------|----------|----------|----------|
| RG  | 10,000 SFB<br>5,000/DU MFB | 10,000 | 70 feet  | 25 feet res.<br>50 feet nonres. | 7 feet   | 20 feet  | 7 feet   |
| LC  | 10,000 SFB<br>5,000/DU MFB | -      | 70 feet  | 25 feet res.<br>50 feet nonres. | 10 feetC | 20 feetC | 7 feetC  |
| GC  | -                          | -      | 70 feet  | 50 feet                         | 10 feetC | 20 feetC | 7 feetC  |
| IND | -                          | -      | 100 feet | 50 feet                         | 20 feetC | 20 feetC | 12 feetC |

A Or as required by SC DHEC  
 B DU = dwelling unit, SF = single-family residential, MF = multi-family residential and duplexes  
 C All uses except single-family residential shall setback from any residential zoning district: 30 feet in LC and GC and 50 feet in IND  
 D Minimum setback from second street right-of-way (ROW) is 25 feet  
 E Minimum lot area for utility station and water towers is 10,000 sq. ft.  
 F For front yard setbacks, res. = single-family detached dwellings and duplexes; nonres. = single-family attached residences, multi-family dwellings, and all non-residential uses

(Ord. 06-11-16, passed 9-21-2016)

## BUFFERS, SCREENING AND LANDSCAPING REQUIREMENTS

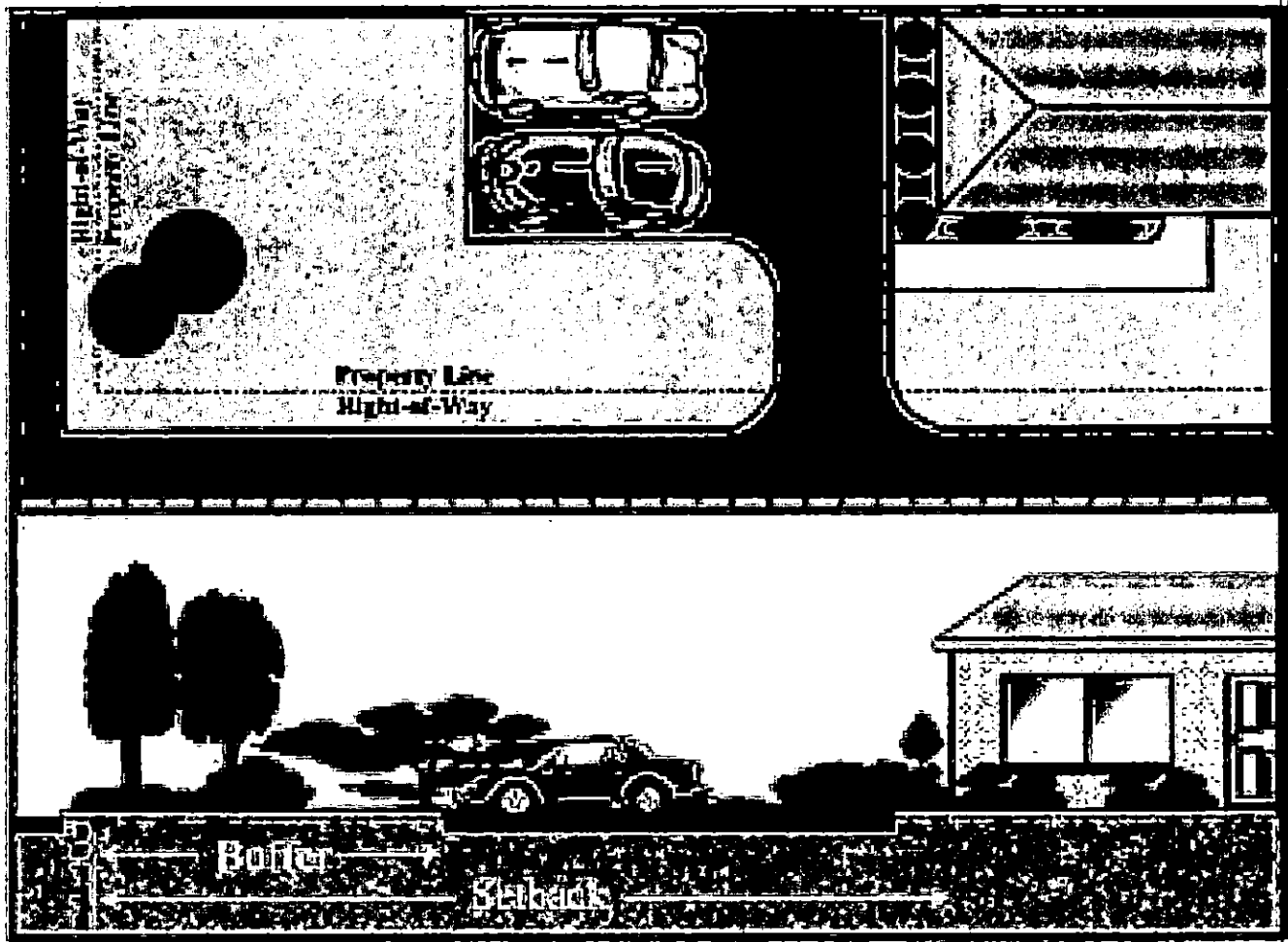
### § 153.182 BUFFERS.

(A) *Intent.* The purpose of a buffer is to help provide transition between different types of land uses, to protect significant water bodies, and to break up and soften the appearance of paved surfaces and provide shade in parking areas. Notwithstanding any other requirements of this section, buffers shall be required as follows.

(B) *Applicability.* Buffers shall be required where applicable whenever new development is approved or an existing use is expanded by more than 25%.

(C) *Modification of buffer requirements.* The requirements of this section may be further modified by other applicable sections of this zoning ordinance, including, but not limited to, those provided in §§ 153.088 *et seq.* - Conditional Uses and §§ 153.136 *et seq.* - Special Exceptions. Where requirements differ, the more restrictive requirement shall apply.

(D) *Location.* Buffers shall not be located on any portion of an existing street or right-of-way; however, they may occupy part or all of any required front, side or rear yard setback. Property buffers shall be located on the outer perimeter of a lot or parcel, extending to the lot or parcel boundary line.



## Buffer and Setback Diagram

(E) *Use of buffers.* A buffer may be used for passive recreation. All other uses are prohibited, including off-street parking. However, where permitted, freestanding signs may be installed in required buffers. Otherwise, only landscaping and approved fences, berms and walls shall be permitted within a required buffer area.

(F) *Existing vegetation.* Except when necessary to provide access to a site or to ensure the safety and security of people and property, every reasonable effort shall be made to protect and retain existing trees and shrubs within areas of required buffers not actually lying in planned roadways, drainage ways, building foundation sites and construction activity areas on all development sites and on sites where a nonresidential use is expanded by more than 25%.

(G) *Exceptions to buffer requirements.*

(1) Where the location of existing permanent buildings on an existing site reduces the area available for a buffer, buffer requirements shall be met to the maximum extent practicable.

(2) In the event that unusual topography or elevation of a development site, the size of the parcel to be developed, the soil or sub-surface condition of the site would make strict adherence to the requirements of this section serve no meaningful purpose, the Zoning Administrator may alter the requirements of this section as long as the existing features of the development site comply with the spirit and intent herein. Such

alteration may occur only at the request of the property owner who shall provide adequate explanation and evidence that such conditions apply.

(3) When an activity is located on a parcel which is separated from surrounding protected property by existing road or railroad rights-of-way, by utility rights-of-way, or by water bodies, then the buffering restrictions applicable to that activity shall be measured across such separation from the protected property lines.

**(H) Property buffers.**

(1) Property buffers shall be required along all applicable property boundaries for new development sites, redevelopment sites, and whenever an existing commercial or industrial use is expanded by more than 25%. Buffers for expansions of existing commercial or industrial uses shall only be required for the expanded area and/or structure.

(2) The property buffer width shall be established for applicable new or expanded development as follows:

| <b>REQUIRED BUFFER WIDTH</b>                                         |                                               |                                        |                                              |                                          |
|----------------------------------------------------------------------|-----------------------------------------------|----------------------------------------|----------------------------------------------|------------------------------------------|
| <b><i>Proposed Use</i></b>                                           | <b><i>Existing Use</i></b>                    |                                        |                                              |                                          |
|                                                                      | <b><i>Residential,<br/>Single-Family*</i></b> | <b><i>Residential,<br/>Duplex*</i></b> | <b><i>Residential,<br/>Multi-Family*</i></b> | <b><i>Manufactured<br/>Home Park</i></b> |
| Residential, Single-family Detached                                  | 0 feet                                        | 0 feet                                 | 0 feet                                       | 0 feet                                   |
| Residential, Duplex                                                  | 0 feet                                        | 0 feet                                 | 0 feet                                       | 0 feet                                   |
| Residential, Single-family Attached                                  | 25 feet                                       | 25 feet                                | 25 feet                                      | 25 feet                                  |
| Residential, Zero Lot Line                                           | 25 feet                                       | 25 feet                                | 25 feet                                      | 25 feet                                  |
| Residential, Multi-Family                                            | 50 feet                                       | 50 feet                                | 50 feet                                      | 50 feet                                  |
| Manufactured Home Park                                               | 50 feet                                       | 50 feet                                | 50 feet                                      | 50 feet                                  |
| Commercial                                                           | 50 feet                                       | 50 feet                                | 30 feet                                      | 30 feet                                  |
| Industrial                                                           | 50 feet                                       | 50 feet                                | 50 feet                                      | 50 feet                                  |
| * Existing residential properties and residentially zoned properties |                                               |                                        |                                              |                                          |

**(I) Road buffers.**

(1) Road buffers shall be required for properties along all road corridors identified in the Corridor Protection Overlay District for all new industrial and commercial uses, all industrial and commercial uses expanded by more than 25%, and all large subdivisions (10 or more lots).

(2) Road buffers shall be no less than 6 feet in width at any point and average 8 feet in width, as measured perpendicularly to the road being buffered, along the entire length of the property.

**(J) Stream and wetland buffers.** Land-disturbing activities for construction in, on, or under a lake or natural watercourse shall be planned and conducted to minimize the extent and duration of disturbance of the stream channel or lake bed. Where relocation of a stream is an essential part of the proposed activity, the relocation shall be planned and executed to minimize changes in the stream flow characteristics, except where the developer or landowner demonstrates that the significant alteration of the flow characteristics is justified.

(1) An undisturbed, natural buffer shall be maintained along each perennial stream within the county's jurisdiction. The minimum buffer width shall be 50 feet from each side of the stream as measured from the top of the bank.

(2) No land-disturbing activities shall take place within a stream buffer or delineated wetland area, except for required streets and associated facilities, utility mains and easements, and/or greenways and pedestrian paths. Roads and golf courses may cross a buffer, provided they do not cross at an angle of less than 60 degrees.

(3) Streams, wetlands, and required buffers shall be shown on all site plans and subdivision plats for approval and recording.

(Ord. 06-11-16, passed 9-21-2016)

### § 153.183 SCREENING.

(A) *Purpose.* The purpose of screening is to provide a visual barrier between an unsightly or out of scale feature or incompatible land uses or activities and the view from public streets and abutting properties.

(B) *Applicability.* The requirements of this section shall apply to all required screening in this zoning ordinance, including screening required in §§ 153.088*et seq.* - Conditional Uses and §§ 153.136*et seq.* - Special Exceptions. Screening shall be required where applicable whenever new development is approved or an existing use is expanded by more than 25%.

(C) *Opaque screening required.* Unless otherwise specified in this section, all required screening shall be visually opaque. An opaque screen is intended to exclude visual contact with the screened feature, land use or activity from any protected property, public street, or right-of-way. An opaque screen may be composed of a wall, fence, building, berm, or a combination thereof; as approved by the Zoning Administrator. A wall, fence, or building, or combination thereof, must be used to screen features. Natural areas, as detailed below, may also be used to screen land uses or activities.

(1) *Natural areas.* Where an existing vegetated area is located on the same property as the proposed development; is within or includes the required buffer; and is of sufficient height, length and depth and contains adequate and sufficient healthy vegetation to provide a visually opaque screen as required in this section, the Zoning Administrator may determine that further improvements shall not be required. Such area must remain intact and be protected throughout all phases of development, including any land disturbance, per the requirements in § 153.184(C)(2). Such areas may not be used for the screening of features.

(D) *Height of required screening.* The height of required screening shall be sufficient to block the view of the feature, land use or activity for which the screening is required from the protected property, public street, or right-of-way that is to be provided such protection as approved by the Zoning Administrator; however, all required screening shall be opaque to a minimum height of 6 feet above grade and shall not be required to exceed 8 feet in height above grade.

(E) *Length of required screening.* The length of a required screen shall be that which is necessary to screen the feature, land use or activity from protected properties, streets, and rights-of-way as provided in this section, however screening cannot obstruct the line of sight for vehicular traffic and must comply with the requirements of § 153.032 - Visibility Requirements, Sight Triangle. The Zoning Administrator may approve accommodations for reasonable access to the property.

(1) Where an existing residential property is to be afforded screening protection and the adjacent property line exceeds 200 feet in length, the screen need only extend 100 feet beyond either extent of the existing use to be protected by screening to meet the screening requirements of this section. The extent of the existing use shall include any primary structures, and structures and associated area accessory to the primary use afforded such protection.

(2) Where a vacant residentially zoned property is to be afforded screening protection and the adjacent property line of the proposed use exceeds 200 feet in length, the following requirements shall apply to meet the screening requirements of this section. The extent of the proposed use shall include any structures, parking, and outdoor storage or work areas associated with the proposed use.

(a) If the proposed use is included in the use category Commercial - Wholesale or the use Manufacturing - Limited as provided in § 153.073(D), the screen need only extend 25 feet beyond either extent of the proposed use.

(b) If the proposed use is included in the use category of Commercial - Retail or is any Manufacturing use other than those included in the Manufacturing - Limited use as provided in § 153.073(D), the screen need only extend 50 feet beyond either extent of the proposed use.

(F) *Screening required as a condition.* All screening required by §§ 153.088*et seq.* - Conditional Uses and §§ 153.136*et seq.* - Special Exceptions, except for screening required for features as provided in division (G) below, must be installed within the required buffer between the land use or activity to be screened and the



adjacent property, road, road right-of-way, or use being provided such protection. Where a land use or activity is to be screened, the opaque screen may be composed of a wall, fence, building, berm, or a combination thereof; as approved by the Zoning Administrator. Natural areas, as provided in division (C)(1) may be used to screen land uses or activities.

(G) *Features for which screening is required.* Screening to minimize views from adjacent properties, roads and public rights-of-way shall be required for the following features, and additional features as provided in §§ 153.088 *et seq.* - Conditional Uses and §§ 153.136 *et seq.* - Special Exceptions. To maximize site line obstruction, a screen shall be placed immediately adjacent to the feature to be screened except as otherwise approved by the Zoning Administrator. The Zoning Administrator may approve accommodations for reasonable access, use, and maintenance of the features and equipment, as necessary.

(1) Mechanical equipment for all uses other than single-family residential and duplexes at ground level and mounted on roofs, including, but not limited to HVAC equipment, transformers and generators.

(a) Roof mounted mechanical equipment shall not be visible in any direction from any adjacent existing residential properties, properties in residential zoning districts, roads and public rights-of-way. Where it can be clearly demonstrated that such equipment is not visible from any adjacent existing residential properties, properties in residential zoning districts, roads and public rights-of-way, the Zoning Administrator may waive screening requirements.

(b) Screening of roof-mounted equipment shall be accomplished by solid and permanent roof-mounted screens, compatible with the architectural style, materials and color of the building upon which the equipment is located.

(2) Service areas for all uses other than single-family residential and duplexes, including, but not limited to, garbage and trash collection areas, exposed non-power utility fixtures, power utility substations, and delivery and loading areas.

(3) Open, outdoor storage of materials, including, but not limited to, materials used in assembly, fabrication or processing, and waste materials, in the R2, LC, GC and IND districts as provided in § 153.117 - Open Storage.

(4) Communications towers as provided in § 153.108 - Communications Towers and Antennas or § 153.053 - Special Exception.

(5) Junked vehicle storage as provided in § 153.099 - Junked Vehicle Storage.

(6) Transport containers used as accessory storage as provided in § 153.118 - Transport Containers as Accessory Storage.

(H) Land uses for which screening is required. Screening to minimize views between the following new land uses or land uses expanded by more than 25% shall be required. Where a land use or activity is to be screened, the opaque screen may be composed of a wall, fence, building, berm, or a combination thereof; as approved by the Zoning Administrator. Natural areas, as provided in division (C)(1), may be used to screen land uses or activities.

(1) *Commercial uses.* An opaque screen is required between all structures and facilities related to commercial uses and all adjacent existing residential uses or residentially zoned properties. The screen shall be installed within the required buffers between the commercial use and any adjacent existing residential uses or residentially zoned properties.

(2) *Industrial uses.* An opaque screen is required between all structures and facilities related to industrial uses and all adjacent existing residential uses and residentially zoned properties. The screen shall be installed within the required buffers between the industrial use and any adjacent existing residential uses or residentially zoned properties.

(I) *Berms.* The following standards shall apply to all berms.

(1) No structures, including fences and walls, shall be placed on a berm unless approved by the Zoning Administrator as part of the landscaping requirements for a development site.

(2) Berms shall not be used for the display of vehicles or other merchandise.

(3) If included in the landscape design, berms shall:

(a) Have a minimum height of 2 feet, a minimum crown width of 2 feet, and a side slope with a width

to height ratio of no greater than 3 to 1. No berm shall exceed 4 feet in height, not including associated landscaping.

(b) Be designed and constructed with an undulating appearance which mimics, as much as is practicable, a natural topographical feature of the site.

(c) Be substantially planted and covered with live vegetation. No berm shall consist entirely of turf grass, ground cover, mulch or similar material.

(d) Be fully installed, planted, stabilized and maintained prior to issuance of a certificate of zoning compliance or occupancy.

(e) Be designed to prevent standing water and not to impede the flow of stormwater from adjacent properties.

(J) *Fences and walls.* All fences and walls shall meet the requirements of § 153.033 - Fences and Walls. Chain-link fences with strips composed of wood, plastic, metal, or other material are expressly prohibited for use in meeting screening requirements, unless otherwise required by this chapter.

(Ord. 06-11-16, passed 9-21-2016)

#### § 153.184 LANDSCAPING.

In order to promote careful landscaping of outdoor areas, soften and enhance the manmade environment, reduce summer heat and provide shade, and to assist with stormwater drainage, the following minimum standards shall apply in all zoning districts where landscaping is required, unless otherwise noted.

##### (A) *General standards.*

(1) All required plantings installed shall be:

(a) Nursery grown stock that is free from pests or growth problems;

(b) Installed and maintained according to best management practices and standards set forth by the American Nursery and Landscape Association, ANSI Z60.1-2004, as amended;

(c) Installed in a manner that is not intrusive to above and below ground utilities; and

(d) Selected from the list of preferred plant species for Newberry County unless otherwise certified by a licensed landscape architect or arborist as suitable for Newberry County's climate and comparable in habit and growth rate to a plant included in the list of preferred plant species for Newberry County.

(2) All required landscaping shall be included in the required site plan as provided in § 153.184(G) - Site plan required.

(3) The use of native species and related cultivars is encouraged.

(4) Clustering and/or random spacing of plants and trees is encouraged to produce a natural appearance in the landscape, except where uniformity is required for opaque screening.

(5) Landscaping, including berms, shall be installed and maintained so as not to interfere with the sight distance requirements of this zoning ordinance or the sight distance needs of vehicular traffic in parking areas and at entrance and exit locations.

(6) Shrubs and trees shall be installed no closer than 2 feet to a curb, gutter, sidewalk or building. Small maturing trees shall be planted no closer than 10 feet to a building, medium maturing trees no closer than 20 feet to a building and large maturing trees no closer than 25 feet to a building, unless otherwise required in § 153.184 - Landscaping.

(7) Shrubs shall not be planted within 6 feet of tree trunks.

(8) In landscaped areas adjacent to parking spaces or street curbs, no plant material with the potential to reach over 6 inches in height may be located within 12 inches of the curb or other protective barrier. This is intended to protect planted materials from damage by car bumpers and car doors.

(9) The Zoning Administrator will conduct inspections as needed to determine that required landscaping is properly installed and maintained as provided in this chapter.

(B) *Tree size.* The following standards shall apply to all required trees at the time of planting.

| <i>Required Tree Size at Time of Planting</i> |                                    |
|-----------------------------------------------|------------------------------------|
| <i>Type</i>                                   | <i>Minimum Caliper<sup>1</sup></i> |
| Large Maturing Tree                           | 1.5 inches                         |

|                                                                  |            |
|------------------------------------------------------------------|------------|
| Medium Maturing Tree                                             | 1.5 inches |
| Small Maturing Tree                                              | 1.0 inches |
| <sup>1</sup> Caliper shall be measured 6 inches above the ground |            |

(C) *Existing vegetation.* Except when necessary to provide access to a site or to insure the safety and security of people and property, every reasonable effort shall be made to protect and retain existing vegetation in required buffers and setbacks, except in planned roadways, driveways, and drainage ways.

(1) *Existing vegetation incorporated into landscaping requirements.* Existing vegetation may count towards meeting the landscaping requirements of this section as long as such are:

- (a) Free from pests or structural problems;
- (b) Clearly shown on the site plan;
- (c) Approved by the Zoning Administrator prior to development as meeting the intent of the landscaping requirements;
- (d) Not considered invasive or noxious plants; and
- (e) Adequately protected before and during grading and development of the site.

(2) *Protection during development required.* Prior to construction, grading or other land disturbing activity, substantial protective barriers shall be placed around the root protection area of all trees and shrubs to be saved and incorporated to meet landscaping requirements.

(a) *Plant protection plan required.* A plan for protection of existing vegetation shall be submitted and approved by the Zoning Administrator prior to clearing, grading or development of the site.

(b) *Protection during development required.* All existing trees included in tree requirements for parking lots must be protected from damage by the property owner by the establishment of a tree protection zone. A tree protection zone for each tree, at a minimum, shall be equal to a 2 foot radius on the ground for every inch of diameter at breast height (DBH) of the tree. The tree protection zone 2017 S-13 shall be protected by a sturdy, durable, and visible fence installed before any land disturbance begins and in place during all phases of development and construction. Each tree protection zone must be designated as such with signs posted visibly on all sides of the fenced protection area, with lettering and colors that provide maximum readability in terms of distance and contrast.

(D) *Irrigation.* All newly-planted and relocated trees and plant material shall be watered by permanent irrigation systems and shall be watered sufficiently to ensure healthy growth and longevity in the landscape.

(E) *Exceptions.* The Zoning Administrator may alter the requirements of this section as long as the existing features complement or enhance the spirit and intent herein, to reasonably accommodate the following circumstances.

(1) In the event that unusual topography or elevation of a development site, the size of the parcel to be developed, the soil or sub-surface condition of the site, or other existing conditions on the site would make strict adherence to the requirements of this section serve no meaningful purpose or would make it physically impractical to install and maintain the required landscaping. Such alterations may occur only at the request of the property owner, who shall submit a plan to the Zoning Administrator showing existing site features that would prevent adherence to the requirements of this section, the requirements of this chapter that would be difficult or impossible to meet, and proposed alternatives to the requirements that would ensure that the spirit and intent of these landscaping regulations will be met.

(2) The Zoning Administrator may require changes to any planting schedule or plant size requirement and may require plant substitution when, in their opinion, the size, nature, and/or spacing of plantings will compromise the safety and security of the public.

(3) The Zoning Administrator may approve revisions to landscaping in an approved site plan in order to accommodate seasonal planting problems or a lack of plant availability as long as:

- (a) There is no significant reduction in the quantity of plant material;
- (b) There is no significant change in the size or location of plant materials; and

(c) The plant substitutions are of the same general category and have the same general design characteristics (growth rate, habit, etc.) as the materials being replaced.

(F) *Landscape and tree installation and maintenance responsibility.* All landscape materials required or installed voluntarily by the developer, whether used for screening, property buffers, road buffers, or other required landscaping areas shall be properly installed and maintained by the property owner. Maintenance includes all actions necessary to keep landscaping materials healthy, neat and orderly in appearance, and free of litter and debris. Any landscape material lost, stolen, or vandalized, or which has died or become irreparably or irreversibly damaged, by disease, pests, or for any other reason shall be removed and replaced unless, in the determination of the Zoning Administrator, the maturity of the remaining vegetation compensates for the loss of an individual shrub or tree, thereby causing the intent of the landscape standard to still be met without replacement.

(G) *Site plan required.* A site plan, drawn to scale, is required for all landscaped areas as required in § 153.184 - Landscaping. The site plan shall include the following elements.

- (1) A scale bar and north arrow.
- (2) Property boundaries for the project site.
- (3) Location of adjacent property lines of existing residential uses and residentially zoned properties.
- (4) Existing adjacent streets (including names) and rights-of-way.
- (5) Existing berms, walls, fences, and natural areas/vegetation to be incorporated into the required landscaping and screening.
- (6) Required buffers and setbacks on the project site.
- (7) Existing and proposed above ground utility lines that would impact required tree planting.
- (8) Location, dimensions, and composition (plants, ground covers, materials, etc.) of all required landscaping, to include plant species and size, and all proposed berms, fences, or walls.
- (9) Proposed driveways, roads, parking lot design (including spaces, medians, walkways, curbs, etc.), additional parking not in a parking lot, loading areas, and other areas of note within required buffers and planting areas.

(H) *Landscaping in the Corridor Protection Overlay District.* The landscaping standards included in this section shall apply, as appropriate, to all required landscaped areas in the Corridor Protection Overlay District (CPO). Landscaping shall be provided for all new industrial and commercial uses and large subdivisions (10 or more lots) and all industrial and commercial uses expanded by more than 25% that are located within the CPO.

(1) *Road buffers.* The following landscaping is required within required road buffers in the CPO as identified in § 153.182(I) - Road Buffers.

(a) Large maturing trees shall be planted unless overhead utility lines or other factors require the use of medium or small maturing trees, as approved by the Zoning Administrator. Fractions generated by applying the minimum number of plants to the actual linear footage of the buffer shall be rounded up to the next whole number. (For example, 125 feet of buffer length would be required to have 2 large trees or 3 medium trees or 4 small trees.) Existing trees may be included in this calculation, if the trees are healthy and structurally sound, are more than 12 inches in diameter at breast height in size, and are located within the road buffer area. The planting schedule for road buffers shall be as follows:

| <b>PLANTING SCHEDULE FOR ROAD BUFFERS</b> |                                                      |
|-------------------------------------------|------------------------------------------------------|
| <b>Type</b>                               | <b>Minimum Number Per Linear Foot of Road Buffer</b> |
| Large Maturing Trees                      | 0.015                                                |
| Medium Maturing Trees                     | 0.04                                                 |
| Small Maturing Trees                      | 0.06                                                 |

- (b) In addition to the tree planting requirements, a minimum of 30% of the buffer area shall be planted

in a combination of approved shrubs, perennials, ornamental grasses, live ground cover, or turfgrass, except that additional plantings may not be required in significant forested areas maintained within the road buffer so approved by the Zoning Administrator. All other areas, including bare ground under trees, shall be covered in a minimum of 3 inches of mulch, turfgrass, live ground cover, or a combination of these elements. Spacing and arrangement of plant material must be primarily based on the mature dimensions of the plants. Plant materials shall be designed and installed in a manner that provides variability of height at maturity.

(c) Berms shall be allowed to augment required road buffer plantings as long as a minimum of 50% of all required trees and plantings shall be planted along the street front portion of the berm.

(I) *Parking lot tree canopy.* The intent of the parking lot tree canopy requirements is to break up and soften the appearance of expanses of paved areas and reduce ambient temperatures within off-street parking lots by providing shade.

(1) *Applicability.* The following standards shall apply to all new off-street parking areas with 10 or more parking spaces and all expansions to existing parking areas which add 10 or more spaces, unless otherwise noted. In an expansion, only the area of expansion is required to be included in the calculations provided in this section.

(2) *Required trees.*

(a) Large maturing trees must be provided in each off-street parking lot at a minimum average density of 1 tree for every 10 parking spaces in the lot. Fractions shall be rounded to the nearest whole number.

(b) *Existing trees.* Existing trees may be included in this calculation, if the trees are healthy and structurally sound, are more than 12 inches in diameter at breast height in size, and are located within the tree planting area as described in divisions (3) and (6).

(3) *Parking lot perimeter.* A buffer of at least 10 feet in width immediately surrounding the off-street parking area, except where the lot is permitted to abut or directly adjoin a building and excluding access points, is required for all off-street parking as regulated by this section. Large maturing trees as required in division (I)(2) - Required Trees may be planted in such buffer areas, as specified in the following subsections.

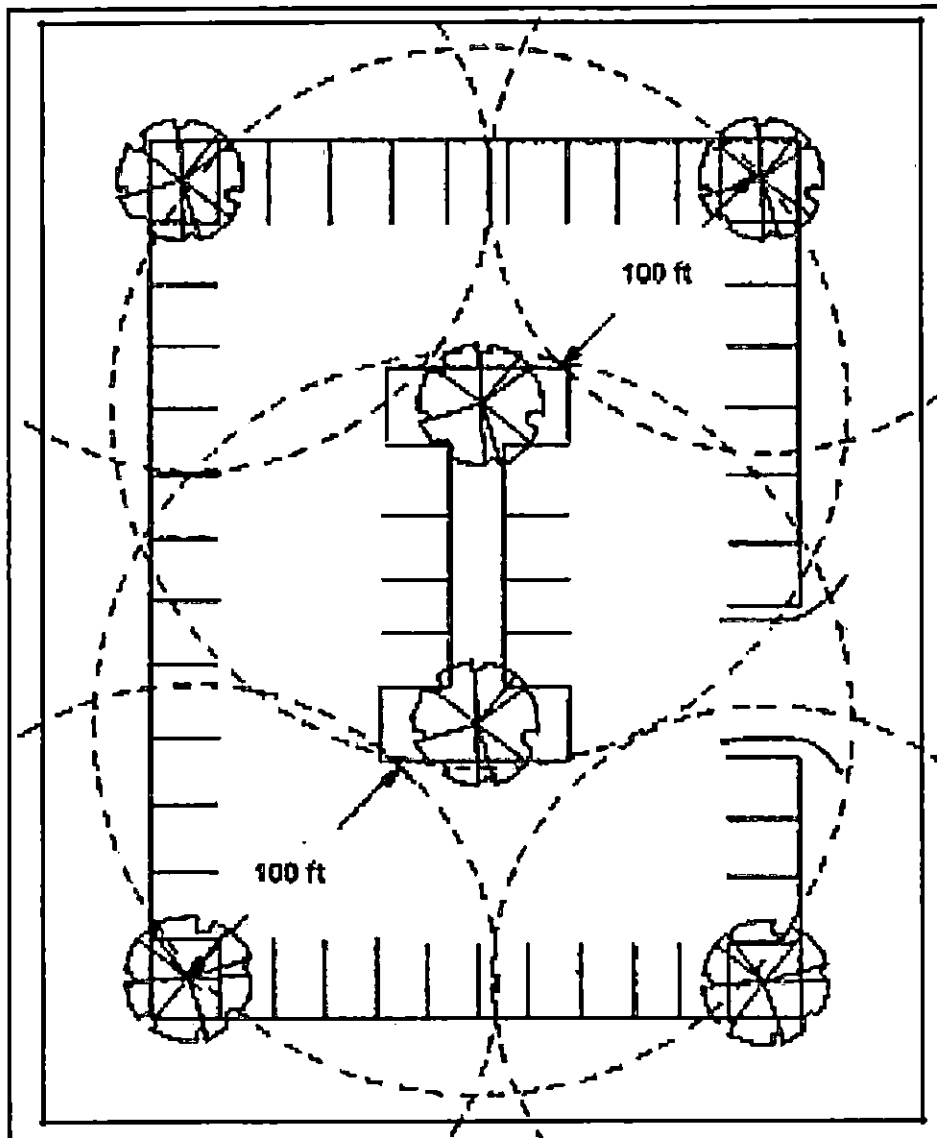
(4) *Responsibility for installation.* The property owner of the developing property shall be responsible for all required tree installation and maintenance.

(5) *Tree size.* Required trees shall be large maturing trees, however smaller trees must be substituted for required large trees whenever a larger tree would interfere with existing overhead utility lines.

(6) *Tree location.* A minimum of 1 large maturing tree shall be located within 100 feet of every parking space. The measurement shall be taken at breast height for each tree.

(a) No tree may be planted closer than 3.5 feet to the back of a curb or the paved portion of the parking lot.

(b) No required tree shall be planted or installed within an underground or overhead utility easement or a drainage easement without the consent of the county and the easement holder at the time of site plan approval.



## Location of Parking Lot Trees

(7) *Tree planting areas.* Each planting area for a required tree shall be pervious, a minimum of 100 square feet in size, and no less than 6 feet in width at any point, with an average width of 8 feet.

(8) *Planting areas - design and materials.* The area between and immediately surrounding required trees and in tree islands shall be designed and installed in an orderly and attractive manner conducive to the ongoing health of the plant materials, and shall include ground cover, mulch, or plantings including, but not limited to: small maturing shrubs (no more than 2 feet tall at maturity), annuals, perennials, ornamental grasses, turf grasses, or a minimum of 3 inches of landscaping mulch. Bare ground, including areas under trees, shall not be visible within these areas.

(9) *Tree planting, maintenance and replacement.* Required trees shall be properly maintained by the property owners. Maintenance includes all actions necessary to keep trees healthy, neat and orderly in

appearance.

(a) Any trees lost, stolen, vandalized or irreparably or irreversibly damaged, to include disease or pest infestation, or dead shall be removed and replaced. In the event that any tree functioning to meet the standards of division (I) is severely damaged due to an unusual weather occurrence or natural catastrophe, the owner shall have 1 growing season to replace or replant.

(b) Any tree with a diameter at breast height of at least 12 inches which is damaged or removed shall be replaced with a tree which at maturity will have a diameter at breast height of equal size to that tree it is replacing. The size at planting of such replacement tree shall meet the requirements of division (I)(5) - tree size. Replacement trees shall be planted within close vicinity of the tree they are replacing. If the area is too small or in any way not conducive to the health and growth of the new tree, the Zoning Administrator may approve a more suitable location on the site.

(c) All trees shall be installed and maintained to current industry standards as provided by American National Standards Institute (ANSI) and/or the International Society of Arboriculture (ISA) Best Management Practices Series.

(d) In no instance will Newberry County be responsible for the maintenance of any vegetation located on any property that is not owned by the county.

(J) Time for installation of required landscaping and trees.

(1) *Time limit.* All landscaping as required by this zoning ordinance shall be completed in accordance with the approved site plan prior to issuance of a certificate of occupancy for the site.

(2) *Extensions and exceptions.* The Newberry County Zoning Administrator may grant exceptions and extensions to the above time limit under the following conditions:

(a) Extensions may be granted due to unusual environmental conditions, such as drought, ice, over-saturated soil (deep mud), or inappropriate planting;

(b) Exceptions may be granted due to the substitution or unavailability of tree or plant species or acceptable tree size as specified on the site plan; and

(c) Exceptions may be granted due to circumstances beyond the developer's or property owner's control, such as incomplete construction or utility work to occur in a proposed landscaped area within 30 days after expected site completion. Exceptions may be granted provided that the developer or property owner submits a letter from the utility company to the county stating the estimated installation date.

(3) *Inspections.* A permanent certificate of occupancy for the development shall not be issued unless the landscaping required under this section is installed in accordance with these standards and in accordance with the approved site plan or subdivision plat.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.185 OPEN SPACE.**

The following standards shall apply to all required open space unless otherwise noted.

(A) In residential cluster developments, multi-family developments, equestrian subdivisions, manufactured home parks, planned development districts, and major subdivisions as defined in Chapter 154 Land Development Regulations of the Newberry County Code of Ordinances:

(1) No existing development shall be expanded or enlarged unless the minimum open space requirements of this section are met.

(2) Required buffers may be included in open space if held in common ownership.

(B) Open space requirements shall be calculated using the open space ratio.

(C) Open space may include recreational areas, wooded areas, and environmental open space. Environmental open space is defined as any pervious area set aside for the protection, enhancement, or creation of water quality buffers, wildlife habitat, view corridors, flood hazard mitigation, or similar environmental features and may or may not include public access.

(D) All required open space shall be well buffered from moving vehicles.

(E) Required open space shall be substantially clustered around the edges of the development to buffer the development against adjacent tracts of land, especially land used for agriculture and low density residential development.

(F) The land used for required open space shall have an average slope of 5% or less with no portion of the land exceeding a 15% slope.

(G) Open space areas set aside in residential cluster developments may be used for onsite treatment of stormwater.

(H) Required open space may be public or private. The planning, construction, and maintenance of privately owned facilities shall adhere to the following:

(1) Private open space intended to count towards the open space requirements of this section shall be held and maintained by a legally constituted homeowner's association or corporation. Land designated as open space may not be separately sold, subdivided or developed.

(2) Public open space may be held by any private non-profit organization created for such purposes that has been approved by the County Council. Public open space shall:

- (a) Have direct access from public streets;
- (b) Be visible and easily accessible; and
- (c) Have multiple points of entry.

(3) High maintenance cost facilities such as swimming pools shall not be counted in determining compliance with the minimum open space requirements of this section. Bridges along pedestrian and bicycle paths and similar high cost facilities shall not be permitted as an integral part of any required open space or recreational area unless no feasible alternative exists.

(4) Each phase of a phased development shall meet the minimum requirements for open space. All plans for such developments shall demonstrate compliance for each phase. No certificates of occupancy shall be issued until all such required facilities have been installed or bonded by the developer and approved by the county.

(5) The responsibility for the perpetual maintenance of open space shall be with the owner. Maintenance for required open spaces shall include ensuring that no hazards, nuisances or unhealthy conditions exist; and keeping the property neat and orderly in appearance and free of litter and debris. Failure to adequately maintain open space shall constitute a violation of this chapter and shall subject the owner to any and all remedies permitted herein.

(Ord. 06-11-16, passed 9-21-2016)

## **PARKING AND LOADING REGULATIONS**

### **§ 153.197 OFF-STREET PARKING REQUIREMENTS.**

#### **(A) General requirements.**

(1) Permanent off-street parking for all structures and uses of land, except parking for individual single-family residences, shall conform to the minimum requirements of § 153.198 - Off-Street Parking Table. These standards, to be used as a guide to the Zoning Administrator, are based on parking standards for general land use categories. The developer is ultimately responsible for ensuring that sufficient parking is provided.

(2) Required off-street parking must be provided on the same lot or parcel or within 400 feet of the main entrance of the principal use for which it is required, either:

- (a) In a parking facility under the same ownership as the such principal use;
- (b) Offsite in an area approved by the county as shared parking for the use; or
- (c) Where such parking is to be provided by a public garage or facility, as approved by the Zoning Administrator. Shared parking areas are encouraged and shall be permitted whenever the Zoning Administrator determines that the minimum parking requirements can be met for each use.

(3) Required off-street parking shall meet the requirements of § 153.184(I) - Parking Lot Tree Canopy.

(4) A plan must be submitted for all proposed off-street parking that clearly delineates the location and dimensions of parking spaces, aisles, maneuvering areas, stacking spaces, and driveways. The plan shall provide the location and description of all required trees and tree planting areas as required in § 153.184(I) - Parking Lot Tree Canopy.

(5) Off-street parking is permitted in required yard and setback areas as provided in this section, but



shall not be permitted in any required buffer area.

(6) Expansions to an existing parking area which increase the parking capacity by 10 or more spaces shall be required to comply with all applicable requirements of this section and § 153.184(I) - Parking Lot Tree Canopy.

(B) *Off-street parking extending into residential zoning district.* Required off-street parking for a commercial or industrial use may extend up to 120 feet into a residential zoning district, provided:

(1) The parking area adjoins the property on which the principal commercial or industrial use is located and

(2) The parking area access is to the same street as the principal use.

(C) *Combined parking areas.* Combined parking areas serving 2 or more principal uses shall contain spaces equal in number to the total of spaces required for all principal uses served. This requirement also applies if the principal uses are the same or have the same parking requirements.

(1) The Zoning Administrator may accept a lower number of parking spaces than required in § 153.201 - Off-street Parking Table (or a specific number of spaces for a use not listed) based upon applicant-submitted parking data such as a shared parking analysis or appropriate standards from the Institute of Traffic Engineers (ITE) or other credible sources, provided the following:

(a) If the Zoning Administrator accepts the lower number of parking spaces than is required in § 153.201 - Off-street Parking Table, the plan for the site must be designed to accommodate all required parking, and all areas set aside to accommodate unconstructed parking. Should the Zoning Administrator determine that the originally constructed parking is insufficient, he shall order that the unconstructed parking and/or loading be provided and a certificate of occupancy for such obtained within 12 months of such order. The design and location of these unconstructed parking spaces shall meet design standards as provided in this chapter and the following:

1. The area necessary to accommodate these unconstructed spaces shall not be included as part of the site's minimum open space requirement.

2. The area necessary to accommodate these unconstructed spaces shall be included in the impervious coverage for the site and accounted for in the drainage design.

3. Until or unless such spaces are needed, as determined by the Zoning Administrator, the area shall be maintained as open space, and the clearing of trees and other vegetation and subsequent adherence to the requirements of § 153.184(I) - Parking Lot Tree Canopy and § 153.182 - Buffers, shall not occur until or unless such additional parking is required to be constructed.

(b) Any shared parking analysis shall follow the guidelines provided in the most recent edition of the Urban Land Institute's "Shared Parking" publication. Any off-site parking to be used shall require the recording of a perpetual easement prior to occupancy in the Office of the Register of Deeds of Newberry County, the form and substance of which must be approved by the Zoning Administrator.

(D) *Calculation of off-street parking requirements.*

(1) The number of parking spaces required shall be calculated so that fractional portions of parking spaces are considered a full space (i.e. 56.12 parking spaces shall be calculated as 57 total spaces).

(2) Calculation for required off-street parking for any bar, lounge, nightclub, or restaurant shall take into account all indoor and outdoor seating areas.

(E) *Change or expansion of an existing use.*

(1) Change in the use of an existing structure or site shall require compliance with the minimum parking requirements applicable to the new use. However, if the new use also requires additional buffer area or parking lot canopy, the Zoning Administrator may permit a maximum 20% reduction in the required number of spaces to accommodate additional buffer area or trees.

(2) Any expansion of an existing building or use shall require review by the Zoning Administrator to determine additional off-street parking necessary to accommodate the expansion area or change, per the requirements of § 153.198 - Off-street Parking Table.

(3) Any addition of dwelling units, personnel, seats, chairs, boat slips, or other similar changes shall require review by the Zoning Administrator to determine additional parking necessary to accommodate that

addition or change, per the requirements of § 153.198 - Off-street Parking Table.

(F) *Parking for uses not listed in table.* Parking for uses not expressly provided for in § 153.198 - Off-street Parking Table shall be determined by the Zoning Administrator, who shall apply the unit of measurement set forth in the table for a use that he deems to be most similar to the proposed use.

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.198 OFF-STREET PARKING TABLE.**

| <i>Description of Use</i>                                                                                                                                                                                                                                              | <i>2012 NAICS</i>                                  | <i>Off-Street Parking Requirements</i>                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <b>RESIDENTIAL</b>                                                                                                                                                                                                                                                     |                                                    |                                                                                                          |
| Dwellings, Residential                                                                                                                                                                                                                                                 | NA                                                 | 2 per dwelling unit (DU)                                                                                 |
| Dwelling, Above Non-residential Use                                                                                                                                                                                                                                    | NA                                                 | 1 per DU in excess of 2 units per building                                                               |
| Manufactured Home Park                                                                                                                                                                                                                                                 | 531190                                             | 2 per dwelling unit                                                                                      |
| Rooming and Boarding House                                                                                                                                                                                                                                             | 721310                                             | 2 for owner plus 1 per guestroom                                                                         |
| <b>ACCESSORY USES TO RESIDENTIAL USES</b>                                                                                                                                                                                                                              |                                                    |                                                                                                          |
| Apartment, Accessory to Single-family Dwelling                                                                                                                                                                                                                         | NA                                                 | 1 per dwelling unit                                                                                      |
| Private Residential Community Recreation, Community Center, Common Area, or Storage Area (within residential community)                                                                                                                                                | NA                                                 | Per administrative review                                                                                |
| <b>EDUCATION</b>                                                                                                                                                                                                                                                       |                                                    |                                                                                                          |
| College or University;<br>Community or Junior College;<br>Professional School;<br>Vocational, Technical and Trade School                                                                                                                                               | 6112 - 6115                                        | 1 per 3 students and full-time employees at maximum capacity plus 1 per 4 seats in auditorium            |
| Elementary, Intermediate or Middle School, Public and Private                                                                                                                                                                                                          | 6111                                               | 2 per classroom and office                                                                               |
| Kindergarten, Private;<br>Preschool                                                                                                                                                                                                                                    | 6111<br>624410                                     | 1 per employee plus 1 off-street drop-off/pickup space                                                   |
| Other Schools and Places of Instruction                                                                                                                                                                                                                                | 6116                                               | 1 per 3 students and 1 per full-time employees at maximum capacity                                       |
| High School, Public and Private                                                                                                                                                                                                                                        | 6111                                               | 1 per 3 students and 1 per full-time employees at maximum capacity plus 1 per each 4 seats in auditorium |
| <b>HEALTH CARE AND SOCIAL SERVICES</b>                                                                                                                                                                                                                                 |                                                    |                                                                                                          |
| Ambulance and EMS Services;<br>Home Health Care services;<br>Laboratory, Medical and Diagnostic;<br>Other Ambulatory Health Care Services;<br>Outpatient Care Centers;<br>Physician, Dentist, Other Health Care Practitioner Office;<br>Social Services and Assistance | 6211 - 6216<br>6221 - 6223<br>6219<br>62191<br>624 | 1 per 200 sq ft gross floor area                                                                         |
| Community Care and Assisted Living Facility for the Elderly; Nursing Home                                                                                                                                                                                              | 6231<br>62331                                      | 1 per 3 patient beds plus 1 per full-time employee                                                       |
| Day Care, Child and Adult                                                                                                                                                                                                                                              | 624120                                             | 1 per employee plus 1 off-street                                                                         |

|                                                       |        |                                                                                               |
|-------------------------------------------------------|--------|-----------------------------------------------------------------------------------------------|
|                                                       | 624410 | drop-off/pickup space                                                                         |
| Hospital, General;                                    | 6221   | 1.5 per each patient bed                                                                      |
| Hospital, Psychiatric and Substance Abuse;            | 6222   |                                                                                               |
| Hospital, Other Specialty                             | 6223   |                                                                                               |
| GOVERNMENT                                            |        |                                                                                               |
| Correctional Institutions                             | 922140 | By administrative review                                                                      |
| Executive, Legislative, General Government;           | 491    | 1 per 200 sq. ft. gross floor area                                                            |
| Fire Services;                                        | 921    |                                                                                               |
| Judicial Building;                                    | 92216  |                                                                                               |
| Police Services;                                      | 922110 |                                                                                               |
| Post Office                                           |        |                                                                                               |
| ARTS, ENTERTAINMENT AND RECREATION                    |        |                                                                                               |
| Amusement Arcade;                                     | 713120 | 1 per 200 sq. ft. gross service area                                                          |
| Amusement Ride                                        | 713990 |                                                                                               |
| Botanical Garden;                                     | 712130 | By administrative review                                                                      |
| Campground & RV Parks, Commercial;                    | 712190 |                                                                                               |
| Nature Park;                                          | 712130 |                                                                                               |
| Zoo                                                   | 7212   |                                                                                               |
| Ball Field;                                           | 713950 | 1 per 4 patrons at maximum capacity                                                           |
| Bowling Center;                                       | 7111   |                                                                                               |
| Fairs;                                                | 71121  |                                                                                               |
| Fitness and Recreational Sports Center;               | 711212 |                                                                                               |
| Museum;                                               | 712110 |                                                                                               |
| Park with Playground;                                 | 711310 |                                                                                               |
| Park and Recreation Facilities;                       | 713940 |                                                                                               |
| Swimming;                                             | 713990 |                                                                                               |
| Tennis                                                |        |                                                                                               |
| Driving Range (not accessory to a golf course)        | 713990 | 1 per 3 patrons at maximum capacity                                                           |
| Golf Course                                           | 713910 | 1 per 200 sq. ft. gross building area plus 4 per each golf hole                               |
| Marina                                                | 713930 | 1.5 per slip plus 1 per full-time employee                                                    |
| Miniature Golf                                        | 713990 | 1.25 spaces per playable hole                                                                 |
| Performing Arts Facilities;                           | 7111   | 1 per 4 patrons at maximum capacity plus 1 per full-time employee at maximum shift for events |
| Racetracks;                                           | 711212 |                                                                                               |
| Spectator Sport Complex;                              | 71121  |                                                                                               |
| Stadium                                               | 711310 |                                                                                               |
| Recreational Day Camp;                                | 611620 | 1 per 3 patrons at maximum capacity plus 1 per full-time employee                             |
| Shooting or Archery Range                             | 713990 |                                                                                               |
| RELIGIOUS AND RELATED USES                            |        |                                                                                               |
| Educational Building, Religious                       | 8131   | 1 per 3 students at maximum capacity                                                          |
| Parsonage or Parish House, Accessory to Religious Use | NA     | 2 per dwelling unit                                                                           |
| Places of Worship;                                    | 8131   | 1 for each 4 seats in main assembly                                                           |

|                                                                                                                                                                                                                                                                                                                                                                       |                                                        |                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Religious Organizations                                                                                                                                                                                                                                                                                                                                               |                                                        | room/hall or 1 per 150 sq. ft. gross floor area, whichever is less                            |
| <b>SERVICE ORGANIZATIONS</b>                                                                                                                                                                                                                                                                                                                                          |                                                        |                                                                                               |
| Clubs, Civic, Social                                                                                                                                                                                                                                                                                                                                                  | 8134                                                   | 1 per 150 sq. ft. of gross floor area                                                         |
| <b>ACCOMMODATION AND FOOD SERVICES</b>                                                                                                                                                                                                                                                                                                                                |                                                        |                                                                                               |
| Bed & Breakfast Inn                                                                                                                                                                                                                                                                                                                                                   | 721191                                                 | 2 for owner plus 1 per guest room                                                             |
| Drinking Places, Bars                                                                                                                                                                                                                                                                                                                                                 | 7224                                                   | 1 per 4 patrons at maximum capacity                                                           |
| Hotels and Motels                                                                                                                                                                                                                                                                                                                                                     | 72111                                                  | 1 for each guest room plus 1 per each full-time employee                                      |
| Restaurant, full service;                                                                                                                                                                                                                                                                                                                                             | 722511                                                 | 1 per 3 patrons at maximum capacity plus                                                      |
| Restaurant with drive-thru                                                                                                                                                                                                                                                                                                                                            | 722513                                                 | 1 per full-time employee                                                                      |
| Special Food Service                                                                                                                                                                                                                                                                                                                                                  | 7223                                                   | 1 per 300 sq. ft. gross office, sales or service area                                         |
| <b>OTHER SERVICES</b>                                                                                                                                                                                                                                                                                                                                                 |                                                        |                                                                                               |
| Automotive Service, Repair and Maintenance                                                                                                                                                                                                                                                                                                                            | 8111                                                   | 1 per 1,000 sq. ft. gross floor area                                                          |
| Car Wash                                                                                                                                                                                                                                                                                                                                                              | 811192                                                 | Self-service - 3 auto wash, minimum of 6                                                      |
| Cemetery                                                                                                                                                                                                                                                                                                                                                              | 81222                                                  | 1 per each full time employee                                                                 |
| Dry Cleaning and Laundry;<br>Kennel, Other Pet Care Services;<br>Personal Care Services (including Barber & Beauty shops, Nail Salons, Day Spas), excluding Tattoo Parlors and Sexually Oriented Businesses (NAICS 812199);<br>Repair, Electronic and Precision Equipment, Commercial and Industrial Machinery and Equipment;<br>Repair, Personal and Household Goods | 8112 - 8114<br>8121<br>8123<br>812910                  | 1 per 200 sq. ft. gross office, sales or service area                                         |
| Funeral Home, Crematories                                                                                                                                                                                                                                                                                                                                             | 81221<br>81222                                         | 1 per 3 persons at maximum capacity in viewing rooms and chapel plus 1 per full-time employee |
| Landscaping Service                                                                                                                                                                                                                                                                                                                                                   | 561730                                                 | 1 per 300 sq. ft. gross office area                                                           |
| Sexually Oriented Business;<br>Tattoo or Body Piercing Parlor                                                                                                                                                                                                                                                                                                         | 812199                                                 | 1 per 4 patrons at maximum capacity plus 1 per full-time employee                             |
| Social Advocacy, Business, Professional and Similar Organizations                                                                                                                                                                                                                                                                                                     | 8133<br>8139                                           | 1 per 200 sq. ft. gross office, conference or service area                                    |
| <b>COMMERCIAL - RETAIL</b>                                                                                                                                                                                                                                                                                                                                            |                                                        |                                                                                               |
|                                                                                                                                                                                                                                                                                                                                                                       | 4411-4413<br>442-443<br>4441-4442<br>445-446<br>445120 |                                                                                               |

|                                                                                                         |                                                           |                                                                                                                |
|---------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| All Commercial - Retail uses, except uses otherwise listed under Commercial - Retail                    | 4453<br>448<br>448310<br>451-454<br>453930<br>4542<br>492 | 1 per 200 sq. ft. gross sales area                                                                             |
| Convenience Store with fuel pumps                                                                       | 447110                                                    | 1 per 200 sq. ft. gross sales area plus 2 per each fuel pump                                                   |
| Gasoline Station, w/o convenience store                                                                 | 447190                                                    | 1 per 300 sq. ft. gross floor area plus 2 per each fuel pump                                                   |
| Mini-warehouse and Personal Storage                                                                     | 531130                                                    | 1 per 200 sq. ft. gross floor area plus 1 per 10 storage units                                                 |
| Roadside Fruit and Vegetable Markets                                                                    | 445230                                                    | 1 per 150 sq ft gross sales area                                                                               |
| <b>COMMERCIAL - WHOLESALE</b>                                                                           |                                                           |                                                                                                                |
| All Commercial - Wholesale uses                                                                         | 42<br>424690<br>423140<br>42393<br>424710                 | 1 per 5,000 gross floor area                                                                                   |
| <b>INFORMATION</b>                                                                                      |                                                           |                                                                                                                |
| Broadcasting and Telecommunication (except NAICS 5172 communications towers)                            | 515<br>517                                                | 1 per 300 sq. ft. gross office or sales area                                                                   |
| Information and Data Processing; Newspaper and Software Communications and publishing                   | 511<br>518<br>519                                         | 1 per 200 sq. ft. gross office or sales area                                                                   |
| Motion Picture Production (except 512131 and 512132)                                                    | 5121                                                      | 1 per 300 sq. ft. gross floor area                                                                             |
| Movie Theater (not drive-in)                                                                            | 512131                                                    | 1 per 4 patrons at maximum capacity                                                                            |
| Movie Theater (drive-in)                                                                                | 512132                                                    | Per Administrative Review                                                                                      |
| Communication Tower, Cell                                                                               | 5172                                                      | 1 space                                                                                                        |
| <b>PROFESSIONAL AND OFFICE</b>                                                                          |                                                           |                                                                                                                |
| Contractors, All Types                                                                                  | 23                                                        | 1 per 300 sq. ft. gross office area                                                                            |
| Finance and Insurance; Pawn Shops                                                                       | 52<br>522298                                              | 1 per 200 sq. ft. gross office, service or sales area                                                          |
| Professional, Scientific and Technical Services and Offices (excluding NAICS 54194 Veterinary Services) | 54                                                        | 1 per 150 sq. ft. of gross floor area, or 1 per 300 sq. ft. gross floor area for testing/laboratory facilities |
| Real Estate, Rental and Leasing                                                                         | 53                                                        | 1 per 200 sq. ft. gross office or sales area                                                                   |
| Veterinary Services                                                                                     | 541940                                                    | 1 per 300 sq. ft. gross office, service or sales area plus 1 per full-time employee                            |
| <b>INDUSTRIAL - PROCESSING, MANUFACTURING, WAREHOUSING, DISTRIBUTION</b>                                |                                                           |                                                                                                                |
| Fuel dealer                                                                                             | 454310                                                    | 1 per 200 sq. ft. gross office space                                                                           |

|                                                                                                                                                                                    |                                                       |                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| All Manufacturing uses                                                                                                                                                             | 31-33<br>324<br>325920                                | 1 per employee for maximum shift plus 1 per 200 sq. ft. gross office and sales area                                   |
| Warehousing and Storage                                                                                                                                                            | 493                                                   | 2 per each 3 full-time employees on largest shift or 1 space per 5,000 sq. ft. gross floor area, whichever is greater |
| <b>TRANSPORTATION</b>                                                                                                                                                              |                                                       |                                                                                                                       |
| Air Transportation, Public (including NAICS 48111 Air Traffic Control);<br>Air Transportation Support;<br>Transportation Support Activities (excluding NAICS 4881, 488490, 488210) | 4811<br>488<br>4881                                   | 1 per 300 sq. ft. of gross terminal or office area                                                                    |
| Air Transportation, Private (including associated hangers and runways)                                                                                                             | 48121                                                 | By administrative review                                                                                              |
| Bus Terminal;<br>Rail Terminal                                                                                                                                                     | 488490<br>488210                                      | 1 per each 200 sq. ft. gross floor area                                                                               |
| <b>UTILITIES AND INFRASTRUCTURE</b>                                                                                                                                                |                                                       |                                                                                                                       |
| All Utilities and Infrastructure uses                                                                                                                                              | 22<br>22111<br>22131-22132<br>562<br>562212<br>562219 | 1 per 200 sq. ft. gross office area or 1 per full-time employee                                                       |
| <b>NATURAL RESOURCES - AGRICULTURE, FORESTRY, MINING/EXTRACTIVE</b>                                                                                                                |                                                       |                                                                                                                       |
| Auctions, Livestock Wholesale                                                                                                                                                      | 424520<br>424590                                      | 1 per 300 sq. ft. gross service or sales area                                                                         |
| Farmer's Markets per DHEC                                                                                                                                                          | 445230                                                | 1 per 300 sq. ft. gross sales area                                                                                    |
| Mining;<br>Mining Support Activities                                                                                                                                               | 212<br>213                                            | 1 per 300 sq. ft. gross office area                                                                                   |
| <b>TEMPORARY USES</b>                                                                                                                                                              |                                                       |                                                                                                                       |
| Contractor office & equipment shed - temporary                                                                                                                                     | 23                                                    | 1 per full-time, onsite employee                                                                                      |
| Manufactured Home, Emergency Housing                                                                                                                                               | NA                                                    | 2 per dwelling unit                                                                                                   |
| Manufactured Home, Temporary Assistance;<br>Manufactured Home, Temporary during Construction                                                                                       | NA                                                    | 1 per dwelling unit                                                                                                   |
| Recreational Vehicle, As Temporary Accommodation                                                                                                                                   | NA                                                    | 1 per recreational vehicle                                                                                            |

(Ord. 06-11-16, passed 9-21-2016)

**§ 153.199 PARKING SPACE DESIGN REQUIREMENTS.**

Off-street parking spaces shall meet the following design standards.

(A) *Parking space dimensions.* Parking stalls, except for parking for the physically handicapped as

outlined in division (D), shall be not less than 9 feet by 19 feet, except that a maximum of 10% of the total number of stalls may be 8.5 feet by 18 feet. However, the dimensions of all parallel parking stalls shall be not less than 9 feet by 24 feet.

(B) *Minimum parking aisle widths.* Parking aisles shall be 24 feet in width if serving 2-way traffic and 12 feet in width if serving 1-way traffic.

(1) No parking aisle serving the general public that contains more than 10 parking spaces shall dead end. Any parking aisle that dead ends shall be provided a suitable turnaround.

(2) Driveways shall not exceed 24 feet in width at the street.

(3) All off-street parking shall be served by interior circulation drives. No private off-street parking spaces shall directly connect to public streets. This standard shall not apply to single-family detached residential, duplex, patio home and townhouse developments.

(C) *Construction requirements.*

(1) *Paving - larger parking areas.* All off-street parking areas for 10 or more vehicles shall be paved with asphalt, concrete, brick pavers, or approved pervious pavement and pavers as detailed in division (C)(3), except for areas used for overflow, special events, and peak parking, and parking areas serving single-family detached and duplex housing. However, parking designed to accommodate the regular parking of heavy construction and industrial vehicles shall be allowed to pave those areas with suitable gravel. Any parking on such site intended to park automobiles, small service vehicles, and similar passenger vehicles shall be paved.

(2) *Paving - small parking areas.* Surfaces for all driveways and off-street parking areas for less than 10 vehicles may consist of asphalt, concrete, crushed stone, gravel, approved pervious pavement and pavers as detailed in division (C)(3), or other similar material approved by the Zoning Administrator, except for areas used for overflow, special events, and peak parking, and parking areas serving single-family detached and duplex housing.

(3) *Pervious pavement and pavers.* Permeable pavements are permitted including interlocking paving systems and porous pavement, provided handicapped spaces and pathways are designed and installed to meet Americans with Disabilities Act (ADA) requirements. Open-grid pavers may be used in peripheral and overflow parking areas.

(4) Any non-paved surface used for overflow, special events, and peak parking that cannot be maintained with healthy, living turf grass or similar live ground cover shall be paved with approved permeable pavers.

(5) Parking lot construction shall be designed to minimize off-site storm water runoff.

(6) Driveways and parking areas shall be paved with a minimum 10 foot wide apron made of asphalt, concrete, brick pavers, or similar hard material approved by the Zoning Administrator and suitable for driveway use, which extends at least 10 feet from the edge of the public street to prevent washout into the public street and to protect the edge of pavement. This standard shall not apply to single-family residential and duplex uses.

(7) *On-site turnaround required.* On-site turnaround area adequate to accommodate typical passenger vehicles shall be provided for all parking spaces. This standard shall not apply to single-family detached residential, duplex, patio home and townhouse developments.

(8) *Marking.* Off-street parking, except for single-family detached residential use, shall be clearly marked on the ground by painted lines, curbs or other means to indicate individual spaces. Signs or markers, as approved by the Zoning Administrator, shall be used as necessary to ensure efficient and safe vehicle operation on the lot.

(9) *Circulation.* All off-street parking shall be served by interior circulation drives. No private off-street parking spaces shall directly connect to public streets. This standard shall not apply to single-family detached residential, duplex, patio home and townhouse developments.

(10) *Connectivity.* New parking areas on adjacent non-residential and non-industrial properties shall be connected unless the Zoning Administrator determines that topography or other natural features or other factors prevents it.

(D) *Parking for the physically handicapped.* Parking for the physically handicapped shall be provided per

the requirements of the Americans with Disabilities Act (ADA) of 1990, as amended; and the International Building Code, as amended and adopted by Newberry County. Each space shall be paved, prominently outlined in blue paint, and shall include appropriate signage provided per the requirements of the ADA and the International Building Code.

(E) *Lighting requirements.* Adequate lighting shall be provided if off-street parking spaces are to be used at night. Equipment for lighting parking facilities shall be shielded so as to prevent sky glow and light trespass onto adjacent residential areas, public streets and rights-of-way.

(F) *Tree canopy.* Off-street parking areas for 10 or more vehicles shall be landscaped and buffer areas provided in accordance with the provisions of § 153.184(I) - Parking Lot Canopy.

(G) *Drive-thru stacking.* In addition to required parking spaces, drive-thru facilities shall provide a minimum of 5 stacking spaces per drive-thru facility, window, or bay, with the following exceptions. Stacking spaces shall be located entirely outside of a required driveway or parking aisle needed to access required parking spaces.

(1) Fast food restaurants shall have an additional 5 stacking spaces. A minimum of 5 of the total stacking spaces shall be located at or prior to the ordering station.

(2) Non-automated car washes shall only be required to provide 2 stacking spaces per bay, 1 of which is located for use as a dry down area.

(3) Automated car washes shall be required to provide an additional 2 stacking spaces per bay.  
(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.200 PARKING AND STORAGE OF RECREATIONAL VEHICLES, OTHER RECREATIONAL EQUIPMENT, AND UNLICENSED VEHICLES.**

(A) In the RSV zoning district, no recreational vehicles shall be parked or stored on any property or right-of-way for more than 24 hours, except in accordance with the temporary use restrictions set forth in § 153.123 - Recreational Vehicle as Temporary Accommodation.

(B) No vehicle, watercraft, or trailer subject to state licensing and/or registration which does not display current license plate or decal shall be parked or stored on any property in the R2, RS, RSV, RSM and RG zoning districts, except in an enclosed building or as provided in § 153.099 - Junked Vehicles.

(C) Temporary use of recreational vehicles as accommodations must comply with the provisions of § 153.123 - Recreational Vehicle as Temporary Accommodation.  
(Ord. 06-11-16, passed 9-21-2016)

### **§ 153.201 OFF-STREET LOADING AND UNLOADING SPACES.**

Each property used for commercial or industrial purposes, or multi-family developments with more than 1 units, shall provide off-street space for loading and unloading as follows.

(A) All uses shall provide off-street loading space sufficient for their requirements. Such space shall be arranged so that no vehicle being loaded or unloaded in connection with normal operations shall stand in or project into a public street, walk, alley, or private street.

(B) Off-street loading and unloading space shall in all cases be located on the same lot or parcel of land as the uses they are intended to serve.

(C) Adequate on-site turnaround area shall be provided for all loading and unloading areas.

(D) Off-street loading and unloading areas shall be designed to avoid or minimize safety issues or traffic congestion.

(E) *Access.* Each loading space shall have access from an alley or public street.

(F) *Dimensions.* Each loading space shall be a minimum of 12 feet by 40 feet, clear of obstructions.

(G) *Screening.* Screening of loading/unloading areas shall be provided in accordance with the provisions of § 153.183 - Screening.

(H) *Expansions.* Expansions to an existing loading area which increase the total area by more than 40% shall be required to comply with all applicable requirements of this section.

(Ord. 06-11-16, passed 9-21-2016)

## **SIGN REGULATIONS**



### § 153.213 PURPOSE, INTENT AND APPLICABILITY.

In order to ensure that signage is designed and placed to minimize the distractions and obstruction of view that contribute to traffic hazards and endanger public safety, and to prevent signs from dominating the visual appearance of the areas in which they are located, the following standards shall apply to all signs in all zoning districts unless otherwise noted.

(Ord. 06-11-16, passed 9-21-2016)

### § 153.214 PERMIT REQUIRED.

It shall be unlawful to construct, enlarge, modify, move, or to replace any sign or cause the same to be done without first obtaining a zoning permit for such sign from the county. Notwithstanding this provision, changing or replacing the permanent copy on an existing lawful sign shall not require a permit, provided the copy change does not change the nature of the sign so as to render it in violation of this chapter.

(Ord. 06-11-16, passed 9-21-2016)

### § 153.215 GENERAL PROVISIONS.

The following provisions shall apply to all signs as noted.

(A) *Materials.* Signs must be constructed of durable materials approved by the Zoning Administrator, and maintained in good condition. All signs, except for banners, flags, temporary signs, and window signs conforming in all respects to the requirements of this chapter shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure. Deficiencies such as chipped paint, broken plastic, missing letters and exposed light bulbs shall be evidence of a lack of maintenance. All temporary signs shall be constructed of materials and printed on by inks capable of withstanding normal weather conditions.

(B) *Code compliance required.* All signs shall be constructed and installed in accordance with the applicable provisions of the International Building Code.

(C) *Sign illumination.* Devices illuminating signs shall be placed and shielded in a manner such that the illuminating rays or reflections shall not be directed into any residence, residential district, sleeping room in any district, or public right-of-way. Light produced by a changeable copy billboard (otherwise known as electronic billboards) should not exceed 0.3 Foot-candles over ambient light levels. Furthermore, such billboard must be able to automatically adjust as ambient light levels change. An automatic light-sensing device (such as photocell or similar technology) should be utilized for adjusting the digital billboard's brightness. Sunset-sunrise tables and manual methods of controlling brightness are not acceptable as a primary means of controlling brightness. If light levels are suspected to exceed required light levels by the Zoning Administrator through observation, the property owner will be required to conduct and document light level tests as needed to demonstrate that the light generated does not exceed the values established. Such tests must be conducted by a qualified professional with proven expertise in the area of light level measurement and testing.

(D) *Sign height.* Unless otherwise regulated herein, no freestanding sign shall extend more than 40 feet above the surrounding grade.

(E) *Sign placement.* All signs shall be placed at least 10 feet from any street right-of-way as measured from the closest part of the sign, unless otherwise noted in this section.

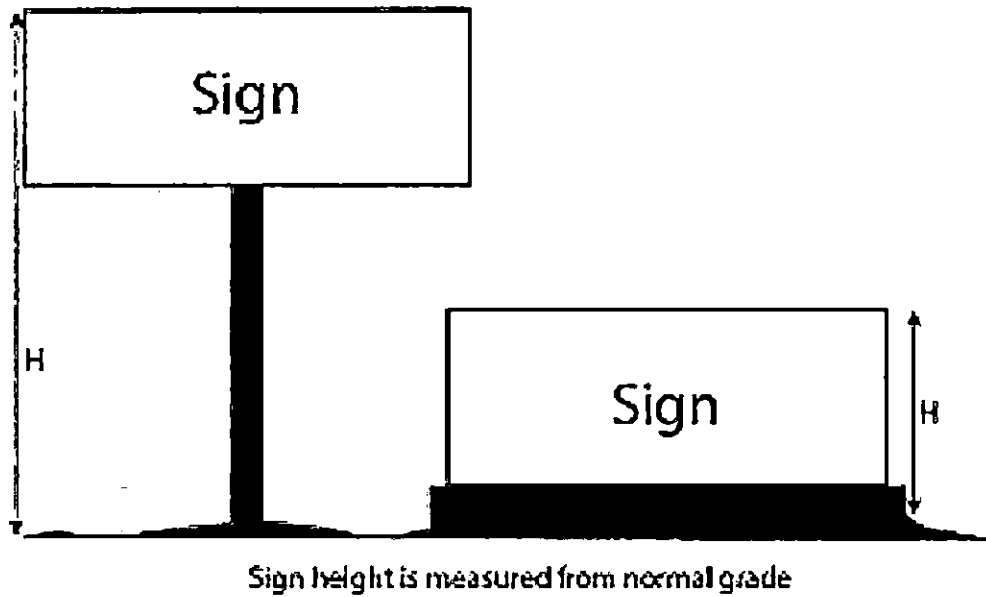
(F) *Measuring setbacks and distances.* All measurements for setbacks and location as stated in this subchapter shall be taken from the outermost portion of a sign to the nearest portion of the feature from which the setback or distance is to be measured, such as property lines, rights-of-way and other signs.

(G) *Computation of sign dimensions.*

(1) *Computation of sign height.* The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of:

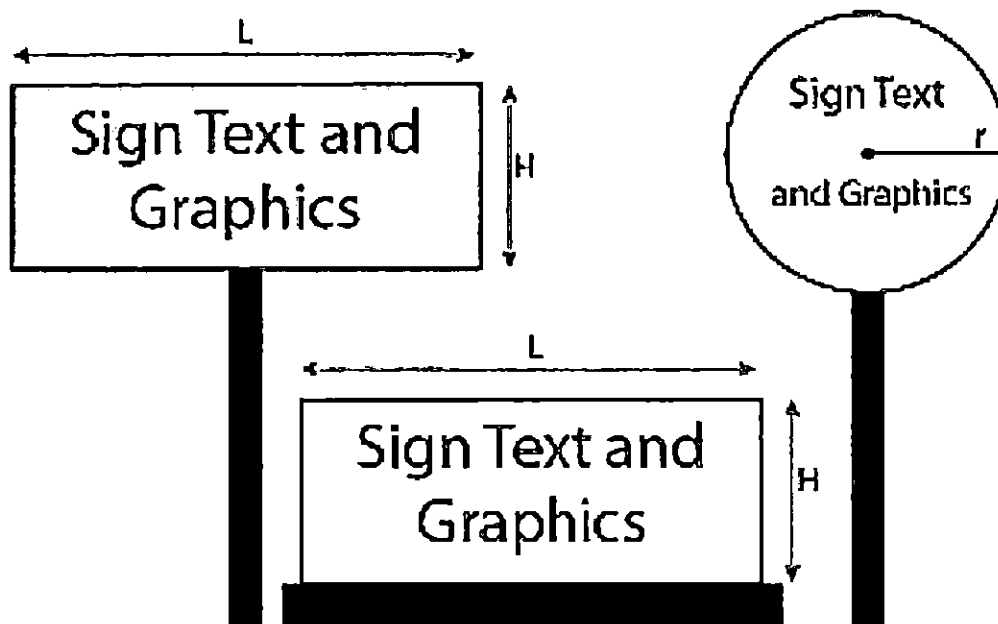
- (a) Existing grade prior to construction; or
- (b) The newly established grade after construction, exclusive of any filling, berming, mounding, or excavating. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the

elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, whichever is lower.



## Sign Height Measurement

(2) *Computation of area of individual signs.* The area of a sign face (which is also the sign area of a wall sign or other sign with only 1 face) shall be computed by means of the smallest square, circle, rectangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets these zoning regulations and is clearly incidental to the display itself.

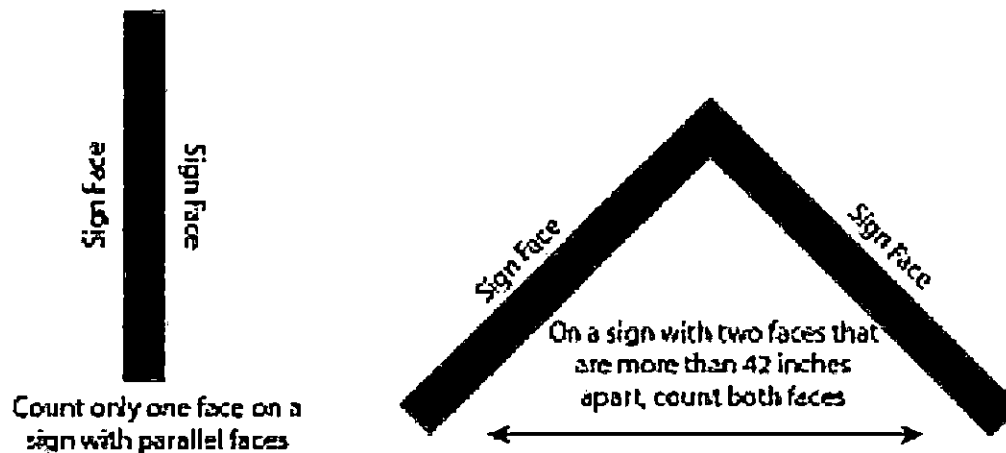


Sign face =  $L \times H$  for rectangular and square signs and  $3.14 \times r^2$  for circular signs. Similar common calculations should be used for all sign shapes. Signs that incorporate more than one shape must use a combination of calculations to determine size.

## Sign Face Measurement

(3) *Computation of area of multi-faced signs.* The sign area for a sign with more than 1 face shall be computed by adding together the area of all sign faces visible from any 1 point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign area shall be computed by the measurement of one of the faces.

## How to Determine the Area of Sign Faces



## Sign Face Area Calculation

(H) *Obstructions prohibited.* No sign shall be placed so as to obstruct the clear sight triangle at a street intersection nor shall any sign obstruct the view of motorists entering or leaving an off-street parking area.

(I) *Forfeiture of illegal signs placed on or over public property.* Any sign installed or placed on or over public property, except in conformance with the requirements of this chapter, shall be forfeited to the public and be subject to confiscation and disposal. In addition to other remedies provided by this chapter, the county shall have the right to recover from the sign owner and/or installer the full costs of removal and disposal of such sign.

(J) *Placement on trees, utility poles, towers, natural features, and the like prohibited.* No sign shall be painted or attached to a tree, fence, utility pole, tower, tank, roof, rock, bridge, street sign or other similar natural or manmade feature. This prohibition shall not apply to "no trespassing" or boundary marker signs posted on trees on private property or utility and official community identification signs posted on water towers.

(Ord. 06-11-16, passed 9-21-2016)

### § 153.216 PROHIBITED SIGNS.

(A) *Signs imitating traffic or emergency signals.* No private sign which imitates or gives the appearance of an official traffic or emergency sign or signal shall be permitted.

(B) *Distracting signs.* No private sign which uses flashing, blinking, scrolling or moving lights, text or graphics shall be permitted.

(C) *Sign lighting incompatible with a residential district.* Sign lighting shall not trespass onto adjacent properties or create glare that is dangerous to passing motorists or interferes with the use and enjoyment of adjacent residential properties.

(D) *Roof signs.* No signs shall be permitted above the roofline of a building.

(E) *Portable signs.* Portable signs are prohibited.

(F) *Signs in right-of-way.* Signs extending into the public right-of-way other than those expressly permitted by this chapter or otherwise approved by the Newberry County Director of Public Works or SCDOT, if placed along public streets.

(G) *Obstructive signs.* Any sign which obstructs the view of motorists, pedestrians, or cyclists using any street, sidewalk, bike path, or driveway, or which obstructs the approach to any street intersection or railroad crossing, or which interferes with the effectiveness of any traffic sign, device, or signal. In addition, any sign

that is illuminated or is highly reflective that hampers the vision of motorists or cyclists shall be prohibited. (Ord. 06-11-16, passed 9-21-2016)

### § 153.217 SIGNS ALLOWED WITHOUT A PERMIT.

A permit shall not be required for the following signs:

- (A) *Traffic signs.* Traffic, directional, street, warning, or information signs authorized by a public agency
  - (B) *Official notices.* Official notices issued by a court, public agency, or office.
  - (C) *Real estate signs.* One non-illuminated "for sale," "for rent," "for lease," or similar sign not exceeding 6 square feet in area in a residential district, or 20 square feet in a nonresidential district, and located at least 10 feet from a street right-of-way or on the front wall of a building.
  - (D) *Temporary signs.* One non-illuminated political campaign, yard sale, "for sale," "for rent," "for lease," or similar sign not exceeding 6 square feet in area in a residential district or 20 square feet in nonresidential districts, and located at least 10 feet from a street right-of-way or on the front wall of a building.
  - (E) *Government signs.* Historical markers, regulatory signs, official notices, public interest signs, and warning signs erected and maintained by the county or state or an agent of such.
  - (F) *Signs for churches, places of worship.* Noncommercial signs for churches and/or places of worship, however such signs must be placed at least 10 feet from any street right-of-way as measured from the closest part of the sign.
  - (G) *Flags on permanent poles.*
  - (H) *Traffic control signs on private property.* Traffic control signs on private property, the faces of which meet SCDOT and/or Newberry County Department of Public Works standards and which contain no commercial message of any kind.
- (Ord. 06-11-16, passed 9-21-2016)

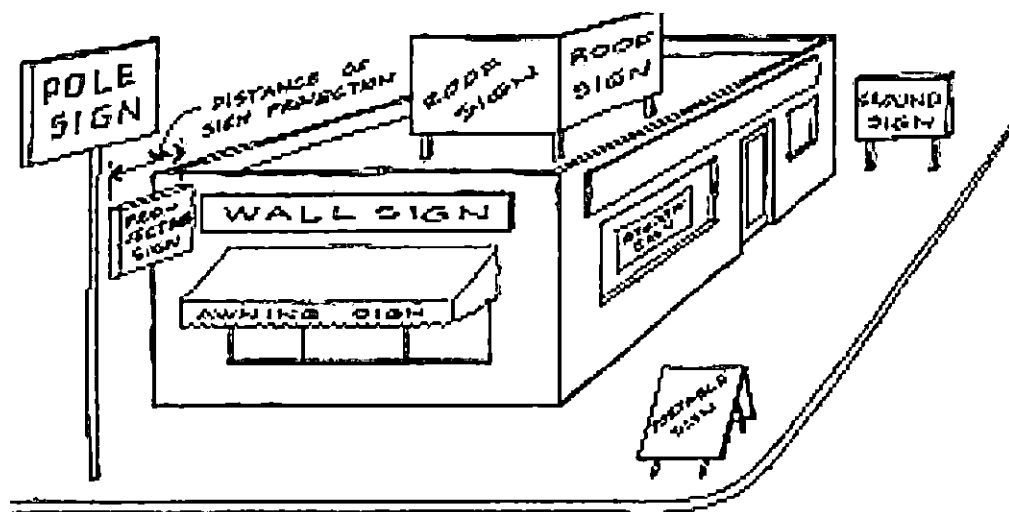
### § 153.218 PERMITTED SIGNS.

The following signs requiring a permit are allowed as indicated in the following table. All signs shall be located on-premises of the business or use being advertised unless otherwise specified.

| PERMITTED SIGNS                                                      |                                |                                                       |                           |                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------|--------------------------------|-------------------------------------------------------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sign Type                                                            | Districts Allowed <sup>1</sup> | Number Allowed <sup>2</sup>                           | Maximum Size <sup>2</sup> | Conditions                                                                                                                                                                                                                                                                                                                                                                                      |
| Bed and Breakfast                                                    | All                            | 1                                                     | 6 sq. ft.                 | (a) May not be illuminated.<br>(b) Must be set back not less than 5 feet from street r-o-w.                                                                                                                                                                                                                                                                                                     |
| Business Identification - Monument                                   | All                            | 1                                                     | 20 sq. ft.                | Not allowed in conjunction with a single-family use.                                                                                                                                                                                                                                                                                                                                            |
| Business Identification - Pole                                       | LC, GC, IND                    | 1                                                     | 200 sq. ft.               | Must be set back not less than 10 feet from street r-o-w.                                                                                                                                                                                                                                                                                                                                       |
| Changeable Copy                                                      | R2, LC, GC, IND                | 1 per sign face, may not exceed 1 per street frontage | 50 sq. ft.                | (a) Permitted only on permanent freestanding signs, marquee signs, canopy signs and wall signs, and shall comply with all of the regulations of such signs as applicable.<br>(b) Changeable copy by electronic or automated means is allowed; however, copy cannot be changed more than 3 times per day. When it does change, it shall be accomplished within an interval of 2 seconds or less. |
| Construction, including alteration and demolition                    | All                            | 1                                                     | 100 sq. ft.               | (a) May not be illuminated.<br>(b) The sign shall be removed from the site within 30 days after completion of the project.                                                                                                                                                                                                                                                                      |
| Institutional and Public Facility                                    | All                            | 1                                                     | 20 sq. ft.                | May not be illuminated.                                                                                                                                                                                                                                                                                                                                                                         |
| Neighborhood, Manufactured Home Park, Industrial Park Identification | All (as applicable)            | 1 per entrance                                        | 20 sq. ft.                | (a) Signs may be located partially or wholly within the street r-o-w on islands at split entrances as approved by the Public Works Director or SCDOT where required prior to issuance of a permit.<br>(b) The County shall not be responsible for the repair or replacement of such signs regardless of why or how they are damaged or                                                          |

|                                                                                                                                                                                                                                                                                                                                                                                                           |                 |                                               |                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                           |                 |                                               |                                                                                                                                              | removed including but not limited to traffic accidents, vandalism, street repair, mowing, or resurfacing, and acts of God.<br>(c) The County may remove any such sign at any time for any reason without notice and without compensation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Off-premises Advertising                                                                                                                                                                                                                                                                                                                                                                                  | R2, LC, GC, IND | Regulated by spacing and setback requirements | (a) On I-26: 672 sq. ft. with embellishments not to exceed 150 square feet.<br>(b) On all other road ways: maximum size shall be 300 sq. ft. | (a) <i>Construction.</i> All signs with a 32-square foot or more sign face shall be of mono-pole construction.<br>(b) <i>Spacing.</i> All signs shall be at least 1,200 feet apart on the same side of the road and 600 feet from the opposite side of the road, measured linearly along the rights-of-way.<br>(c) <i>Configuration.</i> Signs on I-26 may be double decked and double sided. On all other streets, signs may be double sided only.<br>(d) <i>Setbacks.</i> Setback from I-26 may be as required by SCDOT. From adjacent property lines, setback shall be 10 feet measured from the outside edge of the sign. From a residential district boundary or an existing adjacent residence on the same side of the road, minimum setback shall be 100 feet.<br>(e) <i>Height.</i> On I-26, maximum height shall be 110 feet. On all other roads maximum height shall be 40 feet. Advertising space shall be at least 20 feet from ground level for signs greater than 32 square feet in area. |
| Private Directional                                                                                                                                                                                                                                                                                                                                                                                       | All             | 1                                             | 6 sq. ft.                                                                                                                                    | Must be spaced not less than 500 feet apart.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Professional or Business Name Plate                                                                                                                                                                                                                                                                                                                                                                       | All             | 1                                             | 2 sq. ft.                                                                                                                                    | (a) Must be mounted flat against the wall of the building where the business is located.<br>(b) May not be illuminated.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Projecting                                                                                                                                                                                                                                                                                                                                                                                                | LC, GC          | 1 per street frontage                         | 10 sq. ft.                                                                                                                                   | (a) Minimum clearance of 8 feet is required between the bottom of the sign and the sidewalk, pavement or ground surface.<br>(b) Maximum distance a sign shall project from a building is 4 feet. However, no sign shall project from the building wall to an extent that it obstructs the view of pedestrians, cyclists or motorists, or of street intersections, traffic signs, devices or signals.<br>(c) Signs shall not be mounted higher than 12 feet.<br>(d) Signs shall be mounted at a right angle to the building wall.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Temporary Land Subdivision                                                                                                                                                                                                                                                                                                                                                                                | All             | 1 per street frontage                         | 20 sq. ft.                                                                                                                                   | (a) May not be illuminated.<br>(b) Must be spaced not less than 300 feet apart.<br>(c) Must be removed when 75% of the lots are conveyed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Wall                                                                                                                                                                                                                                                                                                                                                                                                      | All             | 2 per building frontage                       | Shall not exceed 20% of the front surface of 25% of the side or rear surface                                                                 | Surface mounted signs may extend not more than 24 inches from the wall.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 Signs in LC, GC and IND districts shall be setback at least 15 feet from all interior lot lines</p> <p>2 On a lot occupied by a business use, signs shall be limited to not more than 4 signs of any type having a total area of not more than 600 square feet in area. Sign area not exceeding a total of 750 square feet may be granted as a special exception by the Board of Zoning Appeals.</p> |                 |                                               |                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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## SIGN TYPES

### Sign Types\*

\* Definitions for Sign Types are provided in §§ 153.230et seq. - Definitions. Source: Harvey S. Moskowitz and Carl G. Lindbloom. *The Latest Illustrated Book of Development Definitions*, Center for Urban Policy Research, 2004.

(Ord. 06-11-16, passed 9-21-2016)

## DEFINITIONS

### § 153.230 GENERAL TERMS.

Except as specifically defined herein, all words and phrases used in this zoning ordinance have their customary dictionary definitions. For the purpose of this chapter, certain words or terms used herein shall be interpreted as follows:

- (A) The present tense includes the past and future tenses.
- (B) Singular words shall include the plural, and plural words include the singular.
- (C) The words "County Council" mean the County Council of Newberry County, South Carolina.
- (D) The words "Board of Zoning Appeals" mean the Newberry County Board of Zoning Appeals.
- (E) The words "Joint Planning Commission" mean the Newberry County Joint Planning Commission.
- (F) The words "zoning map" or "Newberry County Zoning Map" shall mean the Official Zoning Map of Newberry County.
- (G) Any reference to a section or chapter shall mean a section or chapter of the Newberry County zoning ordinance, unless otherwise specified.
- (H) The words "shall," "will" and "must" are mandatory; and the word "may" is permissive, except when the context of the particular use is negative (e.g., "may not").
- (I) The word "street" includes the words "road" and "highway."
- (J) The word "person" includes an individual, firm, association, organization, partnership, corporation, company, trust, governmental unit, and any combination thereof.
- (K) The word "day" or "days" means calendar days unless otherwise specified.
- (L) Words used in the masculine gender include the feminine gender.
- (M) The words **USED** or **OCCUPIED** include the words **INTENDED, DESIGNED, OR ARRANGED TO BE USED OR OCCUPIED**.
- (N) The words **LOT** or **PROPERTY** include the words **LOT, PLOT, PARCEL, PROPERTY, or TRACT**.
- (O) The word **STRUCTURE** includes the words "building" and "accessory structure."
- (P) References to NAICS codes shall mean those codes assigned to businesses in the 2012 North

American Industrial Classification Manual published by the United States Office of Management and Budget. NAICS codes are listed in the Table of Permitted Uses as an aid in interpretation and determination of those specific uses included in a general class of uses.

(Q) The word **CONTIGUOUS**, as applied to lots or districts, shall be interpreted as meaning sharing a common boundary of 10 or more feet in length.

(R) The phrase **ON THE PREMISES OF**, as applied to accessory uses or structures, shall be interpreted to mean on the same lot or on a contiguous lot in the same ownership.

(Ord. 06-11-16, passed 9-21-2016)

#### **§ 153.231 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABANDONED.** A structure that has been left vacant or unused or unoccupied for a period of 6 months or longer. It is further provided that the disconnection of electric power for a period of 6 months or longer, or the failure to ever connect such a structure to electric power after it is brought into Newberry County, creates a rebuttable presumption that the property has been abandoned.

**ACCESSORY STRUCTURE.** A structure detached from a principal building located on the same lot and customarily incidental and subordinate to the principal building or use.

**ACCESSORY USE.** A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

**AGENT, AUTHORIZED.** An agent appointed by a property owner to act as that party's proxy in matters related to land use regulation, as duly authorized in writing.

**ALLEY.** A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

**ANIMAL SHELTER, DOMESTIC.** A pen, shelter or structure where dogs or other small domestic animals, not to include horses, cows, goats, swine, sheep, ponies or small horses, grazing animals or fowl are boarded or kept. This definition does not include commercial training or breeding facilities.

**AUTOMOBILE SERVICE STATION.** Use involving the sale of gasoline, lubricating oils, merchandise such as tires, batteries, auto parts, minor repairs, and may include limited sale of groceries or carwashes, but may not include storage of dismantled or wrecked vehicles for parts.

**BAR.** Premises used primarily for the sale or dispensing of alcohol for on-site consumption, and where food may be available for consumption on the premises as accessory to the principal use.

**BED AND BREAKFAST.** An owner-occupied house or portion thereof, where short-term (no more than a week at a time) lodging rooms and meals are provided for no more than 4 guest rooms at any 1 time.

**BERM.** Any hill or slope which represents a change of elevation of at least 2 feet at a slope of between 25 percent and 50 percent and which is covered with appropriate stabilizing vegetation.

**BOARDING HOUSES.** Same as rooming and boarding houses.

**BODY PIERCING.** The creation of an opening in the body of a human being so as to create a permanent hole for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, navel, or eyebrow. **BODY PIERCING** for the purpose of this chapter does not include piercing an ear lobe with a disposable, single use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear lobe.

**BREAST HEIGHT.** A measurement of 4.5 feet above ground level.

**BUFFER.** A strip of land, that may be improved by landscaping, berms, walls, or fences, or any combination thereof, designed to mitigate the extent of higher intensity land uses on neighboring lower intensity uses. A buffer is an area within which no activity is allowed other than passive recreation and necessary utility and maintenance functions such as transmission lines, underground conduits, or irrigation. The buffer area is described by a linear measurement from the property line inward and will vary depending on the nature of the activity and its location.

**BUFFER YARD.** A strip of land improved by landscaping or fences, or both, designed to mitigate the extent of higher intensity land uses on neighboring lower intensity uses.



**BUILDABLE AREA.** That portion of any property that may be used or built upon in accordance with the regulations governing the zoning district within which the property is located when the required front, side and rear yard setbacks, open space, and applicable buffer area requirements have been met.

**BUILDING.** Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

**CALIPER.** The diameter measurement of the trunk taken 6 inches above ground level for trees up to and including 4 inch caliper. Caliper shall be measured 12 inches above ground level for larger trees.

**CAMPGROUND AND RECREATIONAL VEHICLE (RV) PARK.** A commercial facility for users of recreational vehicles, travel trailers, and similar vehicles to reside, park, rent or lease on a temporary basis.

**CHANGE OF USE.** Any use that substantially differs from the previous use of a building or land.

**CHURCH.** Any building or structure, or group of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

**CIVIC ORGANIZATION.** See club, lodge, civic or fraternal organization, fraternity, sorority.

**CLUB, LODGE, CIVIC OR FRATERNAL ORGANIZATION, FRATERNITY, SORORITY.** An incorporated or unincorporated association for civic, social, cultural, religious, literary, political, or like activities, operated for the benefit of its members and not open to the general public.

**CLUSTER HOUSING.** A form of development that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision or increase in the overall density of development and the remaining land area is devoted to open space, active recreation, preservation of environmentally sensitive areas or agriculture.

**CONCENTRATED ANIMAL FEEDING OPERATION (CAFO).** Agricultural operations where animals have been, are, or will be kept, fed and maintained in confined situations. Animals have been, are, or will be confined for a total of 45 days in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Feed is brought to the animals rather than allowing the animals to graze or otherwise seek feed in pastures, fields or on rangeland. Designation as a CAFO is per SC DHEC. Structures used for storage of animal waste from animals in the operation are part of the confined animal feeding operations.

**CONCENTRATED ANIMAL FEEDING OPERATIONS FOR SWINE, NEW.** Porcine production operations not in existence on June 30, 2006 (S.C. Code § 46-45-20).

**CONDITIONAL USE.** A use permitted in a particular zoning district upon demonstration that the use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in §§ 153.088 *et seq.* - Conditional Uses.

**CORNER LOT.** See lot, corner.

**CRITICAL ROOT ZONE (CRZ).** The area of soil around a tree where the majority of the roots are located and that provide structural stability as well as uptake of water and minerals. In general, the CRZ will be determined by the ratio of radial distance to diameter at breast height (i.e. - 2 radial feet for every 1 inch of diameter at breast height).

**CURB CUT.** The opening along the curb line where vehicles may enter or leave the roadway.

**DAY CARE, CHILD/ADULT.** The care, supervision or guidance of a child/adult or children/adults, unaccompanied by the parent, guardian or custodian, on a regular basis, for periods of less than 24 hours per day, but more than 4 hours, in a place other than the child's/adult's own home or homes.

**DAY CARE FACILITIES, CHILD/ADULT.** Any facility that provides care, supervision or guidance for any minor child or adult who is not related by blood, marriage or adoption to the owner or operator of such a facility whether or not the facility is operated for profit and whether or not the facility makes a charge for services offered by it. This definition includes, but is not limited to:

(1) **CHILD/ADULT DAY CARE CENTER.** Any facility that regularly receives 7 or more children and/or adults for day care.

(2) **FAMILY CHILD/ADULT DAY CARE HOME.** An occupied residence where child and/or adult day care is regularly provided for no more than 6 children and/or adults, unattended by a parent or legal guardian, including those children/adults living in the home and children/adults received for day care who are

related to the resident caregiver. This definition does not include an occupied residence in which child and/or adult care is regularly provided only for a child/adult or children/adults related to the resident caregiver, or only for the child/adult or children/adults of 1 unrelated family, or only for a combination of such children/adults.

**DEVELOPED LOT.** Any lot that has been developed with buildings or other improvements, or for which development approval, such as a final plat approval, a zoning permit, or a certificate of occupancy, has been issued.

**DIAMETER AT BREAST HEIGHT (DBH).** Measurement of tree trunk diameter taken at breast height, which is measured 4.5 feet above ground level.

**DISPLAY AREA OR LOT.** Any unenclosed area used for the display of merchandise.

**DISTRICT.** A geographical area assigned a zoning district designation in accord with the provisions of this chapter.

**DRINKING PLACE.** Establishment primarily engaged in retail sale of alcoholic drinks for consumption on premises. Sale of food may account for a substantial portion of receipts.

**DRIVE-THRU RESTAURANT.** Any eating or drinking establishment that, by its structural design, site characteristics, or manner of food service encourages consumption of food or beverages in automobiles on the premises or upon public streets adjacent thereto.

**DRIVEWAY.** A paved or unpaved area used for ingress and egress of vehicles, and allowing access from a street to a building or other structure or facility.

**DRIVEWAY, PRIVATE.** A privately owned and maintained driveway that provides access to no more than 3 single-family residences.

**DWELLING.** A structure or portion thereof that is used exclusively for human habitation.

**DWELLING, DUPLEX.** A building on a single lot containing 2 dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof, and including separate entrances, kitchens and bathrooms for each dwelling unit. This 2-dwelling unit is not physically attached to any other principal structure.

**DWELLING, MULTI-FAMILY.** A building containing 3 or more dwelling units including, but not limited to, units that are located one over the other.

**DWELLING, PATIO HOME.** A single-family detached or semi-detached dwelling unit built on a small lot generally enclosed by walls which provide privacy.

**DWELLING, SINGLE-FAMILY ATTACHED.** A residential structure containing more than 2 dwelling units in which units are physically attached, and each has its own separate exterior entrance way and a separately owned lot. Townhouses and patio homes are included in this definition.

**DWELLING, SINGLE-FAMILY DETACHED.** A building containing not more than 1 dwelling unit, not physically attached to any other principal structure, and specifically excluding manufactured homes.

**DWELLING, TOWNHOUSE.** A series of attached single-family dwelling units on separate lots in which each has its own front and rear access to the outside, no unit is located over another unit, each unit is separated from any other unit by 1 or more common vertical walls, and which may or may not have a common roof.

**DWELLING UNIT.** One or more rooms, designed, occupied, or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single-family maintaining a household.

**DWELLING, ZERO LOT LINE.** A residential building containing not more than 1 dwelling unit on an individual lot, is not physically attached to any other principal structure, and which instead of being centered on the lot is placed against at least 1 of the side lot lines.

**EASEMENT.** A grant of 1 or more property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

**ENLARGEMENT.** An increase in the size of an existing structure or use, including physical size of the property, building, parking, and other improvements.

**FAMILY.** One or more persons residing in a single dwelling unit. Unless all members are related by blood,

marriage, or adoption, no such family shall contain more than 3 persons. Domestic servants, required medical personnel employed on the premises, or children in approved foster care may be housed within the single dwelling unit without being counted as family or families. Pursuant to South Carolina Code of Laws § 6-29-770(E), Homes for the Handicapped (see definition in this Chapter) are to be perceived as a family as if related by blood or marriage.

**FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS.** Regulations promulgated by the Department of Housing and Urban Development (HUD) governing the design and construction, strength and durability, transportability, fire resistance, energy efficiency, and quality of manufactured housing. These standards also set performance requirements for heating, plumbing, air conditioning, thermal, and electrical systems.

**FENCE.** An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

**FORESTED AREA.** An area covered with trees and undergrowth.

**FRATERNAL ORGANIZATION, FRATERNITY.** See club, lodge, civic or fraternal organization, fraternity, sorority.

**FREESTANDING SIGN.** See sign, freestanding.

**FREESTANDING TOWER.** A wireless communications support structure with no guy wires. This can be either a lattice or monopole tower.

**GARAGE.** A deck, building, or parking structure, or part thereof, used, or intended to be used for the parking and storage of vehicles.

**GRADING.** Any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

**GROSS FLOOR AREA.** The sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls, or from the center line of a wall separating 2 buildings, but excluding any space where the floor-to-ceiling height is less than 6 feet.

**GROUND COVER.** Any plant material that serves to prevent soil erosion by covering large areas of ground, and which does not grow beyond 12 inches in height.

**GUYED TOWER.** Any variety of wireless communication support structures using guy wires connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communications towers, antennas, and connecting appurtenances.

**HELIPAD.** An identifiable area on land, water, or a structure, including any buildings or facilities thereon used or intended to be used for the landing and take-off of helicopters or other tilt rotor aircraft.

**HOME FOR THE HANDICAPPED.** Pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code § 6-29-770, a home serving 9 or fewer mentally or physically handicapped persons, providing 24-hour care, and approved or licensed by a state agency, department or under contract with the agency or department, is exempt from local zoning ordinance requirements. Residents of such a home are perceived as a natural family, as if related by blood or marriage. Approval and licensing for such use is by the appropriate state agency, as provided in S.C. Code § 6-29-770.

**HOME OCCUPATION.** An occupation, profession, or trade customarily and commonly carried out by an occupant in a dwelling unit as a secondary use that is clearly incidental and subordinate to the residential character of the dwelling unit.

**HOTEL.** A building in which lodging for pay is offered to the public, with or without meals, for transient or permanent guests, including a motel or tourist court containing 5 or more guest rooms.

**INTENSITY OF USE.** The number of dwelling units per acre for a residential development and the amount or degree of activity for commercial and industrial development.

**JUNK.** Any scrap, waste, reclaimable material, or debris, whether or not stored, for sale or in the process of being dismantled, destroyed, processed, salvaged, stored, baled, disposed of, or abandoned.

**JUNK, SALVAGE, SCRAP, OR WRECKING YARDS.** Any use involving storage or processing of inoperable, disused, dismantled, or wrecked vehicles, equipment, or machinery or the storage or processing

of scrap metal, waste paper, rags, food processing wastes, construction wastes, industrial wastes, secondhand building materials, or other scrap, salvage, waste, or junk materials.

**KENNEL.** A commercial establishment where dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.

**LAND DISTURBANCE.** Any activity that changes the physical conditions of land form, vegetation and hydrology, creates bare soil, or otherwise causes erosion or sedimentation. Such activities include, but are not limited to clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

**LANDFILL.** Per SC DHEC Regulation 61-107.19: Solid Waste Landfills and Structural Fill, a disposal facility or part of a facility where solid waste is placed in or on land, and which is not a land treatment facility, a surface impoundment, or an injection well.

(1) **CLASS ONE LANDFILL.** A landfill used solely for the disposal of trees, stumps, wood chips, and yard trash that is generated from land-clearing activities, excluding agricultural and silvicultural operations when generation and disposal are on site.

(2) **CLASS TWO LANDFILL.** A landfill used for the disposal of environmentally safe waste, as determined by SC DHEC, as may be generated by construction, demolition, land-clearing, industrial, and/or manufacturing activities, and/or obtained from segregated commercial waste. A listing of such materials is included in Appendix 1 of Regulation 61-107.19. However, any materials listed in that appendix that have been contaminated by any hazardous constituent as listed in the S.C. Hazardous Waste Management Regulations 61-79.261, or petroleum products, are prohibited from disposal at a Class Two Landfill.

(3) **CLASS THREE LANDFILL.** A landfill that accepts municipal solid waste, industrial solid waste, sewage sludge, nonhazardous municipal solid waste incinerator ash and other nonhazardous waste.

**LATTICE TOWER.** A wireless communications support structure that consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

**LOT.** A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.

**LOT AREA.** The total area within the property lines of a lot, excluding any street right-of-way.

**LOT, CORNER.** Any lot that is bounded on 2 or more consecutive sides by road rights-of-way which intersect at an angle of 135 degrees or less.

**LOT COVERAGE.** The area of the lot, which when viewed directly from above would be covered by all principal accessory buildings and structures.

**LOT FRONTAGE.** The front of an interior lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage and yards shall be provided upon that basis. The phrase "street frontage" shall be interpreted to have the same meaning as the phrase "lot frontage."

**LOT, INTERIOR.** A lot other than a corner lot, with only 1 frontage on a street.

**LOT LINE.** A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

**LOT LINE, REAR.** The lot line opposite and most distant from the front lot line.

**LOT OF RECORD.** A lot defined by plat or described by metes and bounds which has been duly recorded with the County Clerk of Court.

**LOT, REVERSE FRONTAGE.** A through lot that is not accessible from 1 of the parallel or nonintersecting streets upon which it fronts.

**LOT, THROUGH.** A lot that fronts upon 2 parallel streets or that fronts upon 2 streets that do not intersect at the boundaries of the lot.

**LOT WIDTH.** The distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard.

**MANUFACTURED HOME.** A manufactured single-family dwelling, or integral part thereof, so constructed that it may be transported, temporarily or permanently affixed to real estate, and comprised of 1

or more components, that meets the National Manufactured Home Construction and Safety Standard Act (42 U.S.C. §§ 5401 et seq.), commonly known as the HUD Code. Manufactured homes in Newberry County must meet the requirements of §§ 150.25 through 150.99 of the Newberry County Code of Ordinances.

**MANUFACTURED HOME PARK.** A lot providing rented parking space for 5 or more manufactured homes used for dwelling units, including service buildings and facilities. Manufactured home sale or storage lots for unoccupied units are not manufactured home parks.

**MINI-WAREHOUSE.** A building or group of buildings on a fenced, controlled access lot which contain individual locked compartments for storage of personal property.

**MOBILE HOME.** A manufactured, single-family dwelling, constructed so that it may be transported, and temporarily or permanently affixed to real estate, and that was manufactured prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act, effective June 15, 1976.

**MODULAR BUILDING.** A structure consisting of 2 or more prefabricated components designed to be transported to a lot and placed on a permanent foundation, and which is certified by the South Carolina Building Codes Council as conforming to the International Building Code standards for site built units. A house trailer or manufactured home is not a modular building.

**MONOPOLE TOWER.** A self-supporting communications tower consisting of a single pole without guy wires or other stabilizers.

**MOTEL.** A building or buildings where lodging, with or without meals, is offered to the public for consumption, including a hotel, tourist court, or inn.

**MULCH.** Organic material that is spread on the soil surface, normally around newly planted trees or other areas, to reduce weed growth, to retain soil moisture and moderate soil temperature extremes, to reduce compaction, to prevent damage from lawn-maintenance equipment, to reduce erosion, to improve soil quality and/or to improve aesthetic appearance of the landscape. Mulch can be composed of chipped, ground or shredded organic material such as bark or wood.

**MULTI-FAMILY DWELLING.** See dwelling, multi-family.

**NONCONFORMING.** A term applied to lots, structures, uses of land or structures, and characteristics or use of land or structures that were lawful before the passage or amendment of this chapter, but which are prohibited by this chapter or which are not in compliance with the requirements of this chapter.

**NOXIOUS PLANT.** Any plant that can directly or indirectly injure crops and other useful plants, interests of agriculture or navigation, fish or wildlife resources, or the public health.

**OFF-STREET LOADING.** Designated areas located adjacent to buildings where trucks may load and unload cargo.

**OFF-STREET PARKING.** An area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street arranged so that maneuvering incidental to parking shall not be on any public street and so that an automobile may be parked or unparked therein without moving any other automobile.

**OPEN SPACE.** Unless otherwise defined in this chapter, open space is any parcel or area of land or water essentially unimproved and set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners, occupants, and their guests of land adjoining or neighboring the open space. Open space shall include recreational areas, greenways, and wooded areas.

**OPEN SPACE RATIO.** The open space ratio is a measure of the intensity of land use. It is calculated by dividing the total amount of open space within the site by the total site area.

**OVERLAY DISTRICT.** A zoning district that encompasses 1 or more underlying zones and that imposes additional requirements above those required by the underlying zone.

**OWNER.** An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

**PARCEL.** A contiguous lot or tract of land owned and recorded as the property of the same persons or controlled by a single entity.

**PARK.** An area or facility intended to be used for recreation, exercise, sports, or similar activities or an area intended to enhance the enjoyment of natural features or natural beauty, but specifically excluding

commercially operated amusement parks.

**PARKING AREA.** Any public or private area located under or outside of a building or structure and designed and used for parking motor vehicles, including parking lots, garages, private driveways, and legally designated areas of public streets.

**PARKING LOT.** A public or private open lot for parking motor vehicles as a principal use or as an accessory use to a commercial use.

**PERMITTED USE.** A use permitted outright by district regulations.

**PERMITTEE.** A person in whose name a permit has been issued, as well as the individual listed as an applicant on the application for a permit.

**PERSONAL SERVICES.** Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel.

**PEST.** An organism, including but not limited to insects, bacteria or fungi, that is severely damaging, noxious, a nuisance or fatal to a plant or animal.

**PLANNED DEVELOPMENT DISTRICT.** An area of land wherein a variety of housing types and/or related commercial and industrial facilities are accommodated in a pre-planned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply. The procedure for approval of the development contains requirements in addition to those of the standard subdivision, such as building design principles, and landscaping plans. See § 153.074 for more details.

**PLAT.**

(1) A map representing a tract of land showing the boundaries and location of individual properties and streets.

(2) A map of a subdivision or site plan.

**PORTABLE ON-DEMAND STORAGE CONTAINER (POD).** A transportable unit designed and used primarily for temporary storage of building materials, household goods, personal items and other materials, for use on a limited basis, typically delivered and removed by truck. The reuse of a shipping container as included in the definition of Transport Containers for storage is not included in this definition.

**PRINCIPAL STRUCTURE OR USE.** A structure or use that is significant or primary rather than accessory.

**PROHIBITED USE.** A use that is not permitted in a zone district.

**PUBLIC HEARING.** A meeting announced and advertised in advance and open to the public, with the public given an opportunity to talk and participate.

**RECREATIONAL.** A use that involves a pastime, exercise, diversion or other resource affording relaxation and enjoyment. Common recreational activities include, but are not limited to: hunting, fishing, swimming, boating, camping, hiking, travel, nature study, golf, tennis, horseback riding, participatory sports, spectator sports; viewing or enjoying historic, archaeological, scenic or scientific sites, and the like.

**RECREATIONAL VEHICLES.** Vehicular-type portable structures without permanent foundation, but with undercarriage, and any necessary axles and wheels continually affixed, that can be towed, hauled, or driven, and are designed as temporary living accommodations for recreational camping and travel use, including but not limited to travel trailers, truck campers, camping trailers, fifth wheel trailers, and self-propelled motor homes.

**RESIDENCE.** A dwelling.

**RESIDENTIALLY ZONED PROPERTY.** A property located in the RS, RSV, RSM and RG zoning districts.

**RESTAURANT.** An establishment where food and drink are prepared, served, and consumed primarily within the principal building.

**RETAIL SALES.** Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of the goods.

**RIGHT-OF-WAY.** A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer and other similar uses.

**ROAD CLASSIFICATION.** Functional road classification is the process by which streets and highways are grouped into classes according to the character of service they are intended to provide. Classifications are provided and updated regularly by the SC Department of Transportation and are based on criteria that include road type and traffic volume.

(1) **ARTERIAL ROAD.** A road of regional importance or a main road of the community that is expected to carry either heavy vehicular traffic volumes or high-speed traffic or both. Arterial roads form a connected network of continuous routes that provide countywide and regional linkages. Arterials are characterized as having access control, channelized intersections, and signalization. Service to abutting land is subordinate to the provision of travel service.

(2) **COLLECTOR ROAD.** A road that is used or intended to be used for moving traffic from local roads to arterial roads. Collectors are generally shorter than arterials, but carry high volumes of traffic. Collector roads carry primarily residential traffic, but provide no or limited residential frontage.

(3) **LOCAL ROAD.** Local roads primarily provide access to adjacent land and road systems of higher classification and travel over relatively short distances as compared to collector roads. The local street system comprises all facilities not assigned a higher classification and offers the lowest level of mobility.

**ROAD FRONTAGE.** Any strip of land adjacent to a public or private road right-of-way.

**ROOMING AND BOARDING HOUSE.** Any dwelling, other than a hotel or motel, in which 3 or more persons who are not members of the owner's or operator's family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which the accommodations are offered in 4 or more rooms shall be considered to be a hotel or motel.

**SALVAGE YARD.** See **JUNK YARD.**

**SATELLITE DISH ANTENNA.** A device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. The device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbital based uses. This definition is meant to include but not be limited to what are commonly referred to as satellite earth stations, television reception only satellite dish antennas, and satellite microwave antennas.

**SCRAP YARD.** See **JUNK YARD.**

**SCREENING.** A method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

**SCREENING, OPAQUE.** An opaque screen is intended to exclude visual contact with the feature, land use, or activity that is required be screened from any property, public street, or right-of-way that is afforded such protection.

**SETBACK LINE.** The linear distance that establishes buildable and non-buildable area measured inward from the road right-of-way or adjoining property lines. Buildings and other principal structures comprising the activity of the site may not encroach upon this space. However, an accessory activity such as parking or driveway may be located within the setback unless superseded by a buffer.

**SEXUALLY-ORIENTED BUSINESS.** An establishment so defined in Chapter 111 of the Newberry County Code of Ordinances.

**SHOPPING CENTER.** One or more commercial establishments planned, constructed, and managed as a total entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

**SHRUB.** A deciduous or evergreen perennial woody plant of relatively low height, smaller than a tree, with several major branches arising from near the base of the main stem.

**SIGN.** Any object, device, fixture, placard, display, or structure, or part thereof, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.

(1) **SIGN, ANIMATED.** Any sign that uses movement or change of lighting to depict action or create a

special effect or scene.

(2) **SIGN AREA.** The area of a sign face.

(3) **SIGN, BANNER (OUTDOOR ADVERTISING).** A sign intended to be hung either with or without a frame, possessing characters, letters, illustrations, or ornamentations applied to plastic or fabric of any kind excluding flags and emblems of political, professional, religious, educational, or corporate organizations.

(4) **SIGN, BEACON.** Any sign with 1 or more beams directed into the atmosphere or directed at 1 or more points not on the same zoning lot as the light source; also, any light with 1 or more beams that rotate or move.

(5) **SIGN, BILLBOARD.** A type of off-premises sign, generally, but not always, consisting of a rigidly assembled sign, display, or devise, that is affixed to the ground or to a building, the primary purpose of which is to display advertising posters.

(6) **SIGN, BUILDING.** Any sign attached to any part of a building, as contrasted to a freestanding sign. Examples include, but are not limited to: wall, projecting, suspended, and roof (including integral roof) signs, marquees, canopies, banners, and building markers.

(7) **SIGN, CAMPAIGN OR ELECTION.** A sign that advertises a candidate or issue to be voted upon on a definite election day and in a local, state, or federal election process.

(8) **SIGN, CANOPY.** Any sign that is a part of, or attached to, an awning, canopy, fabric or plastic, or structural protective cover over a door, entrance, window, or service area. A marquee is not a canopy (see **SIGN, MARQUEE**).

(9) **SIGN, CHANGEABLE COPY.** A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the remaining face or the surface of the sign.

(10) **SIGN, CONSTRUCTION.** A sign placed at a construction site identifying or announcing the names of the building, contractors, architects, engineers, owners, and financial, selling, and development agencies for work involving construction, alteration, or removal.

(11) **SIGN COPY.** Any words, letters, numbers, figures, characters, symbols, logos, or insignia that are used on a sign face.

(12) **SIGN, DIRECTIONAL OR INSTRUCTIONAL.** An on-premises sign designed to guide vehicular and/or pedestrian traffic by using such words as "entrance," "exit," "parking," "one-way," "warning," "no trespassing," or similar direction or instruction, but not including any advertising message. The name or logo of the business or use to which the sign is giving direction may also be included on the sign.

(13) **SIGN, DIRECTION OR INSTRUCTIONAL - PRIVATE.** Off-premises signs indicating the location and direction to property available for or under development erected on private property, which may display the names of the owner, developer, builder, or agent.

(14) **SIGN, DIRECTORY.** A sign other than an identification sign, listing the names, uses, or locations of the various businesses or activities conducted within a building or group of buildings that is centrally located and intended to provide direction

(15) **SIGN FACE.** That part of the sign that is or can be used to identify, advertise, or communicate information or that is used to attract the attention of the public for any purpose. This definition includes any frame, structural member, or other part of the sign when such is designed or used, including the use of color or lighting, to attract the attention of the public.

(16) **SIGN, FLAG.** Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision, or other business entity.

(17) **SIGN, FLASHING.** A sign that uses an intermittent or flashing light source to attract attention.

(18) **SIGN, FREESTANDING.** Any sign supported by structures or supports that are placed on, or anchored in the ground and that are independent from any building or other structure. Examples include, but are not limited to, ground and pole signs.

(19) **SIGN, GOVERNMENT.** Any temporary or permanent sign erected and maintained for any governmental purposes.

(20) **SIGN, GROUND OR MONUMENT-TYPE.** A freestanding sign that extends from the ground or is attached directly to the ground generally for the entire length of its bottom sign face dimension, or that has a



support which places the bottom of the sign less than 12 inches from the ground.

(21) **SIGN HEIGHT.** The distance from the base of the sign at normal grade to the top of the highest attached component of the sign.

(22) **SIGN, IDENTIFICATION.** A sign that displays only the name, address, and/or crest, insignia, trademark, occupation or profession of an occupant, or the name of any building on the premises.

(23) **SIGN, INCIDENTAL.** A sign, generally informational, that has a purpose secondary to the use of the zoning lot where it is to be located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives which are free of any commercial, advertising, or similarly unrelated message.

(24) **SIGN, INTEGRAL ROOF.** Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than 6 inches.

(25) **SIGN, KIOSK.** A freestanding sign consisting of 3 to 5 sides that lists names of businesses located on a property, in a building, or within the immediate area.

(26) **SIGN, KNOCKOUT.** An internally illuminated sign on which only the lettering and graphics are transparent to the light.

(27) **SIGN, MARQUEE.** Any sign attached to, in any manner, a marquee. For purposes of this definition, a marquee is defined as a permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

(28) **SIGN, MEMORIAL OR PLAQUE.** A sign designating the name of a building and/or date of erection and other items such as architect, contractor, or others involved in the building's creation, cut into or attached to a building surface.

(29) **SIGN, MONUMENT.** A freestanding sign supported primarily by an internal structural framework or integrated into landscaping or solid structural features other than support poles where the base of the sign is on the ground or no more than twelve inches above the adjacent grade.

(30) **SIGN, MULTI-FACED.** A sign having more than 1 face.

(31) **SIGN, NONCONFORMING.** Any sign that was legally in existence prior to this chapter and made illegal by this chapter.

(32) **SIGN, OFF-PREMISES ADVERTISING.** A sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered, or manufactured or to an entertainment offered on a site not where the sign is located.

(33) **SIGN, ON-PREMISES.** A sign that directs attention to a business, commodity, or service, that is conducted, sold, or offered on the premises on which the sign is erected.

(34) **SIGN, PENNANT.** Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

(35) **SIGN, POLE.** A freestanding sign that is supported by a pole(s) and otherwise separated from the ground by air.

(36) **SIGN, PORTABLE.** Any sign not permanently attached to the ground or other permanent structures, or a sign designed to be transported including but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T- frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless the vehicle is used in the normal day-to-day operations of the business.

(37) **SIGN, PROJECTING.** A sign affixed to a building or wall in such a manner that its leading edge extends more than 6 inches beyond the surface of such building or wall.

(38) **SIGN, REAL ESTATE.** A sign that is used to offer for sale, lease, or rent the premises upon which such sign is placed.

(39) **SIGN, RIDER.** A sign designed to accommodate other signs suspended from its frame.

(40) **SIGN, ROOF.** Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

(41) **SIGN STRUCTURE.** The frame supporting a freestanding sign, wall sign, projecting sign, suspended sign, portable sign, marquee sign, or roof sign and poles or supports used to elevate or support the frame.

(42) **SIGN, SUSPENDED.** A sign that is suspended from the underside of a horizontal plane surface which is supported by such surface.

(43) **SIGN, TEMPORARY.** A sign that is not permanently installed in the ground or affixed to any structure or building.

(44) **SIGN, WALL.** Signs attached to, projecting from, or painted on the surface of the wall.

(45) **SIGN, WINDOW.** Any sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

**SITE PLAN.** The development plan for 1 or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands, and waterways, landscaping and open spaces, walkways, means of ingress and egress, circulation, utility services, parking, structures and buildings, signs and lighting, berms, buffers, screening devices, surrounding development, and any other information that reasonably may be required in order that an informed decision can be made by the approving authority.

**SLAUGHTERHOUSE OPERATION, NEW.** An operation, established after May 30, 2006, that slaughters or processes more than 200 million pounds of livestock, hogs, aquatic animals, equine, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes (S.C. Code § 46-45-20).

**SOLAR COLLECTOR.** A device, structure or part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy for direct power consumption, which may or may not include interconnection with the power grid to offset energy consumption of a principal use.

**SOLAR ENERGY.** Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector

**SOLAR ENERGY SYSTEM.** A complete assembly consisting of 1 or more solar collectors and associated mounting hardware or equipment.

(1) **BUILDING-INTEGRATED SOLAR ENERGY SYSTEM.** A solar energy system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include but are not limited to active photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights, and awnings, or passive systems that are designed to capture direct solar heat.

(2) **BUILDING-MOUNTED SOLAR ENERGY SYSTEM.** A solar energy system affixed to either a principal or accessory structure on a lot.

(3) **GROUND-MOUNTED SOLAR ENERGY SYSTEM.** A solar energy system with a supporting framework that is placed on, or anchored in, the ground and that is structurally independent from any building.

**SOLAR FARM.** A series of 3 or more ground-mounted solar collectors installed on a site for the purpose of converting energy into electrical or thermal energy for on-site and/or off-site energy consumption. The area of the system includes all land inside the perimeter of the system and extends to any fencing. This term does not include building-integrated or building-mounted systems.

**SPECIAL EXCEPTION.** A use permitted in a particular zoning district upon showing to the Board of Zoning Appeals that the use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in this chapter and authorized by the Board of Zoning Appeals.

**STACKING SPACE.** A stacking lane is an on-site queuing lane for vehicles associated with a drive-through facility, fuel island, car wash, automatic teller machine (ATM), or similar facility. A stacking space is the area needed for 1 vehicle within the stacking lane.

**STAY.** To stop; to suspend, also known as a stay of proceedings. A stay is a suspension of a case or of a

particular proceeding within a case. In the legal context, a stay prevents further action until a prescribed future event occurs.

**STREET.** A public thoroughfare designed to provide the principal means of access to abutting property, or designed to serve as a roadway for vehicular travel, or both, but excluding alleys.

**STRUCTURAL DEFECT, TREE.** Any naturally occurring or secondary condition such as cavities, weak branch attachments, cracks or decayed wood in the trunk, crown or roots or a tree that may contribute to structural failure. Structural defects can lead to risk-tree designation based on the type, location, severity and/or number of the defect(s).

**STRUCTURE.** Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground, including for purposes of this chapter buildings, mobile manufactured homes, travel trailers, signs, swimming pools, fences, and antennae, but excluding from definition as structures minor landscaping features such as ornamental pools, planting boxes, bird baths, paved surfaces, walkways, driveways, recreational equipment, flagpoles, and mailboxes.

**SUBSTANTIAL ENLARGEMENT.** The increase in floor area(s) occupied by a use by more than 25%, as the floor area(s) existed at the time of permitting or on December 5, 2001, whichever is later.

**SUBSTANTIAL REHABILITATION.** The act of rehabilitating a structure or dwelling to the extent necessary to bring the structure or dwelling into compliance with the International Building Code or the Department of Housing and Urban Development's standards for construction of manufactured housing units, whichever applies.

**TATTOO.** Tattoo or "tattooing" means to indelibly mark or color the skin by subcutaneous introduction of nontoxic dyes or pigments.

**TATTOO OR BODY PIERCING ESTABLISHMENT.** Any room, space, location, area, structure, or business, or any part of any of these places, where tattooing and/or body piercing is practiced or where the business of tattooing and/or body piercing is conducted.

**TEMPORARY.** A use that is not permanent. When the term is applied to a residence, a temporary use is not a substitute for a fixed abode.

**THOROUGHFARE.** Any major arterial road; 1 of the principal routes into and through the community.

**TRANSFER OF BUSINESS OWNERSHIP OR CONTROL.** This term shall include any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business.

**TRANSPORT CONTAINER.**

- (1) A reusable, fully enclosed and securable unit that is or appears to be:
  - (a) Originally, specifically or formerly designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities;
  - (b) Designed or capable of being mounted or moved on a rail car; or
  - (c) Designed for or capable of being mounted on a chassis or bogie for movement by truck trailer or loaded onto a ship.
- (2) Such containers may have been repurposed as storage after primary use, or intended use, for shipping of goods by truck or ship as described above. A transport container shall not be used for temporary portable on-demand storage as defined by this chapter.

**TREE.** A woody perennial plant, generally with a single trunk but sometimes having multiple trunks, with the potential to attain a mature size of at least 5 inches in trunk diameter at 4.5 feet above the ground and a height of at least 15 feet.

- (1) **TREE, LARGE MATURING.** A tree, either single or multi-stemmed, which is of a species that at maturity has the potential to reach a height of at least 45 feet during normal growing conditions.
- (2) **TREE, MEDIUM MATURING.** A tree, either single or multi-stemmed, which is of a species that at

maturity has the potential to reach a height of at least 25 feet during normal growing conditions.

(3) **TREE, SMALL MATURING.** A tree, either single or multi-stemmed, which is of a species that at maturity has the potential to reach a height of at least 15 feet during normal growing conditions.

**TREE MAINTENANCE.** Routine, periodic or occasional activities directed at maintaining or improving a tree's health and condition. Maintenance activities include but are not limited to mulching, pruning, irrigation, fertilization, pest control, cabling and bracing and lightning protection system installation and/or any other accepted arboricultural practice.

**TREE PROTECTION.** The active protection of a tree's roots, trunk and crown for the purpose of avoiding damage to the living structure and to maintain tree health and structural integrity.

**TREE PROTECTION ZONE (TPZ).** A defined area within which certain activities are prohibited or restricted to prevent or minimize potential injury to designated trees before, during and after construction activities. The TPZ is defined by a physical barrier such as fencing, soil berms and signs.

**TREE REMOVAL.** The cutting of a tree near ground line which removes the tree's trunk and crown. The tree stump and roots may or may not be removed along the trunk and crown.

**TREE ROOTS.** The below ground portion of a tree that includes large, woody roots that anchor and support the trunk and crown as well as the small, fibrous roots responsible for water and mineral uptake and gas exchange. Roots are generally located within the top 18 inches of soil and may extend out from the trunk 2 to 3 times the width of the crown.

**TREE TRUNK.** The main woody stem of a tree that connects the roots to the crown and which supports the crown. It functions in the transport of water, minerals and carbohydrates from the crown to the roots and the roots to the crown.

**VARIANCE.** Relief granted by the Board of Zoning Appeals from the strict application of zoning regulations in an individual case of unnecessary hardship base on factual findings and specific criteria required by law.

**VEGETATION.** A living organism of natural growth, including, but not limited to, trees, shrubs, groundcovers, vines, grasses (both lawn and ornamental), herbaceous perennials, biennials, annuals, bulbs, ferns, mosses and lichens.

**YARD.** A required open space established by required setbacks, unoccupied and unobstructed by structures except those specifically permitted.

**YARD, FRONT.** A yard situated between the front building line and the front lot line extending the full width of the lot.

**YARD, REAR.** A yard situated between the rear building line and the rear lot line and extending the full width of the lot.

**YARD, SIDE.** A yard situated between the side building line and the side lot line and extending from the front yard to the rear yard.

**ZONE.** A specifically delineated area or district within which uniform regulations and requirements govern the use, placement, spacing, and size of land and buildings.

**ZONING ADMINISTRATOR.** The person designated by the County Administrator to administer this zoning ordinance. Such person may or may not be a county employee.

(Ord. 06-11-16, passed 9-21-2016)

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## Chapter 153: Zoning Code

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### GENERAL PROVISIONS

#### **§ 153.001 ZONING ORDINANCE PUBLISHED SEPARATELY.**

The Zoning Ordinance shall be published in a separate volume, a copy of which shall be filed with the County Clerk to Council.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.002 AUTHORITY AND TITLE.**

This chapter is adopted pursuant to authority granted in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code §§ 6-29-310 *et seq.* (1994 Supp.). This chapter may be cited as Newberry County Zoning Ordinance, #12-24-01.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.003 JURISDICTION AND PURPOSES.**

The provisions of this chapter shall apply to all land and improvements within the unincorporated area of Newberry County, South Carolina. The purposes of this chapter are to implement the land use element of the comprehensive plan and for those purposes set forth in S.C. Code § 6-29-710.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.004 INTERPRETATION.**

(A) The words and phrases used in this chapter shall have their customary and ordinary meanings as defined in a standard dictionary, except for the specific words and phrases as defined in this chapter.

(B) (1) The present tense includes the past and future tenses. Singular words shall include the plural, and plural words include the singular.

(2) The word **PERSON** includes a firm, association, partnership, trust, company, corporation, or any other entity.

(3) The word **SHALL** is mandatory; the word **MAY** is discretionary.

(4) The words **USED** or **OCCUPIED** include the words **INTENDED, DESIGNED, OR ARRANGED TO BE USED OR OCCUPIED**.

(5) The word **LOT** includes the words **PLOT OR PARCEL**.

(6) The word **STRUCTURE** includes the word **BUILDING**.

(7) References to NAICS codes shall mean those codes assigned to businesses in the latest North American Industrial Classification Manual published by the United States Office of Management and Budget. NAICS codes are listed in the tables of uses for each district as an aid in interpretation and determination of those specific uses included in a general class of uses.

(8) The word **CONTIGUOUS**, as applied to lots or districts, shall be interpreted as meaning sharing a common boundary of 10 or more feet in length.

(9) The phrase **ON THE PREMISES OF**, as applied to accessory uses or structures, shall be interpreted to mean on the same lot or on a contiguous lot in the same ownership.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.005 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABANDONED.** A structure has been left vacant or unused or unoccupied for a period of 6 months or longer, and it is further provided that the disconnection of electric power for a period of 6 months or longer, or the failure to ever connect such a structure to electric power after it is brought into Newberry County, creates a rebuttable presumption that the property has been **ABANDONED**.

**ACCESSORY STRUCTURE.** A structure detached from a principal building located on the same lot and customarily incidental and subordinate to the principal building or use.

**ACCESSORY USE.** A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

**ADULT DAY-CARE CENTER.** A facility that provides supervision, therapy, and social development activities for impaired adults, licensed according to regulations by DHEC.

**ALLEY.** A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

**AUTOMOBILE SERVICE STATION.** (See NAICS Code 447.) Use involving the sale of gasoline, lubricating oils, merchandise such as tires, batteries, auto parts, minor repairs, and may include limited sale of groceries or carwashes, but may not include storage of dismantled or wrecked vehicles for parts.

**BAR.** Premises used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises as accessory to the principal use.

**BED AND BREAKFAST.** An owner-occupied house or portion thereof, where short-term (no more than a week at a time) lodging rooms and meals are provided. No more than 4 guest rooms can be available for accommodations and breakfast service in such an establishment at any 1 time.

**BERM.** Any hill or slope which represents a change of elevation of at least 2 feet at a slope of between 25% and 50% and which is covered with an appropriate stabilizing vegetation.

**BOARDING HOUSES.** Same as rooming and boarding houses.

**BUFFER.** Open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen 1 use or property from another so as to visually shield or block noise, lights, or other nuisances.

**BUFFER YARD.** A strip of land, improved by landscaping or fences, or both, designed to mitigate the extent of higher intensity land uses on neighboring lower intensity uses.

**BUILDING.** Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

**CHANGE OF USE.** Any use that substantially differs from the previous use of a building or land.

**CHILD DAY-CARE CENTER.** Any agency, institution, center, or other place, however styled and whether operated under public auspices, as a private business, or by an established religious denomination, in which are received for temporary custodial care apart from their parents, part of the day or all of the day or night, and upon any number of successive days, 1 or more children not related to the persons providing the temporary custodial care.

**CHURCH.** Any building or structure, or group of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

**CIVIC ORGANIZATION.** See club; lodge; civic or fraternal organization; fraternity; sorority.

**CLUB; LODGE; CIVIC OR FRATERNAL ORGANIZATION; FRATERNITY; SORORITY.** An incorporated or unincorporated association for civic, social, cultural, religious, literary, political, or like activities, operated for the benefit of its members and not open to the general public.

**CLUSTER HOUSING.** A form of development that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision or increase in the overall density of development and the remaining land area is devoted to open space, active recreation, preservation or environmentally sensitive areas or agriculture.

**CONDITIONAL USE.** A use permitted in a particular zoning district upon showing that the use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in this chapter.

**CONFINED ANIMAL FEEDING OPERATION.** An agricultural facility, subject to DHEC approval, where hogs, cattle, ratite, alligators, or fish are confined and fed or maintained prior to commercial sale for a total of 45 days or more in a 12-month period, and crops, forage, or post harvest residues are not sustained in the normal growing season over a portion or the lot or facility. Structures used for storage of animal waste from animals in the operation are part of the confined animal feeding operations.

**CORNER LOT.** See lot, corner.

**CURB CUT.** The opening along the curb line at which point vehicles may enter or leave the roadway.

**DECORATIVE CURBING.** Parking or storage lot pavement curbing usually constructed of stone or unit masonry and designed to control surface drainage and serve as a barrier to vehicular traffic.

**DEVELOPED LOT.** Any lot which has been developed with buildings or other improvements, or for which development approval, such as a final plat approval, a zoning permit, or a certificate of occupancy, had been issued before the effective date of this chapter.

**DISPLAY AREA OR LOT.** Any unenclosed area used for the display of merchandise.

**DISTRICT.** A geographical area assigned a zoning district designation in accord with the provisions of this chapter.

**DRINKING PLACE.** (See NAICS Code 7224.) Establishment primarily engaged in retail sale of alcoholic drinks for consumption on premises. Sale of food may account for a substantial portion of receipts.

**DRIVE-THRU RESTAURANT.** Any eating or drinking establishment which, by its structural design, site characteristics, or manner of food service encourages consumption of food or beverages in automobiles on the premises or upon public streets adjacent thereto.

**DWELLING.** A structure or portion thereof that is used exclusively for human habitation.

**DWELLING, MULTI-FAMILY.** A building containing 3 or more dwelling units, including units that are located 1 over the other.

**DWELLING, SINGLE-FAMILY DETACHED.** A building containing not more than 1 dwelling unit, not physically attached to any other principal structure, and specifically excluding mobile homes.

**DWELLING, 2-FAMILY DETACHED.** A building on a single lot containing 2 dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units. This **2-FAMILY DETACHED DWELLING** is not physically attached to any other principal structure.

**DWELLING UNIT.** One or more rooms, designed, occupied, or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single-family maintaining a household.

**EASEMENT.** A grant of 1 or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

**ENLARGEMENT.** An increase in the size of an existing structure or use, including physical size of the property, building, parking, and other improvements.

**FAMILY.** One or more persons occupying a single dwelling unit, provided that, unless all members are related by blood or marriage, no family shall contain over 3 persons, but further provided that domestic servants or required medical personnel employed on the premises may be housed within the single dwelling unit without being counted as a family or families.

**FENCE.** An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

**FLOOR AREA, GROSS.** The sum of the gross horizontal areas of the several floors of a building from the exterior face of exterior walls, or from the center line of a wall separating 2 buildings, but excluding any space where the floor-to- ceiling height is less than 6 feet.

**FOSTER HOMES.** A foster home provides substitute family care for a child or children by a family group consisting of a male and female foster parent other than the child's own parents, blood relatives or legal guardian, in return for a monetary remuneration for the care. A foster home must be authorized or licensed by the Newberry County Department of Social Services, Alston Wilkes, church-sponsored homes, and others to be considered as a foster home under the

provisions of this chapter and any unauthorized or unlicensed use shall be prohibited. In no case shall more than 2 foster children be housed in a single bedroom or room designated for sleeping purposes. There shall be no more than 5 foster children in a home.

**FRATERNAL ORGANIZATION; FRATERNITY.** See club; lodge; civic or fraternal organization; fraternity; sorority.

**FREESTANDING SIGN.** See sign, freestanding.

**GARAGE.** A deck, building, or parking structure, or part thereof, used, or intended to be used for the parking and storage of vehicles.

**GRADING.** Any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

**GROUND COVER.** Any plant material which serves to prevent soil erosion by covering large areas of ground, and which does not grow beyond 12 inches in height.

**GROUP HOME.** A nonprofit or for-profit boarding home for the sheltered care of 4 or more persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation, unless otherwise specified with another definition in this chapter.

**GROUP HOUSING DEVELOPMENT.** A single lot of record upon which is erected more than 1 building containing dwelling units, and all the

structures thereon; or a single lot upon which is erected a single structure designed to contain more than 4 dwelling units on the first floor level thereof or designed to contain more than 8 dwelling units throughout; except that high rise apartments are not defined as group housing developments.

**GROSS FLOOR AREA.** The sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls, or from the center line of a wall separating 2 buildings, but excluding any space where the floor-to-ceiling height is less than 6 feet.

**HOME OCCUPATION.** An occupation, profession, or trade customarily, and commonly, carried out by an occupant in a dwelling unit as a secondary use which is clearly incidental and subordinate to the residential character of the dwelling unit.

**HORTICULTURAL/LANDSCAPE AUTHORITY.** Any individual or source licensed, registered, decreed, or otherwise acknowledged as capable of providing expert information and reference in horticultural science and/or landscape design and maintenance.

**HOTEL.** (See NAICS Code 7211.) A building in which lodging for pay is offered to the public, with or without meals, for transient or permanent guests, including motel or tourist court containing 5 or more guest rooms.

**IN-HOME ADULT DAY-CARE CENTER.** A facility that provides supervision, therapy, and social development activities for no more than 6 impaired adults, in the home of the proprietor, licensed according to regulations by DHEC.

**IN-HOME CHILD DAY-CARE CENTER.** An in the home child day-care center, which is operated by a resident of the home and in which are received for temporary custodial care apart from their parents, part of the day or all of the day or night, and upon any number of successive days, up to 6 children, not related to the persons providing the temporary custodial care.

**INTENSITY OF USE.** The number of dwelling units per acre for a residential development and the amount or degree of activity for commercial and industrial development.

**JUNK.** Any scrap, waste, reclaimable material, or debris, whether or not stored, for sale or in the process of being dismantled, destroyed, processed, salvaged, stored, baled, disposed, or other use or disposition.

**JUNK, SALVAGE, SCRAP, OR WRECKING YARDS.** (See NAICS Code 42193.) Any use involving storage or processing of inoperable, disused, dismantled, or wrecked vehicles, equipment, or machinery or the storage or processing of scrap metal, waste paper, rags, food processing wastes, construction wastes, industrial wastes, secondhand building materials, or other scrap, salvage, waste, or junk materials.

**KENNEL.** A commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.

#### **LANDFILL.**

(1) *Cellulose landfill.* A landfill which disposes of wood, wood products, stumps, brush, and the like.

(2) *Inert landfill.* A landfill which disposes of nondurable nontoxic and nonhazardous waste such as ash and cinders, broken concrete, crushed stone, clay wastes, and glass.

(3) *Sanitary landfill.* A landfill which disposes of household garbage, other nontoxic and nonhazardous solid waste, and nontoxic and nonhazardous industrial waste.

**LOT.** A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.

**LOT AREA.** The total area within the lot lines of a lot, excluding any street right-of-way.

**LOT, CORNER.** Any lot which is bounded on 2 or more consecutive sides by road rights-of-way which intersect at an angle of 135 degrees or less.

**LOT FRONTAGE.** The front of an interior lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage and yards shall be provided upon that basis. The phrase **STREET FRONTAGE** shall be interpreted to have the same meaning as the phrase **LOT FRONTAGE**.

**LOT, INTERIOR.** A lot other than a corner lot, with only 1 frontage on a street.

**LOT LINE.** A line of record bounding a lot that divides 1 lot from another lot or from a public or private street or any other public space.

**LOT LINE, REAR.** The lot line opposite and most distant from the front lot line. In the case of triangular or otherwise irregularly shaped lots, a line 10 feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

**LOT OF RECORD.** A lot defined by plat or described by metes and bounds which has been duly recorded with the County Clerk of Court.

**LOT, REVERSE FRONTAGE.** A through lot that is not accessible from 1 of the parallel or nonintersecting streets upon which it fronts.

**LOT, THROUGH.** A lot that fronts upon 2 parallel streets or that fronts upon 2 streets that do not intersect at the boundaries of the lot.

**LOT WIDTH.** The distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard, provided, however, that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than 80% of the required lot width; in the case of lots fronting on a cul-de-sac, the width between side lot lines at their foremost points shall not be less than 20 feet.

**MANUFACTURED HOME.** Factory-built, single-family structures that meet the National Manufactured Home Construction and Safety Standard Act (42 U.S.C. §§ 5401 *et seq.*), commonly known as the HUD Code.

**MANUFACTURED HOME PARK.** A lot providing rented parking space for 5 or more manufactured homes used for dwelling units, including service buildings and facilities. Manufactured home sale or storage lots for unoccupied units are not manufactured home parks.

**MINIWAREHOUSE.** (See NAICS Code 53113.) A building or group of buildings on a fenced, controlled access lot which contain individual locked compartments for storage of personal property.



**MODULAR BUILDING.** A structure consisting of 2 or more prefabricated components designed to be transported to a lot and placed on a permanent foundation, and which is certified by the South Carolina Building Codes Council as conforming to the Southern Building Code standards for site built units. A house trailer or manufactured home is not a modular building.

**MOTEL.** (See NAICS Code 72111.) A building or buildings in which lodging, with or without meals, is offered to the public for consumption, including a hotel, tourist court, or inn.

**MULTI-FAMILY DWELLING.** See dwelling, multi-family.

**NONCONFORMING.** A term applied to lots, structures, uses of land or structures, and characteristics or use of land or structures which were lawful before the passage or amendment of this chapter, but which are prohibited by this chapter or which are not in compliance with the requirements of this chapter. For more details, see § 153.044.

**OFF-STREET LOADING.** Designated areas located adjacent to buildings where trucks may load and unload cargo.

**OFF-STREET PARKING.** An area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street arranged so that maneuvering incidental to parking shall not be on any public street and so that an automobile may be parked or unparked therein without moving any other automobile.

**OPEN SPACE.** Unless otherwise defined in this chapter, open space is any parcel or area of land or water essentially unimproved and set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners, occupants, and their guests of land adjoining or neighboring the open space.

**OVERLAY DISTRICT.** A zoning district that encompasses 1 or more underlying zones and that imposes additional requirements above that required by the underlying zone.

**OWNER.** An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

**PARCEL.** A contiguous lot or tract of land owned and recorded as the property of the same persons or controlled by a single entity.

**PARK.** An area or facility intended to be used for recreation, exercise, sports, or similar activities or an area intended to enhance the enjoyment of natural features or natural beauty, but specifically excluding commercially operated amusement parks.

**PARKING AREA.** Any public or private area, under or outside of a building or structure, designed and used for parking motor vehicles, including parking lots, garages, private driveways, and legally designated areas of public streets.

**PARKING LOT.** A public or private open lot for parking motor vehicles as a principal use or as an accessory use to a commercial use.

**PERMITTED USE.** A use permitted outright by district regulations.

**PERSONAL SERVICES.** Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. These include the following: laundries, beauty and barber shops, shoe repair, and health clubs.

**PLANNED DEVELOPMENT DISTRICT.** An area of land in which a variety of housing types and/or related commercial and industrial facilities are accommodated in a pre-planned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply under these regulations. The procedure for approval of the development contains requirements in addition to those of the standard subdivision, such as building design principles, and landscaping plans. See § 153.089 for more details.

**PLAT.**

(1) A map representing a tract of land showing the boundaries and location of individual properties and streets.

(2) A map of a subdivision or site plan.

**PRINCIPAL STRUCTURE OR USE.** A structure or use which is significant or primary rather than accessory.

**PROHIBITED USE.** A use that is not permitted in a zone district.

**PUBLIC HEARING.** A meeting announced and advertised in advance and open to the public, with the public given an opportunity to talk and participate.

**RECREATIONAL.** A use that is temporary and not associated with the customary occupation or employment of the participant, and which involves a pastime, exercise, diversion or other resource affording relaxation and enjoyment. Some common recreational activities are hunting, fishing, swimming, boating, camping, hiking, travel, nature study, golf, tennis, horseback riding, participatory sports, spectator sports, viewing or enjoying historic, archaeological, scenic or scientific sites, and the like.

**RECREATIONAL VEHICLES.** Vehicular-type portable structures without permanent foundation, but with undercarriage, and any necessary axles and wheels continually affixed, that can be towed, hauled, or driven, and are designed as temporary living accommodations for recreational camping and travel use, including but not limited to travel trailers, truck campers, camping trailers, fifth wheel trailers, and self-propelled motor homes.

**RESIDENCE.** A dwelling.

**RESTAURANT.** An establishment where food and drink are prepared, served, and consumed primarily within the principal building.

**RETAIL SALES.** Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of the goods.

**RIGHT-OF-WAY.** A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer and other similar uses.

**ROAD FRONTAGE.** Any strip of land adjacent to a public or private road right-of-way.

**ROOMING AND BOARDING HOUSE.** (See NAICS Code 72119.) Any dwelling, other than a hotel or motel, in which 3 or more persons who are not members of the owner's or operator's family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which the accommodations are offered in 4 or more rooms shall be considered to be a hotel or motel.

**SALVAGE YARD.** Same as junk yard.

**SATELLITE DISH ANTENNA.** A device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. The device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbital based uses. This definition is meant to include but not be limited to what are commonly referred to as satellite earth stations, television reception only satellite dish antennas, and satellite microwave antennas.

**SCRAP YARD.** Same as junk yard.

**SCREEN FENCE OR WALL.** For the purposes of the landscaping requirements, any structure which stands at least 6 feet high at its lowest point, is between 67% and 100% opaque, and is designed and constructed as a permanent improvement for the purpose of blocking view.

**SCREENING.** A method of visually shielding or obscuring 1 abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

**SETBACK LINE.** The setback line is the same as the depth or width of any required yard. Note that the line defines the minimum distance between any structure and an adjacent lot boundary and is not necessarily the same as the building line, which is the distance between the actual structure and an adjacent lot boundary.

**SEXUALLY-ORIENTED BUSINESS.** See § 153.110 for definitions and regulations.

**SHOPPING CENTER.** One or more commercial establishments planned, constructed, and managed as a total entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

**SHRUB.** Any hard-wooded perennial plant of a species which normally reaches a height between 12 inches and 8 feet, and which is between 80% and 100% opaque, at maturity.

**SIGN.** Any object, device, display, or structure, or part thereof, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images, with certain exceptions as enumerated in § 153.160.

**SIGN, BUSINESS.** A sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered, or manufactured or to an entertainment offered on the premises where the sign is located, and as further defined in § 153.160.

**SIGN, DIRECTORY.** A sign listing the tenants or occupants of a building or group of buildings and that may indicate their respective professions or business activities, and as further defined in § 153.160.

**SIGN, FREESTANDING.** A sign which is permanently affixed to the ground and which is not a part of a building or other structure.

**SIGN, GROUND OR MONUMENT-TYPE.** A freestanding sign which extends from the ground or is attached directly to the ground generally for the entire length of its bottom sign face dimension or which has a support which places the bottom of the sign less than 12 inches from the ground.

**SIGN, NONCONFORMING.** Any sign that was legally in existence prior to this chapter and made illegal by this chapter.

**SIGN, OFF-PREMISES ADVERTISING.** A sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered, or manufactured or to an entertainment offered on a site not where the sign is located.

**SIGN, PORTABLE.** A sign that is not permanent, affixed to a building, structure, or the ground.

**SIGN, PYLON.** A freestanding sign supported by 1 or more structures or poles that are placed on, or anchored in, the ground, or other surface and otherwise separated from the ground more than 12 inches by air, generally over 7 feet in height, and that is independent from any building or other structure.

**SITE PLAN.** The development plan for 1 or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands, and waterways; landscaping and open spaces; walkways; means of ingress and egress; circulation; utility services; structures and buildings; signs and lighting; berms, buffers, and screening devices; surrounding development; and any other information that reasonably may be required in order that an informed decision can be made by the approving authority.

**SOLAR ENERGY SYSTEM.** A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used), and components for the distribution of transformed energy (to the extent they cannot be used jointly with a conventional energy system). Passive solar energy systems are included in this definition.

**SOLAR SKYSPACE.** The space between a solar energy collector and the sun that must be free of obstructions that shade the collector to an extent which precludes its cost effective operation.

**SOLAR SKYSPACE EASEMENT.** A right, expressed as an easement, covenant, condition, or other property interest, in any land or other instrument executed by, or on behalf of, any landowner that protects the solar skyspace of an actual, proposed, or designated solar energy collector at a described location by forbidding or limiting activities or land uses that interfere with access to solar energy.

**SPECIAL EXCEPTION.** A use permitted in a particular zoning district upon showing to the Board of Appeals that the use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in this chapter and authorized by the Board of Appeals.

**STREET.** A public thoroughfare designed to provide the principal means of access to abutting property, or designed to serve as a roadway for vehicular travel, or both, but excluding alleys.

**STRUCTURE.** Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground, including for purposes of this chapter buildings, mobile manufactured homes, travel trailers, signs, swimming pools, fences, and antennae, but excluding from definition as structures minor landscaping features such as ornamental pools, planting boxes, bird baths, paved surfaces, walkways, driveways, recreational equipment, flagpoles, and mailboxes.

**SUBSTANTIAL REHABILITATION.** The act of rehabilitating a structure or dwelling to the extent necessary to bring the structure or dwelling into compliance with the International Building Code or the Department of Housing and Urban Development's standards for construction of manufactured housing units, whichever applies.

**TEMPORARY.** A use that is not permanent, and which is not a substitute for a fixed abode. Temporary use of a recreational vehicle (RV) is characterized by its not having a permanent connection to electric power, not having a mail receptacle, not having any

occupational or commercial use, and not being used as a fixed place of abode or as a temporary abode during a period of employment or work as an independent contractor, and having no foundation, and no porches, patios or storage buildings affixed or in close proximity to the RV, among other characteristics. To qualify as a temporary use, such RV's must have a current license plate affixed, if state law requires registration and licensing, and must be mechanically ready to be moved at all times under the motive power for which such unit is designed. RV's which are alleged to be in temporary use, but which have a connection to either a water supply or to an individual sewage disposal system or community sewer system may or may not qualify as a temporary use, depending on an evaluation of all other pertinent factors relating to the actual use of the unit.

**THOROUGHFARE.** Any major arterial road; 1 of the principal routes into and through the community.

**VARIANCE.** Relief granted by the Board of Zoning Appeals from the strict application of zoning regulations in an individual case of unnecessary hardship base on factual findings required by law.

**YARD.** A required open space unoccupied and unobstructed by structures except those specifically permitted.

**YARD, FRONT.** A yard situated between the front building line and the front lot line extending the full width of the lot.

**YARD, REAR.** A yard situated between the rear building line and the rear lot line and extending the full width of the lot.

**YARD, SIDE.** A yard situated between the side building line and the side lot line and extending from the front yard to the rear yard.

**ZONE.** A specifically delineated area or district within which uniform regulations and requirements govern the use, placement, spacing, and size of land and buildings.

#### **ZONING ADMINISTRATOR.**

- (1) The person designated by the County Administrator to administer this chapter.
- (2) This person may or may not be an employee of the county.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 04-07-06, passed 4-5-2006; Am. Ord. 03-06-08, passed 6-4-08)

#### **ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP**

##### **§ 153.020 ESTABLISHMENT OF DISTRICTS.**

(A) The following zoning districts are hereby established.

| <b>District</b> | <b>Uses</b>               | <b>Minimum Lot</b>                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AG              | Agricultural              | 5 acres                                                                                                                                                                                                                                                                                                                                                                                    |
| R-2             | Rural                     | 1 acre                                                                                                                                                                                                                                                                                                                                                                                     |
| RS-1            | Single-Family Residential | With public water and sewer - 20,000 square feet;<br>With individual water or sewer - 1 acre, or as directed by DHEC                                                                                                                                                                                                                                                                       |
| RS-1A           | Single-Family Residential | With public water and sewer: 20,000 square feet<br>With individual water or sewer: 1 acre or as directed by DHEC                                                                                                                                                                                                                                                                           |
| RS-2            | Single-Family Residential | With public water and sewer - 15,000 square feet;<br>With individual water or sewer - 1 acre or greater, as directed by DHEC                                                                                                                                                                                                                                                               |
| RS-3            | Single-Family Residential | With public water and sewer - 15,000 square feet;<br>With individual water or sewer - 1 acre or greater, as directed by DHEC                                                                                                                                                                                                                                                               |
| RS-4            | Single-Family Residential | With public water and sewer - 20,000 square feet;<br>With individual water and sewer - 1 acre or greater, as directed by DHEC                                                                                                                                                                                                                                                              |
| RG              | General Residential       | Single-Family:<br><br>With public water and sewer - 10,000 square feet;<br><br>With public water, individual sewer - 1/2 acre as directed by DHEC;<br><br>With individual water and sewer - 1 acre as directed by DHEC<br><br>Multi-family: 12,000 square feet for first dwelling unit; 3,000 square feet for second dwelling unit; thereafter, 2,500 square feet for each additional unit |
| LC              | Limited Commercial        | None                                                                                                                                                                                                                                                                                                                                                                                       |
| GC              | General Commercial        | None                                                                                                                                                                                                                                                                                                                                                                                       |
| LI              | Limited Industrial        | None                                                                                                                                                                                                                                                                                                                                                                                       |

|     |                                     |      |
|-----|-------------------------------------|------|
| BI  | Basic Industrial                    | None |
| PD  | Planned Development District        | None |
| RIV | River Preservation Overlay District | None |
| AP  | Airport Overlay District            | None |
| FP  | Flood Hazard Area Overlay District  | None |

(B) No amendment shall be initiated which would create a new zoning district with an area of less than 2 acres; provided, however, the minimum area for a PD (Planned Development) District shall be 4 acres. The minimum requirement does not apply to the extension of an existing district, or the addition of any commercial or industrial district to any other commercial or industrial district.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 05-15-08, passed 6-4-2008)

#### **§ 153.021 DISTRICT PURPOSE.**

##### **(A) Generally.**

(1) The zoning districts established in this chapter are for the purposes of guiding development in accordance with existing and future needs and promoting public health, safety, morals, convenience, order, appearance, prosperity, and general welfare, and all of the purposes set forth in S.C. Code § 6-29-710. Sections 153.020 et seq. only sets forth the general purposes of the various zoning districts, but the specific regulations relating to permitted uses, conditional uses, and special exceptions are set forth only in §§ 153.065 et seq., which contains the district regulations. In addition, reference is made to §§ 153.065 et seq. district regulations for all yard requirements, off-street parking requirements, and other specific requirements for each zoning district.

(2) The residential district regulations are designed to encourage a stable and healthy environment for residential purposes and to discourage encroachment by commercial, industrial, or other uses adversely affecting the residential character of the district.

##### **(B) Districts.**

(1) *AG Agricultural District.* The Agricultural (AG) District consists of land primarily used as farmland, woodlands, and widely scattered residential development located within the rural areas of the county. The AG District is intended to protect and encourage family agricultural, silvicultural, and equestrian endeavors and promote the wise use of prime agricultural land, forested areas, and pastoral land; to protect valuable natural, historical, and



cultural resources. This is accomplished by maintaining the existing agricultural lands and preventing the encroachment of incompatible land uses. The purpose of the AG District is to provide land use protection specifically for the propagation of crops, orchards, vineyards, and farm animals on family farming operations to include the land uses as fields, pastures, barns, barn yards, gardens, greenhouses, horticultural nurseries, corrals, pens and fertilizer storage facilities, stables, paddocks, arenas, trails, foul weather sheds and associated facilities that can meet the requirements set forth in the district regulations. It should be noted that all primary uses in this district are agricultural, all other uses in this district are incidental and subordinate to the agricultural nature of the district and are permitted as such. Nonfarm residents should recognize that they are located in an agricultural environment where the right-to-farm has been established as county policy. This district is also intended to minimize the demand for public infrastructure and improvements such as roads, sewer, water and utility service areas, by reducing development densities and discouraging large scale development of any kind within the District as a whole.

(2) *R-2 Rural District.* R-2 districts require large parcels for uses, allow rural and residential uses, including manufactured homes on individual lots, agricultural and related uses, ranching, recreation and hunting, a variety of government service uses, and limited business uses. Landfills may be permitted as a special exception.

(3) *RS-1 Single-Family Residential District.* RS-1 Districts are intended to be single-family residential areas with detached units and low populations densities. Use regulation allows education, religious, and limited recreation uses which are compatible with the character of the District. Manufactured homes and businesses are not permitted.

(4) *RS-1A Single-Family Residential District.* RS-1A Districts are intended to be single-family residential areas, typically in platted subdivisions, with detached or semi-detached units and low populations densities. Use regulation allows education, religious and limited recreational uses which are compatible with the character of the district. Manufactured homes, recreational vehicles and business and commercial operations are generally not permitted.

(5) *RS-2 Single-Family Residential District.* RS-2 Districts are intended to be single-family residential areas with detached units and low populations densities. Use regulation allows education, religious, and limited recreation uses which are compatible with the character of the District. Manufactured homes and businesses are not permitted.

(6) *RS-3 Single-Family Residential District.* RS-3 Districts are intended to be single-family residential areas with detached units and low populations densities. Use regulation allows education, religious, and limited recreation uses which are compatible with the character of the District. Manufactured homes are permitted. Businesses are not permitted.

(7) *RS-4 Single-Family Residential District.* RS-4 Districts are intended to be single-family residential areas with detached units and low population densities. Use regulation allows education, religious, and limited recreation uses that are compatible with the character of the District. Manufactured homes are permitted under conditions. Businesses are not permitted.

(8) *RG General Residential District.* This District allows single-family and multi-family residential uses, schools, day care, recreation religious, civic, and social uses. Health care uses and government facility may be permitted as a special exception. Manufactured homes are permitted as conditional uses, and manufactured home parks may be permitted as a special exception.

(9) *LC Limited Commercial District.* LC Districts are intended for areas of office, institutional, residential, and limited neighborhood commercial and service uses. District characteristics may include a mixture of residential and business uses along major streets or highways.

(10) *GC General Commercial District.* GC Districts are intended to accommodate a variety of general commercial and nonresidential uses characterized primarily by retail, including shopping centers, wholesale, office, and service establishments in a business area.

(11) *LI Limited Industrial District.* LI Districts are intended for a limited variety of light industrial and commercial uses which do not create nuisances. Agricultural uses and some light manufacturing and warehousing uses are permitted.

(12) *BI Basic Industrial District.* This District is established for a wide variety of industrial uses involving research, manufacturing, processing, assembly, storage, landfill, mining, and all uses permitted in the LI District.

(13) *PD Planned Development District.* This District designates an area for which an approved development plan constitutes the district regulations. It is intended to utilize the factors of efficiency, economy, flexibility, creative site design, improved appearance, compatibility of mixed uses, maximum benefits from open space, safe and efficient vehicular and pedestrian access for a development characterized by a unified site design for mixed uses. A Planned Development District may be predominately residential or predominately commercial. A planned development district may be proposed in any part of the county.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 05-15-08, passed 6-4-2008)

#### § 153.022 DISTRICT BOUNDARIES ON MAP.

The boundaries of the zoning districts established by this chapter are hereby established on a map or maps entitled Zoning Map of Newberry County, S.C., which map or maps is declared to be a part of this chapter.

(Ord. 12-24-01, passed 12-5-2001)

#### § 153.023 OFFICIAL ZONING MAP.

The Official Zoning Map shall be maintained in the office of the Zoning Administrator. A duplicate Official Zoning Map shall be kept in the office of the County Clerk to Council. All zoning district boundaries shall be clearly shown on the Zoning Map, and amendments shall be

recorded immediately after adoption. The official copies of the Zoning Map shall be dated and attested by the County Clerk to Council, and shall be available for public inspection. The Official Zoning Map and any amendments adopted by County Council shall constitute the final authority for determination of zoning district boundaries. It shall be unlawful for any person to make unauthorized changes to the Zoning Map.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.024 INTERPRETATION OF DISTRICT BOUNDARIES.**

(A) *Generally.* Where uncertainty exists as to the boundaries of any zoning district, the following general rules of interpretation shall apply. It is the duty of the Zoning Administrator to interpret the location of zoning district boundaries. An appeal from an interpretation of finding of the Zoning Administrator may be taken to the Zoning Board of Appeals as specified in §§ 153.190 et seq.

##### **(B) *General rules of interpretation.***

(1) District boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow the center lines.

(2) District boundaries indicated as approximately following platted lot lines shall be construed as following the lot lines.

(3) District boundaries indicated as approximately following county limits shall be construed as following the county limits.

(4) District boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

(5) District boundaries indicated as following center lines of stream beds or other bodies of water shall be construed to follow the center lines.

(6) Supplementary flood plain and floodway boundaries indicated as following the U.S. Army Corps of Engineers 100-year flood plain line or the floodway line shall be construed to follow the lines.

(7) District boundaries indicated as approximately parallel to, or extensions of, features indicated in this section shall be so construed and at the distance therefrom as indicated on the official copy of the Zoning Map. Distances not specifically indicated on the official copy of the Zoning Map shall be determined by the scale of the map.

(8) Where a district boundary line as appearing on the Zoning Map divides a lot in single ownership at the time of adoption of this chapter or subsequent amendment into 2 different zoning districts, the district least restrictive in the opinion of the owner shall be deemed to apply to the whole thereof. Provided, however, that in no case shall a zoning district boundary

line dividing the lot be extended into either district in excess of 50 feet beyond the district boundary line dividing the lot.

(Ord. 12-24-01, passed 12-5-2001)

**§ 153.025 LOT DIVIDED BY DISTRICT BOUNDARIES.**

No structure or accessory use may be placed, structurally altered, or have a change in use where the structure or use is or would be included within 2 or more zoning districts unless the structure or use conforms to the requirements of all applicable district regulations.

(Ord. 12-24-01, passed 12-5-2001)

**GENERAL REGULATIONS**

**§ 153.040 APPLICATION OF REGULATIONS.**

(A) Within each district, the regulations set forth by this chapter shall apply uniformly to each class or kind of structure or land.

(B) In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards shall govern. Unless deed restrictions, covenants, or other contracts directly involve the county as a party in interest, the county shall have no administrative responsibility for enforcing the deed restrictions or covenants.

(C) No building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with the regulations specified in this chapter for the district in which it is located.

(Ord. 12-24-01, passed 12-5-2001)

**§ 153.041 STREET ACCESS REQUIRED.**

Except as otherwise specifically provided, no building shall be located, used, or occupied on a lot without direct vehicular and pedestrian access to a public street, or a private street that meets all public street standards. Direct access may be by either a private drive directly to the street or by a perpetual easement.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.042 STRUCTURES REQUIRED TO BE ON LOTS OF RECORD.**

Any new structure erected after the effective date of this chapter shall be on a lot of record.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.043 REDUCTION OF LOT AREA PROHIBITED.**

(A) No yard or lot existing on the effective date of this chapter shall be reduced in dimension or area below the applicable district minimum requirements.

(B) New lots or yards shall meet the applicable district minimum requirements.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.044 NONCONFORMING STRUCTURES OR USES.**

(A) Nonconforming structures or land uses are declared to be incompatible with permitted uses in the districts established by this chapter. It is the intent of this chapter to allow nonconformities to continue until they are removed, but not to encourage their survival.

(B) The lawful use of any structure or land on the effective date of this chapter may be continued subject to the following regulations.

(1) A nonconforming use, structure, or characteristic of use shall not be changed to any other nonconforming use, structure, or characteristic of use unless the Zoning Board of Appeals finds that the new use, structure, or activity is more in character with the uses permitted in the district, in which case the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the purpose of this chapter.

(2) The minimum yard requirements of this chapter shall not be construed as prohibiting the conversion of an existing building which does not meet the minimum yard requirements to another permitted use, so long as no further encroachment is made into the existing yards.

(3) A nonconforming structure shall not be demolished and rebuilt as a nonconforming structure.

(4) A nonconforming use, structure, or characteristic of use shall not be extended, enlarged, or intensified except in conformity with this chapter, provided, however, that any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for the use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside the building.

(5) A nonconforming use, or characteristic of use, shall not be reestablished after vacancy, abandonment, or discontinuance for any period of 6 consecutive months, except where division (B)(6) below applies. Provided, however, that commercial and industrial businesses established at the time this chapter is adopted are exempt from this provision. Owners of manufactured homes which have been abandoned for a period not less than 6 months and which

are older than 6-15-1976 shall remove them permanently from all land/lots of Newberry County unless the owner can demonstrate significant steps to bring the unit into compliance with the Zoning Ordinance.

(6) (a) A nonconforming structure may be rebuilt, altered, or repaired in its pre-existing location after sustaining damage, provided, however, that the structure is not expanded beyond the previous square footage.

(b) Notwithstanding the above, a manufactured home may be replaced on the same lot with one of equal square footage or larger which meets HUD standards.

(c) The unit must be replaced within 6 months of the destruction or removal.

(7) (a) On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the cubic content of the building as it existed at the time of passage or amendment of this chapter shall not be increased.

(b) Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of the official.

(8) Nonconforming off-premises advertising signs may be rebuilt, provided all structural requirements for the uses set forth in this chapter are met.

(9) A nonconforming use of land outside a building shall not be extended enlarged or intensified on additional land area after the effective date of this chapter.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.045 NONCONFORMING LOTS OF RECORD.**

(A) *Single lots.* In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of this chapter, provided that setback requirements of the district are met.

(B) *Adjoining lots.* If 2 or more adjoining lots with continuous frontage are in a single ownership at any time after the adoption or amendment of this chapter and the lots individually are too small to meet the yard, width, or area requirements of the district in which they are located, the groups of lots shall be considered as a single lot or several lots of minimum permitted size and the lot or lots in 1 ownership shall be subject to the requirements of this chapter.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.046 TEMPORARY NONCONFORMING USES.**

A temporary use permit may be issued by the Zoning Administrator for an appropriate period of time not to exceed 12-month increments for nonconforming buildings, structures, or uses incidental to building construction or land development or deemed to be generally beneficial, provided that the owner of the temporary nonconforming use agrees to remove the temporary nonconforming use upon expiration of the permit.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.047 STRUCTURES IN MINIMUM REQUIRED YARDS.**

(A) The general definition of yards as set forth in § 153.005 states that yards are unoccupied and unobstructed by a structure or portion of a structure from 30 inches above the finished grade level of the ground upward.

(B) However, the general definition shall be construed subject to the following exceptions and interpretations:

(1) Those objects which are excluded from the definition of a structure under § 153.005 shall not be subject to regulation under interpretation of the definition of yard;

(2) Steps and open porches without roofs shall be allowed in any required yard;

(3) Screening walls and fences over 30 inches in height that substantially impede vision may be permitted in a required yard as a special exception, however, screening walls and fences not over 7 feet in height are permitted outright in side and rear yards;

(4) Eaves, cornices, gutters, and other minor architectural features projecting less than 18 inches from the main portion of a building shall be allowed to project into any yard;

(5) In GC, LI, and BI Districts, structures and devices incidental to servicing, and roofs over the structures and devices are permitted within required front yards, provided that they do not constitute a substantial impediment to visibility across the yards which would contribute to the creation of traffic hazards, and further provided that servicing operations in connection therewith can be conducted so as not to interfere with public use of adjacent sidewalks or public streets;

(6) Retaining walls in excess of 30 inches in height may be permitted as a special exception in any yard; however, retaining walls that do not project more than 30 inches above the grade level at the property lines of adjoining lots are permitted outright;

(7) Signs are permitted to encroach upon required yards in certain instances as set forth in §§ 153.160 et seq.;

(8) Screening between commercial or industrial uses and lots zoned residentially, as required by this chapter; and

(9) Apparatus needed for the operation of active and passive solar energy systems, including but not limited to overhangs, movable insulating walls and roofs, the attached solar collectors, reflectors, and piping.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.048 ORIENTATION OF REQUIRED YARDS.**

(A) *Generally.* In interpretation of requirements related to establishment of required yards, the Zoning Administrator shall apply the following interpretation to the orientation of the yards.

(B) *Specifically.*

(1) *Through lots.* In the case of through lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages. Where 1 of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the Zoning Administrator may waive the requirement for the normal front yard and substitute therefore a special yard requirement which shall not exceed the average of the yards existing on adjacent lots.

(2) *Corner lots with two frontages.* In the case of corner lots with 2 frontages, a front yard of the required depth shall be provided on the frontage of the street having the higher traffic volumes. Where the traffic volumes on both streets are approximately equal, the required depth shall be provided on the street frontage having the minimum lot width. A second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

(3) *Corner lots with more than 2 frontages.* In the case of corner lots with more than 2 frontages, the Zoning Administrator shall determine the front yard requirements, subject to the following limitations:

(a) At least 1 front yard shall be provided having full depth required generally in the district; and

(b) No other front yard on the lot shall have less than 1/2 the full depth required generally.

(4) *Appropriateness of orientation.* Notwithstanding the above, the Zoning Administrator may determine that the most appropriate orientation for any required yard is different from the orientation as set forth above in such instances that it appears that the different orientation will further the intent of this chapter. When a structure is to be built which will contain more than 1 dwelling unit, the orientation of required yards shall be based upon both the orientation of the lot and the orientation of the structure. The Zoning Administrator may impose



an orientation of yards different from the orientation set forth in this section and elsewhere in this chapter subject only to appeal of the decision to the Board of Appeals as an appeal from an administrative decision of the Zoning Administrator.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.049 ERECTION OF STRUCTURES ONLY UPON LOTS OF RECORD.**

Any new structure erected after the effective date of this chapter shall be erected only upon a lot of record.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.050 LOT COVERAGE.**

The area of the lot, which when viewed directly from above would be covered by all principal accessory buildings and structures. A portion of the principal or accessory building, or any terrace, balcony, breezeway, porch, or portion thereof, or any solar collection device or related apparatus, not included as floor area of the building, by definition shall not be included in computing lot coverage.

(Ord. 12-24-01, passed 12-5-2001)

**§ 153.051 DETERMINATION OF SOLAR SKYSPACE EASEMENT.**

The solar skyspace easement defined in § 153.005 may be computed by using the designated minimum yard requirement in each zoning district in coordination with the information on skyspace and shadow data in Appendix 1 of *Protecting Solar Access for Residential Development, Department of Housing and Urban Development, 1979.*

(Ord. 12-24-01, passed 12-5-2001)

**DISTRICT REGULATIONS**

**§ 153.065 DISTRICT USE CLASSIFICATIONS.**

Sections 153.040 et seq., 153.065 et seq., and 153.110 et seq. are applicable in all of the following classes of uses.

(A) *Permitted uses.* Permitted uses listed in §§ 153.065 et seq. are permitted outright.

(B) *Conditional uses.* Conditional uses in §§ 153.065 et seq. are permitted by the Zoning Administrator without further review upon compliance with conditions specified in the tables.

(C) *Special exceptions.* Special exceptions are permitted after review and approval by the Board of Zoning Appeals upon compliance with general conditions in the regulations.

(D) *Table of uses.*

(1) References to NAICS codes in §§ 153.065 *et seq.* shall mean those codes assigned to the businesses in the 1997 North American Industry Classification Manual published by the United States Office of Management and Budget.

(2) NAICS codes are listed in §§ 153.065 *et seq.* for each district as an aid in the interpretation and determination of those specific uses included in general class of uses.

(Ord. 12-24-01, passed 12-5-2001)

**§ 153.066 AG AGRICULTURAL DISTRICT; PERMITTED USES.**

| <i>AG Permitted Uses</i>                                                                                                                     | <i>SIC Code</i>                 | <i>SIC Description</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Horticulture or agriculture; including the keeping of poultry or animals, except feedlots. Exotic, wild and dangerous animals not permitted. | 01 and 02, but not 0211 or 0213 | Agricultural production, orchard, greenhouse, nursery; cash grains, berry farms, cotton, tobacco, sugarcane, vegetables and melons, fruits and tree nuts, deciduous tree fruits, citrus, ornamental floriculture and nurseries, mushrooms, hydroponic crops, general farms. Beef cattle and hogs, except feedlots. Horses, mules, ponies, sheep, goats, general livestock, dairy, poultry, eggs, hatcheries, fur-bearing animals and rabbits, aquaculture, honey production, apiaries, aviaries, earthworm hatcheries, silk and silkworms, kennels for breeding and raising animals and stock. |
| Structures and man-made improvements associated with horticulture or agriculture.                                                            | 01 and 02, but not 0211 or 0213 | Barns, barn yards, silos, gardens, greenhouses, horticultural nurseries, corrals, pens, feed and fertilizer storage facilities, stables, paddocks, arenas, trails, pastures, cultivated fields, foul weather sheds, fences, wells and associated facilities.                                                                                                                                                                                                                                                                                                                                   |
| Government building or facility                                                                                                              | 91, 92, 93, 94, 95, 96          | General government buildings and facilities, justice, public order, safety, finance, and the like                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Silviculture, forest nurseries, and gathering of forest products.                                                                            | 81, 83, 85                      | Tree farms, including Christmas tree farms, timber tracts, forest nurseries, ginseng farms, ginkgo farms, and gathering of forest products, seeds. Reforestation, timber valuation, forest management, including cruising, mapping and fire prevention activities.                                                                                                                                                                                                                                                                                                                             |
| Agricultural services                                                                                                                        | 71, 72, 74, 75, 76, 78          | Soil preparation services, crop planting, cultivation and protection; harvesting, both by hand and by machine, seed bed preparation, crop preparation for market, veterinary services, livestock services, animal shelters, farm labor and management services. Landscape planning, consultation, lawn and garden services.                                                                                                                                                                                                                                                                    |

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| <p>Schools, elementary and secondary, public and private. Riding schools, sports instructional schools.</p> <p>NOTE: For kindergartens, colleges, universities, and professional schools, see Special Exception Uses.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 8211, 7999 | <p>Academics, elementary and secondary schools, boarding schools, finishing schools, high schools, parochial schools, preparatory schools, schools for the physically and mentally handicapped, seminaries, vocational schools. Also rental of saddle horses, riding academies and schools, sports instructional schools.</p> |
| <p><u>Accessory uses on same lot with principal use as follows:</u></p> <ol style="list-style-type: none"> <li>(1) Private garage for vehicles;</li> <li>(2) Open parking may be used for 1 commercial vehicle up to 1 ton in capacity;</li> <li>(3) Shed for storage of farming, building or lot maintenance equipment;</li> <li>(4) Private kennel for not more than 4 dogs and/or 4 cats, with minimum 6-foot fence for exterior kennel;</li> <li>(5) Private swimming pool, including deck, bath house or cabana, boat dock;</li> <li>(6) Disaster shelter;</li> <li>(7) Private garden; summerhouse, gardening shed, greenhouse or cold frame up to 8 feet high;</li> <li>(8) Private tennis, outdoor recreation and picnic facilities;</li> <li>(9) Caretaker housing or guesthouse in a permanent site-built structure;</li> <li>(10) Single- and 2-family dwellings: may be permanent site-built structures or HUD-certified manufactured homes permitted in accordance with all other building and zoning requirements as stated on the manufactured home zoning/building permit application. Such dwellings are incidental and subordinate to the primary agricultural use, and may be unlimited in number on the same parcel, so long as total square footage of all the residences combined do not exceed 2% of the total square footage of the parcel, and for tracts over 100 acres the total density of the tract may not exceed 1 dwelling per 5 acres. Such dwellings may be permitted without subdividing in accordance with Newberry County Land Development Regulations so long as these minimums are met.</li> </ol> |            |                                                                                                                                                                                                                                                                                                                               |

(11) Migrant and/or farm worker housing: must be in a permanent site-built single, 2-family, or multi-family structure permitted in accordance with the International Building Code as adopted by Newberry County, or in a HUD-certified manufactured home permitted in accordance with all other building and zoning requirements as stated on the manufactured home zoning/building permit application.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.067 AG AGRICULTURAL DISTRICT; CONDITIONAL AND SPECIAL EXCEPTION USES.**

| <i><b>AG Conditional Uses</b></i>                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i><b>SIC Code</b></i> | <i><b>SIC Description</b></i>                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------------------------------------|
| <p>Church, synagogue, temple, or place of worship, including religious education building, parsonage, or parish office, off-street parking for members and visitors without pay, and recreation facilities; provided all following conditions are met:</p> <p>(1) Use is conducted in a permanent structure;</p> <p>(2) SC-DOT requirements for traffic conditions and all entrances are met;</p> <p>(3) All parking and other requirements of the ordinance are met.</p> | 8661                   | Religious organizations, churches, and the like |
| <p>Public utility substation, water tower (for communication tower, see Special Exceptions); provided all following conditions are met:</p> <p>(1) Structures are enclosed by an appropriate security fence;</p> <p>(2) No office, commercial operation, or storage of vehicles or equipment is permitted;</p> <p>(3) A landscaped strip at least 5 feet wide is planted and maintained along exterior lot lines.</p>                                                     | 49                     | Electric, gas, water, sanitary sewer            |
| <p>Cemetery, provided all following conditions are met:</p> <p>(1) Minimum 5 acre lot;</p> <p>(2) No crematorium or dwelling except caretaker;</p>                                                                                                                                                                                                                                                                                                                        | 6553                   | Cemetery                                        |

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| <p>(3) Front yard setback greater than 70 feet from center of street or 10 feet from street right-of-way line;</p> <p>(4) Non-illuminated sign not more than 32 square feet in area and not to exceed 6 feet in height, or 8 feet in height if on landscaped berm.</p>                                                                                                                                                                                                |      |                                                                                                         |
| <p>Roadside stands, open air markets, and farmers' markets, as permitted under DHEC requirements:</p> <p>(1) All state and federal permitting requirements are met;</p> <p>(2) Use is compatible with the district and neighborhood;</p> <p>(3) Use will not create a traffic, noise, or other nuisances on surrounding properties;</p> <p>(4) One off-street parking space per 100 square feet of gross selling and display area is provided</p>                     |      | Farmers markets, fruit and vegetable stands, open air markets selling produce and farm-related products |
| <p>Temporary contractor office and equipment shed, provided that all following conditions are met:</p> <p>(1) Used in connection with construction on premises;</p> <p>(2) Must not cause traffic congestion or nuisance;</p> <p>(3) For term up to 1 year, may be renewed once.</p>                                                                                                                                                                                  | 1521 | General contractor, single-family houses and other types of licensed contractors.                       |
| <p>Customary home occupation other than farming uses, provided all of the following conditions are met:</p> <p>(1) Conducted inside dwelling or in accessory building by resident family members and no more than 2 non-family members;</p> <p>(2) Utilizes a total floor space equal to not more than 50% of the total floor area of the principal dwelling;</p> <p>(3) No change in exterior appearance of dwelling;</p> <p>(4) No outside display of products;</p> |      |                                                                                                         |

- (5) No sale of products except those made on premises or consumables incidental to a service;
- (6) Create no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly conditions or nuisance;
- (7) Activity is not visibly evident outside dwelling or accessory building, except for a wall-mounted sign not over 4 square feet in area that conforms to all regulations for signage in the district;
- (8) Accessory building used for home occupation or office must conform to all construction, setback and use requirements of the district.
- NOTE: All farming uses, including homes occupations, are as permitted under § 153.066. For bed and breakfast inn, see Special Exceptions.

| <b><i>AG Special Exemptions<br/>(approved by the Board of Zoning Appeals after hearing)</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b><i>SIC Code</i></b> | <b><i>SIC Description</i></b>                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------------------------------------------|
| Unlighted, regulation-size or par 3 golf course, provided the Board of Zoning Appeals determines: <ul style="list-style-type: none"> <li>(1) Adequate off street parking is provided;</li> <li>(2) No building permitted except maintenance shed, clubhouse (including limited eating facility and pro shop), cart storage, restrooms, rain shelters and gate house;</li> <li>(3) No permitted building or parking facility shall be within 300 feet of a dwelling;</li> <li>(4) Adequate provisions for access and traffic safety;</li> <li>(5) The use is compatible with the district.</li> </ul> | 7992<br><br>7991       | Golf course,<br><br>Public golf courses, membership                  |
| Private kindergarten or preschool nursery, provided the Board of Zoning Appeals determines: <ul style="list-style-type: none"> <li>(1) Applicable state regulations are met;</li> <li>(2) Minimum 20,000 square foot lot;</li> <li>(3) Structures minimum 25 feet from residential property;</li> </ul>                                                                                                                                                                                                                                                                                              | 8221<br><br>8351       | Kindergarten (with academic program),<br><br>Child day care services |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |      |                                              |
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| (4) Conditions imposed for safety, traffic, impact on district;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |      |                                              |
| (5) The use is compatible with the district.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |      |                                              |
| Conversion of existing dwelling to bed and breakfast, with DHEC approval and all other state and federal requirements met.<br><br>(1) One off-street parking space per bedroom is provided;<br><br>(2) Traffic, noise, and lighting will not encroach upon surrounding properties.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 7011 | Bed and breakfast inn                        |
| Colleges, universities, and professional schools                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 822  | Colleges, universities, professional schools |
| Equestrian subdivision, provided the Board of Zoning Appeals determines:<br><br>(1) Detached single-family units on minimum of 5 acres for each unit;<br><br>(2) Not to exceed density per entire tract; may exceed density per housing unit, but in no case shall the minimum lot size per housing unit be below 2 acres;<br><br>(3) Thirty percent open space requirements are met;<br><br>(4) Land development regulations are met;<br><br>(5) Adequate provisions for access and traffic safety;<br><br>(6) The use is compatible with the surrounding neighborhood;<br><br>(7) Any access drives to all structures must be of sufficient width to allow access by emergency vehicles;<br><br>(8) Residential lots with accessory facilities for the keeping of farm animals will be no less than 5 acres. |      |                                              |
| Communication tower, see <u>§ 153.111</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 48   | Communication                                |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.068 AG AGRICULTURAL DISTRICT REGULATIONS.**

|                                                                                                                                                                                                                |                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum lot area                                                                                                                                                                                               | 217,800 square feet (5 acres)                                                                                                                                                                                                                                 |
| Minimum lot area per dwelling unit                                                                                                                                                                             | No minimum up to 100 acres. Thereafter, the total density of the tract may not exceed 1 dwelling per 5 acres.                                                                                                                                                 |
| Maximum lot area that may be used for combines square footage of all dwelling units, including single-family residence, duplexes, manufactured homes, garage apartments, guesthouses, and dormitory residences | 2% of total square footage of parcel                                                                                                                                                                                                                          |
| Maximum number of lots that may be subdivided from a single parcel of land                                                                                                                                     | 8, to subdivide further, a rezoning must occur                                                                                                                                                                                                                |
| Maximum lot coverage, maximum number of principal and accessory structures per parcel of lot of record                                                                                                         | No maximum, so long as set back requirements are met and, for tracts over 100 acres, the total density of the tract does not exceed 1 dwelling per 5 acres                                                                                                    |
| Minimum lot width at front building line                                                                                                                                                                       | 100 feet                                                                                                                                                                                                                                                      |
| Minimum front yard depth                                                                                                                                                                                       | 70 feet                                                                                                                                                                                                                                                       |
| Minimum setback from second street frontage                                                                                                                                                                    | Side street on corner lot: 40 feet<br>Rear street on double frontage lot: 50 feet                                                                                                                                                                             |
| Minimum side yard                                                                                                                                                                                              | Principal structures (agricultural buildings over 2,000 square feet): 30 feet<br><br>Principal structures (agricultural buildings less than 2,000 square feet): 20 feet<br><br>Accessory structures other than residences: 15 feet<br><br>Residences: 20 feet |
| Minimum rear yard                                                                                                                                                                                              | Principal structures: 30 feet<br><br>Accessory structures: 20 feet                                                                                                                                                                                            |
| Minimum setback from other detached structures                                                                                                                                                                 | Principal structures: 10 feet<br><br>Accessory structures: 20 feet for residences, 7 feet for all other accessory structures                                                                                                                                  |
| Maximum structure height                                                                                                                                                                                       | Principal structures: 60 feet                                                                                                                                                                                                                                 |



|                                      |                                                                                                                                                                                                                                                   |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Visibility requirements              | <p>Corner lot: no obstruction between heights of 3 and 10 feet above finished street level within 25 feet of intersection of street right-of-way lines</p> <p>Private drive: no obstruction over height of 30 inches within 10 feet of street</p> |
| Off-street parking area requirements | See §§ 153.145 <i>et seq.</i>                                                                                                                                                                                                                     |
| Fences                               | See § 153.047(B)(3)                                                                                                                                                                                                                               |
| Signs                                | See §§ 153.160 <i>et seq.</i>                                                                                                                                                                                                                     |
| Supplemental regulations             | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                     |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.069 R-2 RURAL DISTRICT.**

| <b><i>R-2 Rural Permitted Uses</i></b>                                                                                                                                | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                                                                   | <b><i>Parking Spaces Required</i></b>                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Single-family dwelling unit, including garage apartment on single lot (see Conditional Uses for manufactured homes)                                                   | 814                      | Private households (except manufactured homes)                                                    | 2 for each unit                                                                                                                                                                                                                                   |
| Agriculture, aquaculture, nurseries, livestock production, ranching, equestrian uses and forestry activities (except confined animal feeding, see Special Exceptions) | 111<br>112<br>113        | Crop production, Animal production, Forestry and logging (except 112112, Confined animal feeding) | None                                                                                                                                                                                                                                              |
| Roadside stands for sale of agricultural products                                                                                                                     | 44523                    | Fruit and vegetable markets                                                                       | 1 per 150 square feet of sales area                                                                                                                                                                                                               |
| Elementary and secondary schools, colleges, arts, business, technical and trade schools                                                                               | 61                       | Educational services                                                                              | <p>611- Elementary and secondary schools: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium.<br/>Kindergarten: 1 per employee, plus 1 off-street loading space.</p> <p><b>All other: 1 per 3 students capacity</b></p> |

|                                                                                                                                                                                                                                                  |                         |                                                                    |                                                                                                                                                                                                                                    |
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| Health care, medical and dental services, hospitals, clinics, laboratories, ambulance services, nursing, and residential care, group homes, social services, and child day care                                                                  | 62                      | Health care and social assistance, including child day care        | 622 - Hospital: 1.5 for each patient bed<br><br>623 - Nursing and residential care: 1 per 5 resident beds<br><br>6244 - Day care: 1 per employee, plus 1 loading space<br><br>All other: 1 per 200 square feet of gross floor area |
| Neighborhood and community public park and recreational facilities, tennis court, swimming pool, ball field or golf course                                                                                                                       | 71219<br>71391<br>71394 | Parks,<br><br>Golf courses,<br><br>Fitness and recreational sports | 1 per 4 patrons at maximum capacity                                                                                                                                                                                                |
| Bed and breakfast inn, tourist (guest) home                                                                                                                                                                                                      | 72119                   | Traveler accommodations                                            | 2 for owner plus 1 per guest room                                                                                                                                                                                                  |
| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures | 8131                    | Religious organizations, churches, and the like                    | 1 for each 4 seats in main assembly room, or 1 for each 150 square feet of gross floor area, whichever requires the least number of spaces                                                                                         |
| Professional office                                                                                                                                                                                                                              |                         |                                                                    | 1 per 150 square feet of gross floor area                                                                                                                                                                                          |
| Civic and social clubs, not licensed to serve alcoholic beverages                                                                                                                                                                                | 8134                    | Civic and social organizations - no alcohol                        | 1 per 150 square feet of gross floor area                                                                                                                                                                                          |
| <p>Accessory use on same lot with principal use, as follows:</p> <p>(1) Private garage for motor vehicle;</p> <p>(2) Open parking area for motor vehicles may be used for 1 commercial vehicle per dwelling unit;</p>                            |                         |                                                                    |                                                                                                                                                                                                                                    |

| <p>(3) Shed for storage of building or lot maintenance equipment;</p> <p>(4) Barns, silos, outbuildings for agricultural uses and equipment;</p> <p>(5) Private swimming pool, including deck, bath house or cabana, boat dock; private garden, greenhouse, private tennis, outdoor recreation and picnic facilities.</p>                                                                             |                         |                                         |                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----------------------------------------|-------------------------------------------|
| <b><i>R-2 Conditional Uses</i></b><br><b><i>(approved by Zoning Administrator if all conditions are met)</i></b>                                                                                                                                                                                                                                                                                      | <b>NAICS Code</b>       | <b>NAICS Description</b>                | <b>Parking Spaces Required</b>            |
| <p>Public utilities, substation, water tower (see § 153.111 for communication tower), provided all of the following conditions are met:</p> <p>(1) Structures enclosed by six-foot fence;</p> <p>(2) No office, commercial operation or storage of vehicles or equipment is permitted;</p> <p>(3) A landscaped strip at least 5 feet wide is planted and maintained along all exterior lot lines.</p> | 22112<br>2212,<br>22131 | Electric, gas, water sanitary utilities | 1 space                                   |
| <p>Cemetery, provided all following conditions are met:</p> <p>(1) Minimum 2-acre lot;</p> <p>(2) No crematorium or dwelling;</p> <p>(3) Front yard setback 10 feet from street right-of-way line;</p> <p>(4) Non-illuminated sign not over 30 square feet in area or 10 feet in height</p>                                                                                                           | 81222                   | Cemetery only                           | None                                      |
| <p>Temporary contractor office and equipment shed, residential construction; provided all following conditions are met:</p> <p>(1) Used in connection with construction on premises;</p> <p>(2) Must not cause traffic congestion or nuisance;</p> <p>(3) For a term up to 1 year, may be renewed once.</p>                                                                                           | 2332                    | Residential building construction       | 1 for each 300 square feet of office area |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                             |       |                     |                                                                 |
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| Temporary or permanent housing for individuals or families employed in the operation of an agricultural enterprise which includes an acreage of at least 100 acres, provided the following conditions are met:<br><br>(1) All such structures are located at least 200 feet from a public road;<br><br>(2) All such structures shall have a minimum separation of at least 50 feet.<br><br>(3) All structures are at least 100 feet from the property line. | N/A   |                     | None                                                            |
| Temporary Christmas tree sales, on vacant lot for a period not to exceed 45 days                                                                                                                                                                                                                                                                                                                                                                            | N/A   |                     | None                                                            |
| Private hunting facilities, with or without camping; provided the following conditions are met:<br><br>(1) Travel or camping vehicle must display current licensing;<br><br>(2) Parking must comply with § 153.148. Campers in active use are not considered "parked";<br><br>(3) Must comply with DHEC regarding disposal of waste;<br><br>(4) Must comply with all DNR hunting, fishing and sport regulations.                                            |       |                     |                                                                 |
| Veterinary facilities, provided the following conditions are met:<br><br>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;<br><br>(2) Improvements and animals are a minimum of 500 feet from a property line;<br><br>(3) The use would not constitute a safety hazard or traffic hazard;<br><br>(4) The use is not detrimental to adjacent land uses in the vicinity.                                         | 54194 | Veterinary services | 1 space per 150 square feet of gross service area or sales area |

|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                  |                                                                                                                                                                                                                                                                                                               |             |
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| <p>Confined animal feeding operations, provided the Board of Zoning Appeals determines:</p> <p>(1) The use would not constitute a safety hazard or traffic hazard;</p> <p>(2) The use is not detrimental to adjacent land uses in the vicinity; and</p> <p>(3) Approvals shall be conditioned on the applicant receiving all state and federal approvals.</p>                                       | <p>112112 and as defined in § <u>153.005</u></p> | <p>Cattle feedlots and confined animal feeding, see § <u>153.005</u>, with the exception of poultry and broiler barns, see Conditional Uses</p>                                                                                                                                                               | <p>None</p> |
| <p>Limited confined animal feeding operations, provided the Board of Zoning Appeals determines:</p> <p>(1) The use would not constitute a safety hazard or traffic hazard;</p> <p>(2) The use is not detrimental to adjacent land uses in the vicinity; and</p> <p>(3) Approvals shall be conditioned on the applicant receiving all state and federal approvals.</p>                               | <p>11232, 11233, 11234</p>                       | <p>Poultry and broiler barns. For cattle feedlots and confined animal feeding, see Special Exception Uses and § <u>153.005</u>. This industry comprises establishments primarily engaged in raising broilers, fryers, turkeys, roasters, and other meat-type chickens or in hatching poultry of any kind.</p> | <p>None</p> |
| <p>Customary home occupation in single-family dwelling, provided following conditions are met:</p> <p>(1) Conducted inside dwelling or accessory structure by resident family members;</p> <p>(2) Utilizes not more than 25% of total dwelling floor area, or 50% of an accessory building;</p> <p>(3) No change in exterior appearance of dwelling;</p> <p>(4) No outside display of products;</p> |                                                  |                                                                                                                                                                                                                                                                                                               |             |

(5) No sale so products, except those made on premises or consumables incidental to a service;

(6) Creates no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly condition or nuisance;

(7) Activity is not visibly evident outside dwelling, except for a wall-mounted non-illuminated nameplate not over 2 square feet in area.

Single-wide or multi-section manufactured home on an individual lot, provided all following conditions are met:

(1) Wheels are removed and unit is placed on a foundation complying with building code, and skirting compatible with the manufactured home is installed;

(2) Unit is tied down for 80-mile-per-hour wind resistance;

(3) All mobile features are removed;

(4) Two off-parking spaces per unit are provided;

(5) Owner shall certify in writing that unit meets HUD minimum standards at the time the unit was built, and will be maintained in compliance with those HUD standards;

(6) Failure to bring unit into compliance with HUD standards at the time the unit was built, within 15 days after notice of deficiencies, is a violation of these conditions, subject to penalties provided by the county code;

(7) The roof of a multi-section manufactured home shall have no less than a nominal 3:12 pitch;

(8) Each manufactured home shall have porches and/or stoops at all entrances to the home built in accordance with the standard building code, latest adopted editions, or CABO One and Two Family, latest adopted edition.

Single-wide or multi-section manufactured home as emergency housing, provided the following conditions are met:

(1) Temporary use may be permitted for 12 months while repairs are made to dwelling damaged by fire or natural disaster;

(2) Permit may be extended for additional 6 months, provided repairs are in progress and will be completed by expiration of 18-month period. No additional extension may be granted.

Any single-wide or multi-section manufactured home that meets all of the HUD standards may be permitted as a temporary residence for a family member who is elderly, infirm, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance, for a

period not to exceed 2 years; provided the Zoning Administrator makes the following findings:

(1) Such temporary residence must be either on the same lot of record or on an adjacent lot of record as the permanent residence in which either the caregiver or infirm relative lives;

(2) If such temporary residence is to be located on the same lot of record, the building lot is of sufficient size to permit the location of the manufactured home so that all minimum yard requirements are met without encroaching on the yard requirements of the permanent residence;

(3) The manufactured home will be occupied by a family member who is infirm, elderly, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance;

(4) The proposed location will not adversely affect the neighborhood or the adjoining property owners;

(5) Normal plumbing and electrical inspections for the mobile home are completed by the Building Inspector, and all SC-DHEC regulations are complied with;

(6) The applicant will remove the manufactured home from the property or will subdivide the property in a manner that will allow the manufactured home to remain where it is, so long as it will thereafter be in compliance with County Zoning Regulations then in effect, and such action must be taken within 30 days of the date the manufactured home is vacated by the individual in need of assistance, or the caregiver of such person, or within 30 days of the expiration of the temporary permit issued by the Zoning Administrator, or any extension thereof granted by the Board of Zoning Appeals, unless a new permit is issued for another eligible person.

(7) The temporary permit is issued for the use of the manufactured home by a particular individual, and is not transferable; if continued use of the manufactured home for or by another family member or caregiver is requested, a new application must be timely filed and a new permit granted.

(8) The Board of Zoning Appeals may grant conditional renewal of the permit for the manufactured home every 2 years if the applicant shows hardship to the permitted occupant of the manufactured home or the individual being cared for, based on medical conditions that are supported by a signed physician's statement, setting forth the physician's opinion of the medical necessity for the issuance of the permit.

Single-wide or multi-section manufactured home that meets all HUD standards may be used as a temporary residence by the owner of the property during the construction of a permanent residence, provided the Zoning Administrator makes the following findings:

(1) The manufactured home will be occupied by the owner of the property who is constructing the permanent residence;

- (2) The proposed location does not adversely affect the neighborhood or the adjoining property owners;
- (3) The zoning permit is valid for 6 months, renewable 2 times with a 30-day hardship extension;
- (4) Proof of ownership of the property has been submitted in the form of the owner providing a copy of a plat and a deed; and
- (5) The applicant will remove the manufactured home from the property within 30 days of the issuance of a certificate of occupancy for the permanent residence.

In addition to the above requirements, the Zoning Administrator may attach such other conditions as are deemed appropriate to protect adjacent properties and the integrity of the neighborhood, including requiring the applicant to provide an affidavit containing information pertinent to making a determination.

| <b><i>R-2 Special Exceptions<br/>(approved by Board of Zoning Appeals after<br/>hearing)</i></b>                                                                                                                                                                                                                                                       | <b><i>NAICS<br/>Code</i></b>              | <b><i>NAICS<br/>Description</i></b>                               | <b><i>Parking<br/>Spaces<br/>Required</i></b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------|
| Confined animal feeding operations, provided the Board of Zoning Appeals determines: <p>(1) The use would not constitute a safety hazard or traffic hazard;</p> <p>(2) The use is not detrimental to adjacent land uses in the vicinity; and</p> <p>(3) Approvals shall be conditioned on the applicant receiving all state and federal approvals.</p> | 112112 and as defined in § <u>153.005</u> | Cattle feedlots and confined animal feeding, see § <u>153.005</u> | None                                          |
| Hunting preserves, provided the Board of Zoning Appeals determines: <p>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;</p> <p>(2) Improvements are a minimum of 500 feet from residential property lines;</p> <p>(3) The use is not detrimental to adjacent land uses in the vicinity.</p>              | 1142                                      | Limited to: Hunting, operating commercial game preserves          | None                                          |



|                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |                                                        |                                                                        |
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| <p>Aviation hangers and runways, provided the Board of Zoning Appeals determines:</p> <p>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;</p> <p>(2) Improvements are a minimum of 500 feet from a property line;</p> <p>(3) The use would not constitute a safety hazard or traffic hazard;</p> <p>(4) The use is not detrimental to adjacent land uses in the vicinity</p>             | <p>4811</p> <p>4881</p>                | <p>Airport transportation, Airport operations</p>      | <p>Set by Board of Appeals</p>                                         |
| <p>Kennels and animal auctions, provided the Board of Zoning Appeals determines:</p> <p>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;</p> <p>(2) Improvements and animals are a minimum of 500 feet from a property line;</p> <p>(3) The use would not constitute a safety hazard or traffic hazard;</p> <p>(4) The use is not detrimental to adjacent land uses in the vicinity.</p> | <p>54194</p> <p>42252</p> <p>42259</p> | <p>Pet care, Livestock wholesale, Horses wholesale</p> | <p>1 space per 150 square feet of gross service area or sales area</p> |
| <p>Solid waste convenience centers, provided the Board of Zoning Appeals determines:</p> <p>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;</p> <p>(2) Containers are minimum of 300 feet from adjoining property lines;</p> <p>(3) The use would not constitute a safety hazard or traffic hazard;</p> <p>(4) The use is not detrimental to adjacent land uses in the vicinity.</p>    | <p>56211</p>                           | <p>Solid waste collection</p>                          | <p>None</p>                                                            |

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| <p>Landfill, inert and cellulose; provided the Board of Zoning Appeals determines:</p> <p>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;</p> <p>(2) All uses are a minimum of 1,000 feet from adjoining property lines;</p> <p>(3) The use would not constitute a safety hazard or traffic hazard;</p> <p>(4) The use is not detrimental to adjacent land uses in the vicinity.</p>                                                                                                                            | 562212                   | Solid waste landfill, non-hazardous, inert and cellulose only                                                | None                                      |
| <p>Cultural and community facilities, arts and sports, provided the Board of Zoning Appeals determines:</p> <p>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;</p> <p>(2) Minimum 1 acre lot;</p> <p>(3) Structure minimum of 50 feet from residential property lines;</p> <p>(4) The use would not constitute a safety hazard or traffic hazard;</p> <p>(5) The use is not detrimental to adjacent land uses in the vicinity.</p>                                                                              | 71                       | Performing arts, spectator sports                                                                            | 1 per 4 patrons at maximum capacity       |
| <p>Shooting ranges, archery ranges, recreational day camps, <i>commercial campgrounds</i> and similar uses; provided the Board of Zoning Appeals determines:</p> <p>(1) Approvals shall be conditioned on the applicant receiving all state and federal approvals;</p> <p>(2) Improvements are a minimum of 200 feet from all property lines except where contiguous properties are zoned for commercial (LC or GC) and/or industrial (LI or BI) uses;</p> <p>(3) All improvements and man-made uses are to be surrounded by a minimum 20 foot wide opaque</p> | <p>71399</p> <p>7212</p> | Limited to: Archery and shooting ranges; Recreation day camps and sports camps, parks and recreational camps | 1 space per 3 patrons at maximum capacity |

|                                                                                                          |       |                                                            |                                                              |
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| buffer meeting the requirements of § 153.129(A)(2), whether existing, planted or installed;              |       |                                                            |                                                              |
| (4) The use is not detrimental to adjacent land uses in the vicinity.                                    |       |                                                            |                                                              |
| Motor vehicle service and repair establishments, provided the Board of Zoning Appeals determines:        | 8111  | Automotive repair and maintenance                          | 1 per 1,000 square feet of gross floor area                  |
| (1) Improvements are a minimum of 500 feet from residential property lines;                              |       |                                                            |                                                              |
| (2) The use would not constitute a safety hazard or traffic hazard;                                      |       |                                                            |                                                              |
| (3) The use is not detrimental to adjacent land uses in the vicinity.                                    |       |                                                            |                                                              |
| Personal services, repairs, beauty shops, and the like; provided the Board of Zoning Appeals determines: | 8112  | Electronic repair,                                         | 1 per 200 square feet of gross office, sales or service area |
| (1) The structure will not exceed 3,000 square feet in area;                                             | 8113  | Equipment repair,                                          |                                                              |
| (2) The use will be at least 50 feet from a property line;                                               | 8114  | Household goods repair,                                    |                                                              |
| (3) The use would not constitute a safety hazard or traffic hazard;                                      | 8121  | Personal care services;                                    |                                                              |
| (4) The use is not detrimental to adjacent land uses in the vicinity.                                    | 81221 | Funeral homes, Other personal services                     |                                                              |
|                                                                                                          | 8129  |                                                            |                                                              |
| Government building or facility, provided the Board of Zoning Appeals determines:                        | 92    | Public administration, justice, safety, fire, and the like | 1 for each 200 square feet of floor area                     |
| (1) Improvements are a minimum of 100 feet from residential property lines;                              |       |                                                            |                                                              |
| (2) The use would not constitute a safety hazard or traffic hazard;                                      |       |                                                            |                                                              |
| (3) The use is not detrimental to adjacent land uses in the vicinity.                                    |       |                                                            |                                                              |

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| Off-premises advertising sign, provided the Board of Zoning Appeals determines:<br><br>(1) Approvals shall be conditioned on the applicant receiving all state approvals;<br><br>(2) Use will not block a unique scenic vista;<br><br>(3) The use is located at least 100 feet from a residential use;<br><br>(4) Use will not constitute a safety hazard or traffic hazard;<br><br>(5) The use is not detrimental to adjacent land uses in the vicinity;<br><br>(6) Signs is located at least 100 feet from all adjoining property lines. |  | Advertising | N/A |
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(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 01-04-07, passed 2-21-2007; Am. Ord. 05-16-08, passed 6-4-2008; Am. Ord. 04-06-10, passed 7-21-2010) Penalty, see § 10.99

#### **§ 153.070 R-2 RURAL DISTRICT REGULATIONS.**

The following regulations apply to all uses in the R-2 Districts.

|                                          |                                                                                                                     |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| Minimum residential lot area             | 1 acre                                                                                                              |
| Minimum lot area for nonresidential uses | Utility substation and water towers: 10,000 square feet<br>All other permitted uses: 1 acre                         |
| Minimum lot width at front building line | 150 feet                                                                                                            |
| Minimum front yard depth                 | For lots fronting on SC and US routes, see <u>§ 153.112</u> ;<br>50 feet from all other road rights-of-way          |
| Minimum side yard                        | 7 feet from interior side lot line                                                                                  |
| Minimum rear yard                        | Principal structure: 20 feet from interior rear lot line<br>Accessory structure: 6 feet from interior rear lot line |

|                                                                                        |                                                                                                                                                                                                                                                                                                 |
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| Minimum front, side and rear setback from animal shelters, barns and pens              | 50 feet                                                                                                                                                                                                                                                                                         |
| Minimum setback from preexisting animal shelters, barns, and pens on adjacent property | 100 feet (not applicable to agricultural uses)                                                                                                                                                                                                                                                  |
| Maximum structure height                                                               | None                                                                                                                                                                                                                                                                                            |
| Minimum setback from lake shore                                                        | No minimum setback, except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Visibility requirements                                                                | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                            |
| Off-street parking                                                                     | See supplemental regulations                                                                                                                                                                                                                                                                    |
| Signs                                                                                  | See supplemental regulations                                                                                                                                                                                                                                                                    |
| Supplemental regulations                                                               | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                                                                   |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.071 RS-1 SINGLE-FAMILY RESIDENTIAL DISTRICT.**

| <b><i>RS-1 Permitted Uses</i></b>                                                             | <b><i>NAICS Code</i></b>             | <b><i>NAICS Description</i></b>                                                  | <b><i>Parking Spaces Required</i></b>                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------|--------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Single-family dwelling (except manufactured homes)                                            | 814                                  | Private household                                                                | 2 for each dwelling unit                                                                                                                                                                   |
| Public or private school, elementary or secondary, general government facility (except jails) | 6111<br>921, 922,<br>except<br>92214 | Elementary and secondary schools; Justice, public order and safety, except jails | 611 - Elementary and secondary schools: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium.<br><br>Kindergarten: 1 per employee, plus 1 off-street loading space |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                          |                                                          | All other: 1 per 200 square feet floor area                       |
| Public park or playground and recreation facilities limited to tennis court, swimming pool or golf course                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 71219<br>71391<br>71394  | Nature park,<br>Golf course,<br>Tennis and swimming only | 1 per 200 square feet of building area, plus 4 for each golf hole |
| <b><i>RS-1 Permitted Uses</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                          | <b><i>Parking Spaces Required</i></b>                             |
| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures                                                                                                                                                                                                                                                                                                                                                                             | 8131                     | Religious organizations, churches, and the like          | 1 for each 4 seats in main assembly room                          |
| <p>Accessory use on same lot with principal use, as follows:</p> <ol style="list-style-type: none"> <li>(1) Private garage for motor vehicle;</li> <li>(2) Open parking area for motor vehicles may be used for 1 commercial vehicle per dwelling unit;</li> <li>(3) Shed for storage of building or lot maintenance equipment;</li> <li>(4) Barns, silos, outbuildings for agricultural uses and equipment;</li> <li>(5) Private swimming pool, including deck, bath house or cabana, boat dock;</li> <li>(6) Private garden, greenhouse;</li> <li>(7) Private tennis, outdoor recreation and picnic facilities.</li> </ol> |                          |                                                          |                                                                   |

| <b><i>RS-1 Conditional Uses<br/>(approved by Zoning Administrator if all conditions<br/>are met)</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b><i>NAICS<br/>Code</i></b>          | <b><i>NAICS<br/>Description</i></b>                         | <b><i>Parking<br/>Spaces<br/>Required</i></b>                |
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| <p>Public utilities, substation, water tower (see § 153.111 for communication tower); provided all of the following conditions are met:</p> <p>(1) Structures enclosed by 6-foot fence;</p> <p>(2) No office, commercial operation or storage of vehicles or equipment is permitted;</p> <p>(3) A landscaped strip at least 5 feet wide is planted and maintained along all exterior lot lines.</p>                                                                                                                                                                                                                                                                                                                                                    | <p>22112</p> <p>2212</p> <p>22131</p> | <p>Electric,<br/>gas, water,<br/>sanitary<br/>utilities</p> | <p>1 space</p>                                               |
| <p>Temporary contractor office and equipment shed, residential construction; provided all following conditions are met:</p> <p>(1) Used in connection with construction on premises;</p> <p>(2) Must not cause traffic congestion or nuisance;</p> <p>(3) For a term up to 1 year, may be renewed once.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>2332</p>                           | <p>Residential<br/>building<br/>construction</p>            | <p>1 for each<br/>300 square<br/>feet of<br/>office area</p> |
| <p>Customary home occupation in single-family dwelling, provided following conditions are met:</p> <p>(1) Conducted inside dwelling or accessory structure by resident family members;</p> <p>(2) Utilizes not more than 25% of total dwelling floor area, or 50% of an accessory building;</p> <p>(3) No change in exterior appearance of dwelling;</p> <p>(4) No outside display of products;</p> <p>(5) No retail sale of products except those made on premises;</p> <p>(6) Creates no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly condition or nuisance;</p> <p>(7) Activity is not visibly evident outside dwelling, except for a wall-mounted, non-illuminated nameplate not over 2 square feet in area.</p> |                                       |                                                             |                                                              |

| <b><i>RS-1 Special Exceptions<br/>(approved by Zoning Administrator after hearing)</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>                                | <b><i>Parking<br/>Spaces<br/>Required</i></b>                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------------------------------|---------------------------------------------------------------|
| Tourist guest home, provided the Board of Zoning Appeals determines: <ul style="list-style-type: none"> <li>(1) Minimum 1 acre lot;</li> <li>(2) The use is compatible with the district.</li> </ul>                                                                                                                                                                                                                                                                                                                                                          | 72119                        | Tourist home only                                                  | 2 for owner plus 1 per guest room                             |
| Private kindergarten, preschool nursery, day care; provided the Board of Zoning Appeals determines: <ul style="list-style-type: none"> <li>(1) Applicable state regulations are met;</li> <li>(2) Minimum 1 acre lot;</li> <li>(3) Minimum 200 square feet of open space per child enclosed by a fence at least 5 feet in height;</li> <li>(4) Structures minimum 25 feet from residential property;</li> <li>(5) Conditions imposed for safety, traffic, impact on district;</li> <li>(6) The use is compatible with the district.</li> </ul>                | 6111<br>62441                | Kindergarten only (with academic program), Child day care services | 1 per employee, plus 1 off-street, drop-off and pick-up space |
| Clustered single-family development, provided the Board of Zoning Appeals determines: <ul style="list-style-type: none"> <li>(1) Detached single-family units on minimum of 2 acre development parcel;</li> <li>(2) Maximum density of 3 dwellings per acre;</li> <li>(3) Lot requirements per house may be waived;</li> <li>(4) Zero interior lot line setback may be allowed;</li> <li>(5) Subdivision regulations are met;</li> <li>(6) Adequate provision for access and traffic safety;</li> <li>(7) The use is compatible with the district.</li> </ul> | N/A                          | Private household                                                  | 2 for each dwelling unit                                      |



Single-wide or multi-section manufactured home that meets all HUD standards may be used as a temporary residence by the owner of the property during the construction of a permanent residence; provided the Zoning Board of Appeals makes the following findings:

- (1) The applicant has a valid building permit issued by Newberry County for the construction of a permanent residence on the property; and
- (2) The building lot is of sufficient size to permit the location of the manufactured home in such a way that all minimum yard requirements are met without encroaching on the yard requirements of the permanent residence; and
- (3) The manufactured home will be occupied by the owner of the property who is constructing the permanent residence; and
- (4) The proposed location will not adversely affect the neighborhood or the adjoining property owners; and
- (5) The Board of Appeals is satisfied that the permanent residence will be completed and occupied no later than 2 years from the date of the granting of the special exception; and
- (6) The applicant will remove the manufactured home from the property within 30 days of the issuance of a certificate of occupancy for the permanent residence.

In addition to the above 6 requirements, the Zoning Board of Appeals may attach such other conditions as it deems appropriate to protect adjacent properties and the integrity of the neighborhood.

The Zoning Board of Appeals may grant 1 6-month extension of the permit for the manufactured home if substantial progress has been made on the completion of the permanent residence.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.072 RS-1 SINGLE-FAMILY RESIDENTIAL DISTRICT REGULATIONS.**

|                                          |                                                                        |
|------------------------------------------|------------------------------------------------------------------------|
| Minimum residential lot area             | With public water and sewer: 20,000 square feet                        |
|                                          | With individual water or sewer: 1 acre or greater, as directed by DHEC |
| Minimum lot area for nonresidential uses | Utility substation and water towers: 10,000 square feet                |
|                                          | All other permitted uses: 1 acre                                       |

|                                                                              |                                                                                                                                                                                                                                                                                                |
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| Minimum lot width at front building line                                     | With public water and sewer: 70 feet<br>Other: 130 feet                                                                                                                                                                                                                                        |
| Minimum front yard depth                                                     | For lots fronting on SC and US routes, see <u>§ 153.112</u> ;<br>50 feet from all other road rights-of-way                                                                                                                                                                                     |
| Minimum setback from second street frontage                                  | Side street on corner lot: 12 feet<br>Rear street on a double frontage lot: 50 feet                                                                                                                                                                                                            |
| Minimum side yard                                                            | 7 feet from interior side lot line                                                                                                                                                                                                                                                             |
| Minimum rear yard                                                            | Principal structure: 20 feet from interior rear lot line<br>Accessory structure: 6 feet from interior rear lot line                                                                                                                                                                            |
| Minimum setback from preexisting commercial, industrial, or agricultural use | One-half of the applicable setback from a residential district specified for uses in the commercial, industrial or agricultural district regulations                                                                                                                                           |
| Maximum structure height                                                     | None                                                                                                                                                                                                                                                                                           |
| Minimum setback from lake shore                                              | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Visibility requirements                                                      | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                           |
| Off-street parking                                                           | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Signs                                                                        | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Supplemental regulations                                                     | See <u>§§ 153.110 et seq.</u>                                                                                                                                                                                                                                                                  |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.073 RS-2 SINGLE-FAMILY RESIDENTIAL DISTRICT.**

| <i>RS-2 Permitted Uses</i> | <i>NAICS Code</i> | <i>NAICS Description</i> | <i>Parking Spaces Required</i> |
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| Single-family dwelling (except manufactured homes)                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 814                                  | Private household                                                                | 2 for each dwelling unit                                                                                                                                                                                                                     |
| Public or private school, elementary or secondary, general government facility (except jails)                                                                                                                                                                                                                                                                                                                                                                                                                | 6111<br>921, 922,<br>except<br>92214 | Elementary and secondary schools; Justice, public order and safety, except jails | 611- Elementary and secondary schools: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium.<br><br>Kindergarten: 1 per employee, plus 1 off-street loading space<br><br>All other: 1 per 200 square feet floor area |
| Public park or playground and recreation facilities limited to tennis court, swimming pool or golf course                                                                                                                                                                                                                                                                                                                                                                                                    | 71219<br><br>71391<br><br>71394      | Nature park,<br><br>Golf course,<br><br>Tennis and swimming only                 | 1 per 200 square feet of building area, plus 4 for each golf hole                                                                                                                                                                            |
| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures                                                                                                                                                                                                                                                             | 8131                                 | Religious organizations, churches, and the like                                  | 1 for each 4 seats in main assembly room                                                                                                                                                                                                     |
| <p>Accessory use on same lot with principal use, as follows:</p> <ul style="list-style-type: none"> <li>(1) Private garage for motor vehicle;</li> <li>(2) Open parking area for motor vehicles may be used for 1 commercial vehicle per dwelling unit;</li> <li>(3) Shed for storage of building or lot maintenance equipment;</li> <li>(4) Barns, silos, outbuildings for agricultural uses and equipment;</li> <li>(5) Private swimming pool, including deck, bath house or cabana, boat dock;</li> </ul> |                                      |                                                                                  |                                                                                                                                                                                                                                              |

| <p>(6) Private garden, greenhouse;</p> <p>(7) Private tennis, outdoor recreation and picnic facilities.</p>                                                                                                                                                                                                                                                                                         |                                       |                                                             |                                                              |
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| <b><i>RS-2 Conditional Uses<br/>(approved by Zoning Administrator if all<br/>conditions are met)</i></b>                                                                                                                                                                                                                                                                                            | <b><i>NAICS<br/>Code</i></b>          | <b><i>NAICS<br/>Description</i></b>                         | <b><i>Parking<br/>Spaces<br/>Required</i></b>                |
| <p>Public utilities, substation, water tower (see § 153.111 for communication tower); provided all of the following conditions are met:</p> <p>(1) Structures enclosed by 6-foot fence;</p> <p>(2) No office, commercial operation or storage of vehicles or equipment is permitted;</p> <p>(3) A landscaped strip at least 5 feet wide is planted and maintained along all exterior lot lines.</p> | <p>22112</p> <p>2212</p> <p>22131</p> | <p>Electric,<br/>gas, water,<br/>sanitary<br/>utilities</p> | <p>1 space</p>                                               |
| <p>Temporary contractor office and equipment shed, residential construction; provided all following conditions are met:</p> <p>(1) Used in connection with construction on premises;</p> <p>(2) Must not cause traffic congestion or nuisance;</p> <p>(3) For a term up to 1 year, may be renewed once.</p>                                                                                         | <p>2332</p>                           | <p>Residential<br/>building<br/>construction</p>            | <p>1 for each<br/>300 square<br/>feet of office<br/>area</p> |

Customary home occupation in single-family dwelling, provided following conditions are met:

- (1) Conducted inside dwelling or accessory structure by resident family members;
- (2) Utilizes not more than 25% of total dwelling floor area, or 50% of an accessory building;
- (3) No change in exterior appearance of dwelling;
- (4) No outside display of products;
- (5) No retail sale of products except those made on premises;
- (6) Creates no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly condition or nuisance;
- (7) Activity is not visibly evident outside dwelling, except for a wall-mounted, non-illuminated nameplate not over 2 square feet in area.

| <b><i>RS-2 Special Exceptions<br/>(approved by Zoning Administrator after hearing)</i></b>                                                                                                                                                                                                                                                                                                                                                                                               | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>                                | <b><i>Parking Spaces<br/>Required</i></b>                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------|
| Tourist guest home, provided the Board of Zoning Appeals determines: <ol style="list-style-type: none"> <li>(1) Minimum 1 acre lot;</li> <li>(2) The use is compatible with the district.</li> </ol>                                                                                                                                                                                                                                                                                     | 72119                        | Tourist home only                                                  | 2 for owner plus 1 per guest room                              |
| Private kindergarten, preschool nursery, day care; provided the Board of Zoning Appeals determines: <ol style="list-style-type: none"> <li>(1) Applicable state regulations are met;</li> <li>(2) Minimum 1 acre lot;</li> <li>(3) Minimum 200 square feet of open space per child enclosed by a fence at least 5 feet in height;</li> <li>(4) Structures minimum 25 feet from residential property;</li> <li>(5) Conditions imposed for safety, traffic, impact on district;</li> </ol> | 6111<br>62441                | Kindergarten only (with academic program), Child day care services | 1 per employee, plus 1 off-street, drop-off and pick-up space. |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |     |                   |                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------|--------------------------|
| (6) The use is compatible with the district.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |     |                   |                          |
| <p>Clustered single-family development, provided the Board of Zoning Appeals determines:</p> <p>(1) Detached single-family units on minimum of 2 acre development parcel;</p> <p>(2) Maximum density of 3 dwellings per acre;</p> <p>(3) Lot requirements per house may be waived;</p> <p>(4) Zero interior lot line setback may be allowed;</p> <p>(5) Subdivision regulations are met;</p> <p>(6) Adequate provision for access and traffic safety;</p> <p>(7) The use is compatible with the district.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | N/A | Private household | 2 for each dwelling unit |
| <p>Single-wide or multi-section manufactured home that meets all HUD standards may be used as a temporary residence by the owner of the property during the construction of a permanent residence, provided the Zoning Board of Appeals makes the following findings:</p> <p>(1) The building lot is of sufficient size to permit the location of the manufactured home in such a way all minimum yard requirements are met without encroaching on the yard requirements of the permanent residence, and</p> <p>(2) The manufactured home will be occupied by the owner of the property who is constructing the permanent residence, and</p> <p>(3) The proposed location will not adversely affect the neighborhood or the adjoining property owners, and</p> <p>(4) The Board of Appeals is satisfied that the permanent residence will be completed and occupied no later than 2 years from the date of the granting of the special exception, and</p> <p>(5) The applicant will remove the manufactured home from the property within 30 days of the issuance of a certificate of occupancy for the permanent residence.</p> <p>In addition to the above 5 requirements, the Zoning Board of Appeals may attach such other conditions as it deems appropriate to protect adjacent properties and the integrity of the neighborhood.</p> |     |                   |                          |

The Zoning Board of Appeals may grant 1 6-month extension of the permit for the manufactured home if substantial progress has been made on the completion of the permanent residence.

Any single-wide or multi-section manufactured home that meets all of the HUD standards may be permitted as a temporary residence for a family member who is elderly, infirm, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance, for a period not to exceed 2 years; provided the Zoning Administrator makes the following findings:

(1) Such temporary residence must be either on the same lot of record or on an adjacent lot of record as the permanent residence in which either the caregiver or infirm relative lives;

(2) If such temporary residence is to be located on the same lot of record, the building lot is of sufficient size to permit the location of the manufactured home so that all minimum yard requirements are met without encroaching on the yard requirements of the permanent residence;

(3) The manufactured home will be occupied by a family member who is infirm, elderly, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance;

(4) The proposed location will not adversely affect the neighborhood or the adjoining property owners;

(5) Normal plumbing and electrical inspections for the mobile home are completed by the Building Inspector, and all SC-DHEC regulations are complied with;

(6) The applicant will remove the manufactured home from the property or will subdivide the property in a manner that will allow the manufactured home to remain where it is, so long as it will thereafter be in compliance with County Zoning Regulations then in effect, and such action must be taken within 30 days of the date the manufactured home is vacated by the individual in need of assistance, or the caregiver of such person, or within 30 days of the expiration of the temporary permit issued by the Zoning Administrator, or any extension thereof granted by the Board of Zoning Appeals, unless a new permit is issued for another eligible person.

(7) The temporary permit is issued for the use of the manufactured home by a particular individual, and is not transferable; if continued use of the manufactured home for or by another family member or caregiver is requested, a new application must be timely filed and a new permit granted.

(8) The Board of Zoning Appeals may grant conditional renewal of the permit for the manufactured home every 2 years if the applicant shows hardship to the permitted occupant of the manufactured home or the individual being cared for, based on medical conditions that are supported by a signed physician's statement, setting forth the physician's opinion of the medical necessity for the issuance of the permit.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 01-04-07, passed 2-21-2007) Penalty, see § 10.99

**§ 153.074 RS-2 SINGLE-FAMILY RESIDENTIAL DISTRICT REGULATIONS.**

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| Minimum residential lot area                                                 | With public water and sewer: 15,000 square feet<br><br>With individual water or sewer: 1 acre or greater, as directed by DHEC                                                                                                                                                                  |
| Minimum lot area for nonresidential uses                                     | Utility substation and water towers: 10,000 square feet<br><br>Other: 1 acre                                                                                                                                                                                                                   |
| Minimum lot width at front building line                                     | With public water and sewer: 70 feet<br><br>Other: 130 feet                                                                                                                                                                                                                                    |
| Minimum front yard depth                                                     | For lots fronting on SC and US routes, see <u>§ 153.112</u> ;<br><br>25 feet from all other road rights-of-way                                                                                                                                                                                 |
| Minimum setback from second street frontage                                  | Side street on corner lot: 12 feet<br><br>Rear street on a double frontage lot: 50 feet                                                                                                                                                                                                        |
| Minimum side yard                                                            | 7 feet from interior side lot line                                                                                                                                                                                                                                                             |
| Minimum rear yard                                                            | Principal structure: 20 feet from interior rear lot line<br><br>Accessory structure: 6 feet from interior rear lot line                                                                                                                                                                        |
| Minimum setback from preexisting commercial, industrial, or agricultural use | One-half of the applicable setback from a residential district specified for uses in the commercial, industrial or agricultural district regulations                                                                                                                                           |
| Minimum setback from lake shore                                              | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Maximum structure height                                                     | None                                                                                                                                                                                                                                                                                           |
| Visibility requirements                                                      | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                           |
| Off-street parking                                                           | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Signs                                                                        | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Supplemental regulations                                                     | See <u>§§ 153.110 et seq.</u>                                                                                                                                                                                                                                                                  |



(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.075 RS-3 SINGLE-FAMILY RESIDENTIAL DISTRICT.**

| <b><i>RS-3 Permitted Uses</i></b>                                                                                                                                                                                                                | <b><i>NAICS Code</i></b>       | <b><i>NAICS Description</i></b>                                                  | <b><i>Parking Spaces Required</i></b>                                                                                                                                                                                                         |
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| Single-family dwelling (except manufactured homes)                                                                                                                                                                                               | 814                            | Private household                                                                | 2 for each dwelling unit                                                                                                                                                                                                                      |
| Public or private school, elementary or secondary, general government facility (except jails)                                                                                                                                                    | 6111<br>921, 922, except 92214 | Elementary and secondary schools; Justice, public order and safety, except jails | 611 - Elementary and secondary schools: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium.<br><br>Kindergarten: 1 per employee, plus 1 off-street loading space<br><br>All other: 1 per 200 square feet floor area |
| Public park or playground and recreation facilities limited to tennis court, swimming pool or golf course                                                                                                                                        | 71219<br>71391<br>71394        | Nature park,<br><br>Golf course,<br><br>Tennis and swimming only                 | 1 per 200 square feet of building area, plus 4 for each golf hole                                                                                                                                                                             |
| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures | 8131                           | Religious organizations, churches, and the like                                  | 1 for each 4 seats in main assembly room                                                                                                                                                                                                      |
| <p>Accessory use on same lot with principal use, as follows:</p> <p>(1) Private garage for motor vehicle;</p> <p>(2) Open parking area for motor vehicles may be used for 1 commercial vehicle per dwelling unit;</p>                            |                                |                                                                                  |                                                                                                                                                                                                                                               |

| <p>(3) Shed for storage of building or lot maintenance equipment;</p> <p>(4) Barns, silos, outbuildings for agricultural uses and equipment;</p> <p>(5) Private swimming pool, including deck, bath house or cabana, boat dock;</p> <p>(6) Private garden, greenhouse;</p> <p>(7) Private tennis, outdoor recreation and picnic facilities.</p>                                                     |                                       |                                                             |                                                          |
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| <b><i>RS-3 Conditional Uses<br/>(approved by Zoning Administrator if all<br/>conditions are met)</i></b>                                                                                                                                                                                                                                                                                            | <b><i>NAICS<br/>Code</i></b>          | <b><i>NAICS<br/>Description</i></b>                         | <b><i>Parking<br/>Spaces<br/>Required</i></b>            |
| <p>Public utilities, substation, water tower (see § 153.111 for communication tower); provided all of the following conditions are met:</p> <p>(1) Structures enclosed by 6-foot fence;</p> <p>(2) No office, commercial operation or storage of vehicles or equipment is permitted;</p> <p>(3) A landscaped strip at least 5 feet wide is planted and maintained along all exterior lot lines.</p> | <p>22112</p> <p>2212</p> <p>22131</p> | <p>Electric,<br/>gas, water,<br/>sanitary<br/>utilities</p> | <p>1 space</p>                                           |
| <p>Temporary contractor office and equipment shed, residential construction; provided all following conditions are met:</p> <p>(1) Used in connection with construction on premises;</p> <p>(2) Must not cause traffic congestion or nuisance;</p> <p>(3) For a term up to 1 year, may be renewed once.</p>                                                                                         | <p>2332</p>                           | <p>Residential<br/>building<br/>construction</p>            | <p>1 for each 300<br/>square feet of<br/>office area</p> |
| <p>Customary home occupation in single-family dwelling, provided following conditions are met:</p> <p>(1) Conducted inside dwelling or accessory structure by resident family members;</p> <p>(2) Utilizes not more than 25% of total dwelling floor area, or 50% of an accessory building;</p>                                                                                                     |                                       |                                                             |                                                          |

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| <p>(3) No change in exterior appearance of dwelling;</p> <p>(4) No outside display of products;</p> <p>(5) No retail sale of products except those made on premises;</p> <p>(6) Creates no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly condition or nuisance;</p> <p>(7) Activity is not visibly evident outside dwelling, except for a wall-mounted, non-illuminated nameplate not over 2 square feet in area.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>Single-wide or multi-section manufactured home on an individual lot, provided all following conditions are met:</p> <p>(1) Wheels are removed and unit is placed on a foundation complying with building code, and skirting compatible with the manufactured home is installed;</p> <p>(2) Unit is tied down for 80-mile-per-hour wind resistance;</p> <p>(3) All mobile features are removed;</p> <p>(4) Two off-parking spaces per unit are provided;</p> <p>(5) Owner shall certify in writing that unit meets HUD minimum standards at the time the unit was built, and will be maintained in compliance with those HUD standards;</p> <p>(6) Failure to bring unit into compliance with HUD standards at the time the unit was built, within 15 days after notice of deficiencies, is a violation of these conditions, subject to penalties provided by the county code;</p> <p>(7) The roof of a multi-section manufactured home shall have no less than a nominal 3:12 pitch;</p> <p>(8) Each manufactured home shall have porches and/or stoops at all entrances to the home built in accordance with the standard building code, latest adopted editions, or CABO One and Two Family, latest adopted edition.</p> |

Single-wide or multi-section manufactured home that meets all HUD standards may be used as a temporary residence by the owner of the property during the construction of a permanent residence, provided the Zoning Administrator makes the following findings:

- (1) The building lot is of sufficient size to permit the location of the manufactured home in such a way that both structures meet the minimum yard requirements;
- (2) The manufactured home will be occupied by the owner of the property who is constructing the permanent residence;
- (3) The proposed location does not adversely affect the neighborhood or the adjoining property owners;
- (4) The zoning permit is valid for 6 months, renewable 2 times with a 30-day hardship extension;
- (5) Proof of ownership of the property has been submitted in the form of the owner providing a copy of a plat and a deed; and
- (6) The applicant will remove the manufactured home from the property within 30 days of the issuance of a certificate of occupancy for the permanent residence.

In addition to the above requirements, the Zoning Administrator may attach such other conditions as are deemed appropriate to protect adjacent properties and the integrity of the neighborhood, including requiring the applicant to provide an affidavit containing information pertinent to making a determination.

| <b><i>RS-3 Special Exceptions<br/>(approved by Zoning Administrator after hearing)</i></b>                                                                                          | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>                                | <b><i>Parking<br/>Spaces<br/>Required</i></b>                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------------------------------|---------------------------------------------------------------|
| Tourist guest home, provided the Board of Zoning Appeals determines:<br><br>(1) Minimum 1 acre lot;<br><br>(2) The use is compatible with the district.                             | 72119                        | Tourist home only                                                  | 2 for owner plus 1 per guest room                             |
| Private kindergarten, preschool nursery, day care; provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state regulations are met;<br><br>(2) Minimum 1 acre lot; | 6111<br>62441                | Kindergarten only (with academic program), Child day care services | 1 per employee, plus 1 off-street, drop-off and pick-up space |

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| <p>(3) Minimum 200 square feet of open space per child enclosed by a fence at least 5 feet in height;</p> <p>(4) Structures minimum 25 feet from residential property;</p> <p>(5) Conditions imposed for safety, traffic, impact on district;</p> <p>(6) The use is compatible with the district.</p>                                                                                                                                                                                                         |     |                   |                          |
| <p>Clustered single-family development, provided the Board of Zoning Appeals determines:</p> <p>(1) Detached single-family units on minimum of 2 acre development parcel;</p> <p>(2) Maximum density of 3 dwellings per acre;</p> <p>(3) Lot requirements per house may be waived;</p> <p>(4) Zero interior lot line setback may be allowed;</p> <p>(5) Subdivision regulations are met;</p> <p>(6) Adequate provision for access and traffic safety;</p> <p>(7) The use is compatible with the district.</p> | N/A | Private household | 2 for each dwelling unit |
| <p>Any single-wide or multi-section manufactured home that meets all of the HUD standards may be permitted as a temporary residence for a family member who is elderly, infirm, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance, for a period not to exceed 2 years; provided the Zoning Administrator makes the following findings:</p>                                                                                                              |     |                   |                          |
| <p>(1) Such temporary residence must be either on the same lot of record or on an adjacent lot of record as the permanent residence in which either the caregiver or infirm relative lives;</p>                                                                                                                                                                                                                                                                                                               |     |                   |                          |
| <p>(2) If such temporary residence is to be located on the same lot of record, the building lot is of sufficient size to permit the location of the manufactured home so that all minimum yard requirements are met without encroaching on the yard requirements of the permanent residence;</p>                                                                                                                                                                                                              |     |                   |                          |
| <p>(3) The manufactured home will be occupied by a family member who is infirm, elderly, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance;</p>                                                                                                                                                                                                                                                                                                         |     |                   |                          |

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| (4) The proposed location will not adversely affect the neighborhood or the adjoining property owners;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (5) Normal plumbing and electrical inspections for the mobile home are completed by the Building Inspector, and all SC-DHEC regulations are complied with;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (6) The applicant will remove the manufactured home from the property or subdivide the property in a manner that will allow the manufactured home to remain where it is, so long as it will thereafter be in compliance with County Zoning Regulations then in effect, and such action must be taken within 30 days of the date the manufactured home is vacated by the individual in need of assistance, or the caregiver of such person, or within 30 days of the expiration of the temporary permit issued by the Zoning Administrator, or any extension thereof granted by the Board of Zoning Appeals, unless a new permit is issued for another eligible person. |
| (7) The temporary permit is issued for the use of the manufactured home by a particular individual, and is not transferable; if continued use of the manufactured home for or by another family member or caregiver is requested, a new application must be timely filed and a new permit granted.                                                                                                                                                                                                                                                                                                                                                                     |
| (8) The Board of Zoning Appeals may grant conditional renewal of the permit for the manufactured home every 2 years if the applicant shows hardship to the permitted occupant of the manufactured home or the individual being cared for, based on medical conditions that are supported by a signed physician's statement, setting forth the physician's opinion of the medical necessity for the issuance of the permit.                                                                                                                                                                                                                                             |

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 01-04-07, passed 2-21-2007) Penalty, see § 10.99

#### **153.076 RS-3 SINGLE-FAMILY RESIDENTIAL DISTRICT REGULATIONS.**

|                                          |                                                                                                                               |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Minimum residential lot area             | With public water and sewer: 15,000 square feet<br><br>With individual water or sewer: 1 acre or greater, as directed by DHEC |
| Minimum lot area for nonresidential uses | Utility substation and water towers: 10,000 square feet<br><br>Other: 1 acre                                                  |
| Minimum lot width at front building line | With public water and sewer: 70 feet<br><br>Other: 130 feet                                                                   |
| Minimum front yard depth                 | For lots fronting on SC and US routes, see <u>§ 153.112</u> ;<br><br>25 feet from all other road rights-of-way                |

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| Minimum setback from second street frontage                                  | Side street on corner lot: 12 feet<br>Rear street on a double frontage lot: 50 feet                                                                                                                                                                                                            |
| Minimum side yard                                                            | 7 feet from interior side lot line                                                                                                                                                                                                                                                             |
| Minimum rear yard                                                            | Principal structure: 20 feet from interior rear lot line<br>Accessory structure: 6 feet from interior rear lot line                                                                                                                                                                            |
| Minimum setback from preexisting commercial, industrial, or agricultural use | One-half of the applicable setback from a residential district specified for uses in the commercial, industrial or agricultural district regulations                                                                                                                                           |
| Minimum setback from lake shore                                              | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Maximum structure height                                                     | None                                                                                                                                                                                                                                                                                           |
| Visibility requirements                                                      | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                           |
| Off-street parking                                                           | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Signs                                                                        | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Supplemental regulations                                                     | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                                                                  |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.077 RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICT.**

| <b><i>RS-4 Permitted Uses</i></b> | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b> | <b><i>Parking Spaces Required</i></b> |
|-----------------------------------|--------------------------|---------------------------------|---------------------------------------|
| Single-family dwelling            | 814                      | Private household               | 2 for each dwelling unit              |

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| Public or private school, elementary or secondary, general government facility (except jails)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 6111<br>921, 922,<br>except<br>92214 | Elementary and secondary schools; Justice, public order and safety, except jails | 611 -Elementary and secondary schools: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium.<br><br>Kindergarten: 1 per employee, plus 1 off-street loading space<br><br>All other: 1 per 200 square feet floor area |
| Public park or playground and recreation facilities limited to tennis court, swimming pool or golf course                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 71219<br>71391<br>71394              | Nature park,<br><br>Golf course,<br><br>Tennis and swimming only                 | 1 per 200 square feet of building area, plus 4 for each golf hole                                                                                                                                                                            |
| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures                                                                                                                                                                                                                                                                                                                                                                             | 8131                                 | Religious organizations, churches, and the like                                  | 1 for each 4 seats in main assembly room                                                                                                                                                                                                     |
| <p>Accessory use on same lot with principal use, as follows:</p> <ol style="list-style-type: none"> <li>(1) Private garage for motor vehicle;</li> <li>(2) Open parking area for motor vehicles may be used for 1 commercial vehicle per dwelling unit;</li> <li>(3) Shed for storage of building or lot maintenance equipment;</li> <li>(4) Barns, silos, outbuildings for agricultural uses and equipment;</li> <li>(5) Private swimming pool, including deck, bath house or cabana, boat dock;</li> <li>(6) Private garden, greenhouse;</li> <li>(7) Private tennis, outdoor recreation and picnic facilities.</li> </ol> |                                      |                                                                                  |                                                                                                                                                                                                                                              |



| <b><i>RS-4 Conditional Uses<br/>(approved by Zoning Administrator if all conditions<br/>are met)</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b><i>NAICS<br/>Code</i></b>   | <b><i>NAICS<br/>Description</i></b>               | <b><i>Parking<br/>Spaces<br/>Required</i></b>      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------------------------------------|----------------------------------------------------|
| Public utilities, substation, water tower (see § 153.111 for communication tower); provided all of the following conditions are met:<br><br>(1) Structures enclosed by 6-foot fence;<br><br>(2) No office, commercial operation or storage of vehicles or equipment is permitted;<br><br>(3) A landscaped strip at least 5 feet wide is planted and maintained along all exterior lot lines.                                                                                                                                                                                                                                                                                                                                                        | 22112<br><br>2212<br><br>22131 | Electric,<br>gas, water,<br>sanitary<br>utilities | 1 space                                            |
| Temporary contractor office and equipment shed, residential construction; provided all following conditions are met:<br><br>(1) Used in connection with construction on premises;<br><br>(2) Must not cause traffic congestion or nuisance;<br><br>(3) For a term up to 1 year, may be renewed once.                                                                                                                                                                                                                                                                                                                                                                                                                                                | 2332                           | Residential<br>building<br>construction           | 1 for each<br>300 square<br>feet of<br>office area |
| Customary home occupation in single-family dwelling, provided following conditions are met:<br><br>(1) Conducted inside dwelling or accessory structure by resident family members;<br><br>(2) Utilizes not more than 25% of total dwelling floor area, or 50% of an accessory building;<br><br>(3) No change in exterior appearance of dwelling;<br><br>(4) No outside display of products;<br><br>(5) No retail sale of products except those made on premises;<br><br>(6) Creates no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly condition or nuisance; and<br><br>(7) Activity is not visibly evident outside dwelling, except for a wall-mounted, non-illuminated nameplate not over 2 square feet in area. |                                |                                                   |                                                    |

Multi-section manufactured home on an individual lot, provided all following conditions are met:

- (1) Wheels are removed and unit is placed on a permanent foundation complying with the International Building Code;
- (2) All mobile features are removed;
- (3) Two off-street parking spaces per unit are provided;
- (4) Owner shall certify, in writing, that unit meets HUD standards and will be maintained in compliance with those HUD standards;
- (5) The roof of the multi-section home shall have no less than a nominal 3:12 pitch;
- (6) Each multi-sectional home shall have porches and/or stoops at all entrances to the home built in accordance with the International Building Code, latest adopted edition.

Single-wide or multi-section manufactured home that meets all HUD standards may be used as a temporary residence by the owner of the property during the construction of a permanent residence, provided the Zoning Administrator makes the following findings:

- (1) The building lot is of sufficient size to permit the location of the manufactured home in such a way that both structures meet the minimum yard requirements;
- (2) The manufactured home will be occupied by the owner of the property who is constructing the permanent residence;
- (3) The proposed location does not adversely affect the neighborhood or the adjoining property owners;
- (4) The zoning permit is valid for 6 months, renewable 2 times with a 30-day hardship extension;
- (5) Proof of ownership of the property has been submitted in the form of the owner providing a copy of a plat and a deed; and
- (6) The applicant will remove the manufactured home from the property within 30 days of the issuance of a certificate of occupancy for the permanent residence.

In addition to the above requirements, the Zoning Administrator may attach such other conditions as are deemed appropriate to protect adjacent properties and the integrity of the neighborhood, including requiring the applicant to provide an affidavit containing information pertinent to making a determination.

| <b><i>RS-4 Special Exceptions<br/>(approved by Zoning Administrator after hearing)</i></b>                                                                                                                                                                                                                                                                                                                                                                                                       | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>                                | <b><i>Parking<br/>Spaces<br/>Required</i></b>                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------------------------------|---------------------------------------------------------------|
| <p>Tourist guest home, provided the Board of Zoning Appeals determines:</p> <p>(1) Minimum 1 acre lot;</p> <p>(2) The use is compatible with the district.</p>                                                                                                                                                                                                                                                                                                                                   | 72119                        | Tourist home only                                                  | 2 for owner, plus 1 per guest room                            |
| <p>Private kindergarten, preschool nursery, day care; provided the Board of Zoning Appeals determines:</p> <p>(1) Applicable state regulations are met;</p> <p>(2) Minimum 1 acre lot;</p> <p>(3) Minimum 200 square feet of open space per child enclosed by a fence at least 5 feet in height;</p> <p>(4) Structures minimum 25 feet from residential property;</p> <p>(5) Conditions imposed for safety, traffic, impact on district;</p> <p>(6) The use is compatible with the district.</p> | 6111<br>62441                | Kindergarten only (with academic program), Child day care services | 1 per employee, plus 1 off-street, drop-off and pick-up space |
| <p>Any multi-section manufactured home that meets all of the HUD standards may be permitted as a temporary residence for a family member who is elderly, infirm, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance, for a period not to exceed 2 years; provided the Board of Zoning Appeals makes the following findings:</p>                                                                                                             |                              |                                                                    |                                                               |
| <p>(1) Such temporary residence must be either on the same lot of record or on an adjacent lot of record as the permanent residence in which either the caregiver or inform relative lives;</p>                                                                                                                                                                                                                                                                                                  |                              |                                                                    |                                                               |
| <p>(2) If such temporary residence is to be located on the same lot of record, the building lot is of sufficient size to permit the location of the manufactured home so that all minimum yard requirements are met without encroaching on the yard requirements of the permanent residence;</p>                                                                                                                                                                                                 |                              |                                                                    |                                                               |
| <p>(3) The manufactured home will be occupied by a family member who is infirm, elderly, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance;</p>                                                                                                                                                                                                                                                                                            |                              |                                                                    |                                                               |
| <p>(4) The proposed location will not adversely affect the neighborhood or the adjoining property owners;</p>                                                                                                                                                                                                                                                                                                                                                                                    |                              |                                                                    |                                                               |

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| (5) Normal plumbing and electrical inspections for the mobile home are completed by the Building Inspector, and all SC-DHEC regulations are complied with;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| (6) The applicant will remove the manufactured home from the property or will subdivide the property in a manner that will allow the manufactured home to remain where it is, so long as it will thereafter be in compliance with County Zoning Regulations then in effect, and such action must be taken within 30 days of the date the manufactured home is vacated by the individual in need of assistance, or the caregiver of such person, or within 30 days of the expiration of the temporary permit issued by the Zoning Administrator, or any extension thereof granted by the Board of Zoning Appeals, unless a new permit is issued for another eligible person. |
| (7) The temporary permit is issued for the use of the manufactured home by a particular individual, and is not transferable; if continued use of the manufactured home for or by another family member or caregiver is requested, a new application must be timely filed and a new permit granted.                                                                                                                                                                                                                                                                                                                                                                          |
| (8) The Board of Zoning Appeals may grant conditional renewal of the permit for the manufactured home every 2 years if the applicant shows hardship to the permitted occupant of the manufactured home or the individual being cared for, based on medical conditions that are supported by a signed physician's statement, setting forth the physician's opinion of the medical necessity for the issuance of the permit.                                                                                                                                                                                                                                                  |
| In addition to the above 8 requirements, the Board of Zoning Appeals may attach such other conditions as it deems appropriate to protect adjacent properties and the integrity of the neighborhood.                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 01-04-07, passed 2-21-2007) Penalty, see § 10.99

**§ 153.078 RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICT REGULATIONS.**

|                                          |                                                                                                                               |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Minimum residential lot area             | With public water and sewer: 15,000 square feet<br><br>With individual water or sewer: 1 acre or greater, as directed by DHEC |
| Minimum lot area for nonresidential uses | Utility substation and water towers: 10,000 square feet<br><br>Other: 1 acre                                                  |
| Minimum lot width at front building line | With public water and sewer: 70 feet<br><br>Other: 130 feet                                                                   |
| Minimum front yard depth                 | For lots fronting on SC and US routes, see <u>§ 153.112</u> ;<br><br>25 feet from all other road rights-of-way                |

|                                                                              |                                                                                                                                                                                                                                                                                                |
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| Minimum setback from second street frontage                                  | Side street on corner lot: 12 feet<br>Rear street on a double frontage lot: 50 feet                                                                                                                                                                                                            |
| Minimum side yard                                                            | 7 feet from interior side lot line                                                                                                                                                                                                                                                             |
| Minimum rear yard                                                            | Principal structure: 20 feet from interior rear lot line<br>Accessory structure: 6 feet from interior rear lot line                                                                                                                                                                            |
| Minimum setback from preexisting commercial, industrial, or agricultural use | One-half of the applicable setback from a residential district specified for uses in the commercial, industrial or agricultural district regulations                                                                                                                                           |
| Minimum setback from lake shore                                              | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Maximum structure height                                                     | None                                                                                                                                                                                                                                                                                           |
| Visibility requirements                                                      | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                           |
| Off-street parking                                                           | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Signs                                                                        | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Supplemental regulations                                                     | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                                                                  |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.079 RG GENERAL RESIDENTIAL DISTRICT.**

| <b><i>RG Permitted Uses</i></b>                                                              | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                | <b><i>Parking Spaces Required</i></b> |
|----------------------------------------------------------------------------------------------|--------------------------|------------------------------------------------|---------------------------------------|
| Single-family dwelling, including garage apartment on single lot (except manufactured homes) | 814                      | Private households (except manufactured homes) | 2 for each dwelling unit              |

|                                                                                                                                                                                                                                                  |                         |                                                           |                                                                                                                                                                                                                                        |
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| Multi-family dwelling                                                                                                                                                                                                                            | 814                     | Private households                                        | 2 for each dwelling unit                                                                                                                                                                                                               |
| Public or private school, kindergarten, elementary or secondary,                                                                                                                                                                                 | 6111                    | Elementary and secondary schools                          | 611 - Elementary and secondary schools: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium.<br><br>Kindergarten: 1 per employee, plus 1 off-street loading space<br><br>All other: 1 per 3 students capacity |
| Community public park or playground and recreation facilities limited to tennis court, swimming pool or golf course                                                                                                                              | 71219<br>71391<br>71394 | Park,<br><br>Golf course,<br><br>Tennis and swimming only | 1 per 4 patrons at maximum capacity                                                                                                                                                                                                    |
| Bed and breakfast inn, tourist (guest) home                                                                                                                                                                                                      | 72119                   | Traveler accommodations                                   | 2 per owner plus 1 per guest room                                                                                                                                                                                                      |
| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures | 8131                    | Religious organizations, churches, and the like           | 1 for each 4 seats in main assembly room, or 1 for each 150 square feet of gross floor area, whichever requires the least number of spaces                                                                                             |
| Civic and social clubs                                                                                                                                                                                                                           | 8134                    | Civic and social organizations                            | 1 per 150 square feet of gross floor area                                                                                                                                                                                              |

Accessory use on same lot with principal use, as follows:

- (1) Private garage for motor vehicle;
- (2) Open parking area for motor vehicles may be used for 1 commercial vehicle per dwelling unit;
- (3) Shed for storage of building or lot maintenance equipment;
- (4) Barns, silos, outbuildings for agricultural uses and equipment;
- (5) Private swimming pool, including deck, bath house or cabana, boat dock;
- (6) Private garden, greenhouse;
- (7) Private tennis, outdoor recreation and picnic facilities.

| <b><i>RG Conditional Uses<br/>(approved by Zoning Administrator if all<br/>conditions are met)</i></b>                                                                                                                                                                                                                                                                                                                                      | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>               | <b><i>Parking Spaces<br/>Required</i></b>       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|---------------------------------------------------|-------------------------------------------------|
| Public utilities, substation, water tower (see § 153.111 for communication tower); provided all of the following conditions are met: <ol style="list-style-type: none"> <li>(1) Structures enclosed by 6-foot fence;</li> <li>(2) No office, commercial operation or storage of vehicles or equipment is permitted;</li> <li>(3) A landscaped strip at least 5 feet wide is planted and maintained along all exterior lot lines.</li> </ol> | 22112<br>2212<br>22131       | Electric,<br>gas, water,<br>sanitary<br>utilities | 1 space                                         |
| Temporary contractor office and equipment shed, residential construction; provided all following conditions are met: <ol style="list-style-type: none"> <li>(1) Used in connection with construction on premises;</li> <li>(2) Must not cause traffic congestion or nuisance;</li> <li>(3) For a term up to 1 year, may be renewed once.</li> </ol>                                                                                         | 2332                         | Residential<br>building<br>construction           | 1 for each 300<br>square feet of<br>office area |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |     |  |      |
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| Temporary Christmas tree sales, on vacant lot for a period not to exceed 45 days                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A |  | None |
| <p>Customary home occupation in single-family dwelling, provided following conditions are met:</p> <ul style="list-style-type: none"> <li>(1) Conducted inside dwelling or accessory structure by resident family members;</li> <li>(2) Utilizes not more than 25% of total dwelling floor area, or 50% of an accessory building;</li> <li>(3) No change in exterior appearance of dwelling;</li> <li>(4) No outside display of products;</li> <li>(5) No retail sale of products except those made on premises;</li> <li>(6) Creates no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly condition or nuisance; and</li> <li>(7) Activity is not visibly evident outside dwelling, except for a wall-mounted, non-illuminated nameplate not over 2 square feet in area.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |     |  |      |
| <p>Single-wide or multi-section manufactured home on an individual lot, provided all following conditions are met:</p> <ul style="list-style-type: none"> <li>(1) Wheels are removed and unit is placed on a foundation complying with building code, and skirting compatible with the manufactured home is installed;</li> <li>(2) Unit is tied down for 80-mile-per-hour wind resistance;</li> <li>(3) All mobile features are removed;</li> <li>(4) Two off-parking spaces per unit are provided;</li> <li>(5) Owner shall certify in writing that unit meets HUD minimum standards at the time the unit was built, and will be maintained in compliance with those HUD standards;</li> <li>(6) Failure to bring unit into compliance with HUD standards at the time the unit was built, within 15 days after notice of deficiencies, is a violation of these conditions, subject to penalties provided by the county code;</li> <li>(7) The roof of a multi-section manufactured home shall have no less than a nominal 3:12 pitch;</li> <li>(8) Each manufactured home shall have porches and/or stoops at all entrances to the home built in accordance with the standard building code, latest adopted editions, or CABO One and Two Family, latest adopted edition.</li> </ul> |     |  |      |



Manufactured home as emergency housing, provided the following conditions are met:

(1) Temporary use may be permitted for 12 months while repairs are made to dwelling damaged by fire or natural disaster;

(2) Permit may be extended for additional 6 months, provided repairs are in progress and will be completed by expiration of 18-month period. No additional extension may be granted.

Any single-wide or multi-section manufactured home that meets all of the HUD standards may be permitted as a temporary residence for a family member who is elderly, infirm, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance, for a period not to exceed 2 years; provided the Zoning Administrator makes the following findings:

(1) Such temporary residence must be either on the same lot of record or on an adjacent lot of record as the permanent residence in which either the caregiver or infirm relative lives;

(2) If such temporary residence is to be located on the same lot of record, the building lot is of sufficient size to permit the location of the manufactured home so that all minimum yard requirements are met without encroaching on the yard requirements of the permanent residence;

(3) The manufactured home will be occupied by a family member who is infirm, elderly, otherwise in need of assistance, or is to be the caregiver for such family member in need of assistance;

(4) The proposed location will not adversely affect the neighborhood or the adjoining property owners;

(5) Normal plumbing and electrical inspections for the mobile home are completed by the Building Inspector, and all SC-DHEC regulations are complied with;

(6) The applicant will remove the manufactured home from the property or will subdivide the property in a manner that will allow the manufactured home to remain where it is, so long as it will thereafter be in compliance with County Zoning Regulations then in effect, and such action must be taken within 30 days of the date the manufactured home is vacated by the individual in need of assistance, or the caregiver of such person, or within 30 days of the expiration of the temporary permit issued by the Zoning Administrator, or any extension thereof granted by the Board of Zoning Appeals, unless a new permit is issued for another eligible person.

(7) The temporary permit is issued for the use of the manufactured home by a particular individual, and is not transferable; if continued use of the manufactured home for or by another family member or caregiver is requested, a new application must be timely filed and a new permit granted.

(8) The Board of Zoning Appeals may grant conditional renewal of the permit for the manufactured home every 2 years if the applicant shows hardship to the permitted occupant of the manufactured home or the individual being cared for, based on medical conditions that are

supported by a signed physician's statement, setting forth the physician's opinion of the medical necessity for the issuance of the permit.

In addition to the above 8 requirements, the Board of Zoning Appeals may attach such other conditions as it deems appropriate to protect adjacent properties and the integrity of the neighborhood.

Single-wide or multi-section manufactured home that meets all HUD standards may be used as a temporary residence by the owner of the property during the construction of a permanent residence, provided the Zoning Administrator makes the following findings:

- (1) The building lot is of sufficient size to permit the location of the manufactured home in such a way that both structures meet the minimum yard requirements;
- (2) The manufactured home will be occupied by the owner of the property who is constructing the permanent residence;
- (3) The proposed location does not adversely affect the neighborhood or the adjoining property owners;
- (4) The zoning permit is valid for 6 months, renewable 2 times with a 30-day hardship extension;
- (5) Proof of ownership of the property has been submitted in the form of the owner providing a copy of a plat and a deed; and
- (6) The applicant will remove the manufactured home from the property within 30 days of the issuance of a certificate of occupancy for the permanent residence.

In addition to the above requirements, the Zoning Administrator may attach such other conditions as are deemed appropriate to protect adjacent properties and the integrity of the neighborhood, including requiring the applicant to provide an affidavit containing information pertinent to making a determination.

| <b><i>RG Special Exceptions<br/>(approved by Zoning Administrator after<br/>hearing)</i></b> | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>  | <b><i>Parking Spaces<br/>Required</i></b>                           |
|----------------------------------------------------------------------------------------------|------------------------------|--------------------------------------|---------------------------------------------------------------------|
| Day care, adult or child                                                                     | 62412<br>62441               | Adult day<br>care,<br>Child day care | 1 per employee, plus 1<br>off-street, drop-off and<br>pick-up space |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |                                                                        |                                                                                                                        |
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| <p>Outpatient and emergency health care facilities, provided the Board of Zoning Appeals determines:</p> <p>(1) Applicable state regulations are met;</p> <p>(2) Structures minimum of 25 feet from residential property;</p> <p>(3) Conditions imposed for safety, traffic, impact on district;</p> <p>(4) The use is compatible with the district;</p> <p>(5) An approved landscaped buffer or other separation is provided along all interior property lines.</p>                      | <p>621</p> <p>6221</p> | <p>Ambulatory health care services, Medical and surgical hospitals</p> | <p>Office, lab, outpatient facility: 1 per 200 square feet of gross floor area; Hospital: 1.5 for each patient bed</p> |
| <p>Nursing, convalescent and group homes, provided the Board of Zoning Appeals determines:</p> <p>(1) Applicable state regulations are met;</p> <p>(2) Minimum 2 acre lot;</p> <p>(3) Structures minimum of 50 feet from residential property;</p> <p>(4) Conditions imposed for safety, traffic, impact on district;</p> <p>(5) The use is compatible with the district;</p> <p>(6) An approved landscaped buffer or other separation is provided along all interior property lines.</p> | <p>623</p>             | <p>Nursing and residential care facilities</p>                         | <p>1 space per 3 patient beds plus 1 space per employee</p>                                                            |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |    |                                                                                                      |                                          |
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| Government building or facility (except jail or correction facility), provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state regulations are met;<br><br>(2) Structures minimum of 50 feet from residential property;<br><br>(3) Conditions imposed safety, traffic, impact on district;<br><br>(4) The use is compatible with the district;<br><br>(5) An approved landscaped buffer or other separation is provided along all interior property lines. | 92 | Public administration, justice, safety, fire, and the like (except 92214, Correctional institutions) | 1 for each 200 square feet of floor area |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|------------------------------------------------------------------------------------------------------|------------------------------------------|

***Manufactured home park (see § 153.005), provided all following conditions are met:***

|                                     |                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum area                        | A manufactured home park shall contain a minimum of 8 acres                                                                                                                                                                                                                                                                         |
| Maximum density                     | 5 units per acre                                                                                                                                                                                                                                                                                                                    |
| Minimum unit space; markers         | 7,500 square feet per space; minimum width 50 feet; minimum length 150 feet; indicated by permanent flush markers at each corner                                                                                                                                                                                                    |
| Minimum open space                  | There shall be 2,500 square feet of common open space for each acre or major fraction of an acre in the park                                                                                                                                                                                                                        |
| Access road                         | All home spaces shall be accessible by an interior roadway at least 66 feet wide, with unobstructed access to a public road. Roads shall comply with the Newberry County Land Development Regulations and with the Newberry County Road Acceptance Ordinance.                                                                       |
| Minimum parking                     | Two parking spaces per unit shall be provided on, or adjacent to, the to the home space, with car stops for head-in parking, in addition to adequate turn-around space. Parking space may be provided on 1 side of a private driveway at least 34 feet in width, and on both sides of a private driveway at least 43 feet in width. |
| Minimum unit setback and clearances | Front yard: 25 feet. Abutting driveway: 15 feet. Park property lines: 50 feet.                                                                                                                                                                                                                                                      |

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|                   | Adjacent units: 20 feet, side and rear. Accessory structures shall be at least 4 feet from the unit space line and 20 feet from common building such as offices or laundry facilities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Park screening    | A park shall be screened by a greenbelt of evergreen trees or shrubs along rear and side park property lines at least 5 feet in height and 4 feet in width at maturity, or by an opaque wall or fence of commercial grade at least 5 feet high                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Occupancy of park | Construction of required driveways, utilities, unit spaces and other improvements shall be completed for at least 25% of the unit spaces shown on the site plan before any part of the park is occupied                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Site plan         | <p>A site plan drawn to scale of 1 inch to 40 feet or larger, showing the details of development shall be submitted with an application for a manufactured home park showing compliance with all conditions imposed by this chapter. The site plan shall show:</p> <ul style="list-style-type: none"> <li>(1) Total park area, including shape and dimensions of the site and a north arrow;</li> <li>(2) Location and dimensions of access roads, proposed driveways, entrances, exits, walkways, units spaces, stands, parking areas, refuse receptacles, recreation areas, open space, screening and landscaping;</li> <li>(3) The plan of sewage disposal, water, gas, and electrical supply;</li> <li>(4) Tax map number and zoning designation; and</li> <li>(5) Owners and zoning designation of adjoining property</li> <li>(6) A plan must comply with all applicable regulations before a permit is issued. Denial of a permit shall be in writing with reason stated.</li> </ul> |

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 01-04-07, passed 2-21-2007) Penalty, see § 10.99

**§ 153.080 RG GENERAL RESIDENTIAL DISTRICT REGULATIONS.**

|                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| Minimum residential lot area                                                 | <p>Single-family:</p> <p>With public water and sewer: 10,000 square feet</p> <p>With public water, individual sewer: 1/2 acre, as directed by DHEC</p> <p>With individual water and sewer: 1 or greater, as directed by DHEC</p> <p>Multi-family:</p> <p>12,000 square feet for first dwelling unit;</p> <p>3,000 square feet for second dwelling unit;</p> <p>thereafter, 2,500 square feet for each additional unit.</p> |
| Minimum lot area for nonresidential uses                                     | <p>Utility substation and water towers: 10,000 square feet</p> <p>Other: 10,000 square feet</p>                                                                                                                                                                                                                                                                                                                            |
| Minimum lot width at front building line                                     | <p>With public water and sewer: 70 feet</p> <p>Other: 130 feet</p>                                                                                                                                                                                                                                                                                                                                                         |
| Minimum front yard depth                                                     | <p>Residential uses:</p> <p>For lots fronting on SC and US routes, see <u>§ 153.112</u>;</p> <p>25 feet from all other road rights-of-way.</p> <p>Other uses: 35 feet from road right-of-way</p>                                                                                                                                                                                                                           |
| Minimum setback from second street frontage                                  | <p>Side street on corner lot: 12 feet</p> <p>Rear street on a double frontage lot: 50 feet</p>                                                                                                                                                                                                                                                                                                                             |
| Minimum side yard                                                            | 7 feet from interior side lot line                                                                                                                                                                                                                                                                                                                                                                                         |
| Minimum rear yard                                                            | <p>Principal residential structure: 20 feet from interior rear lot line</p> <p>Other principal uses: 30 from interior rear lot line</p> <p>Accessory structure: 6 feet from interior rear lot line</p>                                                                                                                                                                                                                     |
| Minimum setback from preexisting commercial, industrial, or agricultural use | One-half of the applicable setback from a residential district specified for uses in the commercial, industrial or agricultural district regulations                                                                                                                                                                                                                                                                       |

|                                                 |                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Multi-family development additional regulations | Maximum length of structure: 200 feet<br>Setback from other residential buildings in development: 30 feet                                                                                                                                                                                      |
| Minimum setback from lake shore                 | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Visibility requirements                         | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                           |
| Off-street parking                              | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Signs                                           | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Supplemental regulations                        | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                                                                  |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**153.081 LC LIMITED COMMERCIAL DISTRICT.**

| <b><i>LC Permitted Uses</i></b>                                                                                                                              | <b><i>NAICS Code</i></b>                          | <b><i>NAICS Description</i></b>                                                                                                                                   | <b><i>Parking Spaces Required</i></b>     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Single-family and multi-family dwellings (except manufactured homes)                                                                                         | 814                                               | Private household (except manufactured homes)                                                                                                                     | 2 for each dwelling unit                  |
| Retail trade limited to NAICS codes listed, not exceeding 2,500 square feet of gross sales area, including roadside stands for sale of agricultural products | 443<br>44512<br>44523<br>446<br>448<br>451<br>453 | Electronics, appliances computers, photo supply; Conveniences stores<br><br>without fuel pumps;<br><br>Fruit and vegetable markets;<br><br>Health, personal care, | 1 per 200 square feet of gross sales area |

|                                                                                                                                                      |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                 |
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|                                                                                                                                                      | 4542                     | <p>drug stores, cosmetics, beauty supplies, optical goods, health food;</p> <p>Clothing, jewelry, and the like stores;</p> <p>Sporting goods, hobby, toys, sewing, music, books, news, tapes, discs, records</p> <p>Miscellaneous retailers, florists, office supplies, Gifts, antiques, used merchandise, pet stores, art and supplies, other miscellaneous (except 45393, Manufactured home dealers);</p> <p>Vending machines</p> |                                                                 |
| Post office, courier services                                                                                                                        | 491                      | Postal service;                                                                                                                                                                                                                                                                                                                                                                                                                     | 1 per 200 square feet of gross sales area                       |
|                                                                                                                                                      | 492                      | Couriers and messengers                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                 |
| <b><i>LC Permitted Uses</i></b>                                                                                                                      | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                                                                                                                                                                                                                                                                                                                                                                                                     | <b><i>Parking Spaces Required</i></b>                           |
| Information services, publishing, motion picture theater (except drive-in), broadcasting and telecommunication (except towers, see Conditional Uses) | 511                      | Newspaper and software;                                                                                                                                                                                                                                                                                                                                                                                                             | Theater: 1 for each 4 seats.                                    |
|                                                                                                                                                      | 512131                   | Theater (except drive-in);                                                                                                                                                                                                                                                                                                                                                                                                          | All other: 1 per 200 square feet of gross office or sales space |
|                                                                                                                                                      | 513                      | Broadcasting, program distribution and telecommunication (except towers);                                                                                                                                                                                                                                                                                                                                                           |                                                                 |
|                                                                                                                                                      | 514                      | Information and data processing services                                                                                                                                                                                                                                                                                                                                                                                            |                                                                 |
| Finance and insurance, banks, credit unions, security brokers, insurance agencies                                                                    | 52                       | Finance and insurance                                                                                                                                                                                                                                                                                                                                                                                                               | 1 per 200 square feet of gross office or sales area             |



|                                                                                                                     |                          |                                                                                                                  |                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------|--------------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Public or private elementary or secondary; private kindergarten; art, dance, music and other instruction            | 6111                     | Public and private elementary and secondary school; private kindergarten;<br><br>Other schools and instruction   | School: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium<br><br>Other: 1 per employee, plus 1 off-street, drop-off and pick-up space |
|                                                                                                                     | 6116                     |                                                                                                                  |                                                                                                                                                                  |
| Health care services, physicians, dentists, hospitals, nursing homes, group homes (except adult and child day care) | 62                       | Health care and social assistance; day care (except NAICS Code 62412, Adult day care, and 62441, Child day care) | 1 per 200 square feet of gross service area                                                                                                                      |
| Public or private park or playground, and recreation facilities limited to tennis court, swimming pool              | 71219                    | Nature park,                                                                                                     | 1 per 200 square feet of building area                                                                                                                           |
|                                                                                                                     | 71394                    | Tennis and swimming only                                                                                         |                                                                                                                                                                  |
| Bed and breakfast inns, boarding houses                                                                             | 72191                    | Bed and breakfast inns;                                                                                          | 2 per owner plus 1 per guest room                                                                                                                                |
|                                                                                                                     | 7213                     | Rooming and boarding houses                                                                                      |                                                                                                                                                                  |
| Restaurants, bars                                                                                                   | 722                      | Food service and drinking places                                                                                 | 1 for each 3 seats                                                                                                                                               |
| <b><i>LC Permitted Uses</i></b>                                                                                     | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                                                                                  | <b><i>Parking Spaces Required</i></b>                                                                                                                            |
| Personal services, repairs, beauty shops, and the like (except auto repairs)                                        | 8112                     | Electronic repair;                                                                                               | 1 per 200 square feet of gross office, sales or service area                                                                                                     |
|                                                                                                                     | 8113                     | Equipment repair;                                                                                                |                                                                                                                                                                  |
|                                                                                                                     | 8114                     | Household goods repair;                                                                                          |                                                                                                                                                                  |
|                                                                                                                     | 8121                     | Personal care services;                                                                                          |                                                                                                                                                                  |
|                                                                                                                     | 81221                    | Funeral homes;                                                                                                   |                                                                                                                                                                  |
|                                                                                                                     | 8129                     | Other personal services                                                                                          |                                                                                                                                                                  |

|                                                                                                                                                                                                                                                  |      |                                                                                                   |                                           |
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| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures | 8131 | Religious organizations, churches, and the like                                                   | 1 for each 4 seats in main assembly room  |
| Civic and social clubs, not licensed to serve alcoholic beverages                                                                                                                                                                                | 8134 | Civic and social organizations - no alcohol                                                       | 1 per 150 square feet of gross floor area |
| Government facility (correctional facility limited to pre-trial detention)                                                                                                                                                                       | 92   | General government, justice, public order, safety (92214 limited to pre-trial detention facility) | 1 for each 200 square feet of floor area  |

Accessory use on same lot with principal use as follows:

- (1) Off-street parking or storage area for vehicles owned by members, customers or employees of business;
- (2) Completely enclosed building for storage of supplies or merchandise for use in the principal business.

| <b><i>LC Conditional Uses<br/>(approved by Zoning Administrator if all conditions are met)</i></b>                                                                                                                                                                                    | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b> | <b><i>Parking<br/>Spaces<br/>Required</i></b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------------|-----------------------------------------------|
| Communication tower, see § 153.111                                                                                                                                                                                                                                                    | 5133                         | Communication                       | 1 space                                       |
| Cemetery, provided all following conditions are met:<br><br>(1) Minimum 2 acre lot;<br><br>(2) No crematorium or dwelling;<br><br>(3) Front yard setback 10 feet from street right-of-way line;<br><br>(4) Non-illuminated sign not over 30 square feet in area or 10 feet in height. | 81222                        | Cemetery only                       | None                                          |
| <b><i>LC Conditional Uses<br/>(approved by Zoning Administrator if all conditions are met)</i></b>                                                                                                                                                                                    | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b> | <b><i>Parking<br/>Spaces<br/>Required</i></b> |

| Dwelling unit in a business structure, provided all following conditions are met:<br><br>(1) Dwelling unit must be on level above the grade level floor within a permitted principal use building;<br><br>(2) Dwelling unit must have access to a street as required by building and fire codes                                        | 814                        | Private dwelling                                     | 1 for each dwelling unit in excess of 2 units per building |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------------------------|------------------------------------------------------------|
| Temporary Christmas tree sales, on vacant lot for a period not to exceed 45 days                                                                                                                                                                                                                                                       | N/A                        |                                                      | None                                                       |
| Contractor's office and equipment shed, provided all following conditions are met:<br><br>(1) Used in connection with construction on premises;<br><br>(2) Must not cause traffic congestion or nuisance;<br><br>(3) For term up to 1 year; may be renewed once                                                                        | N/A                        |                                                      | 1 for each 300 square feet of office area                  |
| <b><i>LC Special Exceptions<br/>(approved by Zoning Administrator after hearing)</i></b>                                                                                                                                                                                                                                               | <b><i>NAICS Code</i></b>   | <b><i>NAICS Description</i></b>                      | <b><i>Parking Spaces Required</i></b>                      |
| Public utility, substations, water tower (see § 153.111) for communication tower), provided the Board of Zoning Appeals determines:<br><br>(1) The use is compatible with the district;<br><br>(2) Parking and service areas are separated from adjoining residential property by planting screen, fence or wall at least 6 feet high. | 22112<br>2212<br><br>22131 | Electric;<br><br>gas, water<br>sanitary<br>utilities | 1 space                                                    |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                              |                                     |                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------------|-----------------------------------------------------------------|
| <p>Automobile service station, including the sale of groceries; provided that the Board of Zoning Appeals determines:</p> <p>(1) The use is compatible with the district;</p> <p>(2) Parking and service areas are separated from adjoining residential property by planting screen, fence or wall at least 6 feet high;</p> <p>(3) No major repairs or vehicle sales conducted on premises;</p> <p>(4) Adequate provisions are made for access and traffic safety;</p> <p>(5) Conditions are imposed to protect adjacent property from adverse impact</p> | 447                          | Gasoline stations                   | 2 for each fuel pump, plus 3 for each service bay or wash rack  |
| <b><i>LC Special Exceptions<br/>(approved by Zoning Administrator after hearing)</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b> | <b><i>Parking Spaces Required</i></b>                           |
| <p>Car wash, either automatic or self-service; provided the Board of Zoning Appeals determines:</p> <p>(1) The use is compatible with the district;</p> <p>(2) Adequate space for vehicles awaiting entry are required, more than minimum may be required;</p> <p>(3) The area is required to be adequately screened from adjoining residential property;</p> <p>(4) Adequate provisions are made for access and traffic safety;</p> <p>(5) Hours of operation are limited to prevent late night noise.</p>                                                | 811192                       | Carwashes                           | Self-service wash: 3<br>Automatic wash: set by Board, minimum 6 |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.082 LC LIMITED COMMERCIAL DISTRICT REGULATIONS.**

|                                             |                                                                                                                                                                                                                                                                   |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum residential lot area                | <p>Single-family:</p> <p>With public water and sewer: 10,000 square feet</p> <p>With public water, individual sewer: 1/2 acre, as directed by DHEC</p> <p>With individual water and sewer: 1 acre or greater, as directed by DHEC</p> <p>Multi-family: 1 acre</p> |
| Minimum lot area for nonresidential uses    | <p>Utility substation and water towers: 10,000 square feet</p> <p>Other: as specified in conditions, or none</p>                                                                                                                                                  |
| Minimum lot width at front building line    | <p>With public water and sewer: 70 feet</p> <p>Other: 130 feet</p>                                                                                                                                                                                                |
| Minimum street frontage                     | <p>Single-family uses: 50 feet</p> <p>Other uses: 100 feet</p>                                                                                                                                                                                                    |
| Minimum front yard depth                    | <p>For lots fronting on SC and US routes, see <u>§ 153.112</u>;</p> <p>50 feet from all other road rights-of-way;</p> <p>except gasoline island may be 30 feet from road right-of-way</p>                                                                         |
| Minimum setback from second street frontage | <p>Side street on corner lot: 10 feet</p> <p>Rear street on a double frontage lot: 30 feet</p>                                                                                                                                                                    |
| Minimum side yard                           | <p>Principal structure: 10 feet from interior lot line</p> <p>Accessory structure: 6 feet from interior lot line</p> <p>All uses: 30 feet from a residential district</p>                                                                                         |
| Minimum rear yard                           | <p>Principal residential structure: 20 feet from interior rear lot line</p> <p>Accessory structure: 6 feet from interior rear lot line</p>                                                                                                                        |

|                                 |                                                                                                                                                                                                                                                                                                |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                 | All uses: 30 feet from a residential district                                                                                                                                                                                                                                                  |
| Minimum setback from lake shore | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Multi-family development        | Maximum length of structure: 200 feet<br><br>Setback from other residential buildings in development: 30 feet                                                                                                                                                                                  |
| Maximum structure height        | None                                                                                                                                                                                                                                                                                           |
| Outdoor storage                 | Wrecked or junk vehicles prohibited. Outdoor storage of materials used in assembly, fabrication, or processing limited to 25% of floor area of buildings on same lot, as permitted if screened from view of public right-of-way.                                                               |
| Visibility requirements         | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                           |
| Off-street parking              | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Signs                           | See supplemental regulations                                                                                                                                                                                                                                                                   |
| Supplemental regulations        | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                                                                  |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.083 GC GENERAL COMMERCIAL DISTRICT USES.**

| <b><i>GC Permitted Uses</i></b>          | <b><i>NAICS Code</i></b>   | <b><i>NAICS Description</i></b> | <b><i>Parking Spaces Required</i></b>      |
|------------------------------------------|----------------------------|---------------------------------|--------------------------------------------|
| Public utility operations center, office | 22112<br>2212<br><br>22131 | Electric, gas, water,           | 1 per 200 square feet of gross office area |

|                                                                                              |                                                                                  |                                                                                                                                                                                                                                                                                                                                |                                           |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
|                                                                                              |                                                                                  | sanitary utilities, office or operations centers only                                                                                                                                                                                                                                                                          |                                           |
| Wholesale establishments (excluding NAICS 421930, 422690 and 424710, see Special Exceptions) | 42                                                                               | Wholesale trade durable and nondurable goods; (excluding Recyclable materials wholesalers, Other chemical and allied products wholesalers, and Petroleum bulk stations and terminals)                                                                                                                                          | 1 per 300 square feet of gross sales area |
| <b><i>GC Permitted Uses</i></b>                                                              | <b><i>NAICS Code</i></b>                                                         | <b><i>NAICS Description</i></b>                                                                                                                                                                                                                                                                                                | <b><i>Parking Spaces Required</i></b>     |
| Retail trade                                                                                 | 441<br>442<br>443<br>444<br>445<br>446<br>447<br>448<br>451<br>452<br>453<br>454 | Motor vehicles and parts;<br>Furniture and home furnishings;<br>Electronics and appliances;<br>Building material, garden;<br>Food and beverages stores;<br>Health and personal care;<br>Auto service station;<br>Clothing stores;<br>Sporting goods;<br>General merchandise;<br>Miscellaneous retailers;<br>Nonstore retailers | 1 per 200 square feet of gross sales area |
| Information services, publishing, motion picture theater (except drive-in), broadcasting and | 511<br>512131                                                                    | Newspaper and software;<br>Theater (except drive-in);                                                                                                                                                                                                                                                                          | Theater: 1 for each 4 seats               |

|                                                                                                                                                                                                                                                   |                          |                                                                                                                         |                                                                                                                                                                 |
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| telecommunication (except towers, see Conditional Uses)                                                                                                                                                                                           | 513                      | Broadcasting, program distribution and telecommunication (except towers);                                               | All other: 1 per 200 square feet of gross office or sales area                                                                                                  |
|                                                                                                                                                                                                                                                   | 514                      | Information and data processing services                                                                                |                                                                                                                                                                 |
| Finance and insurance, banks, credit unions, security brokers, insurance agencies                                                                                                                                                                 | 52                       | Finance and insurance                                                                                                   | 1 per 200 square feet of gross office or sales area                                                                                                             |
| Real estate, sales and rental, auto and consumer goods rental and leasing services                                                                                                                                                                | 53                       | Real estate;<br><br>Rental and leasing services                                                                         | 1 per 200 square feet of gross office or sales area                                                                                                             |
| Professional science and technical services, art, legal, accounting, architectural, engineering research, testing laboratories, computer services, veterinary and related services, conducted inside structures (except off-premises advertising) | 54                       | Professional, scientific, and technical services (except 54185, Display advertising,<br><br>54194, Veterinary services) | 1 per 200 square feet of gross office area                                                                                                                      |
| <b><i>GC Permitted Uses</i></b>                                                                                                                                                                                                                   | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                                                                                         | <b><i>Parking Spaces Required</i></b>                                                                                                                           |
| Educational services, colleges, elementary and secondary schools, private kindergartens; business and vocational schools, art, dance, music, and other instruction                                                                                | 61                       | Educational services                                                                                                    | School: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium<br><br>Other: 1 per employee plus 1 off-street, drop-off and pick-up space |



|                                                                                                                                                                                                                 |                                               |                                                                                                                                                                                 |                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Health care and social services, medical and dental services, hospitals, clinics, laboratories, ambulance services, nursing and residential care, group homes, social services, except adult and child day care | 62                                            | Health care and social assistance, including adult and child day care (except NAICS Code 62412, Adult day care, and 62441, Child day care)                                      | 622- Hospital: 1.5 for each patient bed;<br><br>623 - Nursing and residential care: 1 per 5 resident beds; and<br><br>All other: 1 per 200 square feet of gross floor area. |
| Parks and entertainment, amusement rides, and arcades (except gambling), skating, physical fitness, bowling, miniature golf and driving ranges, billiard and pool parlors                                       | 712<br>71312<br>71394<br>71395<br>71399       | Museums and parks, Amusement arcades,<br><br>Fitness and sports centers, Bowling centers;<br><br>Amusement rides, pool parlors, miniature golf and driving ranges only          | 1 per 200 square feet of gross service area                                                                                                                                 |
| Accommodations and food services, hotels, motels, bed and breakfast inns, boarding homes, restaurants, bars                                                                                                     | 72111<br>721191<br>7213<br><br>722            | Hotels and motels<br><br>Bed and breakfast inns,, Rooming and boarding,<br><br>Food service and drinking places                                                                 | Hotel, motel: 1 for each room<br><br>Eating and drinking places: 1 for each 3 seats                                                                                         |
| <b><i>GC Permitted Uses</i></b>                                                                                                                                                                                 | <b><i>NAICS Code</i></b>                      | <b><i>NAICS Description</i></b>                                                                                                                                                 | <b><i>Parking Spaces Required</i></b>                                                                                                                                       |
| Personal services, repairs, beauty shops, diet and weight control, funeral homes, dry cleaning, photo finishing, parking, and the like                                                                          | 8111<br>8112<br>8113<br>8114<br>8121<br>81221 | Automotive repair, generally, carwashes;<br><br>Electronic repair;<br><br>Equipment repair;<br><br>Household goods repair;<br><br>Personal care services;<br><br>Funeral homes; | 1 per 200 square feet of gross office, sales or service area                                                                                                                |

|                                                                                                                                                                                                                                                                                                    |              |                                                                                                                               |                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
|                                                                                                                                                                                                                                                                                                    | 8123<br>8129 | Dry cleaning and laundry; Other personal services (except 81291, Pet care services)                                           |                                           |
| Church, synagogue, temple or place of worship, including religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or preschool nursery, in permanent structures                                                   | 8131         | Religious organizations, churches, and the like                                                                               | 1 for each 4 seats in main assembly room  |
| Civic and social clubs                                                                                                                                                                                                                                                                             | 8134         | Civic and social organization                                                                                                 | 1 per 150 square feet of gross floor area |
| Government facility, including postal facility (correctional facility limited to pre-trial detention)                                                                                                                                                                                              | 491<br>92    | U.S. Postal Service;<br><br>General government, justice, public order, safety (92214 limited to pre-trial detention facility) | 1 for each 200 square feet of floor area  |
| Off-premises advertising sign, provided all conditions of this chapter and applicable state regulations are met                                                                                                                                                                                    |              | Advertising                                                                                                                   | N/A                                       |
| <p>Accessory use on same lot with principal use as follows:</p> <p>(1) Off-street parking or storage area for vehicles owned by members, customers or employees of business;</p> <p>(2) Completely enclosed building for storage of supplies or merchandise for use in the principal business.</p> |              |                                                                                                                               |                                           |

| <b><i>GC Conditional Uses<br/>(approved by Zoning Administrator if all conditions<br/>are met)</i></b>                                                                                                                                                           | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>      | <b><i>Parking<br/>Spaces<br/>Required</i></b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------------------------------|-----------------------------------------------|
| Communication tower, see § 153.111                                                                                                                                                                                                                               | 5133                         | Communication                            | 1 space                                       |
| Temporary Christmas tree sales, on vacant lot for a period not to exceed 45 days                                                                                                                                                                                 | N/A                          |                                          | None                                          |
| Contractor's office and equipment shed, provided all following conditions are met:<br><br>(1) Used in connection with construction on premises;<br><br>(2) Must not cause traffic congestion or nuisance;<br><br>(3) For term up to 1 year; may be renewed once. | N/A                          |                                          | 1 for each 300 square feet of office area     |
| Manufacturing of goods for retail sale on premises, provided all following conditions are met:<br><br>(1) Accessory to retail use on same premises;<br><br>(2) Process is contained inside permitted structure.                                                  | N/A                          |                                          | No additional                                 |
| Veterinary services, provided animals are kept inside buildings at night                                                                                                                                                                                         | 54194                        | Veterinary services                      | 1 per 200 square feet of gross office area    |
| Kennels, pet care services, provided animals are kept inside buildings at night                                                                                                                                                                                  | 81291                        | Pet care services                        | 1 per 200 square feet of gross office area    |
| <b><i>GC Special Exceptions<br/>(approved by Zoning Administrator after<br/>hearing)</i></b>                                                                                                                                                                     | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>      | <b><i>Parking Spaces<br/>Required</i></b>     |
| Public utility, substations, water tower (see § 153.111) for communication tower), provided the Board of Zoning Appeals determines:<br><br>(1) The use is compatible with the district;                                                                          | 22112<br>2212<br>22131       | Electric, gas, water, sanitary utilities | 1 space                                       |

|                                                                                                                                         |                              |                                                                    |                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------|
| (2) Parking and service areas are separated from adjoining residential property by planting screen, fence or wall at least 6 feet high. |                              |                                                                    |                                                                            |
| <b><i>GC Special Exceptions<br/>(approved by Zoning Administrator after hearing)</i></b>                                                | <b><i>NAICS<br/>Code</i></b> | <b><i>NAICS<br/>Description</i></b>                                | <b><i>Parking Spaces<br/>Required</i></b>                                  |
| Transportation terminals for bus and railroad service, warehousing and storage; provided the Board of Appeals determines:               | 482<br>48849                 | Railroad transportation;                                           | Set by the Board, minimum: 1 for each 200 square feet of gross floor space |
| (1) Adequate maneuvering and parking spaces are met;                                                                                    | 493                          | Terminal for motor vehicle passenger transportation, bus terminal: |                                                                            |
| (2) Adequate provisions are made for access and traffic safety;                                                                         |                              | Mini-warehouse and personal storage                                |                                                                            |
| (3) The area is adequately screened from residential areas;                                                                             |                              |                                                                    |                                                                            |
| (4) The use is compatible with the district.                                                                                            |                              |                                                                    |                                                                            |
| Marina, provided that the Board of Zoning Appeals determines:                                                                           | 71393                        | Marinas                                                            | 1 per 4 patrons at maximum capacity                                        |
| (1) Applicable state regulations are met;                                                                                               |                              |                                                                    |                                                                            |
| (2) Minimum 1 acre lot;                                                                                                                 |                              |                                                                    |                                                                            |
| (3) Structures minimum of 50 feet from residential property;                                                                            |                              |                                                                    |                                                                            |
| (4) Conditions imposed for safety, traffic, impact on district;                                                                         |                              |                                                                    |                                                                            |
| (5) The use is compatible with the district.                                                                                            |                              |                                                                    |                                                                            |
| Sexually oriented business, provided that the Zoning Board of Appeals finds that the requirements of <u>§ 153.110</u> are met           |                              | Sexually oriented businesses                                       | 1 per 4 patrons at maximum capacity                                        |

|                                                                                                                                                                                                                                                                                                                                                                                                                                  |                             |                                                                                                     |                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------|
| <p>Cultural and community facilities, arts, sports, provided the Board of Zoning Appeals determines:</p> <p>(1) Applicable state regulations are met;</p> <p>(2) Minimum 1 acre lot;</p> <p>(3) Structures minimum of 50 feet from residential property;</p> <p>(4) Conditions imposed for safety, traffic, impact on district;</p> <p>(5) The use is compatible with the district.</p>                                          | 71                          | Performing arts, spectator sports                                                                   | 1 per 4 patrons at maximum capacity       |
| <p>Other chemical and allied products wholesalers, and Petroleum bulk stations and terminals, provided the Board of Zoning Appeals determines:</p> <p>(1) Applicable state regulations are met;</p> <p>(2) Minimum 1 acre lot;</p> <p>(3) Structures minimum of 50 feet from residential property;</p> <p>(4) Conditions imposed for safety, traffic, impact on district;</p> <p>(5) The use is compatible with the district</p> | <p>422690</p> <p>424710</p> | <p>Other chemical and allied products wholesalers;</p> <p>Petroleum bulk stations and terminals</p> | 1 per 300 square feet of gross sales area |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.084 GC GENERAL COMMERCIAL DISTRICT REGULATIONS.**

|                                          |                                                                                                                  |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| Minimum lot area for nonresidential uses | <p>Utility substation and water towers: 10,000 square feet</p> <p>Other: as specified in conditions, or none</p> |
| Minimum lot width at front building line | <p>With public water and sewer: 70 feet</p> <p>Other: 130 feet</p>                                               |

|                                             |                                                                                                                                                                                                                                                                                                |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum street frontage                     | 100 feet                                                                                                                                                                                                                                                                                       |
| Minimum front yard depth                    | For lots fronting on SC and US routes, see <u>§ 153.112</u> ;<br><br>50 feet from all other road rights-of-way;<br><br>except gasoline island may be 30 feet from road right-of-way                                                                                                            |
| Minimum setback from second street frontage | Side street on corner lot: 10 feet<br><br>Rear street on a double frontage lot: 30 feet                                                                                                                                                                                                        |
| Minimum side yard                           | Principal structure: 10 feet from interior lot line<br><br>Accessory structure: 6 feet from interior lot line<br><br>All uses: 30 feet from a residential district                                                                                                                             |
| Minimum rear yard                           | Principal residential structure: 20 feet from interior rear lot line<br><br>Accessory structure: 6 feet from interior rear lot line<br><br>All uses: 30 feet from a residential district                                                                                                       |
| Minimum setback from lake shore             | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Multi-family development                    | Maximum length of structure: 200 feet<br><br>Setback from other residential buildings in development: 30 feet                                                                                                                                                                                  |
| Maximum structure height                    | 50 feet to the roof line (not applicable to church spires, belfries, cupolas, domes, utility and communication towers, chimneys, flag poles, antennae)                                                                                                                                         |
| Outdoor storage                             | Wrecked or junk vehicles prohibited. Outdoor storage of materials used in assembly, fabrication, or processing limited to 25% of floor area of buildings on same lot, as permitted if screened from view of public right-of-way.                                                               |
| Visibility requirements                     | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines                                                                                                                                     |

|                          |                                                                                    |
|--------------------------|------------------------------------------------------------------------------------|
|                          | Private drive: no obstruction above the height of 30 inches within 10 feet of road |
| Off-street parking       | See supplemental regulations                                                       |
| Signs                    | See supplemental regulations                                                       |
| Supplemental regulations | See §§ 153.110 <i>et seq.</i>                                                      |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

### 153.085 LI LIGHT INDUSTRIAL DISTRICT USES.

| <i>LI Permitted Uses</i>                    | <i>NAICS Code</i>                                          | <i>NAICS Description</i>                                                                                                                                                                                             | <i>Parking Spaces Required</i>                                                              |
|---------------------------------------------|------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Agriculture farming only                    | 111                                                        | Crop production                                                                                                                                                                                                      | None                                                                                        |
| Contractors limited to NAICS codes listed   | 2351<br>2352<br>2353<br>2354<br>2355<br>2356<br>2358       | Plumbing, heating and air conditioning; Painting, wall covering;<br>Electrical;<br>Masonry, drywall, tile;<br>Carpentry and floor;<br>Roofing, siding, metal;<br>Water well drilling                                 | 1 per 200 square feet of gross office are                                                   |
| Manufacturing limited to NAICS codes listed | 3112<br>3113<br>3114<br>3115<br>3118<br>3119<br>312<br>315 | Grain milling (except 31122 and 311225, Fats and oils)<br>Sugar and confectionary;<br>Fruit and vegetable;<br>Dairy products;<br>Bakeries and tortillas;<br>Other miscellaneous food;<br>Beverage, tobacco products; | 1 per employee for maximum shift, plus 1 per office and 1 per 200 square feet of sales area |

|                                                         | 3162              | Apparel;                                    |                                |
|---------------------------------------------------------|-------------------|---------------------------------------------|--------------------------------|
|                                                         | 3169              | Footwear;                                   |                                |
|                                                         | 321214            | Leather and allied products;                |                                |
|                                                         | 321219            | Truss manufacturing;                        |                                |
|                                                         | 3219              | Reconstituted wood products;                |                                |
|                                                         | 3222              | Other wood products;                        |                                |
|                                                         | 323               | Converted paper products (except 322299);   |                                |
|                                                         | 325132            | Printing, related support;                  |                                |
|                                                         | 3252              | Dye and pigment;                            |                                |
|                                                         | 3254              | Resin, plastic, synthetic fibers;           |                                |
|                                                         | 3256              | Pharmaceutical, medicine;                   |                                |
|                                                         | 3259              | Soap, cleaners;                             |                                |
|                                                         |                   | Other chemicals (except 32592, Explosives); |                                |
| <i>LI Permitted Uses</i>                                | <i>NAICS Code</i> | <i>NAICS Description</i>                    | <i>Parking Spaces Required</i> |
| Manufacturing limited to NAICS codes listed (continued) | 3261              | Plastics;                                   |                                |
|                                                         | 3262              | Rubber products (except 32632, Tires);      |                                |
|                                                         | 327111            | Vitreous plumbing fixtures;                 |                                |
|                                                         | 327112            | Vitreous china, fine earthenware;           |                                |
|                                                         | 327113            | Porcelain electrical supply;                |                                |
|                                                         | 3272              | Glass and glass products;                   |                                |
|                                                         | 327992            | Mineral and earth;                          |                                |
|                                                         |                   |                                             |                                |



|                                            |        |                                                            |                                                  |
|--------------------------------------------|--------|------------------------------------------------------------|--------------------------------------------------|
|                                            | 327993 | Mineral wool;                                              |                                                  |
|                                            | 327999 | Miscellaneous nonmetallic mineral                          |                                                  |
|                                            | 3312   | Steel products                                             |                                                  |
|                                            | 3313   | Aluminum production;                                       |                                                  |
|                                            | 332    | Fabricated metal products (except 3321 and 33299);         |                                                  |
|                                            | 333    | Machinery;                                                 |                                                  |
|                                            | 334    | Computer and electronic production;                        |                                                  |
|                                            | 335    | Electric equipment, appliances;                            |                                                  |
|                                            | 336213 | Motor homes;                                               |                                                  |
|                                            | 336214 | Travel trailer and camper;                                 |                                                  |
|                                            | 3363   | Motor vehicle parts;                                       |                                                  |
|                                            | 3366   | Ship and boat building;                                    |                                                  |
|                                            | 3369   | Transportation equipment (except 336992, Military, tanks); |                                                  |
|                                            | 337    | Furniture and related products;                            |                                                  |
|                                            | 339    | Miscellaneous medical, jewelry, toys, and the like         |                                                  |
| Retail trade limited to NAICS codes listed | 441    | Motor vehicle and parts dealers;                           | 1 per 200 square feet of gross floor area        |
|                                            | 444    | Building material, garden equipment and supply, nursery;   |                                                  |
|                                            | 447    | Gasoline stations, with or without convenience stores      |                                                  |
| Transportation                             | 481    | Air transportation;                                        | 1 per 300 square feet of terminal or office area |
|                                            | 485    | Ground passenger transportation;                           |                                                  |

|                                                                                                                                         |                   |                                                                                         |                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------|-------------------------------------------|
|                                                                                                                                         | 488               | Transportation support activities                                                       |                                           |
| Postal service, warehousing and storage                                                                                                 | 491               | Postal service;                                                                         | 1 per 200 square feet of gross floor area |
|                                                                                                                                         | 493               | Warehousing and storage                                                                 |                                           |
| Publishing, motion picture production, radio and TV stations                                                                            | 51                | Information, publishing, motion picture, recording, broadcasting and telecommunications | 1 per 300 square feet of gross floor      |
| <b>LI Permitted Uses</b>                                                                                                                | <b>NAICS Code</b> | <b>NAICS Description</b>                                                                | <b>Parking Spaces Required</b>            |
| Testing laboratories and research                                                                                                       | 54138             | Testing laboratories;                                                                   | 1 per 300 square feet of gross floor area |
|                                                                                                                                         | 5417              | Scientific R&D services                                                                 |                                           |
| Landscaping services                                                                                                                    | 56173             | Landscaping services                                                                    | None                                      |
| Vocational schools                                                                                                                      | 61151             | Technical and trade schools                                                             | 1 per 3 students plus 1 per staff member  |
| Off-premises advertising sign, provided all conditions of this chapter and applicable state regulations are met                         |                   | Advertising                                                                             | N/A                                       |
| Repair services                                                                                                                         | 811               | Repair and maintenance                                                                  | 1 per 200 square feet of gross floor area |
| <b>LI Conditional Uses<br/>(approved by Zoning Administrator if all conditions are met)</b>                                             |                   | <b>NAICS Code</b>                                                                       | <b>NAICS Description</b>                  |
| Public utility, substations, water tower (see § 153.111 for communication tower), provided the Board of Zoning Appeals determines:      |                   | 22112<br>2212<br>22131                                                                  | Electric, gas, water, sanitary utilities  |
| (1) The use is compatible with the district,                                                                                            |                   |                                                                                         | 1 space                                   |
| (2) Parking and service areas are separated from adjoining residential property by planting screen, fence or wall at least 6 feet high. |                   |                                                                                         |                                           |
| Communication tower, see § 153.111                                                                                                      |                   | 5133                                                                                    | Communication                             |
|                                                                                                                                         |                   |                                                                                         | 1 space                                   |

|                                                                                                                                                                                                                                                                                                                                                                             |                          |                                                                                                   |                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------------------------------|-------------------------------------------|
| Zoos and botanical gardens, provided all following conditions are met:<br><br>(1) Minimum 5 acre lot;<br><br>(2) Building setback from residential district 100 feet;<br><br>(3) Parking setback from residential district 200 feet.                                                                                                                                        | 71213                    | Zoos, botanical gardens                                                                           | 1 per 200 square feet of building area    |
| <b><i>LI Special Exceptions<br/>(approved by Board of Zoning Appeals after hearing)</i></b>                                                                                                                                                                                                                                                                                 | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                                                                   | <b><i>Parking Spaces Required</i></b>     |
| Fishing and hunting (except trapping)                                                                                                                                                                                                                                                                                                                                       | 114                      | Fishing and hunting (except trapping)                                                             | None                                      |
| Poultry hatcheries, cattle ranching                                                                                                                                                                                                                                                                                                                                         | 11234<br>112111          | Poultry hatcheries;<br>Cattle ranching and farming                                                | None                                      |
| Government facility (correctional facility limited to pre-trial detention), provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state regulations are met;<br><br>(2) Structures minimum of 50 feet from residential property;<br><br>(3) Conditions imposed for safety, traffic, impact on district;<br><br>(4) The use is compatible with the district | 92                       | General government, justice, public order, safety (92214 limited to pre-trial detention facility) | 1 for each 200 square feet of floor area  |
| Other chemical and allied products wholesalers, and petroleum bulk stations and terminals; provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state regulations are met;<br><br>(2) Minimum 1 acre lot;                                                                                                                                                 | 422690<br>424710         | Other chemical and allied products wholesalers; and Petroleum bulk stations and terminals         | 1 per 300 square feet of gross sales area |

|                                                                 |  |  |  |
|-----------------------------------------------------------------|--|--|--|
| (3) Structures minimum of 50 feet from residential property;    |  |  |  |
| (4) Conditions imposed for safety, traffic, impact on district; |  |  |  |
| (5) The use is compatible with the district                     |  |  |  |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.086 LI LIGHT INDUSTRIAL DISTRICT REGULATIONS.**

|                                              |                                                                                                                                                                                                                                                                                                |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum lot area for nonresidential uses     | Utility substation and water towers: 10,000 square feet<br>Other: as specified in conditions, or none                                                                                                                                                                                          |
| Minimum street frontage                      | 100 feet, or access as specified in conditions                                                                                                                                                                                                                                                 |
| Minimum front yard depth                     | For lots fronting on SC and US routes, see § 153.112;<br>50 feet from all other road rights-of-way;<br>except gasoline island may be 30 feet from road right-of-way                                                                                                                            |
| Minimum setback from second street frontage  | Side street on corner lot: 10 feet<br>Rear street on a double frontage lot: 30 feet                                                                                                                                                                                                            |
| Minimum side yard                            | Principal structure: 20 feet from interior lot line<br>Accessory structure: 12 feet from interior lot line                                                                                                                                                                                     |
| Minimum rear yard                            | Principal residential structure: 20 feet from interior rear lot line<br>Accessory structure: 12 feet from interior rear lot line                                                                                                                                                               |
| Minimum setback from lake shore              | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties. |
| Minimum setback from any commercial district | 50 feet                                                                                                                                                                                                                                                                                        |

|                                                     |                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum setback from any rural residential district | 150 feet; or<br><br>75 feet, with a 50-foot-wide, densely planted buffer maintained at least 6 feet high along the rural or residential district line, or as specified in conditions                                                                                                                                                                                 |
| Maximum structure height                            | Fifty feet to the roof line (not applicable to church spires, belfries, cupolas, domes, utility and communication towers, chimneys, flag poles, antennae). Manufacturing, processing and assembly plants may exceed 50 feet in height, provided setbacks from residential districts shall be increased by 4 additional feet for every 2 feet in height over 50 feet. |
| Outdoor storage                                     | Wrecked or junk vehicles prohibited. Outdoor storage of materials used in assembly, fabrication, or processing limited to 25% of floor area of buildings on same lot, as permitted if screened from view of public right-of-way.                                                                                                                                     |
| Visibility requirements                             | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                                                                                                 |
| Off-street parking                                  | See supplemental regulations                                                                                                                                                                                                                                                                                                                                         |
| Signs                                               | See supplemental regulations                                                                                                                                                                                                                                                                                                                                         |
| Supplemental regulations                            | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                                                                                                                                        |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.087 BI BASIC INDUSTRIAL DISTRICT.**

| <b><i>BI Permitted Uses</i></b>                                                      | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b> | <b><i>Parking Spaces Required</i></b>      |
|--------------------------------------------------------------------------------------|--------------------------|---------------------------------|--------------------------------------------|
| Agriculture farming only, including roadside stand for direct sale of produce        | 111                      | Crop production                 | None                                       |
| Mining support                                                                       | 213                      | Mining support activities       | 1 per 200 square feet of gross office area |
| Utilities, electric power generation and transmission, gas, water, sewage facilities | 22                       | Utilities                       | 1 per 200 square feet of gross office area |

|                                                                                                                                                                                                                                                                                                                                       |       |                                           |                                                                                             |                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------------------------------|---------------------------------------------------------------------------------------------|--------------------------------|
| Contractors, construction, all types                                                                                                                                                                                                                                                                                                  | 23    | Construction companies, contractors       | 1 per 200 square feet of gross office area                                                  |                                |
| Manufacturing, all types                                                                                                                                                                                                                                                                                                              | 31-33 | Manufacturing                             | 1 per employee for maximum shift, plus 1 per office and 1 per 200 square feet of sales area |                                |
| Fuel dealers, retail                                                                                                                                                                                                                                                                                                                  | 45431 | Fuel dealers                              | 1 per 200 square feet of gross office area                                                  |                                |
| Transportation                                                                                                                                                                                                                                                                                                                        | 48    | Transportation and support activities     | 1 per 300 square feet of terminal or office area                                            |                                |
| Warehousing and storage                                                                                                                                                                                                                                                                                                               | 493   | Warehousing and storage                   | 1 per 200 square feet of gross office area                                                  |                                |
| Miniwarehouse (except open storage)                                                                                                                                                                                                                                                                                                   | 53113 | Miniwarehouse (except open storage)       | 1 per 200 square feet of gross office area                                                  |                                |
| Waste collection and treatment                                                                                                                                                                                                                                                                                                        | 562   | Waste management and remediation services | 1 per 200 square feet of gross office area                                                  |                                |
| Off-premises advertising sign, provided all conditions of this chapter and applicable state regulations are met                                                                                                                                                                                                                       |       | Advertising                               | N/A                                                                                         |                                |
| <b>BI Conditional Uses</b><br>(approved by Zoning Administrator if all conditions are met)                                                                                                                                                                                                                                            |       | <b>NAICS Code</b>                         | <b>NAICS Description</b>                                                                    | <b>Parking Spaces Required</b> |
| Public utility, substations, water tower (see § 153.111 for communication tower), provided the Board of Zoning Appeals determines:<br><br>(1) The use is compatible with the district,<br><br>(2) Parking and service areas are separated from adjoining residential property by planting screen, fence or wall at least 6 feet high. |       | 22112<br>2212<br>22131                    | Electric, gas, water, sanitary utilities                                                    | 1 space                        |
| Communication tower, see § 153.111                                                                                                                                                                                                                                                                                                    |       | 5133                                      | Communication                                                                               | 1 space                        |
| <b>BI Special Exceptions</b><br>(approved by Board of Zoning Appeals after hearing)                                                                                                                                                                                                                                                   |       | <b>NAICS Code</b>                         | <b>NAICS Description</b>                                                                    | <b>Parking Spaces Required</b> |

|                                                                                                                                                                                                                                                                                                                                               |                  |                                                             |                                                                    |                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------|
| Mining, provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state regulations are met;<br><br>(2) Structures minimum of 500 feet from residential property;<br><br>(3) Conditions imposed safety, traffic, impact on district;<br><br>(4) The use is compatible with the district.                                         | 21               | Mining                                                      | 1 for each 200 square feet of office area                          |                                                    |
| Airports, provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state and federal regulations are met;<br><br>(2) Structures a minimum of 1,000 feet from residential district or property line;<br><br>(3) Conditions imposed for safety, traffic, impact on districts;<br><br>(4) The use is compatible with the district. | 481              | Air transportation                                          | Set by Board: minimum 1 for each 200 square feet of terminal space |                                                    |
| Sports, racetracks, fairgrounds, provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state regulations are met;<br><br>(2) Structures minimum of 100 feet from residential property;<br><br>(3) Conditions imposed for safety, traffic, impact on district;<br><br>(4) The use is compatible with the district.            | 7112<br><br>7113 | Spectator sports, racetracks; Stadiums, fairs, and the like | Set by Board: minimum 1 per 4 each 4 spectator seats               |                                                    |
| <b>BI Special Exceptions</b><br><i>(approved by Board of Zoning Appeals after hearing)</i>                                                                                                                                                                                                                                                    |                  | <b>NAICS</b><br>Code                                        | <b>NAICS</b><br>Description                                        | <b>Parking</b><br><b>Spaces</b><br><b>Required</b> |

|                                                                                                                                                                                                                                                                                                                                                                                                                         |        |                                                                                                                                    |                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Recyclable materials wholesalers, petroleum bulk stations and terminals, provided the Board of Zoning Appeals determines:<br><br>(1) The structure will not exceed 3,000 square feet in area;<br><br>(2) The use will be at least 50 feet from a property line;<br><br>(3) The use would not constitute a safety hazard or traffic hazard;<br><br>(4) The use is not detrimental to adjacent land uses in the vicinity. | 421930 | Recyclable materials wholesalers;<br><br>Other chemical and allied products wholesalers; and Petroleum bulk stations and terminals | 1 per 150 feet of gross floor area       |
|                                                                                                                                                                                                                                                                                                                                                                                                                         | 422690 |                                                                                                                                    |                                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                         | 424710 |                                                                                                                                    |                                          |
| Government facility provided the Board of Zoning Appeals determines:<br><br>(1) Applicable state regulations are met;<br><br>(2) Structures minimum of 100 feet from residential property;<br><br>(3) Conditions imposed for safety, traffic, impact on district;<br><br>(4) The use is compatible with the district.                                                                                                   | 92     | General government, justice, public order, safety                                                                                  | 1 for each 200 square feet of floor area |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.088 BI BASIC INDUSTRIAL DISTRICT REGULATIONS.**

|                                          |                                                                                                                                                                             |
|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum lot area for nonresidential uses | Utility substation and water towers: 10,000 square feet                                                                                                                     |
|                                          | Other: as specified in conditions, or none                                                                                                                                  |
| Minimum street frontage                  | 100 feet, or access as specified in conditions                                                                                                                              |
| Minimum front yard depth                 | For lots fronting on SC and US routes, see § 153.112;<br><br>50 feet from all other road rights-of-way;<br><br>except gasoline island may be 30 feet from road right-of-way |



|                                                     |                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum setback from second street frontage         | Side street on corner lot: 10 feet<br>Rear street on a double frontage lot: 30 feet                                                                                                                                                                                                                                                                                  |
| Minimum side yard                                   | Principal structure: 20 feet from interior lot line<br>Accessory structure: 12 feet from interior lot line                                                                                                                                                                                                                                                           |
| Minimum rear yard                                   | Principal structure: 20 feet from interior rear lot line<br>Accessory structure: 12 feet from interior rear lot line                                                                                                                                                                                                                                                 |
| Minimum setback from lake shore                     | No minimum setback except that which is required by state and federal agencies; provided however, in cases where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high-water mark on the adjacent property or properties.                                                                       |
| Minimum setback from any commercial district        | 50 feet                                                                                                                                                                                                                                                                                                                                                              |
| Minimum setback from any rural residential district | Petroleum products and asphalt production, 3241, 23411 and 4227: 1,000 feet from residential district or property line;<br><br>Other uses:<br><br>150 feet; or<br><br>75 feet, with a 50-foot-wide, densely planted buffer maintained at least 6 feet high along the rural or residential district line, or as specified in conditions                               |
| Maximum structure height                            | Fifty feet to the roof line (not applicable to church spires, belfries, cupolas, domes, utility and communication towers, chimneys, flag poles, antennae). Manufacturing, processing and assembly plants may exceed 50 feet in height, provided setbacks from residential districts shall be increased by 4 additional feet for every 2 feet in height over 50 feet. |
| Outdoor storage                                     | Wrecked or junk vehicles prohibited. Outdoor storage of materials used in assembly, fabrication, or processing limited to 25% of floor area of buildings on same lot, as permitted if screened from view of public right-of-way.                                                                                                                                     |
| Visibility requirements                             | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines                                                                                                                                                                                                           |

|                          |                                                                                    |
|--------------------------|------------------------------------------------------------------------------------|
|                          | Private drive: no obstruction above the height of 30 inches within 10 feet of road |
| Off-street parking       | See supplemental regulations                                                       |
| Signs                    | See supplemental regulations                                                       |
| Supplemental regulations | See §§ 153.110 <i>et seq.</i>                                                      |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.089 PD PLANNED DEVELOPMENT DISTRICT USES.**

(A) Planned development districts may permit a mixture of different types of housing with compatible commercial uses, shopping centers, office parks and other mixed used developments.

(B) Flexibility in design, character and quality of development, and preservation of natural and scenic features are made possible through the approval of a plan which describes the specific uses, densities, setbacks, and other requirements for a planned development.

(C) The approved plan constitutes the district regulations for a particular planned development.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.090 PD PLANNED DEVELOPMENT DISTRICTS REGULATIONS.**

The following regulations shall apply to all uses in PD districts, other provisions in this chapter to the contrary withstanding.

|                                             |                                                                                                                                                                          |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum site area                           | 4 acres                                                                                                                                                                  |
| Minimum lot area for structure              | Set in approved plan                                                                                                                                                     |
| Minimum lot width, yards, setbacks          | Set in approved plan                                                                                                                                                     |
| Maximum structure height                    | 60 feet when permitted by fire regulations (not applicable to church spires, belfries, cupolas, domes, utility and communication towers, chimneys, flag poles, antennae) |
| Off street parking and loading requirements | Set in approved plan                                                                                                                                                     |
| Screening                                   | Set in approved plan, but not less than landscaping required in §§ 153.125 <i>et seq.</i>                                                                                |
| Signs                                       | Set in approved plan, but not greater than signs allowed in §§ 153.160 <i>et seq.</i>                                                                                    |

|                          |                                    |
|--------------------------|------------------------------------|
| Subdivision regulations  | Applicable regulations must be met |
| Supplemental regulations | See §§ 153.110 <i>et seq.</i>      |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.091 PD PLANNED DEVELOPMENT DISTRICT APPLICATION AND REVIEW PROCEDURES.**

The following procedures shall apply to the establishment of a PD district, other provisions in this chapter to the contrary notwithstanding.

|                                        |                                                                                                                                                                                                                                                               |
|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Zoning amendment required          | PD districts are established by amendment to the zoning ordinance in the manner prescribed for rezoning.                                                                                                                                                      |
| (b) District regulations               | The applicable regulations in § 153.090, §§ 153.110 <i>et seq.</i> , and those in an approved plan and descriptive statement shall constitute the PD district regulations for the site.                                                                       |
| (c) Preapplication conference optional | An applicant for PD zoning is encouraged, but not required, to contact the Planning Commission prior to submission of the application for information and review of the regulations and procedures applicable to the proposed plan and descriptive statement. |
| (d) Amendment application required     | Initiation of a PD amendment shall be by submission of an application form provided by the Zoning Administrator with required attachments.                                                                                                                    |
| (e) Development plan required          | A site development plan is a required attachment to application for PD amendment. The site development plan shall indicate the proposed use of all land areas and such other information as the Zoning Administrator deems reasonably necessary for review.   |

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| (f) Descriptive statement required | <p>(1) A descriptive statement is a required attachment to the application for PD amendment. The descriptive statement shall indicate the characteristics and standards to be used for development of the site, and shall include at least the following items:</p> <p>(2) Legal description of site boundaries , and total area of the site;</p> <p>(3) Area and location of each type of use;</p> <p>(4) Number and density of dwelling units by type;</p> <p>(5) Description of open space location, uses and proposed dedication for public use;</p> <p>(6) Ownership and maintenance of streets, and proposed dedication to public;</p> <p>(7) Methods of dealing with parking and the impact of projected traffic on the uses on the site and adjacent distorts, and streets;</p> <p>(8) Steps proposed to comply with sediment control and storm drainage regulations;</p> <p>(9) Steps proposed to comply with landscaping regulations;</p> <p>(10) Details of association or organization involved in ownership and maintenance, including procedures and methods of operation;</p> <p>(11) Outline for development phasing with anticipated time frames;</p> <p>(12) Design standards, procedures and methods demonstrating that development will result in integrated use district, functional and compatible with the area;</p> <p>(13) Proposed restrictive covenants to be recorded to assure future compliance with the standards in the plan; and</p> <p>(14) Such other information as may be appropriate for planning commission review.</p> |
| (g) Planning Commission review     | Upon determination that the application meets above requirements, the Zoning Administrator shall forward the application to the Planning Commission for review and recommendation to County Council as required for zoning amendments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (h) County Council action          | Upon receipt of the Planning Commission recommendation, County Council shall, conduct a public hearing as required for zoning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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|                                                                | amendments, and may approve, approve with modifications accepted by applicant, or disapprove the proposed amendment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| (i) Zoning and building permits                                | Zoning and building permits shall not be issued until the zoning is approved by County Council, and approved plats, the approved descriptive statement and all required restrictive covenants are filed for record with the Clerk of Court for Newberry County, and all required bounds are posted with the Municipal Clerk.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (j) District map                                               | The site development plan approve by County Council shall be the zoning district map for the PD, and shall be the basis for issuance for zoning and building permits.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (k) Changes to plan                                            | <p>Minor changes: Changes proposed in writing by the applicant which do not alter district boundaries and which involve revision of minor characteristics of the PD, such as relocation of driveways, revision of floor plans, facades, landscaping, relocation of required parking, drainage structures, and features which do not materially affect the approve plan concept or violate any applicable regulations, may be approved by the Zoning Administrator. Approval or rejection of the change is subject to review and final determination by the Planning Commission, if the applicant or any party whose property is adversely affected files a written objection with the Planning Commission within 10 days after action by the Zoning Administrator. An applicant may submit a rejected change as an amendment to the plan under the normal zoning amendment procedures.</p> <p>Major changes: Changes proposed in writing by the applicant which alter district boundaries or which materially affect the characteristics of the PD shall be submitted under normal zoning amendment procedures applicable to the establishment of the PD.</p> <p>Permits: No zoning or building permits involving a minor or major change of the PD descriptive statement or map shall be issued until the written change is filed with the office of the Clerk of Court for Newberry County.</p> |
| (l) Failure to begin; failure to progress; failure to complete | If the responsible party fails to begin, fails to progress, or fails to complete development as agreed in the descriptive statement, County Council may charge the developer with violation of the zoning ordinance, may rezone the property, or may take any combination of these actions. In any event, if the planned development is not initiated within two years of its establishment, the Planning Commission shall initiate the rezoning of the property to an appropriate district classification in conformity with the comprehensive plan.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.092 RIV RIVER PRESERVATION OVERLAY DISTRICT.**

The RIV River Preservation Overlay is not a separate zoning district classification; it is appended to an existing district designation for the purposes of imposing additional regulations necessary to protect water quality and river and stream banks. The regulations in this section shall apply to all uses in the zoning district to which the RIV River Preservation Overlay designation is attached.

| <b><i>RIV Permitted Uses</i></b>                  | <b><i>NAICS Code</i></b> | <b><i>NAICS Description</i></b>                                                                                                  |
|---------------------------------------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Agriculture                                       | 11                       | Agriculture (except 112112 and confined animal feeding as defined in § 153.005), forestry, fishing and hunting (except trapping) |
| Passive                                           | 71219                    | Nature parks                                                                                                                     |
| Public boat landings                              | 71393                    | Marinas, public only                                                                                                             |
| Public water and waste water treatment facilities | 2213                     | Water supply and sewage treatment facilities                                                                                     |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.093 RIV RIVER PRESERVATION OVERLAY DISTRICT REGULATIONS.**

The following regulations apply to al uses in the RIV District.

|                           |                                                                                                                                                                                                                                                                                                                    |
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| River buffer              | There shall be no disturbance of vegetative land cover within 50 feet of the banks of the rivers and streams identified on the Newberry County Zoning Map.                                                                                                                                                         |
| Vegetative buffer         | A 50 foot-wide vegetative buffer shall be maintained along both banks of the rivers and streams identified on the zoning map. When possible, this vegetative buffer should be comprised of native vegetation. When necessary, reclamation efforts may be permitted to return the buffer area to its natural state. |
| Conservation requirements | “Best Management Practices” prepared by the Natural Resources Conservation Service, and the Newberry County Drainage and Sediment Control Ordinance shall apply to operations in the district.                                                                                                                     |
| Signs                     | Signs, other than public street signs and signs required by government regulations, are not permitted.                                                                                                                                                                                                             |
| Supplemental regulations  | See <u>§§ 153.110 et seq.</u>                                                                                                                                                                                                                                                                                      |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.094 AP AIRPORT OVERLAY DISTRICT.**

The AP Airport Overlay is not a separate zoning district classification, it is appended to an existing district designation for the purposes of imposing additional regulations necessary to protect public health and safety by preventing establishment of obstructions and hazards to aircraft. The regulations in this section shall apply to all uses in the zoning district to which the AP Airport Overlay designation is attached.

| <b>(A) Definitions.</b>     |                                                                                                                                                                                                                                                                                                                                                                     |
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| <b>AIRPORT</b>              | A Newberry County public airport.                                                                                                                                                                                                                                                                                                                                   |
| <b>AIRPORT ELEVATION</b>    | The highest point of an airport's usable landing area, measured in feet above the mean sea level.                                                                                                                                                                                                                                                                   |
| <b>APPROACH SURFACE</b>     | A surface longitudinally centered on the extend runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in this section.                                                                                                                                   |
| <b>APPROACH ZONE</b>        | The inner edge <b>APPROACH ZONE</b> coincides with the width of the primary surface, and begins 200 feet from the runway end and is 250 feet wide. The <b>APPROACH ZONE</b> expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway. |
| <b>CONICAL SURFACE</b>      | A surface extending outward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet.                                                                                                                                                                                                                                |
| <b>CONICAL ZONE</b>         | The area that commences at the periphery of the horizontal zone and extends outward there from for a distance of 4,000 feet upward at a slope of 20:1.                                                                                                                                                                                                              |
| <b>HAZARD TO NAVIGATION</b> | An obstruction determined to have a substantial adverse effect on the safety and efficient utilization of the navigable airspace.                                                                                                                                                                                                                                   |
| <b>HEIGHT LIMIT</b>         | Maximum distance above mean sea level elevation unless otherwise specified.                                                                                                                                                                                                                                                                                         |
| <b>HORIZONTAL SURFACE</b>   | A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plane coincides with the perimeter of the horizontal zone.                                                                                                                                                                                                           |
| <b>HORIZONTAL ZONE</b>      | The <b>HORIZONTAL ZONE</b> is established by swing arcs of 5,000 feet radii from the center of each end of the primary surface of each runway, and connecting the adjacent arcs by drawing lines tangential to the arcs. The <b>HORIZONTAL ZONE</b> does not include the approach and transitional zones.                                                           |

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| <b><i>OBSTRUCTION</i></b>     | Any structure, growth or other object, including a mobile object, which exceeds the limited height set forth in this section.                                                                                                                                                                                           |
| <b><i>PRIMARY SURFACE</i></b> | The <b><i>PRIMARY SURFACE</i></b> is longitudinally centered on a runway and extends 200 feet beyond each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the <b><i>PRIMARY SURFACE</i></b> is 250 feet. |
| <b><i>RUNWAY</i></b>          | A defined area on an airport prepared for landing and take off of aircraft along its length.                                                                                                                                                                                                                            |
| <b><i>STRUCTURE</i></b>       | An object, including a mobile object, constructed or installed by man, including but not limited to buildings, towers, smokestacks, earth formations and overhead transmission lines.                                                                                                                                   |

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| <b><i>TRANSITIONAL SURFACES</i></b>                                                                                                                                                                                                                                         | Surfaces extending outward at 90-degree angles to the runway centerline, and extending at a slope of 7 feet horizontally for each foot vertically from the side of the primary and approach surfaces to where they intersect the horizontal surfaces.                                  |
| <b><i>TRANSITIONAL ZONE</i></b>                                                                                                                                                                                                                                             | The area beneath the transitional surfaces.                                                                                                                                                                                                                                            |
| <b>(B) Height limitations.</b> Except as otherwise provided in this section, no structure shall be erected, altered or maintained, and no trees shall be allowed to grow in any -AP zone to a height in excess of the applicable height limitations established as follows. |                                                                                                                                                                                                                                                                                        |
| <b>(1) Approach zone</b>                                                                                                                                                                                                                                                    | Slopes 20 feet outward for each foot upward, beginning at the end of, and at the same elevation as, the primary surface, and extending to a horizontal distance of 5,000 feet along the extended runway centerline.                                                                    |
| <b>(2) Transitional zone</b>                                                                                                                                                                                                                                                | Slopes 7 feet horizontally for each foot upward, beginning at the side of and extending to a height of 150 feet above the airport elevation above mean sea level. In addition, there are established height limits sloping 7 feet outward for each foot upward, beginning at the sides |



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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | and at the same elevation as the approach surface, and extending to where they intersect the horizontal surface.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>(3) Horizontal surface</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Established at 150 feet above the airport elevation above mean sea level.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>(4) Conical surface</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Slopes 20 feet outward for each foot upward, beginning at the periphery of the horizontal zone, and at 150 feet above the airport elevation, and extending to an elevation of 350 feet above the airport elevation.                                                                                                                                                                                                                                                                                                                                                              |
| <b>(C) Use restrictions.</b> Notwithstanding any other provisions of this section, no use may be made of land or water within any zone established by this section in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots distinguish between airport lights and others, result in glares in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird-strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>(D) Nonconforming uses.</b> Nonconforming uses are subject to <u>§ 153.044</u> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>(1) Regulations not retroactive</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | The regulations prescribed by this section shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this section, or otherwise interfere with the continuance of nonconforming use. Nothing contained in this section shall require any change in construction, alteration or intended use of any structure, the construction or alteration of which was begun under a permit issued prior to the effective date of this section, and is diligently pursued. |
| <b>(2) Obstruction marking and lighting</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Notwithstanding division (D)(1) above, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the Airport Commission to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated and maintained at the expense of the county.                                                                                          |
| <b>(E) Permits.</b> The Zoning Administrator shall not issue a zoning permit within an -AP district until it has been determined that the proposal is in compliance with the terms of this section.                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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| <p><b>(1) Permits required; exceptions</b></p>      | <p>Except as specifically provided in this section, no material changes shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any -AP district without a permit. A permit application shall indicate the purpose for the permit, and demonstrate that the use, structure or tree would conform to the regulations in this section. No permit for a use inconsistent with the provisions of this section shall be granted unless a variance has been approved in accordance with this section. Exceptions:</p> <p>(a) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 75 feet in vertical height above the ground, except when, because of terrain, land contour or topographical features, such tree or structure would extend above the height limits prescribed for such zones.</p> <p>(b) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 75 feet in vertical height above the ground, except when, because of terrain, land contour or topographical features, such tree or structure would extend above the height limits prescribed for such zones.</p> <p>(c) In areas lying within the limits of the transition zones, no permit shall be required for any tree or structure less than 75 feet above the ground, except when such tree or structure, because of terrain, land contour or topographic features, would extend above the elevation prescribed for such transition zones.</p> |
| <p><b>(2) Existing use</b></p>                      | <p>No permit shall be granted for establishment or creation of an obstruction or permit, a nonconforming use, structure or tree to become a greater hazard to air navigation than it was on the effective date of this section, or any amendments to this section, or than it is when the application for such a permit is granted.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p><b>(3) Nonconforming structures and uses</b></p> | <p>Nonconforming structures and uses are subject to regulations in § 153.044.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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| <b>(4) Variances</b>                        | <p>(a) A person desiring to erect or increase the height of any structure, or permit the growth of any tree or use property, not in accordance with the regulations prescribed in this section, may apply to the Board of Zoning Appeals for a variance.</p> <p>(b) Application for a variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities, and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this section. Additionally, no application for variance to the requirements of this section may be considered by the Board of Appeals unless a copy of this application has been furnished to the airport manager for advice as to the aeronautical effects of the variance. If the airport manager does not respond to the application within 15 days after receipt, the Board of Zoning Appeals may act on its own to grant or deny the application.</p> |
| <b>(5) Obstruction marking and lighting</b> | A permit or variance granted may, if such action is deemed advisable to effect the purpose of this section and be reasonable in the circumstances, but so conditioned as to require the owner of the structure or tree in question to install, operate and maintain, at the owner's expense, such marking and lights as may be necessary. If deemed property by the Board of Zoning Appeals, these conditions may be modified to require the owner to permit the county, at its own expense, to install, operate and maintain the necessary markings and lights.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **153.095 FLOOD HAZARD AREA OVERLAY DISTRICT.**

The FP Flood Hazard Area Overlay is not a separate zoning district classification; it is appended to an existing district designation for the purposes of imposing additional regulations necessary to protect public health and safety by preventing establishment of obstructions and hazards flood hazard areas. The regulations in this section shall apply to all uses in the zoning district to which the -FP Flood Hazard Area Overlay designation is attached.

| <b><i>FP Flood Hazard Area Regulations</i></b> |                                                                                                                                                  |
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| <b>Area</b>                                    | The area of the overlay district shall be in accordance with the latest Flood Insurance Rate Maps for the unincorporated area of Newberry County |

|                |                                                                                                                                                          |
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| Uses permitted | The uses permitted in the underlying zoning district are permitted, subject to the requirements of the Newberry County Flood Damage Prevention Ordinance |
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(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.096 RS-1A SINGLE-FAMILY RESIDENTIAL DISTRICT.**

| <b>RS-1A PERMITTED USES</b>                                                                                                                                                                                                                        | <b>NAICS CODE</b>                   | <b>NAICS DESCRIPTION</b>                                                        | <b>PARKING SPACES REQUIRED</b>                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Single-family dwelling (except manufactured or modular homes)                                                                                                                                                                                      | 814                                 | Private household                                                               | 2 for each dwelling unit                                                                                                                                                                                                         |
| Public or private school, elementary or secondary, general government facility (except jails)                                                                                                                                                      | 6111<br>921; 922<br>except<br>92213 | elementary and secondary schools; justice, public order and safety except jails | 611 - Elem and sec. schools: 2 per classroom or office, plus 1 for each 4 seats in senior high auditorium. Kindergarten - 1 per employee, plus 1 off- street loading space<br><br><b>All other: 1 per 200 sq. ft. floor area</b> |
| Public park or playground and recreation facilities limited to tennis court, common area non-commercial boat ramp, swimming pool or golf course                                                                                                    | 71219<br>71391<br>71394             | Nature park, golf course, tennis and swimming only                              | 1 per 200 sq. ft. of building area plus 4 for each golf hole                                                                                                                                                                     |
| Church, synagogue, temple or place of worship, including, religious education building, parsonage or parish house, off-street parking for members and visitors, recreation facilities, kindergarten or pre-school nursery, in permanent structures | 8131                                | Religious organizations, churches, etc.                                         | 1 for each 4 seats in main assembly room                                                                                                                                                                                         |
| Homeowners' Association operated common area recreational facilities suitable to character of neighborhood, including boat ramp where appropriate                                                                                                  |                                     |                                                                                 |                                                                                                                                                                                                                                  |
| Homeowners' Association operated storage area for recreational vehicle and equipments storage facilities landscaped and fenced so as to be suitable to character of neighborhood                                                                   |                                     |                                                                                 |                                                                                                                                                                                                                                  |

Accessory use on same lot with principal use, as follows:

- (1) Private garage for motor vehicle;
- (2) Open parking area for motor vehicles may be used for one commercial vehicle per dwelling unit;
- (3) Shed for storage of building or lot maintenance equipment;
- (4) Barns, silos, outbuildings for agricultural uses and equipment;
- (5) Private swimming pool, including desk, bath house or cabana; boat dock, walkway to adjacent dock or body of water;
- (6) Private garden; greenhouse;
- (7) Private tennis court; outdoor recreation and picnic facilities.

| <b><i>RS-1A CONDITIONAL USES</i></b><br><b><i>(approved by Zoning Administrator if</i></b><br><b><i>all conditions are met)</i></b>                                                                                                                                                                                                                                                                                | <b>NAICS<br/>CODE</b>          | <b>NAICS<br/>DESCRIPTION</b>                   | <b>PARKING SPACES<br/>REQUIRED</b>           |
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| Public utilities, substation, water tower,<br>(see §153.11 for communication tower)<br>provided all of the following conditions<br>are met:<br><br>(1) Structures enclosed by 6-foot<br>fence;<br><br>(2) No office, commercial operation<br>or storage of vehicles or equipment is<br>permitted;<br><br>(3) A landscaped strip at least 5 feet<br>wide is planted and maintained along all<br>exterior lot lines. | 22112<br><br>2212<br><br>22131 | Electric, gas,<br>water, sanitary<br>utilities | 1 space                                      |
| Temporary contractor office and<br>equipment shed, residential<br>construction, provided all following<br>conditions are met:<br><br>(1) Used in connection with<br>construction on premises;                                                                                                                                                                                                                      | 2332                           | Residential<br>building<br>construction        | 1 for each 300 square<br>feet of office area |

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| <p>(2) Must not cause traffic congestion or nuisance;</p> <p>(3) For a term up to 1 year may be renewed once.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                       |                              |                                    |
| <p>Customary home occupation in single-family dwelling, provided following conditions are met:</p> <p>(1) Conducted inside dwelling or accessory structure by resident family members;</p> <p>(2) Utilizes not more than 25% of total dwelling floor area, or 50% of an accessory building;</p> <p>(3) No change in exterior appearance of dwelling;</p> <p>(4) No outside display of products;</p> <p>(5) No retail sale of products except those made on premise;</p> <p>(6) Creates no health or safety hazard, noise, offensive emissions, traffic hazard, unsightly condition or nuisance;</p> <p>(7) Activity is not visibly evident outside dwelling, except for a wall-mounted non-illuminated nameplate not over 2 square feet in area;</p> <p>(8) No outside storage of equipment, inventory, or tools;</p> <p>(9) No parking of trailers or commercial equipment on or adjacent to property, or on streets of zoning district.</p> |                       |                              |                                    |
| <p><b><i>RS-1A SPECIAL EXCEPTION</i></b><br/> <b><i>(approved by Board of Zoning Appeals after hearing)</i></b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>NAICS<br/>CODE</p> | <p>NAICS<br/>DESCRIPTION</p> | <p>PARKING SPACES<br/>REQUIRED</p> |
| <p>Clustered single-family development provided the Board of Zoning Appeals determines:</p> <p>(1) Detached single-family units on minimum of 2 acre development parcel;</p> <p>(2) Maximum density of 3 dwellings per acre;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>N/A</p>            | <p>Private household</p>     | <p>2 for each dwelling unit</p>    |

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| (3) Lot requirements per house may be waived;         |  |  |  |
| (4) Zero interior lot line setback may be allowed;    |  |  |  |
| (5) Subdivision regulations are met;                  |  |  |  |
| (6) Adequate provision for access and traffic safety; |  |  |  |
| (7) The use is compatible with the district.          |  |  |  |

(Ord. 05-15-08, passed 6-4-2008)

**§ 153.097 RS-1A SINGLE-FAMILY RESIDENTIAL DISTRICT REGULATIONS.**

|                                                                               |                                                                                                                                                      |
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| Minimum residential lot area                                                  | With public water and sewer: 20,000 square feet<br>With individual water or sewer: 1 acre or greater, as directed by DHEC                            |
| Minimum lot area for non-residential uses                                     | Utility substation and water towers: 10,000 square feet.<br>Other: 1 acre                                                                            |
| Minimum lot width at front building line                                      | With public water and sewer: 70 feet<br>Other: 130 feet                                                                                              |
| Minimum front yard depth                                                      | For lots fronting on SC and US routes, see § 153.112; 25 feet from all other road right-of-way                                                       |
| Minimum setback from second street frontage                                   | Side street on corner lot - 12 feet<br>Rear street on a double frontage lot - 50 feet                                                                |
| Minimum side yard                                                             | 7 feet from interior side lot line                                                                                                                   |
| Minimum rear yard                                                             | Principal structure: 20 feet from interior rear lot line<br>Accessory structure: 6 feet from interior rear lot line                                  |
| Minimum setback from pre-existing commercial, industrial, or agricultural use | One-half of the applicable setback from a residential district specified for uses in the commercial, industrial or agricultural district regulations |

|                                 |                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum setback from lake shore | No minimum setback except that which is required by state and federal agencies, or set by entity charged by law and regulating lake activities; provided, however, in the case where adjacent property or properties are developed, the setback shall not be less than the average of the setback from the high water mark on the adjacent property or properties |
| Visibility requirements         | Corner lot: no obstruction between the heights of 3 feet and 10 feet above finished street level within 15 feet of intersection of road right-of-way lines<br><br>Private drive: no obstruction above the height of 30 inches within 10 feet of road                                                                                                              |
| Off-street parking              | See supplemental regulations                                                                                                                                                                                                                                                                                                                                      |
| Signs                           | See supplemental regulations                                                                                                                                                                                                                                                                                                                                      |
| Supplemental regulations        | See §§ 153.110 <i>et seq.</i>                                                                                                                                                                                                                                                                                                                                     |

(Ord. 05-15-08, passed 6-4-2008)

## SUPPLEMENTAL REGULATIONS

### § 153.110 SEXUALLY-ORIENTED BUSINESSES.

(A) *Purpose.* It is the purpose of this section to regulate sexually-oriented businesses to promote the health, safety, morals, and general welfare of the citizens of Newberry County, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually-oriented businesses within the town. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials including sexually-oriented materials. Similarly, it is not the intent or effect of this chapter to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADULT ARCADE.** Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to 5 or fewer persons per machine at any 1 time, and where the images so displayed are



distinguished or characterized by the depicting or describing of certain sexual activities or specified anatomical areas.

***ADULT BOOKSTORE*** or ***ADULT VIDEO STORE***. A commercial establishment which, as 1 of its principal business purposes, offers for sale or rental for any form of consideration any 1 or more of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as ***ADULT BOOKSTORE*** or ***ADULT VIDEO STORE***. The other business purposes will not serve to exempt the commercial establishment from being categorized as an ***ADULT BOOKSTORE*** or ***ADULT VIDEO STORE*** so long as 1 of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.

***ADULT CABARET***. A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) Persons who appear in a state of nudity; or

(b) Live performances which are characterized by the exposure of specified anatomical areas or by 'specified sexual activities; or

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

***ADULT MOTEL***. A hotel, motel, or similar commercial establishment:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type or photographic reproductions;

(b) Offers a sleeping room for rent for a period of time that is less than 10 hours; or

(c) Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

**ADULT MOTION PICTURE THEATER.** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT THEATER.** A theater concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**ESCORT.** A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as 1 of its primary business purposes for a fee, tip, or other consideration.

**ESTABLISHMENT.** Means and includes any of the following:

- (a) The opening or commencement of any sexually-oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business;
- (c) The additions of any sexually-oriented business to any other existing sexually-oriented business; or
- (d) The relocation of any sexually-oriented business.

**NUDE MODEL STUDIO.** Any place where a person who appears in a state of nudity or displays specified anatomical area is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

**NUDITY OR A STATE OF NUDITY.** The appearance of a person's genitals, pubic area, vulva, anus, anal cleft or cleavage or buttocks or any simulation thereof; or any portion of a female breast below the horizontal line across the top of the areola at its highest point or any simulation thereof. The definition shall include the appearance of any portion of the entire lower portion of the female breast.

**PERMITTEE AND/OR LICENSEE.** A person in whose name a permit and/or license to operate a sexually-oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

**PERSON.** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**SEMI-NUDE.** A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

**SEXUAL ENCOUNTER CENTER.** A business or commercial enterprise that, as 1 of its primary business purposes, offers for any form of consideration:

- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) Activities between male and female persons and/or persons of the same sex when 1 or more of the persons is in a state of nudity or semi-nude.

**SEXUALLY-ORIENTED BUSINESS.** An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

**SPECIFIED ANATOMICAL AREAS.** The male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

**SPECIFIED SEXUAL ACTIVITIES.** Means and includes any of the following:

- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated;
- (d) The fondling, erotic touching, or other contact with an animal by a human being; or
- (e) Excretory functions as part of or in connection with any of the activities set forth in divisions (a) through (d) above.

***SUBSTANTIAL ENLARGEMENT.*** Of a sexually-oriented business, means the increase in floor areas occupied by the business by more than 25%, as the floor areas exist on 1-1-2001.

***TRANSFER OF OWNERSHIP OR CONTROL.*** Of a sexually-oriented business, means and includes any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business.

(C) *Classification.* Sexually-oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers.

(D) *Permit required.*

(1) A person commits a misdemeanor if he or she operates a sexually-oriented business without a valid permit and/or license issued by the county for the particular type of business.

(2) An application for a permit and/or license must be made on a form provided by the Newberry County zoning department. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a

designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.

(3) The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the Health Department, Fire Department, and Building Official. The Health Department, Fire Department, and Building Official shall complete their inspections and certify same to the Zoning Administrator within 21 days of receipt of the application by the Zoning Administrator.

(4) If a person who wishes to operate a sexually-oriented business is an individual, he or she must sign the application for a permit and/or license as applicant. If a person who wishes to operate a sexually-oriented business is other than an individual, each individual who has a 10% or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually-oriented business or as the entity which wishes to operate such a business, each individual having a 10% or greater interest in the corporation must sign the application for a permit and/or license as applicant.

(5) The fact that a person possesses other types of state or county permits and/or licenses does not exempt that person from the requirement of obtaining a sexually-oriented business permit and/or license.

(E) *Issuance of permit and fee.*

(1) The County Zoning Administrator shall approve the issuance of a permit and/or license to an applicant within 30 days after receipt of an application unless any 1 or more of the following is found to be true:

- (a) An applicant is under 18 years of age;
- (b) An applicant or an applicant's spouse is overdue payment to the county for taxes, fees, fines, or penalties assessed or imposed in relation to a sexually-oriented business;
- (c) An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application;
- (d) An applicant is residing with a person who has been denied a permit and/or license by the county to operate a sexually-oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually-oriented business has been revoked within the preceding 12 months, or residing with a person whose license to operate a sexually-oriented business has been revoked within the preceding 12 months;
- (e) The premises to be used for the sexually-oriented business have not been approved by the Health Department, Fire Department, and the Building Official as being in compliance with applicable laws and ordinances;

(f) The permit and/or license fee required by this chapter has not been paid;

(g) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter; and/or

(h) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually-oriented business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually-oriented business so that it may be easily read at any time.

(2) The annual fee for a sexually-oriented business permit and/or license is \$500.

(F) *Inspection.*

(1) An application of permittee shall permit representatives of the Law Enforcement Department, Health Department, Fire Department, Zoning Department, or any other county departments or agencies to inspect the premises of a sexually-oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(2) A person who operates a sexually-oriented business, or his or her agent or employee, commits a misdemeanor if he or she refuses to permit the lawful inspection of the premises at any time it is occupied or open for business.

(G) *Expiration of permit.*

(1) Each permit and/or license shall expire 1 year from the date of issuance and may be renewed only by making application as provided in § 153.110(D)(2). Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the permit and/or license will not be affected.

(2) When the Zoning Administrator denies renewal of a permit and/or license, the applicant shall not be issued a permit and/or license for 1 year from the date of denial. If subsequent to denial, the Zoning Administrator finds that the basis for denial of the renewal permit and/or license has

been corrected or abated, the applicant may be granted a permit and/or license if at least 90 days have elapsed since the date of denial became final.

(H) *Suspension of permit.* The Zoning Administrator may suspend a permit for a period not to exceed 30 days if it is determined that a permittee and/or licensee, or an employee of a permittee and/or licensee, has:

(1) Violated, or is not in compliance with, any section of this chapter;

(2) Engaged in excessive use of alcoholic beverages while on the sexually-oriented business premises;

(3) Refused to allow an inspection of the sexually-oriented business premises as authorized by this chapter; and/or

(4) Knowingly permitted gambling by any person on the sexually-oriented business premises.

(I) *Revocation of permit.*

(1) The Zoning Administrator shall revoke a permit if a cause for suspension in division (H) above occurs and the permit and/or license have been suspended within the preceding 12 months.

(2) The Zoning Administrator shall revoke a permit and/or license if it is determined that:

(a) A permittee and/or his or her licensee knowingly gave false or misleading information in the material submitted to the Zoning Department during the application process;

(b) A permittee and/or licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) A permittee and/or licensee or an employee has knowingly allowed prostitution on the premise;

(d) A permittee and/or licensee or an employee knowingly operated the sexually-oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;

(e) A permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or license premises; and/or

(f) A permittee and/or licensee is delinquent in payments to the county or state for any taxes or fees past due.

(2) When the Zoning Administrator revokes a permit and/or license, the revocation shall continue for 1 year, and the permittee and/or licensee shall not be issued a sexually-oriented permit and/or license for 1 year from the date revocation became effective. If, subsequent to revocation, the Zoning Administrator finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least 90 days have elapsed since the date the revocation became effective.

(J) *Transfer of permit.* A permittee and/or licensee shall not transfer his or her permit and/or license to another, nor shall a permittee and/or licensee operate a sexually-oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

(K) *Location of sexually-oriented businesses.*

(1) A sexually-oriented business may be located only within a GC General Commercial District.

(2) A person commits a misdemeanor when operating, or causes to be operated, a sexually-oriented business outside of a designated GC General Commercial District.

(3) A person commits a misdemeanor when operating, or causes to be operated, a sexually-oriented business within 1,000 feet of:

- (a) A church;
- (b) A public or private elementary or secondary school;
- (c) A boundary of any residential district;
- (d) A public park adjacent of any residential use;
- (e) A day-care center; and/or
- (f) The property line of a lot devoted to residential use.

(4) A person commits a misdemeanor if he or she causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually-oriented business within 1,000 feet of another sexually-oriented business.

(5) A person commits a misdemeanor if he or she causes or permits the operation, establishment or maintenance of more than 1 sexually-oriented business in the same building, structure, or portion thereof, or the increase of floor areas of any sexually-oriented business in any building, structure, or portion thereof containing another sexually-oriented business.

(6) For the purpose of this chapter, measurement shall be made in a straight line, without regard of intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually-oriented business is conducted, to the nearest property line of the premises of a church, day-care center, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.



(7) For the purposes of division (K)(4) above, the distance between any 2 sexually-oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(8) Any sexually-oriented business lawfully operating on 1-1-2002 that is in violation of divisions (K)(1) through (K)(7) above shall be deemed to be a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 2 years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. The nonconforming uses shall not be increased, enlarged, extended, or altered, except that the use may be changed to a conforming use. If 2 or more sexually-oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually-oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(9) A sexually-oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually-oriented business permit and/or license, of a church, public or private elementary or secondary school, public park, day-care center residential district, or a residential lot with 1,000 feet of the sexually-oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

(L) *Additional regulations for adult motels.*

(1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated 2 or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(2) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually-oriented permit and/or license, he or she rents or sub rents a sleeping room to a person and, within 10 hours from the time the room is rented, he or she rents or sub rents the same sleeping room again.

(3) For the purposes of this division (L), the terms rent or sub rent mean the act of permitting a room to be occupied for any form of consideration.

(M) *Regulations for exhibition of sexually explicit films or videos.*

(1) A person who operates or causes to be operated a sexually-oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements.

(a) Upon application for a sexually-oriented permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of 1 or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit and/or license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus 6 inches. The County Zoning Administrator

may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(b) The application shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Administrator or his or her designee.

(d) It is the duty of the owners and operator of the premises to ensure that at least 1 employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction equipment. If the premises has 2 or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least 1 of the manager's stations. The view required in this division (M)(1)(e) must be by direct line of sight from the manager's station.

(f) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in division (M)(1)(e) above remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will be permitted in application filed pursuant to division (M)(1)(a) above.

(g) No viewing room may be occupied by more than 1 person at any time.

(h) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1 foot candle as measured at the floor level.

(i) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(2) A person having a duty under division (M)(1) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

(N) *Exemptions.* It is a defense to prosecution under divisions (E) and (K) above that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school, licensed by the state of South Carolina; a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates education programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

(b) Where, in order to participate in a class, a student must enroll at least 3 days in advance of the class; and

(c) Where no more than 1 nude model is on the premises at any 1 time.

(O) *Injunction.* A person who operates or causes to be operated a sexually-oriented business without a valid permit and/or license or in violation of division (K) above is subject to a suit for injunction as well as prosecution for criminal violation as outlined in §§ 153.175 *et seq.*

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.111 COMMUNICATIONS TOWERS AND ANTENNAS.**

A communications tower and/or antenna may be permitted as follows.

(A) *Districts in which special exception and conditional uses are permitted and height limitations of free-standing or guyed towers.*

(1) In residential districts RS-1, RS-1A and RG, a free-standing pole with height not exceeding 100 feet is a permitted special exception pursuant to division (E) below.

(2) In commercial districts LC and GC, free-standing or guying towers with height not exceeding 180 feet is a permitted conditional use; height exceeding 180 feet requires special exception.

(3) In the rural district R-2 and the industrial districts LI and BI,, free-standing or guyed towers with height not exceeding 360 feet is a permitted conditional use; height exceeding 360 feet requires special exception.

(4) In planned development districts, towers with height specified in approved plan is permitted under conditions set forth in plan.

(5) In permissible districts, towers and/or antennas mounted on buildings, water tanks or structures other than a free-standing or guyed communications tower must not extend more than 30 feet above the highest part of the structure.

(6) In districts in which communication towers and antennas are permitted except the PD Planned Development District, free-standing or guyed and/or antenna exceeding height limitations may be permitted by the Zoning Board of Appeals as a special exception. (See requirements for special exception in division (E) below.

(7) In all districts, variances from conditions imposed by this section may not be granted by the Zoning Board of Appeals. Variances from other general district regulations may be granted under standards in S.C. Code § 6-29-800.

(B) *Application requirements.* The applicant for a conditional use zoning permit for construction of a communications tower or placement of a commercial telecommunication antenna on an existing structure other than a tower previously permitted must file with the Zoning Administrator an application accompanied by a fee of \$200 and the following documents, if applicable:

(1) One copy of typical specifications for proposed structures and antennae, including description of design characteristics and material;

(2) A site plan, drawn to scale, showing property boundaries, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, and existing land uses on adjacent property;

(3) A current map, or update for an existing map on file, showing locations of applicant's antennae, facilities, existing towers, and proposed towers which are reflected in public records, serving any property within the town;

(4) A report from a structural engineer registered in South Carolina showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with ANSI/EIAMA 222 (latest version) standards;

(5) Identification of the owners of all antennas and equipment to be located on the site;

(6) Written authorization from the site owner for the application;

(7) Evidence that a valid FCC license for the proposed activity has been issued;

(8) A line of sight analysis showing the potential visual and aesthetic impacts on adjacent residential districts;

(9) A written agreement to remove the tower and/or antenna within 90 days after cessation of use;

(10) Evidence that applicable conditions in § 153.111(C) are met; and

(11) Additional information required by the Zoning Administrator for determination that all applicable zoning regulations are met.

(C) *Conditions.* Applicant must show that all applicable conditions are met.

(1) The proposed communications tower, antenna, or accessory structure will be placed in a reasonably available location which will minimize the visual impact on the surrounding area and allow the facility to function in accordance with minimum standards imposed by applicable communications regulations and applicant's technical design requirements.

(2) Applicant must show that a proposed antenna and equipment cannot be accommodated and function as required by applicable regulations and applicant's technical design requirements, without unreasonable modifications on any existing structure or tower under the control of applicant.

(3) Applicant for a permit in a residential district must show that the area cannot be adequately served by a facility placed in a nonresidential district for valid technical reasons.

(4) Prior to consideration of a permit for location on private property which must be acquired, applicant must show that available publicly-owned sites, and available privately owned sites occupied by a compatible use, are unsuitable for operation of the facility under applicable communications regulations and applicant's technical design requirements.

(5) Applicant must show that a new tower is designed to accommodate additional antennae equal in number to applicant's present and future requirements.

(6) Applicant must show that all applicable health, nuisance, noise, fire, building, and safety code requirements are met.

(7) A communications tower must not be painted or illuminated unless otherwise provided by state or federal regulations.

(8) A permit for a proposed tower site within 1,000 feet of an existing tower shall not be issued unless the applicant certifies that the existing tower does not meet applicant's structural specifications and applicant's technical design requirements, or that a collocation agreement could not be obtained.

(9) Applicant must show by certificate from a registered engineer that the proposed facility will contain only equipment meeting FCC rules, and must file with the Zoning Administrator a written indemnification of the municipality and proof of liability insurance or financial ability to respond to claims up to \$1,000,000 in the aggregate which may arise from operation of the facility during its life, at no cost to the municipality, in form approved by the municipality attorney.

(10) Land development regulations, visibility, fencing, screening, landscaping, parking, access, lot size, exterior illumination, sign, storage, and all other general zoning district regulations except setback and height, shall apply to the use. Setback and height conditions in this section apply.

(11) A tower must be a minimum distance equal to 1/2 the height of the tower from property designated historic or architecturally significant, and must be set back from all lot lines distances equal to the district setback requirements or 25% of the tower height, whichever is greater.

(12) Prior to issuing a permit, the Zoning Administrator may consult with a communications expert for technical review to determine that the standards in divisions (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), and (C)(8) above are met.

(D) *Appeal to Board.* Applicant may appeal to the Board of Zoning Appeals as follows:

(1) Failure of the Zoning Administrator to act on an application which is determined to be complete under this section within 45 days, unless extended by agreement, may be considered by applicant to be a denial of a permit which is subject to appeal to the Board of Zoning Appeals;

(2) Applicant may appeal to the Board for a variance from general zoning district regulations and setbacks requirements in this section, but not from any other conditions in this section. Towers exceeding height limitations may be permitted only by special exception pursuant to division (E) below;

(3) Applicant may apply directly to the Board for a permit for any tower as a special exception pursuant to division (E) below.

(E) *Special exceptions.* A tower, pole, or antenna may be permitted by special exception granted by the Board of Zoning Appeals after public hearing and findings of fact based on the following criteria:

(1) All application requirements and conditions imposed in divisions (A) through (D) above are met;

(2) If additional tower height is requested, total tower height will not exceed 150% of the maximum height permitted in the district as a conditional use;

(3) Applicant has demonstrated that additional height above that permitted by conditional use regulations is necessary for service to occupants of an area within the municipality;

(4) Setback requirements and the additional conditions are established by the Board as is deemed necessary to remove danger to health and safety, and to protect adjacent property;

(5) Prior to approving a permit by special exception or on appeal from action of the Zoning Administrator on an application for a conditional use, the Board may consult with a communication expert for technical review to determine that the standards in divisions (C)(1), (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), and (C)(8) above are met;

(6) The Telecommunications Act of 1996 requires that a denial of permit be supported by substantial evidence;

(7) The Board may not grant a variance from the standards imposed for a communication tower or antenna in connection with granting a special exception, except as permitted by divisions (A) through (D) above.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 05-15-08, passed 6-4-2008) Penalty, see § 10.99

#### **§ 153.112 FRONT SETBACK REQUIREMENTS.**

(A) The front yard setback for lots on the following roads shall be as follows. In cases where the existing right-of-way adjacent to the property proposed for development is:

(1) Fifty feet or less, the setback shall be 75 feet;

(2) Fifty feet to 75 feet, the setback shall be 60 feet;

(3) Seventy-five feet to 100 feet, the setback shall be 55 feet; and

(4) Over 100 feet, the setback shall conform to the minimum setback for the district in which the property is located.

(B) (1) In circumstances where, in the opinion of the Zoning Administrator, the depth of the lot, proximity of railroad rights-of-way, or an unusual topographic feature would unduly restrict the practical development of a lot, the owner may file a request to the Zoning Board of Appeals for a variance.

(2) The Zoning Administrator shall waive the required fee in those circumstances.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.113 MANUFACTURED HOME PARKS.**

Manufactured home parks shall meet the requirements specified in the Newberry County Land Development Regulations.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### ***Cross-reference:***

*General regulations for manufactured homes, see §§ 150.25 et seq.*

#### **§ 153.114 CHILD DAY-CARE CENTERS.**

(A) Before granting a special exception for establishment of a child day-care center or an in-home child day-care center, the Board of Appeals shall determine that the facility meets the requirements set by the South Carolina Department of Social Services Rules and Regulations Relating to Licensing Day Care Facilities and Child Care Centers. Child day-care facilities are divided into the following categories based upon the number of children served:

| <b><i>SC Highways</i></b> | <b><i>US Highways</i></b> |
|---------------------------|---------------------------|
| 72                        | 176                       |
| 121                       | 76                        |
| 76                        |                           |
| 34                        |                           |
| 219                       |                           |
| 773                       |                           |
| 202                       |                           |
| 213                       |                           |



|           |  |
|-----------|--|
| 34 Bypass |  |
| 395       |  |
| 391       |  |
| 56        |  |
| 39        |  |
| 560       |  |

- (1) In-home child day-care center - 1 to 6 children; and
- (2) Child day-care center - 7 children and greater.

(B) The Fire Inspector and Building Official may inspect the facilities semi-annually to ensure adequate compliance with regulations.

(1) A fenced play area of not less than 4,000 square feet shall be provided for 20 children or less, with 200 additional square feet for each additional child. No play area shall be closer than 20 feet to any residential lot line. No fence shall be less than 5 feet in height or greater than 7 feet in height.

(2) An area adequate for loading and unloading children to be accommodated shall be provided, and the area shall not be located within any public right-of-way.

(3) Signs shall conform to the regulations of §§ 153.160 et seq.

(4) Facilities, operations, and maintenance shall meet the requirements of the Health Department.

(5) The Board shall determine if additional safeguards and conditions are appropriate in order to protect children accommodated from detrimental characteristics of use of adjacent areas, or to protect adjacent uses from potential incompatible characteristics arising from the child day-care centers and in-home child day-care centers.(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.125 APPLICABILITY.**

(A) All land uses requiring site plan or subdivision plat approval shall provide and maintain landscaping in accordance with §§ 153.125 et seq. Landscaped areas shall include existing vegetation to remain following development, open space, flood plains, wetlands, and areas containing new plantings. Landscaped areas may include any perimeter landscaping required by §§ 153.125 et seq.

(B) Where necessary to accommodate creativity in site design, or where conformance with the strict requirements of §§ 153.125 *et seq.* are not feasible, the Zoning Administrator may modify these requirements, provided that the type and amount of landscaping or other features are equivalent in effectiveness.(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.126 TREE AND LANDSCAPING SURVEY.**

(A) Identification of existing trees, understory vegetation, and topographical features on a site prior to the advanced preparation of development plans enables the reasonable and practical planned preservation of existing vegetation while considering unique site conditions. This requirement provides the county and the applicant the ability to evaluate the proposed development in order to preserve vegetation, to improve the appearance of the development proposed and to encourage the use of the existing forest and tree canopy, specimen trees, and significant vegetation to satisfy the requirements of §§ 153.125 *et seq.* A tree survey is intended to identify forest stands or trees of a uniform size and species (homogeneous trees); specimen trees of varying sizes and species, particularly free standing or open-grown or field grown trees; and/or a distinctive tree line or forest edge.

(B) Tree survey requirements are as follows.

(1) The area to survey is to be located within the proposed construction limits, building envelope, or area of the site to be disturbed and is to extend a minimum of 10 feet outside of this area.

(2) Provide a general written description of the significant vegetation 12 inches in diameter at breast height (DBH) or greater and native understory species 2 inches or greater, including tree species and uniform the size and height of stands of homogeneous trees including the typical tree species composition of the forest stand, typical tree size, typical spacing between trees, and general health and vigor of the stand and specimen trees.

(3) Denote the trunk line of any existing forest stand, as measured between existing tree trunks 6 inches or greater located at the edge of the stand.

(4) Identify all free standing, open grown, or field grown specimen trees 18 inches DBH or greater located on the site. Every effort shall be made to save the trees during development.

(5) Show all other important natural features influencing site design such as the location of wetlands, rock outcroppings, site topography at two foot contour intervals, slopes steeper than 15%, and perennial streams, natural drainage ways, lakes, and other water bodies.(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.127 TREE AND ROOT PROTECTION.**

(A) An existing healthy tree greater than 10 inches in DBH (diameter breast high) is a valuable natural resource by virtue of age, size, and contribution to the environment, and must

be preserved and protected to the extent practical and feasible on all lots 2 acres or less, except in the Planned Development District. Trees 10 inches in DBH shall be flagged and shown on a required plat or site plan for development. No more than 90% of the trees shall be removed from a lot, except by variance granted by the Board of Zoning Appeals. In the event a variance is granted, each tree removed shall be replaced by a tree at least 2 inches DBH in a location meeting required landscaping.

(B) Pine trees are exempted from the tree protection requirements described above. Timber harvesting is permitted as long as the appropriate best management practices (BMP's) are followed.(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.128 GENERAL PROVISIONS.**

(A) *Location.* The perimeter landscaping required by §§ 153.125 et seq. shall be located along the outer perimeter of the parcel and shall extend to the parcel boundary line or right-of-way line. Plants comprising the perimeter landscape shall be appropriately spread across the entire width of the landscape area.

(B) *Existing vegetation, fences, walls, and berms.* The use of existing trees or shrubs to satisfy the perimeter landscaping requirements of this section is strongly encouraged. Existing significant vegetation within the required perimeter landscaped area shall be preserved and credited toward standards for the type of perimeter landscaping required, unless otherwise approved by Newberry County at the time of site plan approval. Existing berms, walls, or fences within the perimeter landscaped area, but not including chain link fencing, may be used to fulfill the standards for the type of perimeter landscaping required, provided that these elements are healthy and/or in a condition of good repair. Other existing site features within the required perimeter landscaped area which do not otherwise function to meet the standards for the required perimeter landscaping shall be screened from the view of other properties or removed, as determined during review and approval of the site plan.

(C) *Installation of new vegetation and other features.* If existing significant vegetation and other site features do not fully meet the standards for the type of landscaping required, then additional vegetation and/or site features (including fences) shall be planted or installed within the required landscaping area. The use of native species of trees, shrubs, vines, ground covers, and perennials is encouraged in order to make planted areas compatible with existing native habitats.

(D) *Standards for new planting.* All trees which §§ 153.125 et seq. require to be planted shall be at least 8 feet high above ground level and at least 2 inches in caliper at the time of installation, and shall have an expected mature height of at least 20 feet. All shrubs which §§ 153.125 et seq. require to be planted shall be measured at least 3 gallons in container size and 2 feet above ground level and shall reach the height required for performance within 5 years after installation. The selection of plants, planting methods, minimum height, root ball and container size, number of branches, and width, shall conform to the American Standard for Nursery Stock published by the American Association of Nurserymen for that type of tree or shrub at the time of installation. Groves of trees, as well as isolated islands with single trees, are

encouraged. Adequate drainage and mulching shall be provided for planting medians and islands. Each canopy tree shall be provided with a minimum pervious ground area of 300 square feet for root growth (exception: street trees) and should be planted on slopes not to exceed 4:1 horizontal to vertical distance.

(E) *Grading and development within the perimeter landscaping.* The required perimeter landscaping shall not contain any development, impervious surfaces, or site features that do not function to meet these standards or that require removal of existing significant vegetation. No grading, development, or land-disturbing activities shall occur within this area if forest canopy, specimen trees, or significant vegetation exists within the perimeter landscape area, unless approved at the time of site plan approval. If grading within a perimeter landscaped area is proposed, slopes of 3:1 or less are encouraged to ensure the proper transition of grades to the adjacent property and to facilitate landscaping.

(F) *Easements.* Nothing shall be planted or installed within an underground or overhead utility easement or a drainage easement without the consent of the county and the easement holder at the time of site plan approval.

(G) *Responsibility for installation.* Where a vacant parcel is being developed adjacent to another vacant parcel, then the developer or owner of the first parcel to be developed shall provide the perimeter landscaping required adjacent to the vacant land. Where a vacant parcel is being developed adjacent to an existing land use, then the developer or owner of the vacant parcel shall provide the perimeter landscaping required adjacent to the existing land use.

(H) *Zoning change.* If the zoning district classification changes for an existing use or parcel, then the parcel shall comply with the landscaping requirements of §§ 153.125 et seq. or, at a minimum, the intent of §§ 153.125 et seq. as prescribed by the Zoning Administrator. The owner or developer may need to install additional plant material on the parcel in order to meet the intent of §§ 153.125 et seq., especially on developed sites, or to bring the parcel up to the standards for the type of perimeter landscaping which would be required under §§ 153.125 et seq.

(I) *Standards for fences.* Fences are permitted only where they are of uniform design, materials, and construction. Fences shall supplement the existing and/or required plantings. Fences shall be maintained by the owner.

(J) *Design standards for berms.* All berms shall not exceed a slope with maximum rise of 1 foot to a run of 2 feet (a ratio of 1:2) and a maximum height of 4 feet. All berms, regardless of size, shall be stabilized with a ground cover or other suitable vegetation.

(K) *Irrigation.* The use of irrigation is encouraged in all required landscaping areas as required by §§ 153.125 et seq.

(L) *Unlawful cutting of vegetation.* No person may remove any vegetation from within any right-of-way except in areas approved by Newberry County and/or the SC Department of Transportation.

(M) *Stream and wetland buffers.* Land-disturbing activities for construction in, on, or under a lake or natural watercourse shall be planned and conducted to minimize the extent and duration of disturbance of the stream channel or lake bed. Where relocation of a stream is an essential part of the proposed activity, the relocation shall be planned and executed to minimize changes in the stream flow characteristics, except where the developer or landowner demonstrates that the significant alteration of the flow characteristics is justified.

(1) An undisturbed, natural buffer shall be maintained along each perennial stream within the county's jurisdiction. The minimum buffer width shall be 20 feet from each side of the stream as measured from the top of the bank.

(2) No land-disturbing activities shall take place within a stream buffer or delineated wetland area, except for required streets and associated facilities, utility mains and easements, and/or greenways and pedestrian paths. Roads and golf courses may cross a buffer, provided they do not cross at an angle of less than 60 degrees.

(3) Streams, wetlands, and required buffers shall be shown on all site plans and subdivision plats for approval and recording.(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.129 TYPES OF LANDSCAPING.**

The 5 types of landscaping are defined as follows, and shall meet the following performance requirements.

(A) *Type A (opaque screen/buffer).*

(1) Location and required usage;

(a) Transition yard between GC, LI, and BI lots and residentially zoned lots or lots with residential uses - minimum width 30 feet;

(b) Transition yard between LI and BI lots and commercial lots - minimum width 20 feet;

(c) Transition yard between LC lots and residentially zoned lots - minimum width 15 feet; and

(d) Edge of all yards abutting right-of-way of Interstate 26 - minimum width 25 feet.

(2) This type functions as an opaque screen from the ground to a height of at least 8 feet. This type excludes visual contact between uses and creates a strong impression of spatial separation. Composition of the Type A landscaping may include a wall, wood fence, landscaped earthen berm, planted vegetation, existing vegetation, or any appropriate combination of these elements. Intermittent planting of deciduous and evergreen trees shall obtain a height at maturity of no less than 20 feet and have no unobstructed openings wider than 10 feet between tree canopies upon maturity. Shrub plantings shall have a minimum height of 3 feet at installation and have no unobstructed openings wider than 4 feet. At least 50% of the required trees, and at least 75% of the required shrubs, shall be evergreen species locally adapted to the area.

(B) *Type B (semi-opaque screen).*

(1) Location and required usage:

(a) Transition yard between commercially zoned lots or between industrially zoned lots - minimum 10 feet; and

(b) Perimeter yard of all parking and storage areas visible from the street (LC, GC, LI, BI) - minimum width 10 feet.

(2) This type functions as a semi-opaque screen from the ground to at least a height of 4 feet for screening of car lights and glare. Composition of the Type B landscaping may include a wall, fence, planted vegetation, existing vegetation, or any appropriate combination of the elements. Intermittent planting of deciduous and evergreen trees shall obtain a height at maturity of no less than 20 feet and have no unobstructed openings wider than 20 feet between canopies upon maturity. Shrub plantings shall have no unobstructed openings wider than 4 feet. At least 75% of the required shrubs shall be evergreen species locally adapted to the area. All side yard parking areas in the LC district shall be screened from the sidewalk by low walls, fences, or constructed as a continuation of the building wall a minimum of 3 feet in height. Landscaping may be used in combination with walls or fences but shall not exceed 50% of the total required width.

(C) *Type C (interior plantings).*

(1) Location and required usage: interiors of all parking areas with more than 16 parking spaces.

(2) Large canopy trees must be provided in each parking lot at a minimum average density of 1 tree for every 10 parking spaces in the lot.

(3) No off-street parking space may be located more than 100 feet from the trunk of a large canopy tree.

(4) No tree may be planted closer than 3 and 1/2 feet to the back of a curb or the paved portion of the parking lot.

(D) *Type D (service areas).*

(1) Location and required usage: the perimeter of services areas - minimum width 3 feet.

(2) This type functions as at least a 75% opaque screen from the ground to at least 1 foot higher than the item being screened (including but not limited to garbage collection sites, exposed nonpower utility fixtures, power utility substations, and exposed metal cabinets over 5 feet in height). However, the screening shall not be less than 6 feet in height. Composition of the Type D landscaping may include a wall, fence, planted vegetation, existing vegetation, or any appropriate combination of the elements. Shrub plantings shall have no unobstructed openings wider than 4 feet. Large trees shall be placed no more than 12 feet apart. At least 75% of the required shrubs shall be evergreen species locally adapted to the area. If a wall or fence is used, then planting must also be used to screen the wall or fence.

(E) *Type E (street tree canopy).*

(1) Location and required usage - along all street frontages (LC, GC, LI, BI, and Major Residential Subdivisions).

(2) (a) This type functions as a unifying element along all street frontages by softening the transition of the public street to the private yard and by providing shelter from sun and rain to pedestrians and drivers.

(b) Trees shall be spaced 10 to 40 feet on-center.

(c) Trees shall be planted parallel to the street within 6 feet of the curb, between the curb and sidewalk, or in tree wells located in the sidewalk.

(d) Tree selections shall be provided for in accordance with Newberry County Street Tree Selection Policy.

(F) *Type F (residential tree canopy).*

(1) Location and required usage: in major residential subdivisions with 10 or more lots (exception: rural).

(2) This type functions to maintain and/or replenish the urban tree canopy in areas of new residential development. Each lot shall provide canopy trees in accordance with the following schedule:

| <b><i>Lot Size Required Number of Canopy Trees</i></b> |
|--------------------------------------------------------|
| Less than 10,000 square feet 0                         |
| 10,000 to 15,000 square feet 1                         |
| 15,001 to 20,000 square feet 2                         |
| More than 20,000 square feet 3                         |

(3) Existing canopy trees over 6 inches in caliper may be counted towards fulfilling this requirement. Required street trees may not be

counted towards the fulfillment of this requirement. All trees required under this section shall be planted within the private lot.

(4) In the case of an existing subdivision where the platting of additional lots would bring the total number of lots to 10 or more, then the installation of a Type F screening shall be required.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### **§ 153.130 ADMINISTRATION.**

##### **(A) *Time for installation of required landscaping.***

(1) *Time limit.* All landscaping, including mulching and seeding, shall be completed in accordance with the approved site plan prior to issuance of a certificate of occupancy for the site.

(2) *Extensions and exceptions.* The Newberry County Zoning Administrator may grant exceptions and extensions to the above time limit under the following conditions:

(a) Extensions may be granted due to unusual environmental conditions, such as drought, ice, over-saturated soil (deep mud), or inappropriate planting, provided that the developer or property owner provides the county with a surety bond ensuring the installation of the remaining landscape materials;

(b) Exceptions may be granted due to the substitution or unavailability of plant species or acceptable plant size as specified on the site plan, provided that the developer or property owner provides the county with a bond to ensure that the unavailable plants will be installed on the property; and/or

(c) Exceptions may be granted due to circumstances beyond the developer's or property owner's control, such as incomplete construction or utility work to occur in a proposed landscaped area within 30 days after expected site completion. Exceptions may be granted



provided that the developer or property owner submits a letter from the utility company to the county stating the estimated installation date, and provides a cash bond to ensure installation of the required landscaping.

(3) *Bonds.* Any bond posted as surety for exceptions bond shall be accompanied by documentation of the estimated cost of the remaining landscaping to be completed. This documentation may be a landscaping contractor's bid or contract, a nurseryman's bill, or a similar document. The amount of the bond shall be 1¼ times the cost of the plant material yet to be installed, based on the highest estimate received. County Council may authorize to release part of any security posted as the improvements are completed and approved by Newberry County. The funds shall be released within 10 days after the corresponding improvements have been approved.

(B) *Inspections.* A permanent certificate of occupancy for the development shall not be issued unless the landscaping required under §§ 153.125 *et seq.* is installed in accordance with these standards and in accordance with the approved site plan or subdivision plat. The Planning Department shall inspect the site 1 year after the issuance of a permanent certificate of occupancy in order to ensure compliance with the approved site plan and to ensure that the landscape is properly maintained.

(C) *Maintenance responsibility and replacement of damage vegetation.*

(1) *Maintenance responsibility.*

(a) The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all plantings and physical features required by the section in a healthy, growing condition, for replacing them when necessary, and for keeping the area free of refuse and debris. All plant materials should be allowed to reach their mature size and maintained at their mature size. Any dead, unhealthy, or missing vegetation, or vegetation disfigured by severe pruning, shall be replaced with locally-adapted vegetation which conforms to the standards of this section and to the approved site or subdivision plan. In the event that any vegetation or physical element functioning to meet the standards of §§ 153.125 *et seq.* is severely damaged due to an unusual weather occurrence or natural catastrophe, the owner shall have one growing season to replace or replant after reconstruction is complete. All required landscaped areas shall be free of refuse and debris in accordance with the site or subdivision plan approved by Newberry County, and shall be maintained so as to prevent mulch, straw, dirt, or other materials from washing onto streets and sidewalks.

(b) This section shall not apply to fully vegetated natural areas, except where the property owner has damaged or destroyed vegetation in a required landscaped area, or caused vegetation to be damaged or destroyed. In no instance will Newberry County be responsible for the maintenance of any vegetation unless the vegetation is located within the public right of way of a county maintained street or is located on property owned by Newberry County.

(2) *Replacement of disturbed and damaged vegetation.* The disturbance of any landscaped area or vegetation required by §§ 153.125 *et seq.* shall constitute a violation of the site or subdivision plan. All disturbed landscaped areas and vegetation shall be replanted so as to meet the standards of this section as well as the approved site plan. Where the vegetation that has been disturbed or damaged existed on the site at the time the development was approved, all replacement vegetation shall meet the standards set forth in §§ 153.125 *et seq.* taking into account any unique site conditions and significant vegetation remaining within the landscaped area. Trees or vegetation that dies within 1 year of construction completion, as a result of the contractor's negligence, shall be removed and replaced with new vegetation. Replacement consists of 1 or a combination of any of the following measures at the discretion of the Zoning Administrator.

(a) A replanting plan denoting the proposed installation shall be submitted to Newberry County for approval. The Zoning Administrator may elect to present the replanting plan to the Planning Commission for final approval.

(b) Replace damaged significant vegetation in both perimeter and or interior landscaped areas with an equal amount of new vegetation according to the size of vegetation removed. Any tree with a caliper of at least 12 inches which is damaged or removed shall be replaced with 1 or more trees which have a caliper of at least 2½ inches and a cumulative caliper equal to or greater than the original tree. A revegetation plan denoting the proposed installation shall be submitted to Newberry County for approval. The Zoning Administrator may elect to present the revegetation plan to the Planning Commission for final approval. This requirement may be modified by the Zoning Administrator based upon site conditions.

(c) For all other cases where existing vegetation is damaged or removed, the type and amount of replacement vegetation required shall be of the type and amount that is necessary to provide the type of landscaping required under this section or interior preservation area identified on the landscape plan.

(3) *Location of replacement trees.* Replanting should be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Zoning Administrator.

(4) *Stop-work orders.* Stop-work orders shall also apply for damaging and/or destroying significant vegetation, interior specimen significant vegetation, landscape, or tree save areas.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### § 153.131 NONCONFORMING LANDSCAPING AND SCREENING.

(A) If there is a change of use or an expansion to the heated square footage of an existing business, the lot shall fully comply with all street yard landscaping, and loading and storage area screening requirements.

(B) Expansions to the parking area or loading areas which increase the total area more than 40% shall be required to comply with all applicable parking and loading area landscaping and screening.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

## **PARKING**

### **§ 153.145 OFF-STREET PARKING.**

(A) Off-street parking spaces required by district regulations shall be located on the same lot as the principal use, or on a lot within 400 feet of the main entrance to the principal use which under the same ownership as the principal use or has been legally restricted for parking in connection with the principal use, and shall have required buffer and landscape areas.

(B) Required off-street parking for a commercial or industrial use may extend up to 120 feet into a residential zoning district, provided:

(1) The parking area adjoins the property on which the principal commercial or industrial use is located;

(2) The parking area access is to the same street as the principal use; and

(3) The parking area has a Type B buffer area along residential lot lines and required landscaping.

(C) Combined parking areas serving 2 or more principal uses shall contain spaces equal in number to the total of spaces required for all principal uses served.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

### **§ 153.146 PARKING SPACE REQUIREMENTS.**

Off-street parking spaces shall meet the following design standards.

(A) *Parking space dimensions.*

(1) Angle parking - 9 feet by 19 feet, provided 10% may be 8.5 feet by 18 feet;

(2) Parallel parking - 9 feet by 24 feet;

(3) Handicapped - 12 feet by 20 feet, or 8 feet by 20 feet, with 8 foot isle.

(B) *Minimum isle widths.*

- (1) Ninety-degree parking - 25 feet;
- (2) Sixty-degree parking - 18feet;
- (3) Forty-five-degree parking - 13 feet;
- (4) Parallel parking - 10 feet; and
- (5) Street rights-of-way may not be considered as aisles for adjacent off-street parking.

(C) *Paving and marking requirements.* A parking area, including driveways containing 10 or more parking spaces, shall be surfaced with an all weather impervious material, and spaces shall be marked with painted lines.

(D) *Lighting requirements.* A parking area open for night use shall have a minimum of 1 9,000 lumen overhead light for each 25 parking spaces or major portion thereof.

(E) *Parking spaces for handicapped persons.* One parking space for handicapped persons shall be provided for each 25 parking spaces, or fraction thereof, except for dwellings of less than 20 units, meeting federal and state requirements, with access to ramps, walkways, and entrances without moving behind parked vehicles.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

#### § 153.147 OFF-STREET LOADING AND UNLOADING SPACES.

Each lot used for commercial or industrial purposes, or multi-family residences with more than 10 units, shall provide off-street space for loading and unloading as follows.

- (A) *Access.* Each space shall have access from an alley or public street.
- (B) *Dimensions.* Each space shall be a minimum of 12 feet by 40 feet, clear of obstructions.
- (C) *Space required.*

| <i>Use Gross Floor Area (Square Feet)</i>                                           | Number of Spaces |
|-------------------------------------------------------------------------------------|------------------|
| Wholesale, industrial, governmental, institutional, educational, medical, assembly: |                  |
| 25,000                                                                              | 1                |
| 25,001 - 99,999                                                                     | 2                |
| 100,000 - 159,000                                                                   | 3                |

|                                              |   |
|----------------------------------------------|---|
| 160,000 - 239,999                            | 4 |
| 240,000 - 349,000                            | 5 |
| Each additional 100,000 or fraction          | 1 |
| Multi-family residence with 10 or more units | 1 |

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

**§ 153.148 PARKING AND USE OF RECREATIONAL VEHICLES, AND PARKING AND STORAGE OF OTHER RECREATIONAL EQUIPMENT AND UNLICENSED VEHICLES.**

(A) In the RS-1A zoning district, no recreational vehicles shall be parked or stored on any real estate parcel or right-of-way for more than 24 hours, except in accordance with the temporary use restrictions set forth in division (C) below.

(B) No vehicle, watercraft, or trailer subject to state licensing and/or registration which does not display a current license plate or decal shall be parked or stored on any real estate parcel in the AG, R-2, RS-1, RS-1A, RS-2, RS-3, RS-4 and RG zoning districts, except in an enclosed building.

(C) The temporary use of recreational vehicles in the RS-1A zoning district shall be subject to the following restrictions:

(1) The use of recreational vehicles shall be allowed only by permits, which shall be issued by the Newberry County Planning and Zoning Department only to real estate parcel owners of record, with each recreational vehicle requiring a separate permit for each permitted use period. Accurate vehicle licensing and registration information shall be provided for each vehicle permitted under these provisions as a condition of permit issuance.

(2) A maximum of 20 calendar days of recreational vehicle use may be allowed for each real estate parcel in any calendar quarter, with each day for each recreational vehicle constituting one day's use (e.g., 2 recreation vehicles used on a given real estate parcel simultaneously for 10 calendar days constitutes 20 calendar days of recreational vehicle use for the real estate parcel).

(3) For each calendar quarter, calendar days of recreational vehicle use not permitted shall expire (i.e., shall not accumulate or roll over) at the end of that calendar quarter. Calendar quarters 1 through 4 shall end at midnight on March 31, June 30, September 30, and December 31, respectively.

(4) No recreational vehicle use permit shall be issued for more than 10 consecutive calendar days, and no fewer than 2 calendar days shall elapse between permitted use periods, though overlapping permits for separate recreational vehicles may be continued as long as no unit is permitted for more than 10 calendar days consecutively, and provided that the use will not result in more than 20 calendar days having been permitted for the real estate parcel in the calendar quarter.

(5) All real estate parcel owners applying for permits for recreational vehicle use must pay an annual, non-refundable fee of \$25 at or prior to the first such permitted use in any calendar year. Annual fees paid for this purpose expire at midnight on December 31 of each calendar year, regardless of the date of permit issuance.

(6) Permits must be prominently displayed on recreational vehicles throughout permitted use periods.

(7) Recreational vehicle use permits shall be issued only during normal working hours of the Newberry County Planning and Zoning Department. Real estate parcel owners are responsible for ensuring that applications for permits are submitted timely and should make such applications no less than 3 working days prior to the first date of intended use.

(8) Except as provided for in division (A) above, no recreational vehicle shall be located on a real estate parcel in an RS-1A zoning district without a recreational vehicle use permit first being issued by the Newberry County Zoning Office to the real estate parcel owner. Failure to display a current recreational vehicle use permit shall be punishable by a fine assessed against the real estate parcel owner, not to exceed \$500 per day.

(9) Real estate parcel owners desiring more than 24 hours of recreational vehicle parking or storage may apply for permits under this section.

(D) Except for state regulations on hunt camps and mobile home/manufactured home parks, and the special exception requirements for hunting preserves and commercial campgrounds in the R-2 Rural District, there is no restriction on the parking or recreational use of recreational vehicles in the areas of Newberry County zoned AG, R-2, RS-1, RS-2, RS-3, RS-4, and RG.

(E) It is the intent of division (D) above with respect to the unrestricted use of recreational vehicles, that no occupancy or use of such vehicle rise to the level of permanent occupancy or use, and that any use remain temporary and recreational in nature.

(F) The legal owner(s) of any real estate parcel on which an RV is located is responsible for any violation of this code.

(G) Any owner of the parcel where the RV is to be used, and/or the user of the RV, if different, is responsible for compliance with any SCDHEC regulations which apply to the use and occupancy of recreational vehicles otherwise permitted by this section.

(H) Notwithstanding the foregoing, in those zoning districts that allow a manufactured home to be used as a temporary residence by the owner of the property during the construction of a permanent residence on the same property, recreational vehicles (RVs) may be used for the same purpose under the same conditions, restrictions, and regulations required for the manufactured home. This provision does not apply to the RS-1A zoning district.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 03-06-08, passed 6-4-2008; Am. Ord. 09-29-08, passed 11-5-2008) Penalty, see § 10.99

## SIGNS

### § 153.160 SIGN REGULATIONS.

The following sign regulations shall apply to signs in all zoning districts.

(A) *Permit required.* No sign shall be erected, altered, or reconstructed without a permit issued by the Zoning Administrator, and compliance with all applicable regulations.

(B) *Materials.* Signs must be constructed of durable materials approved by the Zoning Administrator, and maintained in good condition.

(C) *Prohibited signs.*

(1) *Signs imitating traffic or emergency signals.* No private sign which imitates or gives the appearance of an official traffic or emergency sign or signal shall be permitted.

(2) *Confusing signs.* No private sign which utilizes flashing, blinking, or moving lights which are distracting to drivers of vehicles shall be permitted within 25 feet of a public right-of-way.

(3) *Incompatible with residential district.* No private sign shall be permitted which casts into a residential district illumination of intensity or duration incompatible with the residential district.

(4) *Trees, natural features, and the like.* No sign shall be painted or attached to a tree, fence, utility pole, tower, tank, roof, rock, or other natural feature.

(5) *Roof signs.* No signs shall be permitted above the roofline of a building.

(6) *Portable.* Portable signs are prohibited.

(D) *Exceptions; permit not required.* A permit is not required for the following signs:

(1) *Traffic.* Traffic, directional, street, warning, or information signs authorized by a public agency;

(2) *Official.* Official notices issued by a court, public agency, or office;

(3) *Real estate.* On nonilluminated for sale, for rent for lease, or similar sign not exceeding 6 square feet in area in a residential district, or 2 square feet in a nonresidential district, and located at least 10 feet from a street right-of-way or on the front wall of a building;

(4) *Temporary.* One nonilluminated political campaign, yard sale, for sale, for rent, for lease, or similar sign not exceeding 6 square feet in area in a residential district or 20 square feet in nonresidential districts, and located a least 10 feet from a street right-of-way or on the front wall of a building; and

(5) *Government signs.*

(6) *Noncommercial signs for churches and/or houses of worship.*

(E) *Construction signs.* One nonilluminated sign, not exceeding 100 square feet in area displaying the names of the building, contractors, architects, engineers, owners, and financial, selling, and development agencies, is permitted on the premises for work involving construction, alteration, or removal. The sign shall be removed from the site within 30 days after completion of the project.

(F) *Wall signs attached to, projecting from, or painted on the surface of the wall.*

(1) *Front.* The total area of signs on the exterior front surface of a building shall not exceed 20% of the front surface or the maximum area permitted by district regulations, whichever is less.

(2) *Side and rear.* The total area of signs on the exterior side or rear surface of a building shall not exceed 25% of that surface area or the maximum permitted by district regulations, whichever is less.

(3) *Combined.* The total area of signs on the combined exterior of surfaces of a building shall not exceed the area permitted by district regulations.

(4) *Surface mounted.* Flat surface mounted signs may extend not more than 24 inches from the wall.

(5) *Projecting.* A projecting sign may extend outward from the wall of a building not more than 6½ feet but not closer than 18 inches to the vertical plane at the street curb line. A projecting sign may not extend above the roof line a distance greater than the height of the roof above the ground level. Signs may not project beyond the property lines, except of sidewalks in a CC District at a minimum height of 10 feet above grade or sidewalk. Signs attached to a canopy over a sidewalk must have a minimum clearance of 9 feet above the grade or sidewalk.



(G) *Off-premises advertising signs.* Off-premises advertising signs are permitted in districts where the signs are permitted meeting all requirements of this chapter and South Carolina Department of Transportation regulations.

(1) *Construction.* All signs with a 32-square foot or more sign face shall be of mono-pole construction meeting International Building Code criteria.

(2) *Spacing.* All signs shall be at least 1,200 feet apart on the same side of the road and 600 feet from the opposite side of the road measured linearly along the rights-of-way.

(3) *Maximum size.* On Interstate 26 (I-26), the maximum size shall be 672 square feet with embellishments not to exceed 150 square feet. The signs on I-26 may be double decked and double sided. On all other road ways, the maximum size shall be 300 square feet and may be double sided.

(4) *Setbacks.* From the street property line, the minimum setback shall be 10 feet. Setback from I-26 may be as required by SCDOT. From adjacent property lines, the setback shall be 10 feet measured from the outside edge of the sign. From a residential district boundary on the same side of the road, the minimum setback shall be 100 feet.

(5) *Height.* On I-26, the maximum height shall be 110 feet. On all other roads the maximum height shall be 40 feet. Advertising space shall be at least 20 feet from ground level for signs greater than 32 square feet in area.

(6) *Churches and houses of worship.* One illuminated or non-illuminated church, institutional or public facility sign, not exceeding 20 square feet, set back not less than 10 feet from the street right-of-way; provided however, that churches and houses of worship may also erect or place noncommercial signs of unlimited size, whether illuminated or non-illuminated, on property they own or control, so long as they are set back at least 10 feet from the street right-of-way.

(H) *Temporary subdivision signs.* Temporary signs, not exceeding 20 square feet in area announcing a land subdivision development, are permitted on the premises of the land subdivision not less than 10 feet from the street right-of-way or subdivision boundary line and spaced not less than 300 feet apart. Temporary signs shall be removed when 75% of the subdivision lots are conveyed.

(I) *Private directional signs.* Off-premises signs not exceeding 6 square feet in area and 4 feet in length, spaced not less than 500 feet apart, including location and direction to property available for or under development may be erected on private property, and may display the names of the owner, developer, builder, or agent.

(J) *Sign illumination.* Devices illuminating signs shall be placed and shielded in a manner such that the illuminating rays or reflections shall not be directed into any residential district, sleeping room in any district, or public right-of-way.

(K) *Sign height.* Zoning district height limitations shall apply to signs, except as otherwise specifically noted.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 6-22-06, passed 6-21-2006) Penalty, see § 10.99

#### **§ 153.161 PERMITTED SIGNS.**

The following signs are permitted in the districts indicated.

(A) *R-2, RS-1, RS-1A, RS-2, RS-3, and RG Districts.*

(1) Signs for which permits are not required;

(2) For buildings other than dwellings, and for multi-family dwellings, and group dwellings, a nonilluminated business identification sign or bulletin board not exceeding 20 feet in area, set back not less than 10 feet from a street right-of-way;

(3) Temporary subdivision signs, § 153.160(H);

(4) Private directional sign, § 153.160(I);

(5) Manufactured home park signs not exceeding a combined total of 300 square feet in area;

(6) One nonilluminated professional or business name plat not exceeding 1 square foot in area mounted flat against the wall of a building in which a permitted home occupation is conducted;

(7) One nonilluminated church, institutional, or public facility sign not exceeding 20 square feet in area, set back not less than 10 feet from street right-of-way;

(8) Tourist home; nonilluminated sign not exceeding 6 square feet in area, set back not less than 5 feet from a street right-of-way; and

(9) Temporary signs.

(B) *LC, GC, LI, and BI Districts.*

(1) All signs permitted in residential and neighborhood commercial districts;

(2) On a lot occupied by a business use: not more than 4 signs of any type having a total area of not more than 600 square feet in area. Sign area not exceeding a total of 750 square feet may be granted as a special exception by the Board of Zoning Appeals;

(3) Commercial or industrial uses located on major streets may include in total permitted sign 1 business identification pylon sign set back at least 10 feet from a street right-of-way;

(4) Signs shall be setback at least 15 feet from all interior lot lines;

(5) Roof and wall signs must meet requirements of § 153.160(F);

(6) Illuminated signs must meet requirements of § 153.160(I); and

(7) Temporary signs.

(Ord. 12-24-01, passed 12-5-2001; Am. Ord. 05-15-08, passed 6-4-2008) Penalty, see § 10.99

## ADMINISTRATION

### § 153.175 ZONING ADMINISTRATOR.

(A) This chapter shall be administered and enforced by the Zoning Administrator who shall have all powers and duties authorized by statute or ordinance for a Zoning Administrator.

(B) The duties of the Zoning Administrator shall include:

(1) Interpretation of terms and provisions of this chapter;

(2) Administration of this chapter by the issuance of permits and certificates, including the collection of authorized fees;

(3) Processing applications for appeals to the Board of Zoning Appeals from the decision of the Zoning Administrator, variances, and special exceptions;

(4) Preparation of the record for appeal to the circuit court from the decisions of the Board of Zoning Appeals;

(5) Maintenance of a current zoning map, amendments to the zoning ordinance, and all public records related to zoning and planning;

(6) Enforcement of the zoning ordinance, investigation and resolution of zoning complaints;

(7) Administrative assistance to the Board of Zoning Appeals; and

(8) Any other duties as may be authorized.

(Ord. 12-24-01, passed 12-5-2001)

## § 153.176 ZONING PERMITS.

(A) *Permits required.* No building, sign, or structure shall be erected, moved, enlarged, altered, or demolished without a zoning permit issued by the Zoning Administrator. No permit shall be issued by the Zoning Administrator except for a use which is in conformity with the provision of this chapter or for a use authorized by order of the Board of Zoning Appeals.

(B) *Fees for permits.* A fee established by regulation of County Council shall be paid for each zoning permit or certificate of zoning compliance issued by the Zoning Administrator.

(C) *Applications for permits.* Applications for zoning permits shall be accompanied by plans in duplicate drawn to scale showing the actual dimensions and shape of the lot to be used, the sizes and locations of existing structures on the lot, the location and dimensions of the proposed structure or alteration. The application shall include the other information as may be required by the Zoning Administrator to determine conformance with this chapter, including existing or proposed buildings or alterations, existing or proposed uses of buildings and land, number of families, housekeeping units, rental units, existing conditions on adjacent property. One copy of the plans shall be returned to the applicant with the signed approval or disapproval of the Zoning Administrator noted on the copy within a reasonable time.

(D) *Expiration of permits.* If the work described in a zoning permit has not begun within 6 months from the date of the permit, or within the time specified in a special exception, the permit shall expire and be void upon written notice by the Zoning Administrator.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

## § 153.177 CERTIFICATES OF ZONING COMPLIANCE.

(A) *Certificates required.* It shall be unlawful for any person to use, occupy, or permit the use or occupancy of any building or property created, erected, changed, converted, altered, or enlarged, in whole or in part, until a certificate of zoning compliance has been issued by the Zoning Administrator stating the proposed use conforms to the requirements of this chapter.

(B) *Temporary uses.* Certificates of zoning compliance may be issued and renewed by the Zoning Administrator for permitted temporary uses for the times permitted by the zoning district regulations.

(C) *Administrative variances.* A zoning permit or certificate of zoning compliance may be issued for otherwise permitted uses by the Zoning Administrator without an application for a variance to the Board of Zoning Appeals under the following conditions:

(1) A setback variance of less than 18 inches is desired:

(a) The adjoining property owner affected certifies in writing his or her agreement to the requested variance; and

(b) The adjoining property is vacant and undeveloped or there exists double the required setback between all buildings on the adjoining property and the immediately adjoining property lines to the property whose owner is requesting the variance.

(2) A minimum lot width variance of less than 3% of the required lot width is desired:

(a) The variance request is for only 1 new lot on any present lot of record;

(b) The variance request is for a platted subdivision containing not more than 2 potentially planned lots in total, 1 of which will meet the required lot width;

(c) The adjoining property owners affected certify in writing their agreement to the requested variance; and

(d) The adjoining properties are vacant or there exists double the required lot width on both adjoining properties.

(3) A minimum lot size variance of less than 5% of the required lot size is desired:

(a) The variance request is for only 1 new lot on any present lot of record;

(b) The variance request is for a platted subdivision containing not more than 2 potentially planned lots in total, all but 1 of which will meet the required lot width;

(c) The adjoining property owners affected certify in writing their agreement to the requested variance; and

(d) The adjoining properties are vacant or there exists double the required lot size on both adjoining properties.

(Ord. 12-24-01, passed 12-5-2001)

## **§ 153.178 VIOLATIONS.**

(A) *Misdemeanor; penalties.* It shall be unlawful for any person to use property, or to construct, alter, enlarge, or demolish any structure without a permit or permits required by this chapter. Conviction for violation of this chapter is punishable as a misdemeanor under the general penalty provisions of the county code.

(B) *Withholdings permits.* The Zoning Administrator shall deny a zoning permit for any use or work which fails to comply with this chapter.

The Zoning Administrator or other appropriate official shall withhold all other county permits for work which violates this chapter.

(C) *Complaints.* A written complaint specifying facts showing a violation of this chapter filed by any person shall be investigated by the Zoning Administrator. Upon determination that a violation has occurred, the Zoning Administrator shall take appropriate enforcement action authorized by this chapter.

(D) *Stop-work orders.* The Zoning Administrator is authorized to issue a stop work order pursuant to S.C. Code § 6-29-950(A) requiring work to cease until specific code violations are corrected. Failure to comply with a stop work order of the Zoning Administrator is a misdemeanor punishable under the general provisions of the county code. Issuance of a stop work may be appealed to the Board of Zoning Appeals.

(E) *Ordinance summons.* The Zoning Administrator is authorized to issue an ordinance summons pursuant to county code provisions for violations of this chapter.

(F) *Arrest warrant.* The Zoning Administrator, with concurrence of the County Attorney, is authorized to request the issuance of an arrest of warrant for violations of this chapter.

(G) *Injunction.* The Zoning Administrator shall submit a request to the County Attorney for institution of a civil action seeking an injunction prohibiting violation of this chapter when appropriate.

(Ord. 12-24-01, passed 12-5-2001) Penalty, see § 10.99

## APPEALS

### **§ 153.190 BOARD OF ZONING APPEALS.**

(A) *Board established.* A Board of Zoning Appeals is hereby established which shall consist of 7 members appointed by County Council with initial terms for districts beginning 1-1-2002 as follows: District 1 - 3 years; District 2 - 3 years; District 3 - 1 year; District 4 - 3 years; District 5 - 3 years; District 6 - 1 year; District 7 - 1 year. After the initial terms, members shall serve a 4-year staggered term to coincide with the terms of the council member making the appointment. A vacancy shall be filled for the unexpired term in the same manner as the original appointment. Members of the Board may be removed by Council for cause.

(B) *Officers.* The Board shall elect or re-elect 1 of its members as Chairperson for a term of 1 year. The Board may elect other officers as provided by its rules of procedure. The Board shall appoint a Secretary who may be an officer of the county approved by the County Administrator or a member of the Board.

(C) *Rules of procedure.* The Board shall adopt rules of procedure for the conduct of its meetings and hearings. A majority of the Board shall constitute a quorum. Meetings of the Board shall be held at the call of the Chairperson or at the times as the Board may determine. Public notice of all hearings shall be published in a newspaper of general circulation in the county and shall be posted on or adjacent to property affected, with at least 1 notice visible from each public street abutting the property. The Chairperson may administer

oaths and compel attendance of witnesses by subpoena. The Board shall keep minutes of its proceedings, showing the vote of each member of each question, or if absent or failing to vote by reason of conflict, and shall keep records of its examinations and other official actions filed in the office of the Secretary of the Board as public records.

(Ord. 12-24-01, passed 12-5-2001)

**§ 153.191 POWERS AND DUTIES OF BOARD OF ZONING APPEALS.**

The Board of zoning appeals has the following powers.

(A) *Appeal from Zoning Administrator.* Any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the Board of Zoning Appeals in writing on a form provided by the Zoning Administrator within 15 days after actual notice of the decision. An appeal stays the implementation of the decision of the Zoning Administrator unless he or she certifies to the Board that a stay would cause imminent peril to life or property. The Board may affirm or reverse, wholly or in part, or may modify the decision by a written order separately stating findings of fact and conclusion of law.

(B) *Variances.*

(1) An owner or authorized agent may appeal to the Board on a form provided by the Zoning Administrator for a variance from the requirements of the zoning ordinance when the district application of regulations would result in unnecessary hardship. A variance may be granted if the Board makes all of the following findings and conclusions in a written order:

(a) There are extraordinary and exceptional conditions pertaining to a 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 particular piece of property would effectively prohibit or unreasonably restrict utilization of the property;

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

(e) The effect of the variance would not allow the establishment of a use not otherwise permitted in the zoning district; would not extend physically a nonconforming use of the land; would not change the zoning district boundaries shown on the official zoning map.

(2) The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance. In granting a variance, the Board may attach to it the conditions regarding the location, character, or other features of the proposed building, structure or use as the Board may consider advisable to protect establish property

values in the surrounding area, or to promote the public health, safety, or general welfare. Failure to begin or complete an action for which a variance is granted within the time limit specified as a condition of the variance shall void the variance.

(C) *Special exceptions.* An owner or authorized agent may appeal to the Board on a form provided by the Zoning Administrator for a special exception for a use permitted by district regulations as a special exception after review, subject to applicable criteria. The Board shall consider the following factors in determining whether a special exception should be granted, in addition to specific criteria in district regulations:

- (1) Traffic impact;
- (2) Vehicle and pedestrian safety;
- (3) Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
- (4) Adverse impact of proposed use on aesthetic character of the area; and
- (5) Orientation and spacing of improvements of structures. The Board may prescribe appropriate conditions and safeguards to relieve or reduce adverse impact of a special exception and to protect the character of the area.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.192 APPEAL TO CIRCUIT COURT.**

A person having a substantial interest in a decision of the Board of Zoning Appeals, or an officer of the county authorized by County Council, may appeal to circuit court by petition for review on grounds that the decision is contrary to law, filed with the Clerk of Court and Secretary of the Board within 30 days after the decision of the Board is mailed. Within 30 days after receipt of the notice of filing a petition, the Zoning Administrator or Secretary of the Board, with assistance of the County Attorney, shall file with Clerk of Court a certified copy of the Board proceedings, including a transcript of evidence and findings and conclusions of the Board.

(Ord. 12-24-01, passed 12-5-2001)

#### **AMENDMENT**

#### **§ 153.205 INITIATION OF AMENDMENT.**

(A) An amendment to the zoning ordinance text or zoning map may be initiated by adopted motion of County Council, adopted motion of the planning commission, or the Zoning Administrator. An amendment of the zoning map for changing a zoning district designation of



property may be initiated by the owner of the property affected, or by an agent authorized by the owner, in writing.

(B) An identical amendment to the district designation of the same or a portion of the same property for which a rezoning has been denied shall not be initiated more often than once in each 12-month period after denial unless the Planning Commission determines either:

(1) There has been a substantial change in the character of the area; or

(2) Evidence or factors exist which were not considered in the previous deliberations which might substantially alter the basis for the Planning Commission recommendation.

(C) A zoning map amendment shall be initiated by an owner or agent on an application form provided by the Zoning Administrator, accompanied by required documents and information, and a filing fee established by resolution of County Council.

(D) A complete application for amendment must be received at least 2 weeks prior to the Planning Commission meeting in order to be considered at the meeting.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.206 MINIMUM DISTRICT SIZE.**

No amendment shall be initiated which would create a new zoning district with an area of less than 2 acres; provided, the minimum area for a PD (Planned Development) district shall be 4 acres. The minimum requirement does not apply to extension of an existing district, or addition of any commercial or industrial district to any other commercial or industrial district.

(Ord. 12-24-01, passed 12-5-2001)

#### **§ 153.207 AMENDMENT PROCEDURE.**

The following procedural steps are required for adoption of a text or map amendment; amendments shall be initiated pursuant to § 153.205.

(A) Amendment ordinance shall be prepared in written form required by County Code.

(B) Proposed amendment shall be referred to Planning Commission for review and recommendation.

(C) The Planning Commission shall not conduct a public hearing, but the property owner shall be allowed to present oral or written comments. If oral or written comments are taken, the Commission shall give other interested members of the public 10-days' notice and allow them to comment in the same fashion. Review shall include a determination of whether the proposed amendment is in conformity with the comprehensive plan. Planning Commission shall file

with County Council its report and recommendation on the proposed amendment within 30 days after receipt.

(D) Newspaper notice of public hearing before County Council shall be published at least 15 days prior to hearing. The public hearing shall be scheduled for a date after the Planning Commission recommendation is due.

(E) Notices of public hearing shall be posted on or adjacent to property to be rezoned, with 1 notice visible from each street bordering the property. Posted notices shall contain letters not less than 1 inch in height.

(F) Notice of public hearing shall be mailed to adjacent landowners and groups which have filed a written request for notices.

(G) County Council may introduce an amendment ordinance for first reading and hold a public hearing on the same date. Planning Commission recommendation shall be reviewed and considered, but it shall not be binding on County Council.

(H) County Council may adopt or reject the amendment ordinance on third reading at least 6 days after first reading. Map amendments may be adopted or rejected for all or any portion of the property; however, a zoning district designation which was not included in the public notices shall not be adopted. An amendment may be withdrawn in writing by the initiator at any time prior to final action by County Council. A withdrawn amendment is not subject to the 12-month limitation in § 8-100.

(I) All amendments shall be noted and placed in the copy of the zoning ordinance maintained by the Zoning Administrator and in the official copy of the County Code maintained by the County Clerk to Council. Map amendment shall be reflected on the Official Zoning Map.

(Ord. 12-24-01, passed 12-5-2001)

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**EXHIBIT 5****STATE OF SOUTH CAROLINA****COUNTY OF NEWBERRY**Allen L. Murray, Christy Worthy Brown, and  
Michael Adam Brown,

Plaintiffs,

v.

Newberry County, South Carolina,

Defendant.

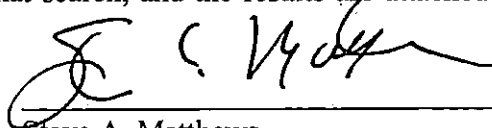
**IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL  
CIRCUIT**

C.A. No.: 2017-CP-36-00385

**AFFIDAVIT**

I, the undersigned Steve A. Matthews, do hereby state as follows:

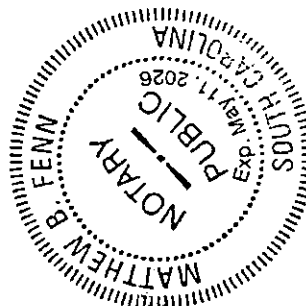
1. I am over the age of eighteen and am competent to make this Affidavit.
2. I am a practicing lawyer and have been licensed to practice and in good standing in the State of South Carolina for approximately 40 years.
3. I am a shareholder and an employee of the law firm Haynsworth Sinkler Boyd, P. A., in its Columbia, South Carolina office.
4. I did, on September 10, 2018, access the website of the Newberry County Assessor's Office (<https://www.qpublic.net/sc/newberry/>) and, using the "Real Property Search" function (<https://qpublic.schneidercorp.com/Application.aspx?AppID=868&LayerID=16446&PageTypeID=2&PageID=7247>), located real property parcels in Newberry County, South Carolina, in which an interest was owned by any one or more of the plaintiffs in this action: Allen Leroy Murray, Michael Adams Brown, and/or Christy Worthy Brown. I downloaded and preserved the results of that search, and the results are attached to this Affidavit as **Attachment A**.



Steve A. Matthews

Sworn to and subscribed before me this  
second day of March, 2021.

Matthew B. Fenn  
 Notary Public for the State of South Carolina  
 Name: Matthew B. Fenn  
 My commission expires: May 11, 2026



**ATTACHMENT A**

ELECTRONICALLY FILED - 2021 Mar 03 4:07 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600385

**Summary**

Parcel ID 742-5  
 Account # 29111  
 Millage Group 605 - County - County - (11)  
 Location Address 1232 BEAGLE RUN RD, Newberry County  
 Acres/Lots 3.000  
 Legal Description 3.2829AC +/- MH ON PROP  
 (Note: Not to be used on legal documents)  
 Neighborhood LITTLE MOUNTAIN RURAL  
 Property Usage Qualified Owner-Occupied Improved (400I)

**Owners**

MURRAY ALLEN LEROY  
 1232 BEAGLE RUN RD  
 CHAPIN SC 29036

**Valuation**

|                              | 2017       | 2016       | 2015       | 2014       |
|------------------------------|------------|------------|------------|------------|
| Market Land Value            | \$16,600   | \$16,600   | \$12,299   | \$16,600   |
| + Market Improvement Value   | \$134,200  | \$134,200  | \$134,200  | \$134,200  |
| + Market Misc Value          | \$0        | \$0        | \$0        | \$0        |
| = Total Market Value         | \$150,800  | \$150,800  | \$146,499  | \$150,800  |
| Taxable Land Value           | \$12,299   | \$12,299   | \$12,299   | \$16,600   |
| + Taxable Improvement Value  | \$134,200  | \$134,200  | \$134,200  | \$134,200  |
| + Taxable Misc Value         | \$0        | \$0        | \$0        | \$0        |
| - Ag Credit Value            | \$0        | \$0        | \$0        | \$0        |
| = Total Taxable Value        | *\$146,499 | *\$146,499 | *\$146,499 | *\$150,800 |
| Assessed Land Value          | \$492      | \$492      | \$492      | \$492      |
| + Assessed Improvement Value | \$5,368    | \$5,368    | \$5,368    | \$5,368    |
| + Assessed Misc Value        | \$0        | \$0        | \$0        | \$0        |
| = Total Assessed Value       | \$5,860    | \$5,860    | \$5,860    | \$5,860    |

\*This parcel is subject to the value cap

**Buildings**

Building ID 30131  
 Style Residential / 1  
 Gross Sq Ft 2,581  
 Finished Sq Ft 2,441  
 Stories 1 Story  
 Condition  
 Interior Walls  
 Exterior Walls  
 Year Built 0  
 Garage  
 Porch Covered Porch  
 Effective Year Built 0  
 Foundation  
 Roof Type  
 Roof Coverage  
 Flooring Type  
 Heating Type  
 Full Bathrooms 0  
 Half Bathrooms 0  
 3/4 Bathrooms 0  
 Grade A  
 Grade Description  
 Number of Fire Pl 1

| Code         | Description | Sketch Area  | Finished Area | Perimeter |
|--------------|-------------|--------------|---------------|-----------|
| FFL          | 1st Floor   | 2,441        | 2,441         | 0         |
| CPR          | Cov Porch   | 140          | 0             | 0         |
| <b>TOTAL</b> |             | <b>2,581</b> | <b>2,441</b>  | <b>0</b>  |

ROA 000851

**Land**

| Land Use        | Number of Units | Unit Type |
|-----------------|-----------------|-----------|
| 4 OO Imp (400I) | 3.00            | ACRES     |

**Sales**

| Sale Date  | Sale Price | Instrument | Instrument Number | Deed Book | Deed Page | Sale Qualification                                 | Vacant or Improved | Grantor                    | Grantee              |
|------------|------------|------------|-------------------|-----------|-----------|----------------------------------------------------|--------------------|----------------------------|----------------------|
| 3/26/2013  | \$0        | Deed Dist  |                   | 1686      | 293       | Unqualified - No Sale Validity Code Needed         | Improved           | MURRAY ALLEN LEROY &       | MURRAY ALLEN LEROY   |
| 7/18/2005  | \$5        |            |                   | 1081      | 252       | Unqualified - Sold does not match appraisal record | Improved           |                            | MURRAY ALLEN LEROY & |
| 7/18/2005  | \$5        |            |                   | 1081      | 250       | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       | MURRAY ALLEN LEROY & |
| 10/1/2003  | \$88,750   |            |                   | 908       | 11        | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       |                      |
| 6/24/1999  | \$1        |            |                   | 516       | 168       | Unqualified - Sold does not match appraisal record | Improved           | MISHAW RAYMOND R & SANDY G |                      |
| 11/19/1993 | \$900      |            |                   | 386       | 43        | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       |                      |
| 2/28/1987  | \$1        |            |                   | 261       | 326       | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       | MURRAY ALLEN LEROY & |
| 9/10/1986  | \$10       |            |                   | 253       | 17        | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       | MURRAY ALLEN LEROY & |
| 10/18/1983 | \$1        |            |                   | 203       | 239       | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       | MURRAY ALLEN LEROY & |
| 9/30/1977  | \$62,000   |            |                   | 146       | 123       | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       | MURRAY ALLEN LEROY & |
| 10/1/1974  | \$6,000    |            |                   | 121       | 128       | Qualified                                          | Improved           | MURRAY ALLEN LEROY &       | MURRAY ALLEN LEROY & |

**Photos****View Map**
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**Summary**

Parcel ID 503-36  
 Account # 19169  
 Millage Group 505 - County - County - (9)  
 Location Address 178 SHINGLE MILL RD, Newberry County  
 Acres/Lots 2.000  
 Legal Description 1.63AC 178 SHINGLE MILL RD MH ON PROP - DECAL 11290  
 (Note: Not to be used on legal documents)  
 Neighborhood HWY 34 EAST 50S  
 Property Usage Non-Qualified Residential Improved (6RI)

**Owners**

BROWN CHRISTY WORTHY  
 6983 OLD WHITMIRE HWY  
 NEWBERRY SC 29108

**Valuation**

|                              | 2017     | 2016     | 2015    | 2014     |
|------------------------------|----------|----------|---------|----------|
| Market Land Value            | \$13,300 | \$13,300 | \$6,613 | \$13,300 |
| + Market Improvement Value   | \$0      | \$0      | \$0     | \$0      |
| + Market Misc Value          | \$0      | \$0      | \$0     | \$0      |
| = Total Market Value         | \$13,300 | \$13,300 | \$6,613 | \$13,300 |
| Taxable Land Value           | \$6,613  | \$6,613  | \$6,613 | \$6,613  |
| + Taxable Improvement Value  | \$0      | \$0      | \$0     | \$0      |
| + Taxable Misc Value         | \$0      | \$0      | \$0     | \$0      |
| - Ag Credit Value            | \$0      | \$0      | \$0     | \$0      |
| = Total Taxable Value        | \$6,613  | \$6,613  | \$6,613 | \$6,613  |
| Assessed Land Value          | \$397    | \$397    | \$397   | \$397    |
| + Assessed Improvement Value | \$0      | \$0      | \$0     | \$0      |
| + Assessed Misc Value        | \$0      | \$0      | \$0     | \$0      |
| = Total Assessed Value       | \$397    | \$397    | \$397   | \$397    |

\*This parcel is subject to the value cap

**Land**

| Land Use        | Number of Units | Unit Type |
|-----------------|-----------------|-----------|
| 6 Res Imp (6RI) | 2.00            | ACRES     |

**Sales**

| Sale Date | Sale Price | Instrument | Instrument Number | Deed Book | Deed Page | Sale Qualification | Vacant or Improved | Grantor | Grantee              |
|-----------|------------|------------|-------------------|-----------|-----------|--------------------|--------------------|---------|----------------------|
| 10/9/2003 | \$5        |            |                   | 623       | 46        | Unqualified - Gift | Improved           |         | BROWN CHRISTY WORTHY |

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ROA 000853

**Summary**

Parcel ID 618-24  
 Account # 24269  
 Millage Group SOS - County - County - (9)  
 Location Address HWY 350, Newberry County  
 Acres/Lots 60.000  
 Legal Description HWY 350  
 (Note: Not to be used on legal documents)  
 Neighborhood HWY 34 EAST SOS  
 Property Usage Qualified Agricultural Vacant (4AGV)

**Owners**

BROWN MICHAEL ADAM  
 6983 OLD WHITMIRE HWY  
 NEWBERRY SC 29108

**Valuation**

|                              | 2017        | 2016        | 2015        | 2014        |
|------------------------------|-------------|-------------|-------------|-------------|
| Market Land Value            | \$174,400   | \$174,400   | \$174,392   | \$174,392   |
| + Market Improvement Value   | \$0         | \$0         | \$0         | \$0         |
| + Market Misc Value          | \$0         | \$0         | \$0         | \$0         |
| = Total Market Value         | \$174,400   | \$174,400   | \$174,392   | \$174,392   |
| Taxable Land Value           | \$174,400   | \$174,400   | \$174,392   | \$174,392   |
| + Taxable Improvement Value  | \$0         | \$0         | \$0         | \$0         |
| + Taxable Misc Value         | \$0         | \$0         | \$0         | \$0         |
| - Ag Credit Value            | (\$168,085) | (\$168,085) | (\$168,077) | (\$168,077) |
| = Total Taxable Value        | \$6,315     | \$6,315     | \$6,315     | \$6,315     |
| Assessed Land Value          | \$253       | \$252       | \$253       | \$253       |
| + Assessed Improvement Value | \$0         | \$0         | \$0         | \$0         |
| + Assessed Misc Value        | \$0         | \$0         | \$0         | \$0         |
| = Total Assessed Value       | \$253       | \$252       | \$253       | \$253       |

\*This parcel is subject to the value cap

**Land**

| Land Use        | Number of Units | Unit Type |
|-----------------|-----------------|-----------|
| 4 Ag Vac (4AGV) | 5.00            | TIMBER3   |
| 4 Ag Vac (4AGV) | 55.00           | TIMBER4   |

**Sales**

| Sale Date  | Sale Price | Instrument | Instrument Number | Deed Book | Deed Page | Sale Qualification  | Vacant or Improved | Grantor                 | Grantee            |
|------------|------------|------------|-------------------|-----------|-----------|---------------------|--------------------|-------------------------|--------------------|
| 5/12/2005  | \$113,500  |            |                   | 1055      | 291       | Unqualified - Other | Improved           |                         | BROWN MICHAEL ADAM |
| 3/23/2005  | \$5        |            |                   | 1039      | 38        | Unqualified - Gift  | Improved           | BROTHERTON JAMES R ETAL |                    |
| 12/31/1996 | \$5        |            |                   | 450       | 208       | Unqualified - Gift  | Improved           | BROWN BARBARA DAWKINS & |                    |

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**Summary**

Parcel ID 383-2  
 Account # 13020  
 Millage Group 4OS - Whitmire Out - Whitmire Outside - (7)  
 Location Address 6983 OLD WHITMIRE HWY, Newberry County  
 Acres/Lots 8.000  
 Legal Description 8.41AC PLAT BK C216 PG 6 (8.41AC)  
 (Note: Not to be used on legal documents)  
 Neighborhood MAYBINTON AREA  
 Property Usage Qualified Owner-Occupied Improved (400I)

**Owners**

BROWN CHRISTY W  
 6983 OLD WHITMIRE HWY  
 NEWBERRY SC 29108

BROWN MICHAEL ADAM &  
 6983 OLD WHITMIRE HWY  
 NEWBERRY SC 29108

**Valuation**

|                              | 2017       | 2016       | 2015       | 2014       |
|------------------------------|------------|------------|------------|------------|
| Market Land Value            | \$30,900   | \$30,900   | \$30,936   | \$30,936   |
| + Market Improvement Value   | \$108,100  | \$108,100  | \$108,100  | \$108,100  |
| + Market Misc Value          | \$800      | \$800      | \$800      | \$800      |
| = Total Market Value         | \$139,800  | \$139,800  | \$139,836  | \$139,836  |
| Taxable Land Value           | \$30,900   | \$30,900   | \$30,936   | \$30,936   |
| + Taxable Improvement Value  | \$108,100  | \$108,100  | \$108,100  | \$108,100  |
| + Taxable Misc Value         | \$800      | \$800      | \$800      | \$800      |
| - Ag Credit Value            | (\$14,370) | (\$14,370) | (\$14,406) | (\$14,406) |
| = Total Taxable Value        | *\$125,430 | *\$125,430 | *\$125,430 | *\$125,430 |
| Assessed Land Value          | \$811      | \$811      | \$811      | \$811      |
| + Assessed Improvement Value | \$4,324    | \$4,324    | \$4,324    | \$4,324    |
| + Assessed Misc Value        | \$32       | \$32       | \$32       | \$32       |
| = Total Assessed Value       | \$5,167    | \$5,167    | \$5,167    | \$5,167    |

\*This parcel is subject to the value cap

**Buildings**

Building ID 13616  
 Style Residential / 1  
 Gross Sq Ft 2,176  
 Finished Sq Ft 1,696  
 Stories 1 Story  
 Condition Average  
 Interior Walls  
 Exterior Walls  
 Year Built 0  
 Garage  
 Porch Covered Porch  
 Effective Year Built 0  
 Foundation  
 Roof Type  
 Roof Coverage  
 Flooring Type  
 Heating Type  
 Full Bathrooms 0  
 Half Bathrooms 0  
 3/4 Bathrooms 0  
 Grade F+  
 Grade Description  
 Number of Fire Pl 1

| Code | Description | Sketch Area | Finished Area | Perimeter |
|------|-------------|-------------|---------------|-----------|
| FFL  | 1st Floor   | 1,696       | 1,696         | 190       |
| CPR  | Cov Porch   | 128         | 0             | 48        |
| GAR  | Garage Atch | 352         | 0             | 76        |

ROA 000855

| Code  | Description | Sketch Area | Finished Area | Perimeter |
|-------|-------------|-------------|---------------|-----------|
| TOTAL |             | 2,176       | 1,696         | 314       |

**Yard Items**

| Description | Year Built | Out Building Type | Size    | Quantity | Units  | Grade |
|-------------|------------|-------------------|---------|----------|--------|-------|
| Cpt No CC   | 2005       | Cpt No CC (157)   | 21 x 24 | 1        | 504 SF |       |

**Land**

| Land Use        | Number of Units | Unit Type |
|-----------------|-----------------|-----------|
| 4 OO Imp (4OOI) | 1.00            | ACRES     |
| 6 Res Imp (6RI) | 1.00            | ACRES     |
| 4 Ag Imp (4AGI) | 6.00            | CROP2     |

**Sales**

| Sale Date | Sale Price | Instrument | Instrument Number | Deed Book | Deed Page | Sale Qualification                         | Vacant or Improved | Grantor               | Grantee               |
|-----------|------------|------------|-------------------|-----------|-----------|--------------------------------------------|--------------------|-----------------------|-----------------------|
| 5/1/2009  | \$3,400    | Split      |                   | 1428      | 212       | Unqualified - No Sale Validity Code Needed | Improved           | BROWN JAMES A JR ETAL | BROWN JAMES A JR ETAL |
| 5/1/2009  | \$120,000  | Joint      |                   | 1428      | 215       | Unqualified - Family Sale ATI              | Improved           | BROWN JAMES A JR ETAL | BROWN MICHAEL ADAM &  |
| 6/13/2008 | \$5        | Split      |                   | 1365      | 170       | Unqualified - No Sale Validity Code Needed | Improved           | BROWN JAMES A JR ETAL | BROWN JAMES A JR ETAL |
| 6/13/2008 | \$0        | Split      |                   | 1365      | 183       | Unqualified - No Sale Validity Code Needed | Improved           | BROWN JAMES A JR ETAL | BROWN JAMES A JR ETAL |
| 6/13/2008 | \$0        | Split      |                   | 1365      | 190       | Unqualified - No Sale Validity Code Needed | Improved           | BROWN JAMES A JR ETAL | BROWN JAMES A JR ETAL |
| 6/13/2008 | \$0        | Split      |                   | 1365      | 176       | Unqualified - No Sale Validity Code Needed | Improved           | BROWN JAMES A JR ETAL | BROWN JAMES A JR ETAL |
| 7/20/2007 | \$0        | Deed Dist  |                   | 1283      | 156       | Qualified                                  | Improved           | BROWN JAMES A JR ETAL | BROWN JAMES A JR ETAL |
| 2/15/2007 | \$0        | Split      |                   | 1235      | 23        | Qualified                                  | Improved           |                       | BROWN JAMES A JR ETAL |
| 2/2/2007  | \$5        | Split      |                   | 1235      | 20        | Qualified                                  | Improved           | BROWN CAROL ELAINE    |                       |
| 8/2/2000  | \$5        |            |                   | 542       | 256       | Unqualified - Gift                         | Improved           | BROWN JAMES ALVAN JR  | BUNN NORMAN W         |

**Photos****View Map**
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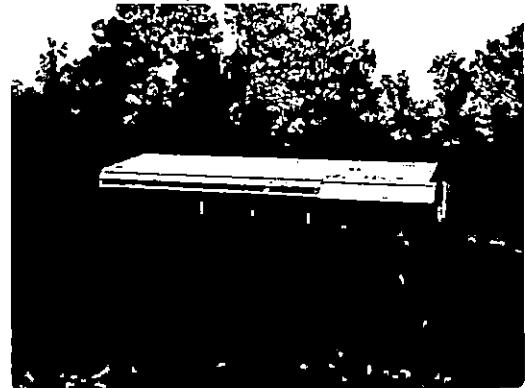
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ROA 000856

**Summary**

Parcel ID 383-6  
 Account # 13025  
 Millage Group 40S - Whitmire Out - Whitmire Outside - (7)  
 Location Address 7061 OLD WHITMIRE HWY, Newberry County  
 Acres/Lots 60.070  
 Legal Description 60.07AC / TR 3 PLAT BK C199 PG 7 / 60.07AC, TR 3  
 (Note: Not to be used on legal documents)  
 Neighborhood MAYBINTON AREA  
 Property Usage Qualified Owner-Occupied Improved (40OI)

**Owners**

BROWN JAMES A JR LIFE EST  
 P O DRAWER 1010  
 NEWBERRY SC 29108

BROWN MICHAEL ADAM  
 00000

**Valuation**

|                              | 2017        | 2016        | 2015        | 2014        |
|------------------------------|-------------|-------------|-------------|-------------|
| Market Land Value            | \$136,200   | \$136,200   | \$127,432   | \$136,278   |
| + Market Improvement Value   | \$0         | \$0         | (\$7,137)   | \$0         |
| + Market Misc Value          | \$14,700    | \$14,700    | \$12,000    | \$12,000    |
| = Total Market Value         | \$150,900   | \$150,900   | \$132,295   | \$148,278   |
| Taxable Land Value           | \$16,059    | \$12,811    | \$127,432   | \$127,432   |
| + Taxable Improvement Value  | \$0         | \$0         | (\$7,137)   | \$0         |
| + Taxable Misc Value         | \$11,299    | \$12,566    | \$12,000    | \$4,863     |
| - Ag Credit Value            | (\$121,214) | (\$121,214) | (\$112,446) | (\$121,292) |
| = Total Taxable Value        | \$27,358    | \$25,377    | \$19,849    | \$19,849    |
| Assessed Land Value          | \$642       | \$512       | \$599       | \$599       |
| + Assessed Improvement Value | \$0         | \$0         | \$0         | \$0         |
| + Assessed Misc Value        | \$452       | \$503       | \$195       | \$195       |
| = Total Assessed Value       | \$1,094     | \$1,015     | \$794       | \$794       |

\*This parcel is subject to the value cap

**Buildings**

Building ID 13622  
 Style  
 Gross Sq Ft  
 Finished Sq Ft  
 Stories  
 Condition Average  
 Interior Walls  
 Exterior Walls  
 Year Built 0  
 Garage  
 Porch  
 Effective Year Built 0  
 Foundation  
 Roof Type  
 Roof Coverage  
 Flooring Type  
 Heating Type  
 Full Bathrooms 0  
 Half Bathrooms 0  
 3/4 Bathrooms 0  
 Grade  
 Grade Description  
 Number of Fire Pl 0

| Code  | Description | Sketch Area | Finished Area | Perimeter |
|-------|-------------|-------------|---------------|-----------|
| TOTAL |             |             |               |           |

**Yard Items**

ROA 000857

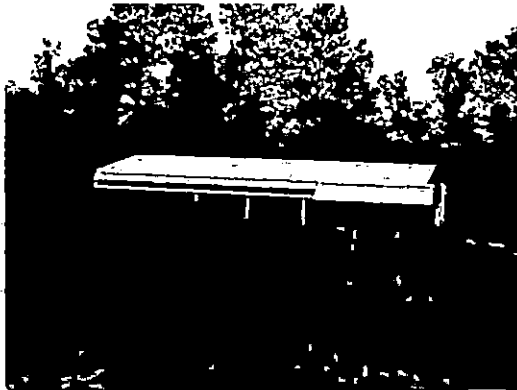
| Description    | Year Built | Out Building Type    | Size    | Quantity | Units   | Grade |
|----------------|------------|----------------------|---------|----------|---------|-------|
| Carport/Fair   | 0          | Carport/Fair (154)   | 29 x 21 | 1        | 609 SF  |       |
| Cpt No CC      | 0          | Cpt No CC (157)      | 20 x 20 | 1        | 400 SF  |       |
| Frame Shed     | 0          | Frame Shed (2)       | 20 x 10 | 1        | 200 SF  |       |
| P/S Open/Poor  | 0          | P/S Open/Poor (147)  | 57 x 32 | 1        | 1824 SF |       |
| P/S Open/Poor  | 0          | P/S Open/Poor (147)  | 24 x 24 | 1        | 576 SF  |       |
| Pole Bldg/Poor | 0          | Pole Bldg/Poor (137) | 28 x 25 | 1        | 700 SF  |       |
| Lean To        | 2010       | attached             | 21 x 10 | 1        | 210 SF  |       |
| Cpt No CC      | 2010       | Cpt No CC (157)      | 21 x 22 | 1        | 462 SF  |       |
| Cpt No CC      | 2012       | Cpt No CC (157)      | 21 x 18 | 1        | 378 SF  |       |
| Cpt No CC      | 2012       | Cpt No CC (157)      | 21 x 20 | 1        | 420 SF  |       |
| Cpt No CC      | 2015       | Cpt No CC (157)      | 31 x 18 | 0        | 558 SF  |       |
| Cpt No CC      | 2015       | Cpt No CC (157)      | 21 x 18 | 0        | 378 SF  |       |
| Cpt No CC      | 2015       | Cpt No CC (157)      | 21 x 54 | 0        | 1134 SF |       |
| Crpt/Pole      | 2017       | Crpt/Pole (104)      | 21 x 18 | 1        | 378 SF  |       |
| Crpt/Pole      | 2017       | Crpt/Pole (104)      | 21 x 18 | 1        | 378 SF  |       |

**Land**

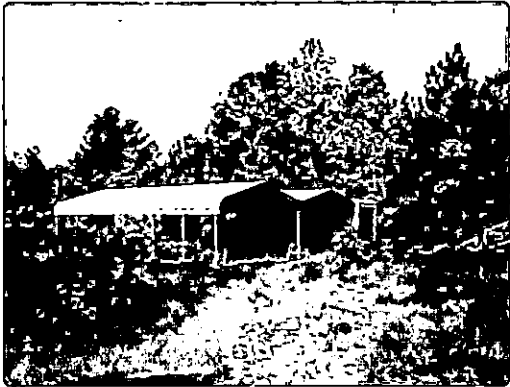
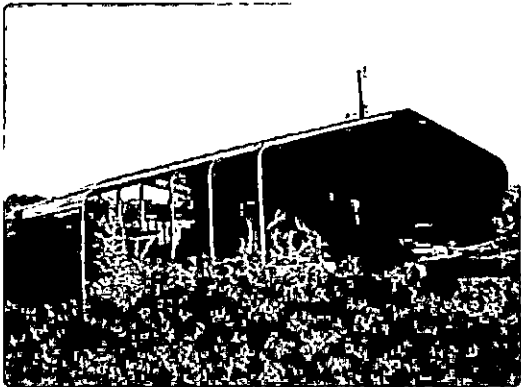
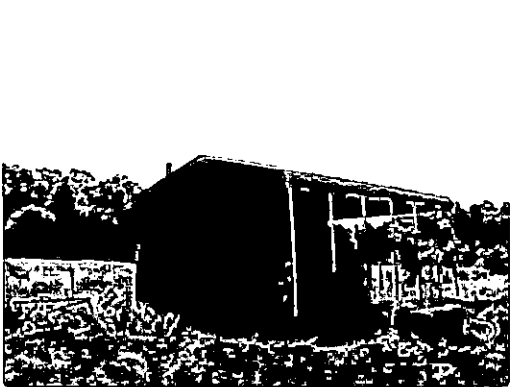
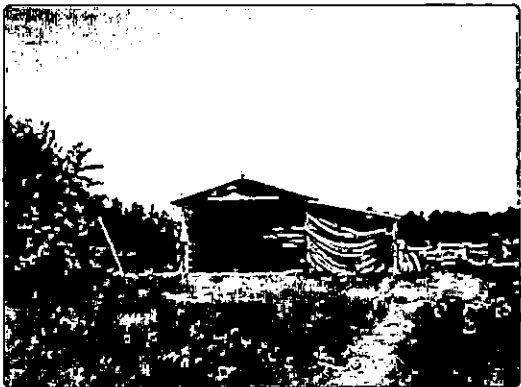
| Land Use        | Number of Units | Unit Type |
|-----------------|-----------------|-----------|
| 4 OO Imp (4OOI) | 1.00            | ACRES     |
| 4 Ag Imp (4AGI) | 11.07           | CROP3     |
| 4 Ag Imp (4AGI) | 13.00           | CROP6     |
| 4 Ag Imp (4AGI) | 6.00            | TIMBER4   |
| 4 Ag Imp (4AGI) | 3.00            | CROP2     |
| 4 Ag Imp (4AGI) | 2.00            | TIMBER2   |
| 4 Ag Imp (4AGI) | 24.00           | TIMBER3   |

**Sales**

| Sale Date | Sale Price | Instrument  | Instrument Number | Deed Book | Deed Page | Sale Qualification                                     | Vacant or Improved | Grantor               | Grantee                   |
|-----------|------------|-------------|-------------------|-----------|-----------|--------------------------------------------------------|--------------------|-----------------------|---------------------------|
| 6/18/2008 | \$5        | Life Estate |                   | 1366      | 297       | Unqualified - Gift                                     | Improved           | BROWN JAMES A JR      | BROWN JAMES A JR LIFE EST |
| 6/13/2008 | \$0        | Split       |                   | 1365      | 183       | Unqualified - Sold does not Match appraisal record ATI | Improved           | BROWN JAMES A JR ETAL | BROWN JAMES A JR ETAL     |
| 2/2/2007  | \$5        | Split       |                   | 1235      | 33        | Unqualified - Sold does not Match appraisal record ATI | Improved           | BROWN CAROL ELAINE    | BUNN NORMAN W             |
| 8/2/2000  | \$5        |             |                   | 542       | 256       | Unqualified - Gift                                     | Improved           | BROWN JAMES ALVAN JR  | BUNN NORMAN W             |

**Photos**

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STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Allan Murray; Christy Worthy Brown, and )  
Michael Adam Brown, )

C.A. No.: 2017-CP-36-00385

Plaintiffs, )

vs. )

**Plaintiffs' Memorandum In Opposition  
To Defendant's Motion To Dismiss**

Newberry County, South Carolina, )

Defendant. )

For the reasons stated below, Plaintiffs, Allan Murray, Christy Worthy Brown, and Michael Adam Brown, hereby ask this court to deny Defendant's motion to dismiss because when viewed in the light most favorable to the Plaintiffs, there exists allegations sufficient to state a cause of action under South Carolina law.

### **BACKGROUND**

This case arises out of a county ordinance passed by the county of Newberry which restricts who can house workers on their property in recreational vehicles. The ordinance was designed to restrict the ability to house temporary workers, which at the time would be working at the SCANA/SCE&G power plants. The ordinance does not apply to individuals who used a camper or recreational vehicle to stay on property when they were not temporary workers. Plaintiffs all own land in Newberry County which they use and planned to use by having temporary workers and others pay to keep their camper or other recreational vehicle on their property.

The Defendant has told the Plaintiffs to not use their land in this manner as it violates the county ordinance which forbids temporary workers from using recreational vehicles in Newberry County in the same way that any citizen of Newberry County could use them. In essence the county

has passed an ordinance which discriminates against one class of people based solely on their occupation. If an individual wanted to use the property for recreation or hunting there is no limit on the amount of people who may stay on the property. This ordinance was passed solely to discriminate against a particular class of people, mainly temporary workers in Newberry County, South Carolina.

Defendant answered Plaintiffs' lawsuit with a motion for a more definite statement and then filed a motion to dismiss in which Defendant offered a litany of alleged deficiencies with Plaintiffs' complaint, which Defendant believed entitled it to be awarded a motion to dismiss Plaintiff's complaint. Defendant also asked for a dismissal pursuant to rule 41(b).

### **ARGUMENT**

#### **1. PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO FORM A CAUSE OF ACTION; THEREFORE, THE COURT SHOULD DENY DEFENDANT'S MOTION TO DISMISS**

A motion to dismiss should only be granted when the Complaint viewed in the light most favorable to the Plaintiff fails to state any valid claim for relief. *See Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). And a Court must deny a motion to dismiss when the "facts alleged and inferences reasonably deducible therefrom" entitle plaintiff to relief under any theory. *Id.* at 5, 522 S.E.2d at 139 (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). Although South Carolina has retained code pleading the "technical, restrictive or outmoded requirements of Code Pleading are not necessarily required." *Lightsey, Jr. & Flanagan* at 93-94. Furthermore, Rule 8(f), SCRCP, states that all pleadings are to be construed to do substantial justice to all parties.

In the instant case, the Defendant has repeatedly stated that Plaintiff's Complaint is deficient for a myriad of reasons; however, none of those alleged deficiencies causes Plaintiff's



Complaint to fail to state of cause of action which entitles the Plaintiff to relief under any theory. For example, Defendant has asked for the tax id numbers for parcels of land, the zoning classification of the property, the permitted uses of the property, a description of enforcement actions etc. These requests are proper discovery requests, yet Defendant has said that they do not need discovery, instead Defendant would like to Plaintiffs to include all this information in their complaint, which is not required under South Carolina law.

Instead, the court should merely asks itself if everything the Plaintiff has said is true, does the Plaintiff have a cause of action. The answer to that questions is yes. Plaintiff has alleged that they own property which has been deprived of its use via a county ordinance which discriminates between different classes of people without any rational basis. That constitutes a cause of action under South Carolina law. Plaintiff has alleged the following facts: 1) the own property in Newberry County; 2) they use and plan to use that property to house temporary workers in recreational vehicles; 3) The County passed an ordinance restricting the number of temporary workers who may lease these vehicles when the County does not restrict how many non-temporary workers may lease these vehicles; 4) The County has selectively enforced this ordinance; 5) The County had made representations through its zoning of property that the Plaintiffs relied upon.

Those are all facts that have been alleged. Defendant would prefer to bypass discovery and simply include all information it could ever want in the Plaintiff's complaint. However, Plaintiffs have complied with the pleading rules under South Carolina law and have alleged facts when viewed in the light most favorable to them to constitute a cause of action.

In addition, as stated before, the complaint should be liberally construed to do justice to the parties. Defendant would like the Complaint to be strictly construed. Instead, the Complaint is required to be liberally construed to do justice to the parties. Here, the Plaintiffs' have been the

victim of an unconstitutional ordinance which has attempted to take away their livelihood. In order to do justice, the Court should deny Defendant's motion to dismiss.

For the reasons stated above, Plaintiff's Complaint alleges facts sufficient to constitute a cause of action.

**2. PLAINTIFFS HAVE COMPLIED WITH THE COURT'S ORDER TO AMEND ITS COMPLAINT, AND THEREFORE, THE PLAINTIFF'S COMPLAINT SHOULD NOT BE DISMISSED UNDER RULE 41(b)**

Defendant has argued in their motion to dismiss that they are entitled to a dismissal under rule 41(b) of the South Carolina Rules of Civil Procedure. Defendant is correct that rule 41(b) of the South Carolina Rules of Civil Procedure allows for the dismissal of an action when a party does not comply with the Court's orders. However, that section is inapplicable to this case. First, a severe sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights. *See Orlando v. Boyd*, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996); *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 108–09, 410 S.E.2d 537, 541–42 (1991); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198–99, 511 S.E.2d 716, 719 (Ct.App.1999).

The dismissal of an action is the most severe sanction in the Court's arsenal, and it should not be thrown about lightly. Here, the Defendant states that the Court should dismiss Plaintiffs' case because, in their opinion, they have not provided a complaint which satisfies the Defendant. However, Plaintiffs' Complaint complies with South Carolina law and alleges facts which constitute causes of action under South Carolina Law.

Defendant supplemented its motion to dismiss on December 21, 2020 again asking for the Court to dismiss the case pursuant to rule 41(b) because the Plaintiff had failed to timely deliver a

proposed order to the Court. Once again, the sanction of complete dismissal is the most severe sanction in the Court's quiver and it should not be used lightly. Here, the Plaintiffs did not intend to not comply with the Court in any way and the Defendant was not prejudiced in any way. Instead, the Defendant wishes to simply have the case dismissed instead of having to proceed on the merits of the action.

Once again, the Complaint alleges facts sufficient to assert a cause of action under South Carolina law, and if the Defendant would like more information, they are more than able to send discovery requests.

### **CONCLUSION**

The Court should deny Defendant's motion to dismiss because when viewed in the light most favorable to the Plaintiffs, the Plaintiffs' Complaint alleges facts sufficient to assert a cause of action, and the failure to timely submit a proposed order should not warrant an outright dismissal of a cause of action.

Respectfully Submitted,

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore, SC Bar No. 4063

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ATTORNEY FOR THE PLAINTIFFS

West Columbia, South Carolina  
March 3, 2021

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Allen L. Murray, Christy Worthy Brown, )  
Michael Adam Brown, )

C.A. No.: 2017-CP-36-00385

Plaintiffs, )

vs. )

**NOTICE OF MOTION  
FOR RECONSIDERATION**

Newberry County, South Carolina, )

Defendant. )

TO: STEVE A. MATTHEWS, ESQUIRE, and A.J. TOTHACER, JR., ESQUIRE,  
ATTORNEYS FOR THE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof or as soon thereafter as counsel can be heard, the undersigned, as counsel for the Plaintiffs, will move before the Court for reconsideration of its Order Granting Defendant's Motion for Summary Judgment and Dismissal which was served on Plaintiffs' counsel January 27, 2022.

The grounds for this Motion are all grounds previously argued.

MOORE BRADLEY MYERS, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore, SC Bar No. 4063  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171  
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina  
February 4, 2022

1 State of South Carolina )  
2 County of Newberry ) Court of Common Pleas  
3 2017-CP-36-00385  
4  
5 Allan L. Murray, et al, )  
6 vs. ) Transcript of Record  
7 Newberry County, )  
8 South Carolina )  
9 Defendant )

January 15, 2021  
Virtual, Newberry, South Carolina

B E F O R E:

Honorable Frank R. Addy, Jr., Judge

A P P E A R A N C E S:

A. Jahue Moore, Esq.  
Samuel M. Price, Jr., Esq.  
Attorneys for the Plaintiffs

Steve A. Matthews, Esq.  
A.J. Tothacer, Jr., Esq.  
Attorneys for the Defendant

Joy E. Holston  
Official Court Reporter

1           THE COURT: We are addressing, I believe, case number  
2 17-CP-36-385. Allan Murray versus Newberry County et al;  
3 or Allan Murray et al versus Newberry County et al. And  
4 this is involving an ordinance, the suit is involving an  
5 ordinance. I think that I have touched this once or twice  
6 some years ago. It comes back to mind but my  
7 understanding is that what we are addressing today, if I  
8 am not mistaken, is basically the Defendant's motion to  
9 dismiss. Mr. Matthews, since you are the moving party I  
10 will be happy to go ahead and hear from you, sir.

11           MR. MATTHEWS: Thank you, Your Honor. If I could, on  
12 a couple of things. I have seen all the official notice  
13 and also you just mentioned versus Newberry County et al,  
14 actually Newberry County is the only Defendant here.  
15 There are two Plaintiffs. One is Allan Murray, the other  
16 is Christy Brown. And that will be why this sounds  
17 familiar to Your Honor. A matter came up before you twice  
18 involving Christy Brown and this zoning ordinance. That  
19 was not this case however. That was a situation in which  
20 Ms. Brown had sought special exemptions and variances from  
21 the zoning ordinance for her property. The Board of  
22 Zoning Appeals in Newberry County had denied that at two  
23 appeals. The administrative action came up to you, there  
24 has been confusion at the Board as to how they were to  
25 proceed. And eventually, Your Honor, you gave them a set

1 of specific questions that they would have to go back and  
2 answer and you gave them the option of doing a De Novo  
3 hearing or operating on the record. They took the action  
4 of doing a De Novo hearing. They admitted evidence, they  
5 took it under consideration, they issued a rather lengthy  
6 opinion answering the questions that you had put forward.  
7 That was then appealed and it went up before Judge McLeod  
8 in December of 2019. Judge McLeod affirmed the decision  
9 below and that was not appealed. So that case is now  
10 over. The administrative request for exception and  
11 variances was concluded at that point. This is a  
12 different action. This is an actual complaint, it is not  
13 an appeal, a challenge to the zoning ordinance and to the  
14 actions of the County with respect to the zoning  
15 ordinance. In a couple of places that resolution of Ms.  
16 Brown's case will have some implication for the motions  
17 that are operating now. And let me just give you kind of  
18 a running background of this case, to put the motions  
19 under perspective. They are actually, it is actually more  
20 than just one motion. There are several of them that have  
21 been filed over time. And we can figure out how the best  
22 way to deal with those is. But this case was originally  
23 filed in July of 2017 as a challenge to the zoning  
24 ordinance. The County was first served in November of  
25 2017 and answered in November or December of 2017.

1 Without approaching four years after it was first filed,  
2 but we still don't have a complaint that complies with the  
3 requirement that the Plaintiff must allege facts and not  
4 merely legal conclusions. In the County's first answer to  
5 the complaint in December of 2017, the County noted that  
6 there were deficiencies in the complaint and asked for a  
7 more definite statement. But nothing was forthcoming, the  
8 Plaintiff did nothing there. January of 2018 the  
9 Plaintiff set out the standard six interrogatories and the  
10 Defendant responded; Defendant, Newberry County, responded  
11 as best as it was able. But said, look, we really can't  
12 respond adequately to this because we can't figure out the  
13 complaint. We don't know what you are alleging here. But  
14 the Plaintiff did not try to clarify the discovery request  
15 or to take any further action. The Plaintiff did notice  
16 the deposition of the County Administrator in the Spring  
17 of 2018. But a couple of days before that was to be held  
18 the Plaintiff canceled that, said that it would be  
19 rescheduled but then there was never any effort to try to  
20 reschedule that. So finally in order to try to prompt  
21 some action and get a complaint that we could deal with  
22 the County, in January of 2019, moved for a more definite  
23 statement. That motion also included three other motions  
24 on different pieces of what we understood the complaint to  
25 be. And those three are still outstanding, the motion to



1 make more definite and certain was actually decided. That  
2 was decided by Judge McLeod in December of 2019, at the  
3 same time he heard that administrative appeal. And he  
4 granted the motion to make more definite and certain.  
5 Now, when we asked for that motion to make more definite  
6 and certain we could have asked for a dismissal at that  
7 point. Under the Paradis case which is cited in the  
8 memorandum that I believe you would have, under that case  
9 the Defendant is entitled to receive a complaint that is  
10 not merely legal conclusions but states particular facts.  
11 We didn't get that. But rather than asking for dismissal  
12 we just ask for a more definite statement so we know what  
13 we are dealing with. And eventually at the end of 2019 we  
14 got that. Judge McLeod ordered that the Plaintiffs were  
15 to make a more definite complaint by February the 1st of  
16 2020. And that discovery would then be completed by May  
17 the 1st of 2020. Some of the reasons that were talked  
18 about at that hearing before Judge McLeod as to why we  
19 needed a more definite statement, obviously just the basic  
20 rule under Paradis. But also it was important so that we  
21 could figure out a discovery schedule. We didn't know  
22 what to ask about until we knew what the complaint was.  
23 Another one was, that one of the allegations was a  
24 takings. And the Court, Justice Kittredge, when he did  
25 the Dunes West decision said that, look, a Court in a

1 takings case has to know what piece of property we are  
2 talking about. And one of the problems with the complaint  
3 is, it never identified the property owned by Mr. Murray  
4 or the property owned by Ms. Brown, that they were talking  
5 about. So we didn't even know what property was at issue  
6 at that point. And then finally we needed to know, in  
7 order to figure out whether or not certain defenses were  
8 available. There was a general allegation that some  
9 procedures had been violated but no indication of what  
10 they are. Well, under 6-29-720, I think it is, 760, I am  
11 sorry, 6-29-760, there is a statute of limitations that if  
12 you are challenging the procedures under which a zoning  
13 ordinance was adopted or the notice provisions then you  
14 only have a 60 day time period in order to bring that. And  
15 that was affirmed on a summary judgment motion in the  
16 Quail Hill case by the Court of Appeals by Chief Judge  
17 Hern before she went on the Supreme Court. So we didn't  
18 know what procedures were being talked about. Was it some  
19 constitutionally required procedure which wouldn't be  
20 subject to a statute of limitations or was it an internal  
21 procedure that was being violated. We just didn't know  
22 what sort of defenses we could raise on that issue. So  
23 those all came up and Judge McLeod granted us the motion  
24 to make more definite and certain. Well February the 1st  
25 came and went and we received no, by the way, in the

1 meantime, after Judge McLeod issued that order Judge  
2 Griffith had asked for a status report from all parties, I  
3 think, on all cases that were pending. And we submitted a  
4 status report, we noted in the status report the February  
5 the 1st deadline. That was served on all parties  
6 including the Plaintiffs. And so both the order itself,  
7 which was electronically served and our status report  
8 which was electronically served, both had that date.  
9 February the 1st came and went and nothing happened. We  
10 waited a while longer, nothing happened. There was, so  
11 finally toward the end of March of 2020 we filed a motion  
12 to dismiss for failure to comply with the Court order.  
13 And nothing happened. We then got a hearing in, I  
14 believe, it was September, at the end of September of 2020  
15 before Judge McIntosh and outlined this same history. And  
16 Judge McIntosh said look, and Mr. Moore was there at the  
17 hearing and explained that he had not received the status  
18 report or the order. So Judge McIntosh said, look, I am  
19 not going to kick the case out. I am going to give you  
20 more time to file an amended complaint, more time to  
21 comply with the order. But I am going to award attorneys  
22 fees for this motion, which he did and which have been  
23 paid. So that part is dealt with. And within a few days  
24 we received a second amended complaint in this matter.  
25 But the problem is, the second amended complaint still

1 doesn't address the specifics and it still is just a group  
2 of allegations. We had in our initial motion, for to make  
3 more definite and certain, put out 18 specific points that  
4 were missing. And those are still not filled in, we don't  
5 know what procedures are alleged to have been violated.  
6 We don't know what parcels of property are involved here  
7 that they think are not being allowed to be used properly.  
8 We don't know what the offending provisions of the zoning  
9 ordinance are, that they say are arbitrary or  
10 unreasonable. With regard to estoppel, we don't know who  
11 made any estopping statements, we don't know what the  
12 content of the estopping statements were. There is just  
13 an allegation that the County, in it's official capacity,  
14 made various representations. That is all we have got in  
15 the second amended complaint. So at that point we filed a  
16 motion to dismiss for two reasons. One was under  
17 12(b)(6), under Paradis, because we haven't been given a  
18 complaint, it has facts rather than legal conclusions.  
19 And then under 41(b), for failure to comply with the  
20 Court's order to file a proper amended complaint. We  
21 subsequently supplemented that second part of it. Judge  
22 McIntosh, in his Form 4 order had directed Plaintiffs  
23 Counsel to prepare a formal order. That was again, I  
24 think on October the 5th was his Form 4 order, that  
25 directed Plaintiffs Counsel to prepare a formal order

1 that, that still has not been done. And that is another  
2 direction of the Court that hasn't been complied with. So  
3 at that point we sort of threw up our hands and said, this  
4 has gone on long enough, it has taken up enough of the  
5 County's time and resources and tax payer's money and we  
6 need to get through with that. So the motions that are  
7 currently before the Court are the three still outstanding  
8 from originally. One of which was, we had asked for  
9 summary judgment on estoppel because under the Quail Hill  
10 case there is no estoppel in a zoning matter against  
11 County officials and Quail Hill itself was a summary  
12 judgment. Second, on the ordinance of validity, we had  
13 asked for summary judgment on the faces of the Peterson  
14 Outdoor Advertising case, in which case there was a zoning  
15 ordinance and permits had been denied but the Court said  
16 that these ordinances, zoning type ordinances are within  
17 the valid power of local Governments in South Carolina and  
18 that those were valid. And then we also asked for one of  
19 two alternate forms of relief with regard to the takings  
20 inverse condemnation aspect of the complaint. And the two  
21 alternate forms of relief were these. One was, we asked  
22 for summary judgment on it based on the Dunes versus West,  
23 Dunes West Golf Club versus Town of Mt. Pleasant in which  
24 Justice Kittredge had said, again on a summary judgment  
25 motion, that the zoning ordinance did not support a

1 takings clause or if we couldn't get the summary judgment  
2 we asked for a dismissal without prejudice for this  
3 reason. In Moore versus Sumter County Council, it was  
4 held that in order to seek to challenge the  
5 constitutionality of the zoning as a takings you had to  
6 first exhaust your administrative remedies. And so we ask  
7 if we couldn't get summary judgment on the inverse  
8 condemnation, we ask for a dismissal without prejudice  
9 because they had failed to exhaust administrative  
10 remedies. Now, that's where that earlier case you dealt  
11 with that comes into play. At the time we made that  
12 motion in 2019, January of 2019, Ms. Brown had not  
13 exhausted her administrative remedies. She now has, so  
14 she is beyond that point and that part of that motion  
15 would no longer apply to Ms. Brown. It still applies in  
16 full to Mr. Murray, who has never sought any  
17 administrative relief from how the zoning ordinance might  
18 apply to him. So those three pieces, estoppel, validity  
19 and inverse condemnation from that original motion in  
20 January of 2019. And then the 12(b)(6) inadequate  
21 complaint and the 41(b) failure to comply with Court  
22 orders from more recent. Those are the five pieces that  
23 are still out there that are up-to-date. I will be happy  
24 to go into the legal aspect. I have tried to touch on the  
25 legal aspect supporting us on each one of those. I will

1 be happy to answer any questions or go into any more  
2 detail.

3 THE COURT: Okay. At this point let me, let Mr.  
4 Moore respond to kind of where we are. And while Mr.  
5 Matthews was talking, Mr. Moore, a very practical question  
6 popped into my head. My understanding years ago when I  
7 touched on Ms. Brown's case, my understanding was that  
8 this ordinance was essentially directed or focused at the  
9 nuclear station that was being constructed up in Fairfield  
10 County. And the County Council of Newberry had issues  
11 with the transient nature of some of the work force that  
12 would come in for a period of time, rent some of these  
13 trailers, reside there while they work on the project and  
14 then move on. As a practical matter, I have to think that  
15 with the nuclear power plant not getting built now and  
16 everything that is going on with that, that perhaps demand  
17 for temporary housing has plummeted in Newberry County and  
18 Fairfield County and perhaps the profitability of  
19 continuing to rent to these folks. As a practical matter,  
20 what I am asking, are the Plaintiffs really seriously  
21 looking at making any kind of money at this point and time  
22 on what they are looking to do?

23 MR. MOORE: Yes, sir. And if I could point out a  
24 logistical issue. If I could ask the Court for, I have  
25 got a mediation downtown that starts at 10:00 o'clock.

1 And I had asked the Clerk, can y'all get me out of here in  
2 time for me to be able to make my mediation. And they  
3 said, yes. I really do -- I have got a task of thousands  
4 waiting for me over in Columbia so any help I can get.  
5 But, yes sir, the answer to your question is, yes. The  
6 case is very much viable and the case is still very much  
7 alive. We were concerned about the amount of time it  
8 might take to argue and I asked yesterday or the day  
9 before, what is going to be argued. And I was told  
10 basically it was a motion to dismiss. But I can respond  
11 very, very briefly. If we look at the complaint, South  
12 Carolina rules, as I was always taught basically say that  
13 what is suppose to be alleged are the ultimate fact. You  
14 are not suppose to write a novel when you are trying to do  
15 a lawsuit. You do not have to basically go in and answer  
16 the types of questions they claim should be answered.  
17 Those are the kinds of things that are and should be  
18 resolved by way of interrogatories and deposition. If the  
19 Court looks at my complaint you will see that what we are  
20 doing, I mean obviously we had two choices on the Brown  
21 Case and were, in effect, told that the constitutionality  
22 issues cannot be resolved in regard to an administrative  
23 appeal. So the County said, you can't argue your  
24 constitutional issue and you have to bring those in a  
25 separate action, so we did. If you look at the complaint,



1 we allege that they live in Newberry County, that Newberry  
2 County is a political subdivision, action for declaratory  
3 judgment. We had invested money in property we own for  
4 purpose of placing the temporary trailers. That the  
5 property is suitable, that permits have been received,  
6 that Plaintiffs have been criminally prosecuted for using  
7 the trailers. As a matter of fact, Mr. Murray was  
8 criminally prosecuted and the Court might be interested to  
9 know that the jury found him not guilty basically taking  
10 the position that what the County was doing was, in  
11 effect, wrong. The County continuingly to threaten  
12 everybody with criminal prosecution. And as the Court's  
13 practical issue, the two new reactors did go down, there  
14 is no doubt about it. But on the reactor that is still  
15 out there, many times you will have shutdowns, many times  
16 you will have people having to come in to do repairs and  
17 maintenance on it. So the issue of the usage for  
18 temporary workers is still very, very much valid. In the  
19 Brown case we cited numerous Supreme Court cases,  
20 numerous, which basically rule that zoning ordinances are  
21 designed to regulate the use for the land, not who uses  
22 them. And the ordinances designed to discriminate against  
23 specific type of people in a commercial setting are  
24 clearly unconstitutional. If you go over the rest of the  
25 complaint, Your Honor, you will see that it very clearly

1 sets forth what we are required to put in a pleading which  
2 are ultimate facts which give rise to the constitutional  
3 violation. Now, for them to come in and say they don't  
4 know what land is involved, all they got to do is send  
5 interrogatory and say, what land is involved, they know  
6 that. They have actually prosecuted us over the very same  
7 piece of land. They have been, the land has all been  
8 identified through discovery and through other informal  
9 conversations. They know that, they know the ordinance,  
10 they know the land and they know that the primary  
11 allegation is that you, Newberry County, have done what  
12 you admitted you have done. You have basically done  
13 discrimination against a defined class of individuals  
14 rather than a particular rational use of the land. And  
15 the question becomes, have they acted in a discriminatory  
16 fashion, which they have. Have they acted in a arbitrary  
17 fashion, which they have. And have they acted in an  
18 unconstitutional fashion, which they have. They know  
19 that. There is nothing wrong with this complaint. I have  
20 practiced law since 1976 and I have drawn an awful lot of  
21 complaints. And unless the rules have changed, which they  
22 have not, we are suppose to plead ultimate facts which is  
23 exactly what I have done. If we are going to get into  
24 things which are not on the roster, he talks about the  
25 Abbeville Arms or about estoppel not lying against a

1 County. Yes, it does. The Abbeville Arms case clearly  
2 says that estoppel can lie against the County. So he is  
3 wrong about that. Obviously, the Peterson case clearly  
4 indicates that the County has a right to pass a zoning  
5 ordinance. We don't dispute that, they simply can't pass  
6 one that is arbitrarily, unreasonably, discriminatory. As  
7 the United States Supreme Court has said, as a matter of  
8 fact, I believe we share all of that legal information  
9 with the Court at the time of the Brown case. And they  
10 basically argued, of course, that we could not argue a  
11 constitutional case in an administrative appeal. That is  
12 why we are here. And the failure to exhaust, Murray can't  
13 exhaust because he has not received any kind of action  
14 against him on an administrative level, he has nothing he  
15 can appeal. What he has done, however, is to be the  
16 subject of a criminal prosecution for violation of the  
17 ordinance and as to threaten with more criminal  
18 prosecution. At that point and time he has, I don't  
19 believe there is any requirement that someone exhaust  
20 administrative remedies before you bring an action to ask  
21 for his lawful protections under the constitutions of  
22 South Carolina and the United States of America. So, Your  
23 Honor, with all due respect, I think the pleadings are  
24 fine, we are happy to engage in discovery. If he wants to  
25 basically continue with further discovery, we don't think

1 we need any more discovery. The case is ready for trial  
2 as far as we are concerned. If discovery is open we will  
3 go ahead and take the County Manager's deposition but I  
4 don't think we need to. The case is simply ready for  
5 trial but if he needs, but if he wants any additional  
6 specifics -- I mean, he is taking the position that I have  
7 got to allege tax map numbers in my complaint. I don't  
8 know of any rule anywhere that says I have got to allege a  
9 tax map number, that I have got to list the address of the  
10 property. I don't know of any rule of pleading which  
11 basically says that. He says that I have got to allege  
12 the zoning class of the property. That is totally  
13 irrelevant to the facts of the case. It doesn't matter if  
14 it is residential or commercial. If they basically  
15 enacted a law that discriminates arbitrarily against  
16 specific group of people, it is unconstitutional. He says  
17 that I have got to come back in my -- what he is basically  
18 asking me to do in my complaint is to fill it up with a  
19 bunch of unnecessary facts rather than the ultimate facts  
20 of the case. And I appreciate you listening to me, I have  
21 got about two minutes to run out the door, I guess I'll be  
22 late but that's okay. I do thank you for listening to me,  
23 Your Honor, all I ask you to do is to look at the  
24 complaint. If there is anything wrong with the complaint,  
25 if I have got to put tax map numbers in, if you will tell

1 me, I'll have the tax map numbers. But I honestly don't  
2 think that the rules require me to do that. All I am  
3 looking for is a day in court. What is happening here is  
4 they are trying to be hyper technical to make this as  
5 aggravating as it possibly can, where it is just not that  
6 hard. They are prosecuting people for using their land  
7 out in the country. This zoning ordinance is  
8 unconstitutional. There ultimately is no doubt about  
9 that, it will be ruled unconstitutional somewhere. And  
10 all I want to do is to be able to move forward on my  
11 complaint. He wants discovery, he wants to know all of  
12 this stuff, take depositions again. You know, gracious,  
13 if the Court reads my complaint and it says it is not well  
14 above -- I will put whatever the Court tells me to put in  
15 there. In regard to the form order, I don't recall ever  
16 being told to prepare a form order. I don't know how to  
17 prepare a form order. My understanding is form orders are  
18 prepared by the Court. But if I was told to prepare a  
19 form order I didn't prepare, I will have to get with Judge  
20 McIntosh to find out how to do that.

21 THE COURT: Okay. I think Mr. Matthews said formal  
22 order, not form order.

23 MR. MOORE: Okay, fine. But in any event, I think  
24 that is for another day. I think the only thing before  
25 you this morning, I believe, is whether or not we have,

1 the only thing I think we are going to argue this morning,  
2 for what I was told was the motion to dismiss. If the  
3 Court looks at my complaint and it's insufficient the  
4 Court will tell me and I will amend it again.

5 THE COURT: Okay.

6 MR. MOORE: Thank you.

7 THE COURT: Let me suggest, because I am trying to  
8 get to that arbitration. But I imagine Mr. Matthews, you  
9 want to respond. And Mr. Matthews, I am well aware that  
10 most of the Supreme Court precedent is striking down a lot  
11 of what, I think, what Mr. Moore is citing where the  
12 Supreme Court has struck down zoning ordinance. There was  
13 some sort of invidious discrimination or something  
14 involved in those cases. If we are only dealing with,  
15 perhaps what we need to do is let Mr. Moore get to his  
16 thing and then we could perhaps reconvene on this sometime  
17 next week if, I see Mr. Price has joined us as well. Mr.  
18 Matthews, the option would be for you to respond to this  
19 by written motion or if you can give me two minutes, two  
20 minute response maybe we can get it done.

21 MR. MATTHEWS: Let me give you a quick two minute  
22 response. But first on the issue, I acknowledge Mr.  
23 Moore's concern about a mediation. This was here  
24 originally scheduled for Monday. It was moved to Friday  
25 at Mr. Moore's request. I exceeded to that on the basis

1 that we would have this hearing and we would go forward  
2 and then if either Mr. Moore or Mr. Price couldn't be here  
3 the other one would be here and would go ahead. I see  
4 that Mr. Price is here, if we need to go ahead with Mr.  
5 Price and not Mr. Moore, that's fine. I understand a  
6 mediation is with Costa Pleicones who is one of my  
7 partners, he is down the hall, I let him know that we were  
8 going to be tied up this morning. So if you are running a  
9 little bit late, that may get you off the hook there.  
10 With regard to the -- several issues here. Mr. Moore went  
11 through some of the things we've talked about, tax map  
12 numbers, street address. We don't need the tax map number  
13 and the street address. As long as we know where the  
14 property is. If we know that then we can figure out what  
15 the zoning classification is. We need something so we can  
16 know what property we are talking about. He said that  
17 the, it is the same piece of land that has been talked  
18 about in discovery. There has been no discovery in this  
19 case. There have been no depositions in this case. Mr.  
20 Moore is now willing to go head without deposing the  
21 County Administrator. And in front of Judge McLeod, he  
22 said that he had to have the County Administrator and he  
23 was given time until May the 1st to get that done and that  
24 was never noticed within that timeframe. The, with regard  
25 to the underlying -- and let me just very quickly, the

1 discriminatory aspect of this. Your Honor, you mentioned  
2 the nuclear station focus. Zoning ordinance was actually  
3 a wholesale revision of the zoning ordinance for Newberry  
4 County. It is only the part that the Plaintiffs complaint  
5 is concerned about that had to do with temporary workers  
6 who were by at large with the nuclear station at that  
7 point. But this is not a question of discrimination  
8 against nuclear workers. But for this revision, there  
9 would have been no possibility for any of these transient  
10 workers to be on the property that is talked about, at  
11 least Ms. Brown's property that was in the administrative  
12 hearing. The prior ordinance didn't allow for that at  
13 all. This expanded that possible use. And the question  
14 before the County Council in adopting it was, how much  
15 should we allow on a particular parcel. They were  
16 actually expanding to permit this because people wanted to  
17 do it rather than saying, no, this is starting to go on,  
18 we are not going to permit this, we are not going to allow  
19 this. It is no discriminatory and it is based on the use  
20 of the property. It is whether or not you can rent  
21 property to a particular number of trailers, I guess, for  
22 a better -- mobile home, for a lack of a better way to  
23 describe that.

24 MR. MOORE: Your Honor, I will say this, I don't have  
25 -- all I am asking the Court to do is to look at our



1 complaint and decide if it needs any more specificity. I  
2 don't have any more argument, Steve can argue all he wants  
3 to. They are coming to get me right now. Sam is on the  
4 phone and I am happy to let Sam listen to the argument.  
5 If I can duck out I would appreciate it.

6 THE COURT: Sure, that's fine. I will just let, I  
7 will let Mr. Price take over for you at this point and  
8 time, if that's okay.

9 MR. MOORE: Thank you, Your honor.

10 THE COURT: All right, take care. Mr. Matthews,  
11 let's hold on for two seconds. Let me -- I am going to  
12 pause recording real quick and find my battery cable here.  
13 I am about to lose my battery, one second. I am pausing  
14 the recording, I will be right back.

15 (Whereupon, a short break was taken.)

16 THE COURT: Okay, that's good. All right. Mr.  
17 Matthews, you want to go ahead, sorry about that.

18 MR. MATTHEWS: Thank you, Your Honor. Just a couple  
19 of more things really. Mr. Moore said that Mr. Murray  
20 cannot exhaust administrative remedies because he is not  
21 being charged presently with anything. That is  
22 inaccurate. Ms. Brown was never charged but she got, she  
23 was able to exhaust her administrative remedies. The way  
24 you do that is when an ordinance, a zoning ordinance  
25 doesn't allow you to use your property you go in and you

1 request a special exceptions or a variance which is what  
2 she did in which Mr. Murray can certainly do. Now, Mr.  
3 Moore also said that he shouldn't have to exhaust  
4 administrative remedies to determine, you know, various  
5 sorts of rights. And that the administrative process  
6 can't determine the constitutional issues. And that is  
7 correct, we are not suggesting that he has to exhaust  
8 administrative remedies for all purposes of the complaint.  
9 It is for the purpose of a condemnation as to whether or  
10 not a particular piece of property has been taken or not.  
11 If he gets a special exception or a variance and he uses  
12 the property in accordance with that, then there is no  
13 taking. He hasn't been deprived of anything. So that's  
14 the piece of it for which he needs to have this exhaustion  
15 of administrative remedies in which Ms. Brown already has.  
16 So that's, that aspect there. Then the, there was one  
17 other thing that I wanted to address. With regard to  
18 where we are. If we proceed on the basis of the current  
19 complaint, then there will need to be additional discovery  
20 because there has been none. Other than the six standard  
21 interrogatories that the Plaintiff sent out, which we  
22 answered as best we could on the first complaint, there  
23 has been no deposition, there has been no interrogatory  
24 put forward to the Plaintiff waiting to see what kind of  
25 complaint we needed to ask questions about. If they want

1 to do it by way of answering interrogatories to narrow  
2 down all of these things then we can do that. And that is  
3 certainly possible but to date there has been no discovery  
4 involved here including the discovery that they had  
5 insisted upon. Regardless of that, there are, let's see,  
6 the estoppel piece on which we had requested summary  
7 judgment is clear that that does not lie based on Quail  
8 Hill versus County of Richland. As to the ordinance of  
9 validity, again, based on that statute of limitations and  
10 the fact that they have only validly alleged procedural  
11 problems, I think the validity is there. So that would  
12 leave the question of whether or not there is some  
13 unconstitutional aspect which seems to be what Mr. Moore  
14 is most focused on in terms of thinking this is a  
15 discrimination against a group of people rather than a  
16 regulation of the use of land which is, in fact, what it  
17 is. And in fact it is a regulation that expanded the use  
18 from what it had been previously. So I don't think there  
19 is any other particular legal aspects to be discussed but  
20 I am happy to answer any questions that you might have.

21 THE COURT: All right, factually, was there, prior to  
22 the adoption of this ordinance, let me ask this question  
23 and maybe you are not going to need to respond or Mr.  
24 Price could for you or for somebody. But prior to the  
25 adoption of this ordinance as it relates to Mr. Murray,

1 had he put more than, I think it is three trailers are  
2 allowed per parcel or something like that.

3 MR. MATTHEWS: Your Honor, my understanding is that  
4 he had not. Again, that is one of the issues that would  
5 be determined in an administrative proceeding. The reason  
6 I know the answer with regard to Ms. Brown, is because  
7 that was all developed in the administrative proceeding.  
8 There is in the ordinance a grandfather clause. And if  
9 she had been doing it before then she would be allowed to  
10 continue using it. That was all developed by way of  
11 evidence. Mr. Murray hasn't gone through that process and  
12 I can't tell you, my understanding based on conversations  
13 with County officials is that he had not but I can't swear  
14 to that.

15 THE COURT: And that is why I asked that question  
16 because I presumed there was going to be some grandfather  
17 provision. I think that when we dealt with Brown there  
18 was some talk about that but I am just going by my memory  
19 and not --

20 MR. MATTHEWS: You are correct, Your Honor.

21 THE COURT: Okay. Mr. Price, did you want to weigh  
22 in on any of this? I am going to unmute you. I got you,  
23 I can hear you now.

24 MR. PRICE: Can you hear me now?

25 THE COURT: I can, yes. I can hear you.

1           MR. PRICE: I am here and it is always a pleasure  
2 appearing before you, Judge. But, yes, Mr. Murray who is  
3 in his upper 70's, maybe even 80 only got into this in an  
4 after the construction of V.C. Summer number two and three  
5 was underway. And it was, I think it was probably after  
6 the ordinances were passed. With Brown, they were in the  
7 process of putting in electrical and sewer hookups and  
8 such. And I am not sure exactly how the first tenant came  
9 along with the reading of the ordinances but it was very  
10 close. But one thing I would point out to the Judge is  
11 that, these people and Jake was absolutely correct, the  
12 concern now is the folks that come through work and  
13 shutdowns. And as I understand, a shutdown is where they  
14 shut down the reactor, to do cleaning or maintenance or  
15 whatever. But there are still these folks that do  
16 shutdowns and they need a place to put their RV's or their  
17 campers. And all of these people are very high paid, they  
18 are, most of them, if they have school age children, their  
19 wives stay back home while the kids go to school. But  
20 most of them, their kids are adults and their wives or  
21 husbands may or may not come with them. But, you know,  
22 one of the problems that everybody is concerned about is  
23 what happens to mobile home parks when they are a few  
24 years old. And, of course, this is a totally different  
25 class of people with much higher incomes who will be there

1 now under the shutdowns for probably about six to nine  
2 weeks and then they move onto the next one. I don't know  
3 if that was responsive to you or not, Judge.

4 THE COURT: Yeah, it helps. If Mr. Murray has not  
5 gone through his administrative remedies or requested a  
6 variance, part of me is saying he probably should do that  
7 but as a practical matter I realize, if he has been  
8 prosecuted by the County the odds of him getting that  
9 variance are slim to none, as a practical matter. I am  
10 simply trying to figure out some way to move this case  
11 along. If it is the constitutional issues we are looking  
12 at getting at, I think that the Plaintiff would have to  
13 show some specific discrimination based on race or  
14 something like that for a lot of the case law that has  
15 been cited to come into play. Without discovery I don't  
16 know that you could necessarily do that but at the same  
17 time the ordinance, at least on its face, is -- it would  
18 have to be some demonstration that it was discriminatory  
19 in practice as opposed to on its face. Obviously it is  
20 not on its face so you are going to need discovery for  
21 that. But I don't know that you necessarily could get  
22 there is my biggest concern, Mr. Price. I am trying to  
23 figure out some way to get a resolution to this. It is a  
24 non-jury case, there shouldn't be a need for too much  
25 discovery but is there any trouble with the Court maybe

1 just ruling on the question of summary judgment because  
2 this was originally, I think, like a 12(b)(6) or a Rule 41  
3 or something like that. I don't remember. I looked at  
4 this two days ago, or looked at the file two days ago. I  
5 think I'm dealing for summary judgment on certain things  
6 but this relates to the constitutional claims that are  
7 being brought. Would there be any problem with the  
8 Plaintiff, that motion being heard just by a brief. I  
9 could keep the record open for three days, I could get a  
10 brief from you guys, I could get a brief from the County  
11 and that way I am not really addressing it on a 12(b)(6)  
12 type level, I am addressing it on summary judgment. And  
13 that way if I were to rule against the Plaintiffs I think  
14 you are in procedural posture for the appeal. It is kind  
15 of what I am thinking and I put that in a very broad way.  
16 What I am trying to do is get this case resolved one way  
17 or another. I don't think that it needs to be tried in  
18 the sense that we call witnesses and all of that. I don't  
19 see the need for that. It is probably an up or down, hey,  
20 this is legally valid ordinance or it is not. Can we do  
21 it that way, Mr. Price, or what are your thoughts?

22 MR. PRICE: That sounds reasonable to me, Judge.

23 THE COURT: Is that okay with you, Mr. Matthews?

24 MR. MATTHEWS: It is, Your Honor. I might, with the  
25 discovery that is ongoing in the current matter that we

1 have 45 days instead of 30.

2 THE COURT: That's fine. Let's do this, I am going  
3 to put this, I will do simply a Four 4 order, indicate  
4 that the matter is under advisement and it would be 45  
5 days, the parties can brief the issue of summary judgment  
6 in terms of the overall constitutionality or validity of  
7 the ordinance. And we all know -- that is pretty high for  
8 the bar. So if there is discriminatory intent, that might  
9 be what maybe to be focused on. But I will let y'all  
10 draft your, your own memorandum based on what you think  
11 the central issues are here and I will simply decide this  
12 on brief. That way, we will handle it that way. Okay.

13 MR. PRICE: Thank you, Judge.

14 MR. MATTHEWS: Thank you, Your Honor.

15 THE COURT: Thank you all. I will stop recording.  
16 We will go off the record. Pleasure to see everyone.

17 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*  
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**BOARD OF ZONING APPEALS**

**COUNTY OF NEWBERRY**

Case # AA01-01-03-17 regarding Tax Map No. 536-36, Property of Christy W. Brown

*Decision of September 4, 2018*

*On Remand from Circuit Court Case No. 2017-CP-36-56*

On September 4, 2018, the Board of Zoning Appeals held its third public hearing in this matter. After each of the first two hearings, the decision of this Board was appealed; and the Circuit Court in each instance remanded the matter for further proceedings by this Board. The Circuit Court's most recent order of remand was issued on May 22, 2018. The issues all arise under the Newberry County Zoning Ordinance (Ordinance No. 06-11-16; Newberry County Code of Ordinances Chapter 153 – herein, the “Zoning Ordinance”) [[http://library.amlegal.com/nxt/gateway.dll/South%20Carolina/newberryco\\_sc/newberrycountysouthcarolinacodeofordinan?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newberryco\\_sc](http://library.amlegal.com/nxt/gateway.dll/South%20Carolina/newberryco_sc/newberrycountysouthcarolinacodeofordinan?f=templates$fn=default.htm$3.0$vid=amlegal:newberryco_sc) at Chapter 153]. At the hearing, the Petitioner was represented by legal counsel, S. Jahue Moore and Samuel R. Price; the County Zoning Department was represented by legal counsel, Steve A. Matthews. At the direction of the Circuit Court in its second remand Order, the Board was advised by County Attorney A.J. Tothacer, Jr.

The questions before the Board at that hearing arose under the Zoning Ordinance and its predecessor zoning ordinance, Ordinance No. 12-24-01 (the “Prior Zoning Ordinance”). Under both the Zoning Ordinance (§ 153.019) and the Prior Zoning Ordinance (§ 153.040), any use that is not expressly allowed is prohibited. All questions and analyses here are in the context of properties zoned into zoning district “R2,” which the Property is.

The questions before the Board were:

1. Was Petitioner's renting of space on her Property for three (3) recreational vehicles a lawfully-established use prior to the time the Zoning Ordinance acquired force under the Pending Ordinance Doctrine to preclude any further initiation of such use, such that Petitioner's use would be allowed to continue under Zoning Ordinance § 153.030(A)(2)?
2. Was the Newberry County Zoning Administrator correct in her decision that the Property does not meet conditions for use of recreational vehicles as temporary accommodations for workers as set forth in Zoning Ordinance § 153.123(H)?
3. If her decision was correct, do the Property and the proposed use nevertheless meet the requirements under Zoning Ordinance § 153.052 and S.C. Code of Laws § 6-29-800(A)(2) for a variance from those conditions? If so, will this Board grant such a variance? If it will, what if any additional conditions does this Board impose under Zoning Ordinance § 153.052(E) and S.C. Code of Laws § 6-29-800(A)(2)(d)(ii)?

4. Do the Property and the proposed use meet the requirements for a special exception under Zoning Ordinance §§ 153.053 and 153.141 to allow use of the property as a commercial campground and recreational vehicle park, and if so, will this Board grant such a special exception?

5. If the Property and the proposed use do not meet the requirements for a special exception, do the Property and the proposed use nevertheless meet the requirements under Zoning Ordinance § 153.052 and S.C. Code of Laws § 6-29-800(A)(2) for a variance from those requirements? If so, will this Board grant such a variance? If it will, what if any additional conditions does this Board impose under Zoning Ordinance § 153.052(E) and S.C. Code of Laws § 6-29-800(A)(2)(d)(ii)?

In its current, second remand Order, the Court recommended that, to the extent that this Board deems it appropriate or necessary, the Board entertain any new information or testimony which may not have been introduced previously, which might assist the Board in arriving at its conclusions.

The material already in the record for this matter, prior to the September 4, 2018 hearing, consists of the following, and these documents are referred to herein as “Exhibits” with the following numbering.

1. The certified record to the Court on appeal from this Board’s decision of January 3, 2017, including:
  - (a) Petitioner’s Appeal Forms 1, 2, 3, and 4, dated November 20, 2016, requesting reversal of the Zoning Administrator’s decision regarding conditional use, special exception, and variance
  - (b) A plat of the property dated October 1, 1966
  - (c) The County Zoning Departments staff report regarding the requests dated January 3, 2017
  - (d) An aerial photograph of the property
  - (e) Ground photographs of the property
  - (f) The petitioner’s appeal dated November 20, 2016, with 10 exhibits, those being:
    - (1) DHEC Septic Approval September 21, 2004, for single mobile home
    - (2) DHEC Well Approval October 5, 2004, for single mobile home
    - (3) Well construction invoice, October 5, 2004
    - (4) Plumbing materials invoice, August 20, 2016
    - (5) Sand invoice, August 5, 2016
    - (6) Rock invoice, September 2, 2016
    - (7) Gravel invoice, August 26, 2016
    - (8) Electrical invoice (“wired 4 camper spots, installed sub-panel”), paid by Check No. 201

- (9) Plumbing invoice ("install 85 gallon tank and plumb system"), August 6, 2016, paid by Check No. 200
  - (10) Septic tank installation invoice September 12, 2004
- 2. Transcript of this Board's hearing on January 3, 2017, with 9 exhibits, those being
  - (a) Board agenda for January 3, 2017
  - (b) Aerial photograph of the property, taken October 25, 2016
  - (c) Zoning Administrator's notice of non-conforming use to owner, dated September 6, 2016
  - (d) Zoning Ordinance excerpts re special exceptions
  - (e) Zoning Ordinance excerpts re conditional uses
  - (f) A list of some allegedly non-compliant users
  - (g) Zoning Ordinance excerpts re appeals
  - (h) Zoning ordinance excerpts re variances
  - (i) Zoning Ordinance excerpts re RV parks
- 3. Board's decision of January 3, 2017
- 4. Transcript of Court proceedings on appeal, August 2, 2017
- 5. The certified record to the Court on appeal from this Board's decision of November 22, 2017, including:
  - (a) Petitioner's notice of second appeal to Court, dated December 13, 2017
  - (b) Board's decision of November 22, 2017
  - (c) Transcript of this Board's hearing on November 7, 2017
  - (d) Recusal from this matter by Board member T. Wayne Boland, dated October 31, 2017
  - (e) Board agenda for November 7, 2017
  - (f) Court remand order of August 15, 2017
  - (g) Duplicate copies of other documents already described
- 6. Transcript of Court proceedings on appeal, May 9, 2018
- 7. Court remand order of May 22, 2018, and the decision form commended by the Court in that order.

At the hearing, the Board received additional evidence in the form of testimony from Zoning Administrator Anne Peters (called and examined by counsel for Petitioner); testimony from Petitioner Christy W. Brown (called and examined by counsel for Petitioner and cross-examined by counsel for the Zoning Department); testimony from Petitioner's husband and former member of the Newberry County Joint Planning Commission, Michael Brown (called and examined by counsel for Petitioner, and cross-examined by counsel for the Zoning Department); and Newberry County Council member Scott Cain, (called and examined by counsel for the

Zoning Department, and cross-examined by counsel for Petitioner). In addition, six exhibits were received; and oral references were made to various public records. To the extent that those last are referred to in this order, citations for public access will be provided. The six additional exhibits received (referred to herein as “Hearing Exhibits” with the following numbering) were:

- Hearing Exhibit 1: Anonymous complaint dated September 2, 2016, regarding non-conforming use of the Property;
- Hearing Exhibit 2: Freedom of Information Act correspondence dated August 17, 2017, of Lynn Davis, with attachments;
- Hearing Exhibit 3: Affidavit of Secretary to the Newberry County Joint Planning Commission, regarding the Commission’s consideration of the County’s zoning ordinance;
- Hearing Exhibit 4: Affidavit of Newberry County Councilmember Scott Cain, regarding discussion with Michael Brown in October 2016;
- Hearing Exhibit 5: Memorandum submitted to Circuit Court by counsel for Petitioner at first appeal; and
- Hearing Exhibit 6: Proposed form of motions from counsel for Zoning Department.

All exhibits, whether submitted before or at this hearing, appear to be what they purport to be; and no party has questioned the authenticity of any exhibit.

#### **ISSUE 1: PRIOR NON-CONFORMING USE**

The Zoning Ordinance, at § 153.030(A)(2), provides that a use that is non-conforming under the Zoning Ordinance will be allowed to continue if it was lawfully undertaken prior to adoption of the Zoning Ordinance.

At the hearing, the parties agreed that the date as of which the non-conforming use of the Property for recreational vehicles began was in late August 2016. Tr., p. 64, lines 3-7; and p. 129, line 8 – p. 130, line 12. The earliest documentary evidence of expenditures to make the Property suitable for that use was from August 5, 2016. Ex. 1(f)(5). Petitioner testified that those expenditures began in June of 2016. Tr. p. 51, line 14 – p. 51, line 2. That is consistent with the representation made by Petitioner’s counsel to the Circuit Court. Hearing Ex. 5, p. 1, fifth ¶.

Petitioner’s husband, Michael Brown, appears to be the manager of the Property for purposes of the present non-conforming use. Tr. p. 50, lines 13-18; p. 52, lines 2-4. Mr. Brown was also at the time that the Zoning Ordinance was adopted a member of the Newberry County Joint Planning Commission (the “Commission”). As such, he was aware that Newberry County was contemplating amending and re-stating its Prior Zoning Ordinance. At some time between about February 26, 2016, and April 25, 2016, Mr. Brown became aware of the manner in which the County’s proposed Zoning Ordinance would affect the non-conforming use that he and Petitioner had in mind, and attempted to have the draft Zoning Ordinance revised in order to make

it accommodate that use. Hearing Ex 3; Tr. p. 76, line 13 – p. 81, line 5. None of Mr. Brown's recommendations was accepted in the Zoning Ordinance as approved. *Id.*

County Council gave first reading approval to the new Zoning Ordinance on June 1, 2016 (<https://www.newberrycountv.net/sites/default/files/uploads/minutes/id-4574.pdf>); second reading on June 15, 2016 (<https://www.newberrycountv.net/sites/default/files/uploads/minutes/id-4690.pdf>); public hearing on July 6, 2016 (<https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-4692.pdf>); and third and final reading on September 21, 2016 (<https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-5916.pdf>). Immediately after first reading, and still on June 1, 2016, County Council voted separately and unanimously to invoke the Pending Ordinance Doctrine (<https://www.newberrycounty.net/sites/default/files/uploads/minutes/id-4574.pdf> at page 8).

The Pending Ordinance Doctrine, established by the South Carolina courts in *Sherman v. Reavis*, 273 S.C. 542, 257 S.E.2d 735 (1979), and *Stratos v. Town of Ravenel*, 297 S.C. 309, 376 S.E.2d 783 (Ct. App. 1989), prevents the establishment of new uses that would be non-conforming under a proposed zoning ordinance from the time that the new proposal becomes known until the final adoption or rejection of the new proposal.

The Prior Zoning Ordinance would have allowed the Petitioner's requested non-conforming use only if the Board had approved it as a special exception under § 153.069 of the Prior Zoning Ordinance, related to commercial campground. To qualify for that special exception, the Property would have to have 200-foot setbacks and 20-foot opaque buffers. It is apparent from evidence submitted by Petitioner at our first hearing on this matter (Ex. 2(b)) and from evidence submitted by the Zoning Administrator at our first hearing on this matter (Exs. 1(d) and 1(e)) that the Petitioner's non-conforming use of the Property did not meet those requirements. In addition, Mr. Brown testified at this hearing that Petitioner had not applied to the Board for permission for this use under the Prior Ordinance, so that no necessary special exception could ever have been granted. Tr. p. 75, line 22 – p. 76, line 7; Tr. p. 56, lines 4-8.

Following the presentation of evidence on all issues, argument by counsel for both Petitioner and the County Zoning Department, and discussion by the Board, Board member Boland made the following motion:

**MOTION:** Petitioner's use of the Property for multiple-RV long-term rentals began after the County's Zoning Ordinance acquired force under the Pending Ordinance Doctrine, so that Petitioner is not entitled to a continued non-conforming use.

It was explained that an AYE vote would not allow Petitioner to continue the use; a NAY vote would allow Petitioner to continue the use. The motion carried by vote of 3 to 1. Voting in favor were Board members Coleman, Longshore, and Wilkes; voting against was Board member Boland. The vote of the Chair was not needed to obtain a majority; and the Chair abstained.

The Board thus determined that Petitioner's renting of space on her Property for three (3) recreational vehicles was not a lawfully-established use prior to the time the Zoning Ordinance

acquired force under the Pending Ordinance Doctrine to preclude any further initiation of such use, and Petitioner's use would therefore not be allowed to continue under Zoning Ordinance § 153.030(A)(2).

## **ISSUE 2: CONDITIONAL USE – TEMPORARY RV WORKER ACCOMMODATIONS**

The Zoning Ordinance, at § 153.123(H), allows as a conditional use the renting of property for the siting of recreational vehicles used as temporary accommodations for persons working in or near Newberry County but who do not intend to relocate permanently to the County. A conditional use is a use that is allowed in a zoning district if certain conditions are met. It is within the authority of the Zoning Administrator to decide in the first instance whether those conditions are met. If she determines that they are, she is authorized to allow the conditional use. If she determines that they are not, the property owner may appeal to this Board. The latter has occurred here.

The conditions for this use include:

- (a) The parcel must be 10 contiguous acres or larger.
- (b) One such temporary RV may be allowed per acre, however RV units may be clustered as long as they comply with all other requirements of this section and the setbacks required in the R2 zoning district. No more than 5 temporary RVs shall be allowed for this use on 1 parcel.
- (c) No portion of any RV may be located closer than 20 feet to any portion of another RV or from a permanent residence if one is on the parcel.
- (d) Application must be made by the property owner for each temporary RV requested to be located on the property. Application for more than 1 temporary RV may be submitted for a property at the same time.
- (e) Such temporary RV shall be maintained in a manner which will facilitate and enable its removal by the expiration date of the permit.
- (f) The placement of the temporary RV must meet SCDHEC requirements for water and wastewater connections and Newberry County requirements for temporary electrical service. Each proposed temporary RV dwelling shall have individual water, sewer and electrical service and connections and may not share such services with other temporary RV dwellings or permanent dwellings.
- (g) A minimum setback of 100 feet is required between the perimeter of all RV sites and all property lines and the road right-of-way. A buffer of at least 50 feet in width is required along all side and rear property lines.

It is apparent from evidence submitted by Petitioner at our first hearing on this matter (Ex. 2(b)), that: the Property consists of 1.63 acres, and does not meet Condition (a); the Petitioner's use was to locate three RVs on 1.6 acres, and does not meet Condition (b); the three RV site

locations share a common well and a common septic tank, and so do not meet Condition (f); and the RV site locations were all within 100 feet of the Property lines, and do not meet Condition (g).

Petitioner and Mr. Brown did not testify, and their counsel did not contend, that the Property or their requested use met the conditions. Rather, they contend that the conditions are unreasonable and unlawful. This Board is an administrative body established by the Zoning Ordinance, § 153.048(c), and charged with its administration and enforcement. This Board cannot step outside the Zoning Ordinance and determine its validity. *Beaufort Cty. Bd. of Educ. v. Lighthouse Charter Sch. Comm.*, 335 S.C. 230, 516 S.E.2d 655 (1999). Whether the Zoning Ordinance is lawful is a matter for the courts. We note that for the courts to consider such a challenge, it would have to be brought in a separate action and not in an appeal of this decision. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 175, 56 S.E.2d 346, 352 (2008).

Following the presentation of evidence on all issues, argument by counsel for both Petitioner and the County Zoning Department, and discussion by the Board, Board member Boland made the following motion:

**MOTION:** The Zoning Administrator correctly determined that Petitioner's use of the Property for multiple-RV long-term rentals does not comply with all of the Conditional Use requirements of Section 153.123(H), relating to temporary RV accommodations for workers, so that Petitioner is not entitled to Conditional Use in this manner.

It was explained that an AYE vote would not allow Petitioner to continue the use; a NAY vote would allow Petitioner to continue the use. The motion carried by vote of 3 to 1. Voting in favor were Board members Coleman, Longshore, and Wilkes; voting against was Board member Boland. The vote of the Chair was not needed to obtain a majority; and the Chair abstained.

The Board thus determined that the Newberry County Zoning Administrator was correct in her decision that the Property does not meet all of the conditions for use as temporary recreational vehicle accommodations for workers as set forth in Zoning Ordinance § 153.123(H).

### ISSUE 3: VARIANCE TO ALLOW CONDITIONAL USE

Under Zoning Ordinance § 153.052 and S.C. Code of Laws § 6-29-800(A)(2), this Board can grant a variance from the un-met conditions for the conditional temporary-accommodations-for-workers use. If it does so, it may also impose additional conditions on the Property and the use under Zoning Ordinance § 153.052(E) and S.C. Code of Laws § 6-29-800(A)(2)(d)(ii).

In order to grant a variance, the Board must make the factual determination that each of the four elements above favor granting the variance. *See Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 418 S.E.2d 319 (Ct.App.1992). Granting a variance is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953).

*Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 214, 516 S.E.2d 442, 445 (1999)

The requirements for granting a variance under the Zoning Ordinance and the statute are substantially identical. Those requirements, as stated in the Zoning Ordinance, are:

- (C) A variance may be granted if the Board makes and explains in a written order all of the following findings and conclusions:
  - (1) There are extraordinary and exceptional conditions pertaining to a particular piece of property;
  - (2) These conditions do not generally apply to other property in the vicinity or in that district;
  - (3) Because of these conditions, the application of the chapter to a particular piece of property would effectively prohibit or unreasonably restrict use of the property;
  - (4) The authorization of the variance will not be a substantial detriment to adjacent property or to public good, and the character of the district will not be harmed by the granting of the variance; and
  - (5) The effect of the variance would not allow the establishment of a use not otherwise permitted in the zoning district; would not extend physically a nonconforming use of the land; would not change the zoning district boundaries shown on the official zoning map.
- (D) The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

With regard to (C)(1) and (C)(2), Mr. Brown testified that he attempted to change the Zoning Ordinance before passage in order to assist other similarly situated persons, for whom he claimed to be speaking as their representative. Tr. p. 78, lines 6-10; p. 79, lines 8-18. Councilmember Cain testified that in October 2016, Mr. Brown told him that “he would turn in a lot of other people who were doing the same thing.” Hearing Ex. 4; Tr. p. 102, line 16 – p. 103, line 17. Mr. Brown did not recall, but did not deny, making the statement. Tr. p. 82, line 20 – p. 83, line 4. Ex. 2(f), submitted by Petitioner at our first hearing, is a list of other owners and properties alleged by Petitioner to be engaged in similar uses. It therefore appears that the Property is not affected by extraordinary or exceptional conditions that do not apply to other properties.

With regard to (C)(3), permitted uses for R2 properties (without the need for approval of conditions or granting of special exceptions) include duplex dwellings, single-family detached dwellings, post-1976 manufactured homes, rooming and boarding houses, various agricultural buildings and animal shelters/stables, private motor vehicle garages, private gardens and greenhouses, recreational facilities, etc. Zoning Ordinance § 153.073(D). It therefore appears that the Zoning Ordinance does not effectively prohibit or unreasonably restrict use of the Property.

With regard to (C)(4), Petitioner’s initial appeal to this Board alleged that “[Petitioner] checked all neighbors who are on Shingle Mill Road and no one objected to the use for temporary recreational vehicles.” Ex. 1(f) at ¶(6)(b). However, the uncontradicted evidence received by the



Board regarding this issue was from two neighbors, Mr. Mac Vohn and Mr. Earl Smith, both of whom live on Shingle Mill Road and both of whom appeared at the Board's first public hearing to speak against the requested use. Ex. 2, pp. 4-5.

With regard to (D), Mr. Brown testified that Petitioner wanted the requested use because "we saw that there was a better opportunity in the RV lots" as opposed to "rent[ing] to low cost mobile home renters [Petitioner's prior use]." Tr. p. 59, lines 17-24. That assertion, if true, cannot be used to support a variance.

It therefore appears that Petitioner's situation does not fall fully within the specified conditions for a variance.

Following the presentation of evidence on all issues, argument by counsel for both Petitioner and the County Zoning Department, and discussion by the Board, Board member Boland made the following motion:

**MOTION:** The requirements of Section 153.052 necessary for a variance that would excuse the missed Conditional Use conditions have not been fully satisfied, and this Board therefore declines to grant a variance from those conditions.

It was explained that an AYE vote would not allow Petitioner to continue the use; a NAY vote would allow Petitioner to continue the use. The motion carried by vote of 3 to 1. Voting in favor were Board members Coleman, Longshore, and Wilkes; voting against was Board member Boland. The vote of the Chair was not needed to obtain a majority; and the Chair abstained.

The Board thus determined that the Property and the proposed use do not meet the requirements under Zoning Ordinance § 153.052 and S.C. Code of Laws § 6-29-800(A)(2) for a variance from those conditions, and that the Board therefore does not grant a variance therefrom.

#### **ISSUE 4: SPECIAL EXCEPTION – RV CAMPGROUND**

The Zoning Ordinance, at § 153.053, allows certain specified uses in specified zoning districts if certain general and certain specified requirements regarding the use and the property are met. A property owner must obtain approval from this Board prior to any use as a special exception. If the Board approves a special exception, it may also impose additional conditions on the Property and the use under Zoning Ordinance § 153.053(E). See also in this context Zoning Ordinance § 153.141(G).

At issue in this matter is the special-exception use as a commercial campground and RV park allowed by Ordinance § 153.141.

The general requirements (§ 153.053(D)) for special exception use are:

- (D) No special exception permit shall be approved by the Board of Zoning Appeals unless the following general findings of fact are made concerning the proposed special exception:

- (1) The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to the information submitted.
- (2) The use complies with all regulations and standards of this chapter.
- (3) The use will not substantially injure the value of adjoining properties, or the use is a public necessity.
- (4) The location and character of the use, if developed according to the information as submitted and approved, will be in harmony with the area in which it is to be located.
- (5) The use will not create traffic impacts that will endanger public safety, or create or contribute to congestion.
- (6) The use will not create noise, light, glare, odor, or obstruction of air flow on adjoining properties.
- (7) That the proposed use will not be in conflict with but will further the objectives of the Newberry County Comprehensive Plan for the area in which it is located.

The special requirements (§ 153.053) for special exception use are:

Commercial campgrounds and recreational vehicle (RV) parks may be permitted by special exception in the R2 zoning district provided the Board of Zoning Appeals finds that the following conditions are met.

- (A) Commercial Campground and RV Park facilities may include a residence for the owner/manager of the premises; utility hook-ups; accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities; and recreational vehicles (including travel trailers) in designated spaces.
- (B) All campground and RV park facilities, including structures, camping sites, RV camp/parking sites, and other facilities associated with the use shall be setback a minimum of 100 feet from all adjacent property lines, except where contiguous properties are zoned for commercial (LC or GC) and/or industrial (IND) uses.
- (C) All campground and RV park facilities, including structures, camping sites, RV camp/parking sites, man-made uses, and other facilities associated with the use shall be surrounded by a minimum 50 foot wide buffer, which meets the applicable requirements of § 153.182 - Buffers. Such facilities shall be surrounded by an opaque screen which meets the requirements of § 153.183 - Screening.

- (D) All applicable conditions required in § 153.089 - R2 Rural District Conditional Uses shall be met for this use.
- (E) Site design shall ensure safe, predictable vehicular access and movement onto and off of the site.
- (F) The use will not substantially injure the value of adjoining properties.
- (G) Additional conditions may be imposed to ensure that the use will not create a safety, health or traffic hazard.

In order to grant a special exception, this Board must find that all of the general and special requirements are met (Zoning Ordinance §§ 153.053(D) and 153.141), or must grant a variance from those unmet.

It is apparent from evidence submitted by Petitioner at our first hearing on this matter (Ex. 2(b)), that the RV site locations were all within 100 feet of the Property lines, and do not meet Special Requirement (B). It is apparent from evidence submitted by Petitioner at our first hearing on this matter (Ex. 2(b)) and from evidence submitted by the Zoning Administrator at our first hearing on this matter (Exs. 1(d) and 1(e)) that there is no opaque screen and so the Petitioner's non-conforming use of the Property does not meet Special Requirement (C).

Because all requirements must be met, there is no need to examine the other requirements in detail.

Following the presentation of evidence on all issues, argument by counsel for both Petitioner and the County Zoning Department, and discussion by the Board, Board member Boland made the following motion:

**MOTION:** Petitioner's use of the Property for multiple-RV long-term rentals does not meet all of the Special Exception requirements of Section 153.141, relating to RV campgrounds, and this Board therefore declines to grant Special Exception status.

It was explained that an AYE vote would not allow Petitioner to continue the use; a NAY vote would allow Petitioner to continue the use. The motion carried by vote of 3 to 1. Voting in favor were Board members Coleman, Longshore, and Wilkes; voting against was Board member Boland. The vote of the Chair was not needed to obtain a majority; and the Chair abstained.

The Board thus determined that the Property and the proposed use do not meet the requirements for a special exception under Zoning Ordinance §§ 153.053 and 153.141 to allow use of the property as a commercial campground and recreational vehicle park, and that the Board therefore does not grant such a special exception.

#### **ISSUE 5: VARIANCE TO ALLOW SPECIAL EXCEPTION**

Under Zoning Ordinance § 153.052 and S.C. Code of Laws § 6-29-800(A)(2), this Board can grant a variance from the un-met requirements for obtaining a special exception to use the

Property as a commercial campground or RV park. If it does so, it may also impose additional conditions on the Property and the use under Zoning Ordinance § 153.052(E) and S.C. Code of Laws § 6-29-800(A)(2)(d)(ii).

The issues, facts, and discussion here are the same as under Issue 3 above with respect to requirements for granting a variance from the un-met conditions for conditional use as temporary accommodations for workers. That discussion is incorporated here by reference.

It therefore appears that Petitioner's situation does not fall fully within the specified conditions for a variance.

Following the presentation of evidence on all issues, argument by counsel for both Petitioner and the County Zoning Department, and discussion by the Board, Board member Boland made the following motion:

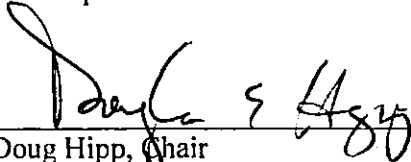
**MOTION:** The requirements of Section 153.052 necessary for a variance that would excuse the missed Special Exception requirements have not been fully satisfied, and this Board therefore declines to grant a variance from those requirements.

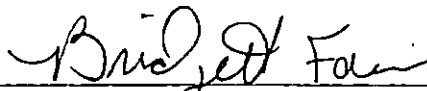
It was explained that an AYE vote would not allow Petitioner to continue the use; a NAY vote would allow Petitioner to continue the use. The motion carried by vote of 3 to 1. Voting in favor were Board members Coleman, Longshore, and Wilkes; voting against was Board member Boland. The vote of the Chair was not needed to obtain a majority; and the Chair abstained.

The Board thus determined that the Property and the proposed use do not meet the requirements under Zoning Ordinance § 153.052 and S.C. Code of Laws § 6-29-800(A)(2) for a variance from those special exception requirements, and that the Board therefore does not grant a variance therefrom.

\* \* \* \* \*

Based on the decisions of the Board described above, taken by duly-recorded vote in public meeting following a public hearing and the reception of evidence to supplement the prior record, this constitutes the decision and order of the Board upon remand from the Circuit Court.

  
Doug Hipp, Chair

  
Bridgett Fain, Secretary

Date issued: 11-6-18

Date mailed to parties in interest: 11-7-18

***Notice of appeal to Circuit Court must be filed  
within 30 days after date this Order was mailed.***