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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT

The Honorable Bentley D. Price

Appellate Court Case No. 2022-000300
Circuit Court Case No. 2021-CP-07-01241

Historic Beaufort Foundation, ...Appellant,

v.

City of Beaufort, City of Beaufort Historic District Review Board,
and The Beaufort Inn, LLC,..... Respondents.

AND

West Street Farms, LLC and Mix Farms, LLC, ... Appellants,

v.

City of Beaufort, City of Beaufort Historic District Review Board,
and The Beaufort Inn, LLC,..... Respondents.

RECORD ON APPEAL
VOLUME I

John A. Massalon, Esquire (SC Bar #10279)
Carissa J. Steichen, Esquire
(SC Bar #104264)
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, SC 29402
(843) 727-1144
jmassalon@wmalawfirm.net
csteichen@wmalawfirm.net

Attorneys for Appellant Historic Beaufort Foundation

W. Andrew Gowder, Jr., Esquire
(SC Bar #7895)
Austen & Gowder, LLC
1629 Meeting Street, Suite A
Charleston, South Carolina 29405
(843) 727-2229
andy@austengowder.com

Attorneys for Appellants West Street Farms, LLC and Mix Farms, LLC

William B. Harvey III, Esquire
(SC Bar #2792)
Harvey & Battey, P.A.
Post Office Box 1107
Beaufort, SC 29901-1107
843-524-3109
bharvey@harveyandbattey.com

Attorneys for Respondents City of Beaufort and City of Beaufort Historic District Review Board

Benjamin Nicholson V, Esquire
(SC Bar #10137)
G. Wade Leach, III, Esquire
(SC Bar #104841)
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800
nnicholson@burr.com
wleach@burr.com

Attorneys for Respondent Beaufort Inn, LLC

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01241
Historic Beaufort Foundation, Petitioner, v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	)))))))))))	**ORDER DENYING APPEAL**

This matter came before me on January 6, 2022 as an appeal ("Appeal") from the City of Beaufort Historic District Review Board decision of June 9, 2021 by the Petitioner Historic Beaufort Foundation ("Petitioner" or "HBF.")

Respondents City of Beaufort ("City") and City of Beaufort Historic District Review Board ("HRB") (collectively, "City Defendants") and Respondent Beaufort Inn, LLC ("Beaufort Inn") filed responses denying the allegations of the Appeal.

All parties filed memoranda in support or in opposition to the Appeal, and a transcript of the proceedings before the HRB was in the record. After consideration of the party's respective arguments, I DENY the Appeal on the grounds stated herein.[1]

[1] With the consent of all parties, this matter was heard simultaneously with a virtually identical appeal of the same HRB decision filed by West Street Farms, LLC and Mix Farms, LLC in Civil Action No. 2021-CP-07-01231. A separate but substantively identical order will be filed in that case.

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I. INTRODUCTION

A. General Background

The following background information is in the Record on Appeal. This matter arises from two long-pending development projects in the Historic District of downtown Beaufort: a hotel project ("Hotel Project") and associated parking garage project ("Parking Garage Project") being developed by Respondent Beaufort Inn, and the latest decisions of the City's Historic District Review Board (HRB) (an architectural review board) approving certain aspects of those projects. Notwithstanding years of approvals by these projects at various stages by the HRB starting in 2016, Petitioner waited until after the Parking Garage Project approval was nearly complete, and two years after the Hotel Project received final approval, to file an appeal of the last and latest HRB decisions of June 9, 2021 regarding these projects.

The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code § 6-29-710 *et seq*. Prior to the enactment of the Beaufort Code, the City's development code was known as the Unified Development Ordinance ("UDO") which had been adopted on January 28, 2003 (last revised September 14, 2012.) The Beaufort Code superseded the UDO when enacted. The UDO provided for a Historic District Review Board ("HRB") at Section 2.7 which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*. The Beaufort Code, when enacted, similarly provided for the HRB at Section 10.7.

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. B.C. § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort Historic District and "will seek to preserve and

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protect the historic character and architectural integrity of Beaufort's National Landmark Historic District." B.C. § 10.7.1.B. Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. B.C. § 10.7.2.B.1. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. B.C. § 9.10.A.1.

On large projects that can take years to develop, the HRB under both the UDO and the Code follows a stepped procedure of conceptual approval, preliminary approval, and final approval.[2] Each of these steps requires a public notice and a public hearing by the HRB, with time for citizen comment at these hearings. Even though a COA may be issued by the HRB, the City must still issue building permits for the work to be performed.

Both the UDO and the Beaufort Code are relevant to matters in this Appeal as both the Parking Garage Project and the Hotel Project received their first approvals in 2016 pursuant to the UDO, prior to the enactment of the Beaufort Code, so the two projects have traversed both the former and current codes over the years. Petitioner specifically challenge the application of the UDO and the Beaufort Code to these projects as part of the Appeal.

B. The Parking Garage Project

As mentioned, both the Parking Garage Project and the Hotel Project have been in process for years. The record reflects that the Parking Garage Project was first presented by Beaufort Inn to the HRB at its August 17, 2016 meeting. This was prior to the enactment of the Beaufort Code. After a lengthy meeting with much discussion, the HRB gave unanimous conceptual approval of

[2] *See* B.C. § 9.10.2 at diagram stating "HRB Review and Decision (Approved, Approved with Conditions, Denied) 2-3 Phases (Conceptual, Preliminary, and Final are Typical)." *Also see,* Appendix I to the UDO, which has similar descriptions.

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the Parking Garage, calling it a "496 space, 186,000 square foot parking garage." As noted in the HRB meeting minutes, the mass, scale and height of the proposed Parking Garage were discussed and approved.[3] The HRB (including the HBF's designee on the HRB) then unanimously gave conceptual approval of the mass, height and scale.

No party appealed the decision of the HRB granting conceptual approval of the mass, height and scale of the Parking Garage Project, including the HBF, which had its Executive Director present.

The HRB then at its November 9, 2016 meeting advised Beaufort Inn that a condition of further development of the Parking Garage was the demolition of a structure owned by Beaufort Inn at 310 West Street. The HRB voted unanimously to allow this demolition, and issued a COA dated November 14, 2016 granting Beaufort Inn permission for the demolishing of 310 West Street. By follow up hearing on February 8, 2017, and letter dated February 15, 2017, the HRB issued a COA to Beaufort Inn, LLC to relocate the building at 918 Craven Street, again as part of the Parking Garage Project. The City then issued permits for both this demolition and building relocation, which were completed by Beaufort Inn. There was no appeal of either of these decisions of the HRB.

On September 20, 2017, the HRB met and unanimously voted to grant preliminary approval to the Parking Garage Project as subsequently memorized by the City's October 9, 2017 letter. The preliminary approval did not change the height, mass and scale issues, which had previously received conceptual approval. Many members of the public, and representatives of

[3] Of note for this Appeal and the appeal of the HBF, the Executive Director of the Historic Beaufort Foundation at the time, Maxine Lutz, was present at the meeting and expressly stated "this seems like a wonderful way to develop this parcel," but then qualified that statement that the HBF was "primarily interested in the height, mass, and scale of a parking garage." Further, under the UDO, the HBF was able to designate a seat on the HRB, so the HBF's designee was sitting on the HRB at this time.

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HBF, were present and participated in this September 20, 2017 HRB meeting. There was similarly no appeal of this preliminary approval of the Parking Garage Project.

The Parking Garage Project was submitted to the HRB for final approval at its June 9, 2021 meeting. The final approval did not involve any elements of mass, scale or height but dealt with the architectural and aesthetic details set forth in preliminary approval. As noted the HRB's October 9, 2017 preliminary approval letter, the *only things that needed to be addressed* by Beaufort Inn for final approval were:

> the type and color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborist report and plan for the 'treatment of trees.' The HRB clarified that the current drawings were approved as submitted, and that the applicant was tasked with refining the details listed in order to receive final approval.

Thus, for all practical purposes, the hearing on final approval of Garage Parking Project had a very limited agenda and list of items to be considered.

After a 4 ½ hour hearing, involving many members of the public, the HRB voted 3-1 to give final approval to the Parking Garage Project. The HRB issued a letter dated June 15, 2021 confirming final approval.

C. The Hotel Project

The Hotel Project matter currently being appealed is a request for final approval of a change after certification. That is, the Hotel Project itself had already had final approval and a COA was issued in 2019. Beaufort Inn by its current application simply requested several changes to the original HRB COA approval to construct the Hotel Project. To that end, Beaufort Inn applied for a "Change after Certification" for the Hotel Project on December 25, 2020. Beaufort Inn obtained preliminary approval of the Change after Certification at the HRB's February 10, 2021 Meeting. Thus, the Hotel Project only came up at the June 9, 2021 HRB meeting for final approval of this

Change after Certification.

The items Beaufort Inn requested to be changed from the original approved COA were: (1) slight changes in exterior design for storefronts; (2) revised cornice design, (3) revised porte-cochere design, (4) change in type of doors, and (5) a proposed new roof deck. The rooftop change was to add a rooftop amenity space. However, in their Appeal, Petitioner attempt to reargue matters decided years ago by the HRB, and in doing so seek to vastly expand the scope of what was actually heard at the June 9, 2021 HRB meeting. The issues complained of now by the Petitioner involve elements of the Hotel Project which were approved in 2019, and which were not challenged or appealed at that time, and an element of the Hotel roof design that already received an unchallenged preliminary approval in February 2021.

The Hotel Project was first presented to the HRB, and it received unanimous HRB conceptual approval, on September 14, 2016. Therefore, like the Parking Garage Project, the Hotel Project began under the UDO. (Indeed, at the HRB meeting of June 9, 2021, the chair of the HRB recognized that the Hotel Project was vested in the UDO.) There was no appeal of the HRB's conceptual approval.

The Hotel Project's preliminary approval was issued unanimously by the HRB on July 25, 2017. There was no appeal of the preliminary approval of this COA approving the Hotel Project design.[4] The Hotel Project was granted a final approval and Certificate of Appropriateness at the HRB's October 9, 2019 meeting. The HRB issued its Certificate of Appropriateness by letter dated October 9, 2019. There was no appeal of this COA.

[4] The HRB also required that Beaufort Inn demolish the building at 812 Port Republic Street in order to build the Hotel Project, per the HRB meeting minutes for the November 13, 2019 meeting. The HRB granted Beaufort Inn a COA demolish this building on November 13, 2019. There was no appeal or other challenge from this decision. Beaufort Inn obtained a demolition permit from the City per this COA on December 17, 2020, and completed this demolition.

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As noted, the Hotel Project's Change after Certification received preliminary approval at the HRB's February 10, 2021 meeting. This included preliminary approval of the change in the mass and type of roof design. There was no appeal of this preliminary approval.

Notwithstanding Petitioner's claims, the HRB felt that the prior approvals of the Hotel Project were final and could not be changed by the HRB. At the beginning of the June 9, 2021 HRB meeting under appeal, the Chair noted:

> I will explain, also, at this point that we are at final, which means mass, scale, and all of those items have all been dealt with and voted upon in advance. We will not be relitigating them, we will not be going back over all of those details today. We're only here today to review the last details for this project and then to make a decision to approve or not.

This is consistent with the view the HRB took of prior approvals of the Parking Garage Project as well. The Change after Certification for the Hotel Project was then approved by a 3-1 vote of the HRB.

II. STANDARD OF REVIEW

The HRB is a board of architectural review as permitted by S.C. Code § 6-29-870 (Supp. 2020) and established by the Beaufort Code. B.C. § 10.7. "The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance." S.C. Code § 6-29-880. The Beaufort Code provides such authority at § 10.7.2.B.

"On appeal, the findings of fact by the [HRB] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code§ 6-29-930(A)(Supp. 2020) ("The findings of fact by the board of architectural review must be treated in the same manner as a finding of fact by a jury, and the court

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may not take additional evidence.") "A reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters*., 401 S.C. at 147-48, 735 S.E.2d at 661). "However, a decision of a [HRB] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id*. (quoting *Wyndham Enters*., 401 S.C. at 148, 735 S.E.2d at 661). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

III. PETITIONER'S ARGUMENTS

The relief sought by the Petitioner is that the approvals given the projects by the HRB be reversed and remanded by this Court to the HRB for further proceedings. Petitioner interprets further proceedings to mean that all approvals for the two projects must be vacated and Beaufort Inn must start the entire HRB approval process for each project anew. For the reasons stated below, Petitioner's Appeal is rejected.[5]

Before addressing any of the Petitioner's arguments, the Court must discuss the overriding legal principle that moots nearly all of the grounds for these appeals, that is, the timeliness of the

[5] Each basis outlined in this Order for the rejection of the Appeal is an independent and alternative basis for denial of the Appeal, and each basis thus stands on its own.

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Appeal with respect to the relief sought by Petitioner and the Court's subject matter jurisdiction to grant the relief requested.

A. Subject Matter Jurisdiction-Timeliness of Appeal

The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")[6]

"Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). These UDO and Beaufort Code deadlines are of critical importance to the Appeal, as it is well settled that the failure to appeal within the ordinance timelines renders a circuit court with no subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't,* 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and S.C.R.C.P. Rule 74.

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[6] Both time periods are as authorized by South Carolina law. *See* S.C. Code ¶ 6-29-900(A)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")

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Each conceptual, preliminary, and final approval by the HRB for both projects was indisputably a "decision" under the UDO and the Beaufort Code. Thus, if any party was aggrieved by the subject matter of any of those decisions, the time to appeal was with within thirty days of that decision per both the UDO and the Beaufort Code. The Petitioner has attacked both process (for example, contesting that extensions were not properly granted) and substance (whether or not the HRB decisions complied with the substantive requirements for the projects) with respect to approvals for these projects.

However, to the extent the matters they attack were decided at an HRB meeting prior to the June 9, 2021 meeting, the time for appealing those decisions has expired and those decisions cannot be challenged now. Nor can Petitioner use the final approval stage to reach back to prior approvals that were not appealed. Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.

The requirement of immediate appeal of HRB decisions on conceptual, preliminary and final approval is consistent with how the HRB itself views its processes. For example, the Petitioner attacks the Parking Garage Project and Hotel Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Petitioner claim are relevant. However, the HRB members specifically discussed whether or not the HRB could revisit prior approvals given to Beaufort Inn for the Parking Garage Project and the HRB specifically decided it could not revisit those approvals, as three of the four HRB members specifically stated that it was not their position to revisit approvals given by the HRB at prior meetings. Therefore, the HRB specifically discussed and rejected Petitioner's claims that the HRB

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could revisit matters already decided favorably to Beaufort Inn in prior HRB meetings. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).

This requirement for timely appeals is also consistent with the common law and avoids problematic situations where a property owner has relied on an HRB approval and created vested rights in the HRB approval by expending resources. It is axiomatic that when a government entity makes a land use decision regarding property, the property owner is entitled to rely on that decision and the government cannot later change that decision to the detriment of the property owner. *See e.g.*, *Nuckles v. Allen,* 250 S.C. 123, 130, 156 S.E.2d 633, 637 (1967).

The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given. The record is replete with evidence that Beaufort Inn, for both the Hotel Project and the Parking Project, obtained HRB conceptual approvals under the UDO, then obtained later preliminary approvals from the HRB, and were granted demolition and relocation permits from the HRB necessary for Beaufort Inn to proceed with the projects.

It is well established in South Carolina that a project that is begun under one ordinance cannot be stopped or limited by a subsequent change in that ordinance. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). If HRB conceptual and preliminary approval decisions could be challenged at the final approval stage, the

City Defendants could face legal challenges by property owners of interference with the property owner's vested rights.[7]

Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals. As the City Defendants cannot revoke the approvals, the Petitioner by the Appeal cannot force the City Defendants to do what they are otherwise legally prohibited from doing.

For these reasons, the Petitioner is precluded from appealing any matter that was the subject of the conceptual, preliminary, or final approvals of the Hotel Project, as final approval was granted to that project in October 2019. Likewise, Petitioner is precluded from appealing any matter that was the subject of the preliminary approval of the Change after Certification of the Hotel Project on February 10, 2021.

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[7] "Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986). However, Petitioner argues that Beaufort Inn may not claim a vested right, even though the City Defendants concede it has vested rights in the application of the UDO to the project, because Beaufort Inn has failed to comply with the Vested Rights Act, S.C. Code § 6-29-1510, *et. seq*. ("VRA"), and therefore it obtained no vested rights. This is incorrect for several reasons. First, the VRA nowhere states that it is the exclusive method of establishing vested rights by a property owner in South Carolina. It is well settled in South Carolina that a statutory scheme creating a remedy of some type is not deemed to create an exclusive remedy unless the statute expressly so provides. *See e.g*., *Tilley v. Pacesetter Corp*., 333 S.C. 33, 40–41, 508 S.E.2d 16, 20 (1998)(creation of specific remedy by statute did not mean it was the sole one at law); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986)(Collection of Rent by Distraint Statute not exclusive remedy); and *Wimberly v. Barr*, 359 S.C. 414, 419, 597 S.E.2d 853, 856 (Ct. App. 2004)(timber cutting statute not the exclusive remedy). Conversely, where the legislature intends a statute to create an exclusive remedy, it has expressly said so. *See e.g*., *Dickert v. Metro. Life Ins. Co.,* 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993)(workers compensation is exclusive remedy); *Wimberly v. Barr*, 597 S.E.2d at 857 (S. C. Tort Claims Act is exclusive remedy.) North Carolina, with its similar vested rights act, has recognized that its vested rights act is not meant to be the sole method of establishing vested rights, and that the traditional framework of substantial reliance on municipal actions is still an avenue of relief for property owners. *Simpson v. City of Charlotte*, 115 N.C. App. 51, 56, 443 S.E.2d 772, 776 (1994). The same reasoning applies here; the South Carolina Supreme Court has recognized "the purpose of the Act was to protect, preserve, and create vested rights in development permits." *Grays Hill Baptist Church v. Beaufort Cty*., 431 S.C. 630, 640, 850 S.E.2d 29, 34 (2020). Limiting the ability of a property owner to acquire vested rights to those under a statutory scheme is anathema to the purpose for the VRA. The VRA merely provides another vehicle by which a property owner and developer can achieve some certainly in the development process—but it is not the only method.

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The only issues that can be subject to any appeal by Petitioner are those matters before the HRB for the first time at the June 9, 2021 meeting and were additional design changes required by the HRB after preliminary approval of the Change after Certification request of Beaufort Inn. That included the proposed roof deck that was contested at the June 9, 2021 HRB hearing. As noted, the only matter at issue in the HRB June 9, 2021 hearing was final approval of the design changes to the roof and other parts of the Hotel Project, but Petitioner only challenges the roof design changes from that hearing—something that the HRB had already granted preliminary approval for at its February 10, 2021 hearing. Therefore, all of Petitioner's Appeal with respect to the Hotel Project is time barred.

Likewise, the Petitioner is precluded from appealing any matter that was the subject of the conceptual and preliminary approvals of the Parking Garage Project, and Petitioner can only appeal those matters decided for the first time at the HRB's June 9, 2021 meeting. That in this case would be just those matters that the HRB had to review in order to provide final approval to the Parking Garage Project.

B. The HRB's Final Approval Regarding the Change after Certification of the Hotel Project is supported by Evidence in the Record.

Petitioner at the June 9, 2021 HRB meeting did not directly challenge any of these changes to the Hotel Project except the rooftop change. Mr. Graham Trask complained at the meeting about mass and scale of the entire Hotel Project, not just the matters at issue with respect to the changes proposed at the meeting. Trask also claimed that the new "rooftop bar increases the size and scale of this hotel by 25 percent because it's a 4th floor." The HRB chair acknowledged that the HRB would consider that issue, but not the original mass and scale of the Hotel Project.

However, this claim by Trask was refuted by the Hotel Project design architect, Ken

Ramsey, who pointed to the plans and said that a 4th floor was not being added and the size of the building was not being increased by 25%. The HRB obviously accepted Mr. Ramsey's testimony over the opinion of Mr. Trask, as it approved Beaufort Inn's application. Assessing development plans, and differing interpretations of those plans, is part of the normal function of the HRB. In this case, after making such assessment, the HRB decided in favor of the applicant. There was clearly evidence in the record to support the HRB's decision. A court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995.)

C. The HRB Properly Granted the Parking Garage Project Final Approval.

Petitioner only advance two arguments with respect only to the Parking Garage Project. First, it argues that the time period for a final approval by the HRB had run, and so final approval should not have been granted. Second, it disagrees with the HRB's decision almost entirely on matters that were conclusively established at the conceptual and preliminary approval stages—that is the scale, size, height and mass of Parking Garage Project.

1. There was no error in the HRB accepting the extensions.

Petitioner argues that the prior approvals granted to Beaufort Inn for the Parking Garage Project expired before the June 9, 2021 HRB meeting, and thus the application for final approval was not properly before the HRB. Petitioner asserts that the UDO did not allow for an extension totaling more than 18 months, and there was more than an 18 month gap between the preliminary approval of the HRB on September 20, 2019 and the June 9, 2021 HRB meeting. Petitioner claims that the approvals granted previously on the Parking Garage Project had thus expired, and so Beaufort Inn was required to start the Parking Garage Project approval process again.

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However, the City granted two extensions to Beaufort Inn, one by letter of June 21, 2019 and one by letter of July 1, 2020, pursuant to § 9.1.4 of the Beaufort Code, which allows up to five one-year extensions. There are no time limitations on extensions for conceptual, preliminary, or final approvals for COAs other than those stated in § 9.1.4. See B.C. § 9.1.9.C. Thus, the City was within its discretion to provide such extensions, and such extensions were accepted by the HRB in its discretion. See *Gurganious v. City of Beaufort*, 454 S.E.2d at 916

Petitioner cites to § 1.4.2 (B) of the Beaufort Code stating that the City Defendants and Beaufort Inn were required to follow the UDO time limits on extensions. However, that is not what § 1.4.2(B) requires. This section does not address extensions of the application process other than to say the City "shall review and decide the application in good faith and in accordance with any time frame established by the prior standards." This language clearly requires the City not to use the crossover of applicable codes to delay a project; otherwise, there would be no need to reference a "good faith" requirement.

Cleary the HRB did not construe § 1.4.2 (B) to bar final approval of the Parking Garage Project. Given the many interrelated acts by the City requiring approvals on this Project at various stages, as well as interconnected approvals needed for existing structure demolition and relocation, it would be inequitable and patently unfair for the HRB to give Beaufort Inn written extensions and then have this Court vacate those extensions. Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*. The application of timelines in the UDO that do not exist or are no longer in the ordinance clearly would impair such rights. Simply put, § 1.4.2 (B) cannot be construed to make a project *harder* to develop simply because of a crossover of codes. That would not be the "good faith"

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required of the City.

Further, Petitioner ignores B.C. § 1.4.4.A: "Other Approved Development Permits and Approvals." Section 1.4.4.A provides:

> Any other development that has received approval of a development permit or approval of a portion of a development—including any required Traffic Impact Analysis and/or Archaeology Survey—before the effective date of this chapter or any amendments thereof **may** be carried out in accordance with the terms and conditions of the development permit or approval and the procedures and standards in effect at the time of the approval, provided the permit or approval does not expire and otherwise remains valid. If significant changes are made to the development, associated studies and surveys required as part of the development process shall be redone. If the development permit or approval expires, is revoked (e.g., for failure to comply with time limits or terms and conditions), or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

(Emphasis added.) In statutory construction, the use of the word "may" means the action is permissive. *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980)("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary."); *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 276, 834 S.E.2d 209, 212 (Ct. App. 2019).

B.C. § 1.4.4.A clearly gives the HRB the *discretion* to apply the UDO or the Code with respect to timelines it applied to the Parking Garage Project. Thus, the HRB staff was free to apply the Beaufort Code timelines per this section of the Code, and was not required to follow the UDO.[8] There was no error in the HRB allowing the extensions to stand and the Parking Project

[8] To the extent that B.C. § 1.4.4.A may be interpreted to conflict with § 1.4.2 (B), the interpretation of the HRB giving precedence to § 1.4.4.A must be given great weight. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), *quoting Purdy v. Moise*, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

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to move to final approval.

2. There was evidence in the record supporting the HRB's final approval.

Second, Petitioner complains about the same matters that were approved at the conceptual and preliminary stages of the HRB approval process, the scale, size, height and mass of the Parking Garage Project. Petitioner claims there was no evidence before the HRB supporting the scale, size, height and mass of the Parking Garage Project. Petitioner by this position demonstrates the fallacy of its arguments. There were not thousands of pages of plans, specifications, and reports before the HRB because that back up documentation was presented to the HRB many years before at the prior approval stage. Nonetheless, from a review of the record before the Court, it is clear that there is sufficient evidence to support the HRB's final approval of the Parking Garage Project, so that its decision could in no way be characterized as arbitrary or capricious or contrary to law.

D. <u>There is No Requirement that the HRB Defer Decisions with Respect to Matters under the Jurisdiction of the City's Zoning Board of Appeals</u>.

Petitioner, citing no authority, claims that the HRB was precluded from hearing the Hotel Project matter and the Parking Garage Project matter because it alleges that neither project should be permitted under the Beaufort Code because both buildings are allegedly "Large Footprint Buildings" as defined at B.C. § 4.510 (B)(5). Large Footprint Buildings under this section of the Beaufort Code are required to have a Special Exception from the City of Beaufort's Zoning Board of Appeals ("ZBOA") to go forward. Thus, Petitioner reasons, the two projects do not qualify under applicable zoning and so should not be considered by the HRB. The Court rejects this argument.

First, as noted, the Parking Project and the Hotel Project were initiated under the UDO, not the Beaufort Code. As held by the HRB, and admitted by City Defendants, these two projects

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were to be assessed under the UDO, not the Beaufort Code. The Beaufort Code also provides that these projects are grandfathered under the UDO as they were initiated when the UDO was in effect. B.C. § 1.4.2.A. Critically, the UDO did not have a section like the Large Footprint Building in the Beaufort Code. Consequently, no Special Exception by the ZBOA was required for either the Hotel Project or the Parking Garage Project. Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*.[9]

Second, there is no provision in Beaufort Code requiring ZBOA approval of any project prior to HRB approval. Indeed, B.C. § 9.2.5 allows an applicant to apply for approvals concurrently at its own risk. Further, B.C. § 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioner's position that one must come before the other.

Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official" as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does

[9] This Appeal is but one part of a recent fight against the Hotel Project and the Parking Garage Project by West Street Farms, LLC and Mix Farms, LLC (collectively, the "Trask Petitioner"), two entities owned or controlled by Graham Trask, a real estate developer with property near the site of the Hotel Project and the Parking Project. Prior to this Appeal, the Trask Petitioners filed a declaratory judgment action against Beaufort Inn and the City on April 5, 2021 captioned "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates*," Civil Action No. 2021-CP-07-00663, which makes the same specious claim at they do here: that the Beaufort Code requires the Hotel Project and the Parking Garage Project to have Special Exceptions as Large Footprint Buildings.

not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to the arguments by Petitioner that the HRB was without jurisdiction over these projects or otherwise should have abstained from deciding anything because of its allegation that they needed Special Exceptions from the ZBOA.

IV. CONCLUSION

For the reasons aforestated, the Court DENIES the Appeal.

_____
The Honorable Bentley Price

January ___, 2022
_____, South Carolina

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Beaufort Common Pleas

Case Caption: Historic Beaufort Foundation VS Beaufort City Of , defendant, et al

Case Number: 2021CP0701241

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01231
West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	))))))))))))	**ORDER DENYING APPEAL**

This matter came before me on January 6, 2022 as an appeal ("Appeal") from the City of Beaufort Historic District Review Board decision of June 9, 2021 by the Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively "Petitioners.")

Respondents City of Beaufort ("City") and City of Beaufort Historic District Review Board ("HRB") (collectively, "City Defendants") and Respondent Beaufort Inn, LLC ("Beaufort Inn") filed responses denying the allegations of the Appeal.

All parties filed memoranda in support or in opposition to the Appeal, and a transcript of the proceedings before the HRB was in the record. After consideration of the party's respective arguments, I DENY the Appeal on the grounds stated herein.[1]

I. INTRODUCTION

[1] With the consent of all parties, this matter was heard simultaneously with a virtually identical appeal of the same HRB decision filed by the Historic Beaufort Foundation in Civil Action No. 2021-CP-07-0141. A separate but substantively identical order will be filed in that case.

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A. General Background

The following background information is in the Record on Appeal. This matter arises from two long-pending development projects in the Historic District of downtown Beaufort: a hotel project ("Hotel Project") and associated parking garage project ("Parking Garage Project") being developed by Respondent Beaufort Inn, and the latest decisions of the City's Historic District Review Board (HRB) (an architectural review board) approving certain aspects of those projects. Notwithstanding years of approvals by these projects at various stages by the HRB starting in 2016, Petitioners waited until after the Parking Garage Project approval was nearly complete, and two years after the Hotel Project received final approval, to file an appeal of the last and latest HRB decisions of June 9, 2021 regarding these projects.

The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code § 6-29-710 *et seq*. Prior to the enactment of the Beaufort Code, the City's development code was known as the Unified Development Ordinance ("UDO") which had been adopted on January 28, 2003 (last revised September 14, 2012.) The Beaufort Code superseded the UDO when enacted. The UDO provided for a Historic District Review Board ("HRB") at Section 2.7 which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*. The Beaufort Code, when enacted, similarly provided for the HRB at Section 10.7.

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. B.C. § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort Historic District and "will seek to preserve and protect the historic character and architectural integrity of Beaufort's National Landmark Historic

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District." B.C. § 10.7.1.B. Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. B.C. § 10.7.2.B.1. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. B.C. § 9.10.A.1.

On large projects that can take years to develop, the HRB under both the UDO and the Code follows a stepped procedure of conceptual approval, preliminary approval, and final approval.[2] Each of these steps requires a public notice and a public hearing by the HRB, with time for citizen comment at these hearings. Even though a COA may be issued by the HRB, the City must still issue building permits for the work to be performed.

Both the UDO and the Beaufort Code are relevant to matters in this Appeal as both the Parking Garage Project and the Hotel Project received their first approvals in 2016 pursuant to the UDO, prior to the enactment of the Beaufort Code, so the two projects have traversed both the former and current codes over the years. Petitioners specifically challenge the application of the UDO and the Beaufort Code to these projects as part of the Appeal.

B. The Parking Garage Project

As mentioned, both the Parking Garage Project and the Hotel Project have been in process for years. The record reflects that the Parking Garage Project was first presented by Beaufort Inn to the HRB at its August 17, 2016 meeting. This was prior to the enactment of the Beaufort Code. After a lengthy meeting with much discussion, the HRB gave unanimous conceptual approval of the Parking Garage, calling it a "496 space, 186,000 square foot parking garage." As noted in the

[2] *See* B.C. § 9.10.2 at diagram stating "HRB Review and Decision (Approved, Approved with Conditions, Denied) 2-3 Phases (Conceptual, Preliminary, and Final are Typical)." *Also see,* Appendix I to the UDO, which has similar descriptions.

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HRB meeting minutes, the mass, scale and height of the proposed Parking Garage were discussed and approved.[3] The HRB (including the HBF's designee on the HRB) then unanimously gave conceptual approval of the mass, height and scale.

No party appealed the decision of the HRB granting conceptual approval of the mass, height and scale of the Parking Garage Project, including the HBF, which had its Executive Director present.

The HRB then at its November 9, 2016 meeting advised Beaufort Inn that a condition of further development of the Parking Garage was the demolition of a structure owned by Beaufort Inn at 310 West Street. The HRB voted unanimously to allow this demolition, and issued a COA dated November 14, 2016 granting Beaufort Inn permission for the demolishing of 310 West Street. By follow up hearing on February 8, 2017, and letter dated February 15, 2017, the HRB issued a COA to Beaufort Inn, LLC to relocate the building at 918 Craven Street, again as part of the Parking Garage Project. The City then issued permits for both this demolition and building relocation, which were completed by Beaufort Inn. There was no appeal of either of these decisions of the HRB.

On September 20, 2017, the HRB met and unanimously voted to grant preliminary approval to the Parking Garage Project as subsequently memorized by the City's October 9, 2017 letter. The preliminary approval did not change the height, mass and scale issues, which had previously received conceptual approval. Many members of the public, and representatives of HBF, were present and participated in this September 20, 2017 HRB meeting. There was similarly

[3] Of note for this Appeal and the appeal of the HBF, the Executive Director of the Historic Beaufort Foundation at the time, Maxine Lutz, was present at the meeting and expressly stated "this seems like a wonderful way to develop this parcel," but then qualified that statement that the HBF was "primarily interested in the height, mass, and scale of a parking garage." Further, under the UDO, the HBF was able to designate a seat on the HRB, so the HBF's designee was sitting on the HRB at this time.

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no appeal of this preliminary approval of the Parking Garage Project.

The Parking Garage Project was submitted to the HRB for final approval at its June 9, 2021 meeting. The final approval did not involve any elements of mass, scale or height but dealt with the architectural and aesthetic details set forth in preliminary approval. As noted the HRB's October 9, 2017 preliminary approval letter, the *only things that needed to be addressed* by Beaufort Inn for final approval were:

> the type and color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborist report and plan for the 'treatment of trees.' The HRB clarified that the current drawings were approved as submitted, and that the applicant was tasked with refining the details listed in order to receive final approval.

Thus, for all practical purposes, the hearing on final approval of Garage Parking Project had a very limited agenda and list of items to be considered.

After a 4 ½ hour hearing, involving many members of the public, the HRB voted 3-1 to give final approval to the Parking Garage Project. The HRB issued a letter dated June 15, 2021 confirming final approval.

C. The Hotel Project

The Hotel Project matter currently being appealed is a request for final approval of a change after certification. That is, the Hotel Project itself had already had final approval and a COA was issued in 2019. Beaufort Inn by its current application simply requested several changes to the original HRB COA approval to construct the Hotel Project. To that end, Beaufort Inn applied for a "Change after Certification" for the Hotel Project on December 25, 2020. Beaufort Inn obtained preliminary approval of the Change after Certification at the HRB's February 10, 2021 Meeting. Thus, the Hotel Project only came up at the June 9, 2021 HRB meeting for final approval of this Change after Certification.

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The items Beaufort Inn requested to be changed from the original approved COA were: (1) slight changes in exterior design for storefronts; (2) revised cornice design, (3) revised porte-cochere design, (4) change in type of doors, and (5) a proposed new roof deck. The rooftop change was to add a rooftop amenity space. However, in their Appeal, Petitioners attempt to reargue matters decided years ago by the HRB, and in doing so seek to vastly expand the scope of what was actually heard at the June 9, 2021 HRB meeting. The issues complained of now by the Petitioners involve elements of the Hotel Project which were approved in 2019, and which were not challenged or appealed at that time, and an element of the Hotel roof design that already received an unchallenged preliminary approval in February 2021.

The Hotel Project was first presented to the HRB, and it received unanimous HRB conceptual approval, on September 14, 2016. Therefore, like the Parking Garage Project, the Hotel Project began under the UDO. (Indeed, at the HRB meeting of June 9, 2021, the chair of the HRB recognized that the Hotel Project was vested in the UDO.) There was no appeal of the HRB's conceptual approval.

The Hotel Project's preliminary approval was issued unanimously by the HRB on July 25, 2017. There was no appeal of the preliminary approval of this COA approving the Hotel Project design.[4] The Hotel Project was granted a final approval and Certificate of Appropriateness at the HRB's October 9, 2019 meeting. The HRB issued its Certificate of Appropriateness by letter dated October 9, 2019. There was no appeal of this COA.

As noted, the Hotel Project's Change after Certification received preliminary approval at

[4] The HRB also required that Beaufort Inn demolish the building at 812 Port Republic Street in order to build the Hotel Project, per the HRB meeting minutes for the November 13, 2019 meeting. The HRB granted Beaufort Inn a COA demolish this building on November 13, 2019. There was no appeal or other challenge from this decision. Beaufort Inn obtained a demolition permit from the City per this COA on December 17, 2020, and completed this demolition.

the HRB's February 10, 2021 meeting. This included preliminary approval of the change in the mass and type of roof design. There was no appeal of this preliminary approval.

Notwithstanding Petitioners' claims, the HRB felt that the prior approvals of the Hotel Project were final and could not be changed by the HRB. At the beginning of the June 9, 2021 HRB meeting under appeal, the Chair noted:

> I will explain, also, at this point that we are at final, which means mass, scale, and all of those items have all been dealt with and voted upon in advance. We will not be relitigating them, we will not be going back over all of those details today. We're only here today to review the last details for this project and then to make a decision to approve or not.

This is consistent with the view the HRB took of prior approvals of the Parking Garage Project as well. The Change after Certification for the Hotel Project was then approved by a 3-1 vote of the HRB.

II. STANDARD OF REVIEW

The HRB is a board of architectural review as permitted by S.C. Code § 6-29-870 (Supp. 2020) and established by the Beaufort Code. B.C. § 10.7. "The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance." S.C. Code § 6-29-880. The Beaufort Code provides such authority at § 10.7.2.B.

"On appeal, the findings of fact by the [HRB] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code§ 6-29-930(A)(Supp. 2020) ("The findings of fact by the board of architectural review must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.") "A reviewing court in a zoning case may rely on

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uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters*., 401 S.C. at 147-48, 735 S.E.2d at 661). "However, a decision of a [HRB] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id*. (quoting *Wyndham Enters*., 401 S.C. at 148, 735 S.E.2d at 661). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

III. PETITIONERS' ARGUMENTS

The relief sought by the Petitioners is that the approvals given the projects by the HRB be reversed and remanded by this Court to the HRB for further proceedings. Petitioners interpret further proceedings to mean that all approvals for the two projects must be vacated and Beaufort Inn must start the entire HRB approval process for each project anew. For the reasons stated below, Petitioners' Appeal is rejected.[5]

Before addressing any of the Petitioners' arguments, the Court must discuss the overriding legal principle that moots nearly all of the grounds for these appeals, that is, the timeliness of the

[5] Each basis outlined in this Order for the rejection of the Appeal is an independent and alternative basis for denial of the Appeal, and each basis thus stands on its own.

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Appeal with respect to the relief sought by Petitioners and the Court's subject matter jurisdiction to grant the relief requested.

A. Subject Matter Jurisdiction-Timeliness of Appeal

The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")[6]

"Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). These UDO and Beaufort Code deadlines are of critical importance to the Appeal, as it is well settled that the failure to appeal within the ordinance timelines renders a circuit court with no subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't,* 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and S.C.R.C.P. Rule 74.

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[6] Both time periods are as authorized by South Carolina law. *See* S.C. Code ¶ 6-29-900(A)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")

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Each conceptual, preliminary, and final approval by the HRB for both projects was indisputably a "decision" under the UDO and the Beaufort Code. Thus, if any party was aggrieved by the subject matter of any of those decisions, the time to appeal was with within thirty days of that decision per both the UDO and the Beaufort Code. The Petitioners have attacked both process (for example, contesting that extensions were not properly granted) and substance (whether or not the HRB decisions complied with the substantive requirements for the projects) with respect to approvals for these projects.

However, to the extent the matters they attack were decided at an HRB meeting prior to the June 9, 2021 meeting, the time for appealing those decisions has expired and those decisions cannot be challenged now. Nor can Petitioners use the final approval stage to reach back to prior approvals that were not appealed. Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.

The requirement of immediate appeal of HRB decisions on conceptual, preliminary and final approval is consistent with how the HRB itself views its processes. For example, the Petitioners attack the Parking Garage Project and Hotel Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Petitioners claim are relevant. However, the HRB members specifically discussed whether or not the HRB could revisit prior approvals given to Beaufort Inn for the Parking Garage Project and the HRB specifically decided it could not revisit those approvals, as three of the four HRB members specifically stated that it was not their position to revisit approvals given by the HRB at prior meetings. Therefore, the HRB specifically discussed and rejected Petitioners claims that the

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HRB could revisit matters already decided favorably to Beaufort Inn in prior HRB meetings. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).

This requirement for timely appeals is also consistent with the common law and avoids problematic situations where a property owner has relied on an HRB approval and created vested rights in the HRB approval by expending resources. It is axiomatic that when a government entity makes a land use decision regarding property, the property owner is entitled to rely on that decision and the government cannot later change that decision to the detriment of the property owner. *See e.g.*, *Nuckles v. Allen,* 250 S.C. 123, 130, 156 S.E.2d 633, 637 (1967).

The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given. The record is replete with evidence that Beaufort Inn, for both the Hotel Project and the Parking Project, obtained HRB conceptual approvals under the UDO, then obtained later preliminary approvals from the HRB, and were granted demolition and relocation permits from the HRB necessary for Beaufort Inn to proceed with the projects.

It is well established in South Carolina that a project that is begun under one ordinance cannot be stopped or limited by a subsequent change in that ordinance. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). If HRB conceptual and preliminary approval decisions could be challenged at the final approval stage, the

City Defendants could face legal challenges by property owners of interference with the property owner's vested rights.[7]

Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals. As the City Defendants cannot revoke the approvals, the Petitioners by the Appeal cannot force the City Defendants to do what they are otherwise legally prohibited from doing.

For these reasons, the Petitioners are precluded from appealing any matter that was the subject of the conceptual, preliminary, or final approvals of the Hotel Project, as final approval was granted to that project in October 2019. Likewise, Petitioners are precluded from appealing any matter that was the subject of the preliminary approval of the Change after Certification of the Hotel Project on February 10, 2021.

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[7] "Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986). However, Petitioners argue that Beaufort Inn may not claim a vested right, even though the City Defendants concede it has vested rights in the application of the UDO to the project, because Beaufort Inn has failed to comply with the Vested Rights Act, S.C. Code § 6-29-1510, *et. seq*. ("VRA"), and therefore it obtained no vested rights. This is incorrect for several reasons. First, the VRA nowhere states that it is the exclusive method of establishing vested rights by a property owner in South Carolina. It is well settled in South Carolina that a statutory scheme creating a remedy of some type is not deemed to create an exclusive remedy unless the statute expressly so provides. *See e.g*., *Tilley v. Pacesetter Corp*., 333 S.C. 33, 40–41, 508 S.E.2d 16, 20 (1998)(creation of specific remedy by statute did not mean it was the sole one at law); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986)(Collection of Rent by Distraint Statute not exclusive remedy); and *Wimberly v. Barr*, 359 S.C. 414, 419, 597 S.E.2d 853, 856 (Ct. App. 2004)(timber cutting statute not the exclusive remedy). Conversely, where the legislature intends a statute to create an exclusive remedy, it has expressly said so. *See e.g*., *Dickert v. Metro. Life Ins. Co.,* 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993)(workers compensation is exclusive remedy); *Wimberly v. Barr*, 597 S.E.2d at 857 (S. C. Tort Claims Act is exclusive remedy.) North Carolina, with its similar vested rights act, has recognized that its vested rights act is not meant to be the sole method of establishing vested rights, and that the traditional framework of substantial reliance on municipal actions is still an avenue of relief for property owners. *Simpson v. City of Charlotte*, 115 N.C. App. 51, 56, 443 S.E.2d 772, 776 (1994). The same reasoning applies here; the South Carolina Supreme Court has recognized "the purpose of the Act was to protect, preserve, and create vested rights in development permits." *Grays Hill Baptist Church v. Beaufort Cty*., 431 S.C. 630, 640, 850 S.E.2d 29, 34 (2020). Limiting the ability of a property owner to acquire vested rights to those under a statutory scheme is anathema to the purpose for the VRA. The VRA merely provides another vehicle by which a property owner and developer can achieve some certainly in the development process—but it is not the only method.

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The only issues that can be subject to any appeal by Petitioners are those matters before the HRB for the first time at the June 9, 2021 meeting and were additional design changes required by the HRB after preliminary approval of the Change after Certification request of Beaufort Inn. That included the proposed roof deck that was contested by Petitioners at the June 9, 2021 HRB hearing. As noted, the only matter at issue in the HRB June 9, 2021 hearing was final approval of the design changes to the roof and other parts of the Hotel Project, but Petitioners only challenge the roof design changes from that hearing—something that the HRB had already granted preliminary approval for at its February 10, 2021 hearing. Therefore, all of Petitioners' Appeal with respect to the Hotel Project is time barred.

Likewise, the Petitioners are precluded from appealing any matter that was the subject of the conceptual and preliminary approvals of the Parking Garage Project, and Petitioners can only appeal those matters decided for the first time at the HRB's June 9, 2021 meeting. That in this case would be just those matters that the HRB had to review in order to provide final approval to the Parking Garage Project.

B. The HRB's Final Approval Regarding the Change after Certification of the Hotel Project is supported by Evidence in the Record.

Petitioners at the June 9, 2021 HRB meeting did not directly challenge any of these changes to the Hotel Project except the rooftop change. Mr. Graham Trask, the owners of Petitioners, complained at the meeting about mass and scale of the entire Hotel Project, not just the matters at issue with respect to the changes proposed at the meeting. Trask also claimed that the new "rooftop bar increases the size and scale of this hotel by 25 percent because it's a 4th floor." The HRB chair acknowledged that the HRB would consider that issue, but not the original mass and scale of the Hotel Project.

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However, this claim by Trask was refuted by the Hotel Project design architect, Ken Ramsey, who pointed to the plans and said that a 4th floor was not being added and the size of the building was not being increased by 25%. The HRB obviously accepted Mr. Ramsey's testimony over the opinion of Mr. Trask, as it approved Beaufort Inn's application. Assessing development plans, and differing interpretations of those plans, is part of the normal function of the HRB. In this case, after making such assessment, the HRB decided in favor of the applicant. There was clearly evidence in the record to support the HRB's decision. A court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995.)

C. The HRB Properly Granted the Parking Garage Project Final Approval.

Petitioners only advance two arguments with respect only to the Parking Garage Project. First, they argue that the time period for a final approval by the HRB had run, and so final approval should not have been granted. Second, they disagree with the HRB's decision almost entirely on matters that were conclusively established at the conceptual and preliminary approval stages—that is the scale, size, height and mass of Parking Garage Project.

1. There was no error in the HRB accepting the extensions.

Petitioners argue that the prior approvals granted to Beaufort Inn for the Parking Garage Project expired before the June 9, 2021 HRB meeting, and thus the application for final approval was not properly before the HRB. Petitioners argue that the UDO did not allow for an extension totaling more than 18 months, and there was more than an 18 month gap between the preliminary approval of the HRB on September 20, 2019 and the June 9, 2021 HRB meeting. Petitioners claim that the approvals granted previously on the Parking Garage Project had thus expired, and so

Beaufort Inn was required to start the Parking Garage Project approval process again.

However, the City granted two extensions to Beaufort Inn, one by letter of June 21, 2019 and one by letter of July 1, 2020, pursuant to § 9.1.4 of the Beaufort Code, which allows up to five one-year extensions. There are no time limitations on extensions for conceptual, preliminary, or final approvals for COAs other than those stated in § 9.1.4. See B.C. § 9.1.9.C. Thus, the City was within its discretion to provide such extensions, and such extensions were accepted by the HRB in its discretion. See *Gurganious v. City of Beaufort*, 454 S.E.2d at 916

Petitioners cite to § 1.4.2 (B) of the Beaufort Code stating that the City Defendants and Beaufort Inn were required to follow the UDO time limits on extensions. However, that is not what § 1.4.2(B) requires. This section does not address extensions of the application process other than to say the City "shall review and decide the application in good faith and in accordance with any time frame established by the prior standards." This language clearly requires the City not to use the crossover of applicable codes to delay a project; otherwise, there would be no need to reference a "good faith" requirement.

Cleary the HRB did not construe § 1.4.2 (B) to bar final approval of the Parking Garage Project. Given the many interrelated acts by the City requiring approvals on this Project at various stages, as well as interconnected approvals needed for existing structure demolition and relocation, it would be inequitable and patently unfair for the HRB to give Beaufort Inn written extensions and then have this Court vacate those extensions. Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*. The application of timelines in the UDO that do not exist or are no longer in the ordinance clearly would impair such rights. Simply put, § 1.4.2 (B) cannot be construed to make a project

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harder to develop simply because of a crossover of codes. That would not be the "good faith" required of the City.

Further, Petitioners ignore B.C. § 1.4.4.A: "Other Approved Development Permits and Approvals." Section 1.4.4.A provides:

> Any other development that has received approval of a development permit or approval of a portion of a development—including any required Traffic Impact Analysis and/or Archaeology Survey—before the effective date of this chapter or any amendments thereof **may** be carried out in accordance with the terms and conditions of the development permit or approval and the procedures and standards in effect at the time of the approval, provided the permit or approval does not expire and otherwise remains valid. If significant changes are made to the development, associated studies and surveys required as part of the development process shall be redone. If the development permit or approval expires, is revoked (e.g., for failure to comply with time limits or terms and conditions), or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

(Emphasis added.) In statutory construction, the use of the word "may" means the action is permissive. *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980)("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary."); *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 276, 834 S.E.2d 209, 212 (Ct. App. 2019).

B.C. § 1.4.4.A clearly gives the HRB the *discretion* to apply the UDO or the Code with respect to timelines it applied to the Parking Garage Project. Thus, the HRB staff was free to apply the Beaufort Code timelines per this section of the Code, and was not required to follow the UDO.[8] There was no error in the HRB allowing the extensions to stand and the Parking Project

[8] To the extent that B.C. § 1.4.4.A may be interpreted to conflict with § 1.4.2 (B), the interpretation of the HRB giving precedence to § 1.4.4.A must be given great weight. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), *quoting Purdy v.*

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to move to final approval.

2. There was evidence in the record supporting the HRB's final approval.

Second, Petitioners complain about the same matters that were approved at the conceptual and preliminary stages of the HRB approval process, the scale, size, height and mass of the Parking Garage Project. Petitioners claim there was no evidence before the HRB supporting the scale, size, height and mass of the Parking Garage Project. Petitioners by this position demonstrate the fallacy of their arguments. There were not thousands of pages of plans, specifications, and reports before the HRB because that back up documentation was presented to the HRB many years before at the prior approval stage. Nonetheless, from a review of the record before the Court, it is clear that there is sufficient evidence to support the HRB's final approval of the Parking Garage Project, so that its decision could in no way be characterized as arbitrary or capricious or contrary to law.

D. <u>There is No Requirement that the HRB Defer Decisions with Respect to Matters under the Jurisdiction of the City's Zoning Board of Appeals</u>.

Petitioners, citing no authority, claim that the HRB was precluded from hearing the Hotel Project matter and the Parking Garage Project matter because they allege that neither project should be permitted under the Beaufort Code because both buildings are allegedly "Large Footprint Buildings" as defined at B.C. § 4.510 (B)(5). Large Footprint Buildings under this section of the Beaufort Code are required to have a Special Exception from the City of Beaufort's Zoning Board of Appeals ("ZBOA") to go forward. Thus, Petitioners reason, the two projects do not qualify under applicable zoning and so should not be considered by the HRB. The Court rejects this argument.

First, as noted, the Parking Project and the Hotel Project were initiated under the UDO, not

Moise, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

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the Beaufort Code. As held by the HRB, and admitted by City Defendants, these two projects were to be assessed under the UDO, not the Beaufort Code. The Beaufort Code also provides that these projects are grandfathered under the UDO as they were initiated when the UDO was in effect. B.C. § 1.4.2.A. Critically, the UDO did not have a section like the Large Footprint Building in the Beaufort Code. Consequently, no Special Exception by the ZBOA was required for either the Hotel Project or the Parking Garage Project. Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*.[9]

Second, there is no provision in Beaufort Code requiring ZBOA approval of any project prior to HRB approval. Indeed, B.C. § 9.2.5 allows an applicant to apply for approvals concurrently at its own risk. Further, B.C. § 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioners' position that one must come before the other.

Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official"

[9] This Appeal is but one part of a recent fight against the Hotel Project and the Parking Garage Project by Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively, the "Trask Petitioners"), two entities owned or controlled by Graham Trask, a real estate developer with property near the site of the Hotel Project and the Parking Project. Prior to this Appeal, Petitioners filed a declaratory judgment action against Beaufort Inn and the City on April 5, 2021 captioned "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates*," Civil Action No. 2021-CP-07-00663, which makes the same specious claim at they do here: that the Beaufort Code requires the Hotel Project and the Parking Garage Project to have Special Exceptions as Large Footprint Buildings.

as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to the arguments by Petitioners that the HRB was without jurisdiction over these projects or otherwise should have abstained from deciding anything because of its allegation that they needed Special Exceptions from the ZBOA.

IV. CONCLUSION

For the reasons aforestated, the Court DENIES the Appeal.

_____
The Honorable Bentley Price

January ___, 2022
_____, South Carolina

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Beaufort Common Pleas

Case Caption:	West Street Farms Llc , plaintiff, et al VS Beaufort City , defendant, et al
Case Number:	2021CP0701231
Type:	Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 Feb 11 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Historic Beaufort Foundation, Petitioner, vs. City of Beaufort and City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01241 **ORDER DENYING PETITIONERS' MOTION TO RECONSIDER**
West Street Farms, LLC and Mix Farms, LLC Petitioner, vs. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	CASE NO.: 2021-CP-07-01231

The Petitioners Historic Beaufort Foundation, West Street Farms, LLC and Mix Farms, LLC ("Petitioners") filed a motion asking this Court to reconsider its January 20, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

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available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Petitioners' motion, the Court hereby DENIES Petitioners' Motion to Reconsider.

AND IT IS SO ORDERED.

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Beaufort Common Pleas

Case Caption: Historic Beaufort Foundation VS Beaufort City Of , defendant, et al

Case Number: 2021CP0701241

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2021 Jul 09 4:22 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-
Historic Beaufort Foundation, Petitioner, v. City of Beaufort and City of Beaufort Historic District Review Board, and Beaufort Inn, LLC, Respondents.	)	**PETITION AND NOTICE OF APPEAL** (Appeal from Decision of Historic District Review Board) *Non-Jury*

TO: THE ABOVE-NAMED RESPONDENTS:

The Historic Beaufort Foundation ("Petitioner") files this petition, pursuant to S.C. Code Ann. § 6-29-900 and Section 9.10 of The Beaufort Code ("the Code"), appealing the decision of the Historic District Review Board ("Board") issued on June 9, 2021, on the following grounds:

1. The Petitioner is a nonprofit corporation organized in 1965 and existing pursuant to the laws of the State of South Carolina with its principal place of business located at 208 Scotts Street in Beaufort South Carolina. The Petitioner owns the John Mark Verdier House (the "Verdier House") located at 801 Bay Street and operates it as a museum open to the public. The Verdier House is in the immediate vicinity of the property located at 812 Port Republic Street which is owned by Respondent Beaufort Inn, LLC, separated by less than one hundred (100) feet of real estate and two small, one-story buildings.

2. The City of Beaufort, South Carolina (the "City") is a municipal corporation as defined in S.C. Code Ann. § 5-1-20 and body politic created by and subject to the laws of the State of South Carolina.

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3. The Board is a five member Board of architectural review appointed by the members of Beaufort City Council pursuant to Section 10.7 of The Beaufort Code Section in accordance with the authority granted by S.C. Code Ann. § 6-29-870. According to the City's website, the Board's mission is "to aid in the preservation, protection and enhancement of the Beaufort National Historic Landmark District."

4. Upon information and belief, Beaufort Inn LLC (the "LLC") is a limited liability company organized and existing pursuant to the laws of the State of Georgia that is authorized to do business and does business in Beaufort County, South Carolina.

5. Upon information and belief, the LLC owns the two parcels located in the City of Beaufort that are the subject of this Petition and Notice of Appeal: 812 Port Republic Street (Property Identification No. 120-004-000-0984); and 918 Craven Street (Property Identification No. 121-004-000-0850-0000).

6. Petitioner is aggrieved by the decisions of the Board on June 9, 2021, within the context of The Beaufort Code Section 9.10, which approved Agenda Item No. IV(C) 812 Port Republic Street: Change after Certification (the "Hotel"); and Agenda Item No. IV(D) 918 Craven Street, New Construction (the "Parking Garage"). Applicant Beaufort Inn, LLC sought proposed changes after certification (21-01 HRB.2) for the Hotel and approval for new construction (21-10 HRB.01) for the Parking Garage.

7. The Petitioner appeals those decisions on the grounds more fully described in the paragraphs which follow.

8. This Court has both subject matter jurisdiction and personal jurisdiction over the parties to this action.

9. Venue is proper in Beaufort County pursuant to the provisions of S.C. Code Ann.

§ 6-29-900 and The Beaufort Code Section 9.10.

I. THE APPROVALS ARE INVALID DUE TO NUMEROUS LEGAL ERRORS

A. The Board erred in granting final approval under the UDO because any prior approvals had expired by the terms of the ordinance.

10. At the outset of the hearing on the Hotel application, the Chair announced that the application would be considered Under the Unified Development Ordinance ("UDO").

11. Prior to the hearing on June 9th, the Hotel never received any approval under the UDO.

12. The Beaufort Code was adopted on June 27, 2017 and replaced the UDO as of that date.

13. The Hotel Project was originally presented in a July 12, 2017, Board meeting, fifteen (15) days after The Beaufort Code was adopted.

14. Furthermore, the official July 12, 2017, minutes indicate that the Hotel "is being evaluated under the new Beaufort Code," confirming that the Hotel was considered under The Beaufort Code and not the UDO.

15. During the July 12, 2017, meeting, the Hotel received preliminary approval. Under the UDO, item 3.1.M.3c, conceptual and preliminary approvals expire after 18 months and cannot be renewed beyond 18 months.

16. It is noteworthy that under table 9.1.4 of The Beaufort Code any approval expired 24 months thereafter.

17. The next approval, however, for the Hotel was almost 27 months later on October 9, 2019, for a "Certificate of Appropriateness." Therefore, the Hotel's preliminary approval expired prior to the applicant's claimed approval of the Hotel's "Certificate of Appropriateness".

18. Also, the "Certificate of Appropriateness", dated October 9, 2019, and signed by

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the current chairman of the Board confirms that the Hotel was evaluated under The Beaufort Code. The Certificate of Appropriateness specifically references Section 9.4.1 of The Beaufort Code. It does not reference the UDO.

19. Since the Hotel had no valid preliminary approval under either the UDO or The Beaufort Code on June 9, 2021, and it was legal error for the Board to consider the application for final approval.

B. Any approval of the Parking Garage under the UDO expired before June 9, 2021

20. On August 17, 2016, the Board, granted conceptual approval with conditions for the Parking Garage.

21. Assuming, without conceding, that the Garage was conceptually approved under the UDO, the Parking Garage received preliminary approval from the City as evidenced by a letter written by Lauren Kelley, former project development planner for City of Beaufort dated October 9th, 2017, which referenced a September 20, 2017, Board meeting. A copy of that letter was included in the application for the June 9th meeting at page 195.

22. This preliminary approval was granted after the UDO was repealed and replaced by The Beaufort Code.

23. The approval expired on March 20, 2019, i.e., 18 months after the issuing of the preliminary approval and could not be renewed according to the terms of the UDO.

24. The Parking Garage application was not eligible for consideration of final approval at the June 9, 2021 hearing, because the preliminary approval for the Garage expired over two years before the Board heard the final approval application.

C. The Board never issued a Certificate of Appropriateness for the Parking Garage

25. Further, the Board granted final approval for the Parking Garage based on an

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erroneous understanding that the Parking Garage had previously been granted a "Certificate of Appropriateness."

26. Both the UDO and The Beaufort Code require the applicant to apply for a Certificate of Appropriateness. The Board then votes on final approval of the project. When the Board grants final approval, a Certificate of Appropriateness may be issued.

27. The consideration of a Certificate of Appropriateness is a substantial compliance issue and vital to the Board's approval process.

28. Section 9.10(c) of The Beaufort Code details the following process and criteria for granting a Certificate of Appropriateness:

> In reviewing an application, the [Board] shall conduct a public meeting and consider, among other things, the historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, the use of such structure and its importance to the city, the character and appropriateness of design, scale of buildings, arrangement, texture, materials and color of the structure in question, and the relation of such elements to similar features of structures in the immediate surroundings.

29. David Prichard, Director of Economic Development and Community Planning for the City of Beaufort issued two letters dated June 20, 2019, and July 21, 2020 which were included in the materials for the June 9th meeting at pages 196 and 197 which purported to extend a "Certificate of Appropriateness" for the Parking Garage that never actually existed.

30. To further compound the legal confusion, Mr. Prichard references section 9.1.4 of The Beaufort Code as the basis for the extensions. Mr. Prichard does not reference the UDO.

31. Clearly, it was error for the Board to consider the application for the Parking Garage, since the prior approval under the UDO had expired, and any further action relating to the parking Garage would have to proceed under The Beaufort Code.

32. Instead of considering the application submitted for the June 9th meeting, the Board

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should have required the applicant to begin the process anew under the terms of The Beaufort Code.

33. The Beaufort Code is clear on this point. Section 1.4.2 (B) provides that

> If the applicant elects to have the pending application reviewed in accordance with the prior standards, the City shall review and decide the application in good faith and in accordance with any time frames established by the prior standards. If the application is approved, and the approval or subsequent authorization of the approved development expires or becomes invalid (e.g., for failure to comply with time limits or the terms and conditions of approval), any subsequent development of the site shall be subject to the procedures and standards of this Code.

D. <u>Neither application should have been considered in the absence of a Special Exception from the City of Beaufort Board of Zoning Appeals.</u>

34. Both the Hotel and the Parking Garage amount to a Large Footprint Building under The Beaufort Code

35. Section 4.5.10 (B)(5) of The Beaufort Code requires a Large Footprint Building to secure a Special Exception from the Board of Zoning Appeals ("BZA").

36. According to the rules that the City wrote for itself, neither application could proceed before the Board without satisfying the condition precedent of obtaining a Special Exception from the BZA.

37. The applicant did not request or receive a Special Exception for either project.

38. The Beaufort Code controls both of these projects.

39. Absent the Special Exceptions required by Section 4.5.10 (B)(5) of The Beaufort Code the Board had no jurisdiction to consider either application that was approved on June 9th.

II. THE APPROVALS WERE ARBITRARY AND CAPRICIOUS AND CONTRARY TO LAW BECAUSE THERE IS NO SUPPORTING EVIDENCE IN THE RECORD.

40. The applicant, Beaufort Inn, LLC, failed to present any evidence that the Hotel or

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Parking Garage qualified for approval under of the guidance documents that govern the Board's decision-making as a matter of law, as provided in The Beaufort Code, Section 9.10.2 (B).

41. In the absence of such evidence, the Board's decision to grant approval was arbitrary and capricious and an error of law.

42. As approved by the Board, the Parking Garage is 4 levels tall with a front facade of approximately 300 linear feet, square footage of approximately 160,000 square feet, volumetric mass approaching 3 million cubic feet, and accommodates over 475 vehicles.

43. The Hotel has a proposed fourth-story roof-top bar, a front façade of approximately 170 linear feet, square footage of approximately 50,000; and volumetric mass of approximately 1 million cubic feet.

44. At the hearing on June 9th the 4th floor rooftop bar was treated as previously approved even though the addition of that element indisputably affected the height, scale and mass of the Hotel. The applicant did not present evidence on those issues and the Board approved the Hotel without giving any consideration to the effect of the 4th floor on the Hotel's height, scale and mass. That decision was not based on any evidence in the record and was contrary to law.

45. Each of these structures individually are multiple times larger across all dimensions and metrics than any other building in historic downtown Beaufort. Each individually is classified as a "Large Footprint Building" and is specifically prohibited in downtown historic Beaufort unless a Special Exception is issued by the City of Beaufort Zoning Board of Appeals. Neither of these projects was granted a Special Exception as required by law.

46. City staff requested scale models of these buildings in 2016, but the applicant was never required to present models illustrating the true impact of the Hotel and the Garage on the historic district. The applicant did not submit scale models in support of the applications and the

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Board's determination that the projects were compatible with the character of the surrounding neighborhood has no support in the record and is contrary to law.

47. The Verdier House owned by the Petitioner, is one of the finest examples of federal architecture in South Carolina and is in the immediate vicinity of the proposed Hotel. As a point of comparison, the Verdier House is approximately 5,500 square feet and has volumetric mass of 50,000 cubic feet. The Parking Garage is 60 times larger, and the Hotel is 20 times larger in volumetric mass than the Verdier House. Construction of these massive new buildings would completely overwhelm the Verdier House and the rest of the built environment.

48. Clearly, the Hotel and the Parking Garage benefit from their location in the National Landmark Historic District, but the neighboring properties and the district in general and the Verdier House in particular will be adversely impacted by light, noise, congestion and other factors if the approval of those projects are not reversed.

49. The Parking Garage and the Hotel are both infill projects which are addressed in Section 4.1 of The Beaufort Code. Specifically, Section 4.1 provides:

4.1.1 PURPOSE

The purpose of this section is to:

A. protect and enhance Beaufort's unique aesthetic character
B. support high quality streets and public spaces
C. encourage architecture that blends harmoniously with the natural surroundings and neighboring development
D. safeguard property values and long-term economic assets
E. carefully preserve the character of Beaufort's National Historic Landmark District while permitting appropriate growth.

50. The Parking Garage and the Hotel, even in the absence of the Hotel's proposed fourth story rooftop bar, are not compliant with any of the stated points of 4.1 Purpose and Intent of Infill Projects given their outsized proportions and are completely out of character in Beaufort's

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National Historic Landmark District.

51. Additionally, there was no meaningful review of the architectural details of either the Hotel or the Parking Garage on June 9th. The applicant never constructed a sample wall to allow City staff or the Board an opportunity to review the building elements, construction materials or proposed workmanship. At the very least a sample should have been required and reviewed and Board approval without reviewing a sample had no basis in the record and was contrary to law.

52. The Hotel was granted approval with little or no details about the solar panels that will be installed on the building. It is apparent in the record that there was some concern by the Board about the design of the panels and their visibility, but no details were provided and the Board simply abrogated its legal duty to review evidence and deny the approval if the evidence was lacking as it was in this instance.

53. Section 4.2.3 of The Beaufort Code provides:

4.2.3 RELATIONSHIP TO HISTORIC DISTRICT STANDARDS

a. Applicability: In addition to the standards and guidelines in this article, any development located within the Beaufort Historic District is subject to the standards, guidelines, and procedures established in Section 9.10.
b. Conflicts: In the event of a conflict between the requirements of this article and the requirements and guidance provided by the documents listed in 9.10.2.B, the later shall take precedence.

54. In Section 9 of The Beaufort Code, 9.10: CERTIFICATE OF APPROPRIATENESS outlines, the following specific criteria that infill projects in the Historic District must meet in order to be approved to include: a) Compatibility; b) No Adverse Impact; and c) Consistency with Adopted Plans.

55. Neither the Parking Garage nor the Hotel are compatible in downtown historic Beaufort given their height, scale, and mass; they will each individually have irreparable adverse

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impact on the character of downtown Beaufort and have already triggered the National Parks Service's intervention. Because of the threat that each of these structures poses to the Beaufort National Historic Landmark District, the National Parks Service has started an "Integrity and Condition Study for the Beaufort National Historic Landmark District". Moreover, the director of its State Historic Preservation Office, W. Eric Emerson, Ph.D., has written a letter discouraging the approval of the Parking Garage. In that letter Dr. Emerson stated, "When we refer to the established design guidelines for the City of Beaufort, (Beaufort Preservation Manual dated 1979, and the 1990 Supplement), we see more inconsistencies with the guidelines than consistencies.". The contents of the Park Service notification to the City and the Emerson's letter were part of the record before the Board and referenced in the public comments to the Board.

56. 9.10.2.B.1 then specifically requires that the Board utilize the "Beaufort Preservation Manual," August 1979, and the "Beaufort Preservation Manual, Supplement," August 1990 in evaluating infill projects. The manual specifically mandates that new construction have appropriate scale, absolute size, massing, and proportions to the surrounding buildings and townscape. The manual also includes illustrations of examples of prohibited buildings such as those that are significantly taller and/or wider and/or have a significantly larger footprint and/or have a significantly larger mass than surrounding buildings and within the townscape. The size and incompatibility of Hotel and the Parking Garage are immensely beyond even the illustrated prohibited structures.

57. Sections 4, 9, and the Beaufort Preservation Manual all clearly prohibited Board approval of the Parking Garage and prohibited a fourth story rooftop bar for the Hotel. The UDO, which has been superseded by The Beaufort Code, also required that the Board evaluate infill buildings and structures in exactly the same manner as The Beaufort Code to ensure their:

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Compatibility, No Adverse Impact, and Consistency with Adopted Plans. The UDO also required that the Board abide by the "Beaufort Preservation Manual."

58. Counsel for the applicant argued in support of the Parking Garage that a parking Garage in the district is part of the City's master plan; however, neither the Vision Beaufort 2009 Comprehensive Master Plan nor the City of Beaufort Master Plan of 2014 contemplated a facility of the nature, size or scale of the Parking Garage approved on June 9th. Instead, those plans envisioned a parking Garage in the Historic District that was publicly owned for the benefit of citizens and visitors and appropriately scaled. The Parking Garage that was approved will be privately owned primarily for the benefit of the applicant's Hotel and other businesses. It is completely out of scale and proportion with the surrounding buildings and the overall character of the Historic District.

59. The applicants did not present evidence before the Board, or make arguments to the Board, establishing even a minimum compliance with any of the guidelines the Board is required to apply in its decision-making under The Beaufort Code (or the UDO, even if it were to apply). Based on this dearth of evidence before the Board, the Board erred in granting the relief requested by the applicants in the absence of even a minimum threshold of evidence by the applicant.

SUMMARY

60. Neither the Parking Garage nor the Hotel had the requisite valid approvals from the City of Beaufort for the Board to consider these applications. Furthermore, the structures failed to meet even the minimal threshold requirements for infill projects as clearly defined in Sections 4 and 9 of The Beaufort Code and the Beaufort Preservation Manual. The Board failed as a matter of law to fulfill its duties under The Beaufort Code in evaluating these applications. Therefore, the approvals must be reversed by this Court.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for this Honorable Court to reverse the actions of the Board and remand these matters to the Board for further action and grant such other, further, or different relief as may be just and proper.

s/John A. Massalon
John A. Massalon (SC Bar #10279)
Carissa J. Steichen (SC Bar #104264)
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
csteichen@wmalawfirm.net

ATTORNEYS FOR PETITIONER

July 9, 2021

Charleston, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-__- **PETITION** (Appeal of Award of Certificate of Appropriateness by Historic District Review Board) *Non-Jury*

TO: THE ABOVE-NAMED RESPONDENTS

The above-named Petitioners file this petition, pursuant to S.C. Code Ann. § 6-29-900 (LexisNexis, Lexis Advance through 2021 Regular Session Act No. 91 with the exception of Act No. 76) and The Beaufort Code Section 9.10, appealing the decision of the Historic District Review Board (HRB) issued on June 9, 2021, as contrary to law, as follows:

1. Petitioner West Street Farms, LLC ("**West Street**") is a South Carolina limited liability company and a property owner and taxpayer in the City of Beaufort, South Carolina. West Street is the owner of 205, 207, 209, and 221 West Street. Petitioner Mix Farms, LLC (**Mix Farms**) is a South Carolina limited liability company and a property owner and taxpayer in the City of Beaufort, South Carolina, and the owner of 211 Scott Street (West Street and Mix Farms are collectively, "**Petitioners**"). All of these properties ("**Adjacent Properties**") are adjacent to the projects that are the subject of this petition.

2. The City of Beaufort, South Carolina (the "**City**" or "**Beaufort**") is a municipal corporation and body politic created by and subject to the laws of the State of South Carolina.

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3. The City of Beaufort Historic District Review Board ("**HRB**") is a board of architectural review established by the City of Beaufort in The Beaufort Code Section 10.7 under the authority granted by S.C. Code Ann. § 6-29-870 (LexisNexis, Lexis Advance through 2021 Regular Session Act No. 91 with the exception of Act No. 76).

4. The Beaufort Inn, LLC is a Georgia limited liability company in good standing and registered to do business as a foreign corporation by the State of South Carolina ("**Applicant**"). Beaufort Inn, LLC, was the applicant for the approvals before the HRB appealed herein. Applicant owns and seeks to develop these properties that are the subject of this action:

a. 812 Port Republic Street and 212 Scott Street, identified as R120, Tax Map 4, Parcel 984, as a 77-unit hotel building, with retail/commercial space on the ground floor and the hotel on the upper floors ("**Hotel**"); and

b. 918 Craven Street for which it has sought approval of plans for a parking garage ("**Parking Garage**").

5. Petitioners are parties aggrieved by the decisions of the HRB on June 9, 2021, acting on (a) Agenda Item No. IV(C) 812 Port Republic Street: Change after Certification ("**Hotel**"), and (b) Agenda Item No. IV(D) 918 Craven Street, New Construction ("**Parking Garage**"). Applicant Beaufort Inn, LLC sought proposed changes after certification (21-01 HRB.2) for the Hotel and approval for new construction (21-10 HRB.01) for the Parking Garage.

6. The HRB granted those applications of Beaufort Inn, LLC, and the Petitioners hereby appeal those decisions as being contrary to law.

7. This Honorable Court has both subject matter and personal jurisdiction over the parties to this action.

8. Venue is proper in Beaufort County pursuant to the provisions of S.C. Code Ann. § 6-29-900 and The Beaufort Code Section 9.10.

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9. The Petitioners' grounds for appeal are set forth herein.

I. THE HRB LACKED THE LEGAL AUTHORITY TO CONSIDER THESE APPLICATIONS.

10. Under the Unified Development Ordinance ("UDO")[1], which was repealed on June 27, 2017, the Parking Garage's preliminary approval has expired. The Hotel never received any approval under the UDO. As a result, neither of these applications has received the requisite legal approvals to proceed.

11. The Beaufort Code was adopted on June 27, 2017 and replaced the UDO as of that date.

12. Under the UDO, section 3.1.M.3c specifically outlines expiration dates for City approvals: conceptual and preliminary approvals expire after 18 months and cannot be renewed beyond 18 months.

A. Any approval that the HRB may have granted the Parking Garage under the UDO had expired by June 9, 2021, and the HRB erred in acting on this application.

13. On August 17, 2016, the HRB, ostensibly under the UDO, granted conceptual approval with conditions for the Parking Garage.

14. The Parking Garage then received preliminary approval from the City in a letter from Lauren Kelley dated October 9, 2017. This preliminary approval was given after the UDO was repealed and replaced by The Beaufort Code. Ms. Kelley's letter referenced a September 20, 2017, HRB meeting. Ms. Kelley's letter was included on page 195 of the June 9, 2021, HRB meeting agenda documents and is part of the record of this appeal.

15. According to the UDO, such preliminary approval expired on March 20, 2019, i.e., 18 months after the issuing of the preliminary approval. Therefore, the Parking Garage's preliminary

[1] The predecessor to the current zoning ordinance, The Beaufort Code.

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approval under the UDO had expired before the June 9, 2021, HRB meeting.

16. The Parking Garage was therefore not eligible to proceed to final approval on June 9, 2021, almost 45 months after the issuing of the preliminary approval and almost 27 months after the preliminary approval's expiration.

17. Furthermore, the Parking Garage has never received a "Certificate of Appropriateness" from the HRB, a requirement both under the UDO and The Beaufort Code. Therefore, the Parking Garage was not eligible to proceed to final approval on June 9, 2021. Rather, the approval process had to begin again as the Parking Garage has no valid current approval.

18. David Prichard, on behalf of the City, in two letters dated June 20, 2019, and July 21, 2020, on pages 196 and 197 respectively of the June 9, 2021's HRB meeting agenda documents that are part of the record of this appeal, issued an extension of a non-existent "Certificate of Appropriateness" for the Parking Garage without authorization and in violation of law.

19. Also, in those two letters, David Prichard referenced The Beaufort Code section 9.1.4 as the governing code. Mr. Prichard did not reference the UDO.

20. The preliminary approval for the Parking Garage expired on March 20, 2019. Accordingly, it was error for the HRB to consider the application for a change after certification for the Parking Garage, since the prior action under the UDO no longer had any effect, and any further action relating to the parking garage would have had to have proceeded under The Beaufort Code.

B. Any application that the HRB had previously granted the Hotel was granted under The Beaufort Code, not the UDO, and that approval had expired by the terms of the ordinance.

21. Lauren Kelly, representing the City at the time, originally presented the Hotel Project in a July 12, 2017, HRB meeting, approximately two weeks after the Beaufort Code was adopted.

22. Furthermore, the approved official July 12, 2017, minutes quote Lauren Kelly saying,

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"this project (the Hotel) is being evaluated under the new Beaufort Code," confirming that the Hotel is being considered under the Beaufort Code and not the UDO.

23. During this July 12, 2017, meeting, the Hotel received preliminary approval. According to the Beaufort Code, such preliminary approval expired on January 12, 2019, i.e., 18 months after the issuing of such preliminary approval.

24. The next approval, however, for the Hotel was almost 27 months later on October 9, 2019, for a "Certificate of Appropriateness." Therefore, the Hotel's preliminary approval expired prior to the purported approval of the Hotel's "Certificate of Appropriateness".

25. As a consequence, the Hotel's "Certificate of Appropriateness" issued on October 9, 2019, is null and void.

26. Notably, though, the "Certificate of Appropriateness", dated October 9, 2019, and signed by John Dickerson, the current chairman of the HRB, specifically referenced the Beaufort Code and its Section 9.4.1 as the governing authority. He did not reference the UDO.

27. The Hotel had no approval under either the UDO or the Beaufort Code on June 9, 2021, and it was clear legal error for the HRB to proceed on the application.

C. Neither application could proceed before the HRB without each of these Large Footprint Buildings having first obtained a special exception from the City of Beaufort Board of Zoning Appeals.

28. Neither the Hotel nor the Parking Garage could proceed at all before the HRB without having first received a special exception from the City of Beaufort Zoning Board of Appeals, which neither had received.

29. Each project is a Large Footprint Building under the Beaufort Code and neither has received a Special Exception as required by Beaufort Code Sec. 4.5.10 (B)(5).

30. As outlined in this petition, The Beaufort Code controls both of these projects, as

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neither the Hotel nor the Parking Garage have vested rights under state law that would make the UDO the governing law for these applications. Rather, The Beaufort Code applies.

31. The applicants, not having received Special Exceptions from the City of Beaufort Zoning Board of Appeals for either the Hotel or the Parking Garage, could not proceed to obtain approval for either of these applications from the HRB, and the HRB had no jurisdiction to consider those applications.

II. THE HRB COMMITTED LEGAL ERROR IN GRANTING THESE APPLICATIONS WHERE THE APPROVALS LACK ANY LEGAL BASIS AND ARE NOT SUPPORTED BY THE FACTUAL RECORD.

32. The applicant, Beaufort Inn, LLC, failed to present any evidence bringing the Hotel or Parking Garage projects within the parameters of the guidance documents that control the HRB's decision-making as a matter of law, as provided in The Beaufort Code, Section 9.10.2 (B).

33. In the absence of such evidence, the HRB erred as a matter of law in granting the relief requested by the applications.

34. The Parking Garage is four stories tall with a front façade of over 300 linear feet, square footage of over 160,000 square feet, volumetric mass approaching 3 million cubic feet, and accommodates over 475 vehicles.

35. The Hotel has a proposed fourth-story roof-top bar, a front façade of over 170 linear feet, square footage of approximately 50,000, and volumetric mass of over 1 million cubic feet.

36. Each of these structures individually are multiple times larger across all dimensions and metrics than any other building in historic downtown Beaufort. As already stated, these two projects are so large that each individually is classified as a "Large Footprint Building" under The Beaufort Code and is specifically prohibited in downtown historic Beaufort unless a Special Exception is issued by the City of Beaufort Zoning Board of Appeals. Neither of these projects has a Special Exception.

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37. By comparison and for context, the Verdier House, which itself is immediately adjacent to the proposed Hotel, has square footage of approximately 5,500 square feet and volumetric mass of 50,000 cubic feet. The Parking Garage is 60 times larger, and the Hotel is 20 times larger in volumetric mass than the Verdier House.

38. The Parking Garage and the Hotel are both infill projects. Section 4.1 of the Beaufort Code specifically addresses infill projects and dictates the following purpose and intent of infill projects:

4.1.1 PURPOSE

The purpose of this section is to:

A. protect and enhance Beaufort's unique aesthetic character
B. support high quality streets and public spaces
C. encourage architecture that blends harmoniously with the natural surroundings and neighboring development
D. safeguard property values and long-term economic assets
E. carefully preserve the character of Beaufort's National Historic Landmark District while permitting appropriate growth.

39. The Parking Garage and the Hotel, even in the absence of the Hotel's proposed fourth story rooftop bar, are each individually incongruous with all five of the points of 4.1 Purpose and Intent of Infill Projects given their outsized proportions and are completely out of character in Beaufort's National Historic Landmark District.

40. Section 4.2.3 of the Beaufort Code goes on to address specifically for infill projects:

4.2.3 RELATIONSHIP TO HISTORIC DISTRICT STANDARDS

a. Applicability: In addition to the standards and guidelines in this article, any development located within the Beaufort Historic District is subject to the standards, guidelines, and procedures established in Section 9.10.
b. Conflicts: In the event of a conflict between the requirements of this article and the requirements and guidance provided by the documents listed in 9.10.2.B, the later shall take precedence.

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41. In Section 9 of the Beaufort Code, **9.10: CERTIFICATE OF APPROPRIATENESS** outlines, for the HRB, the specific criteria that infill projects in the Historic District must meet in order to be approved to include: a) Compatibility; b) No Adverse Impact; and c) Consistency with Adopted Plans.

42. Neither the Parking Garage nor the Hotel are compatible in downtown historic Beaufort given their size, scale, and mass; they will each individually have irreparable adverse impact on the character of downtown Beaufort and have already triggered the National Parks Service's intervention; and they are not consistent with adopted plans for the Beaufort historic district.

43. 9.10.2.B.1 then specifically requires that the HRB utilize the "Beaufort Preservation Manual," August 1979, and the "Beaufort Preservation Manual, Supplement," August 1990 in evaluating infill projects. These manuals dictate that infill buildings must interrelate with surrounding buildings. The manual specifically mandates that new construction have appropriate scale, absolute size, massing, and proportions to the surrounding buildings and townscape. The manual also provides drawings which show very clear examples of prohibited buildings such as those that are significantly taller and/or wider and/or have a significantly larger footprint and/or have a significantly larger mass than surrounding buildings and within the townscape.

44. Sections 4, 9, and the Beaufort Preservation Manual all clearly prohibited HRB approval of the Parking Garage and prohibited a fourth story rooftop bar for the Hotel. The UDO, which has been superseded by The Beaufort Code, also required that the HRB evaluate infill buildings and structures in exactly the same manner as the Beaufort Code to ensure their: Compatibility, No Adverse Impact, and Consistency with Adopted Plans. The UDO also required that the HRB abide by the "Beaufort Preservation Manual."

45. Because of the threat that each of these structures poses to the Beaufort National

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Historic Landmark District, the National Parks Service "NPS" has undertaken an "Integrity and Condition Study for the Beaufort National Historic Landmark District" and the South Carolina Department of Archives and History, in a letter from the director of its State Historic Preservation Office "SHPO", W. Eric Emerson, Ph.D., discouraged the approval of the Parking Garage. Dr. Emerson stated, "When we refer to the established design guidelines for the City of Beaufort, (Beaufort Preservation Manual dated 1979, and the 1990 Supplement), we see more inconsistencies with the guidelines than consistencies.". The contents of the NPS notification to the City and the SPHO's letter were part of the record before the HRB.

46. The applicants did not present evidence before the HRB, or make arguments to the HRB, establishing even a minimum compliance with any of the guidelines the HRB is required to apply in its decision-making under The Beaufort Code (or the UDO, even if it were to apply). Based on this dearth of evidence before the HRB, the Board erred in granting the relief requested by the applicants in the absence of even a minimum threshold of evidence by the applicant.

SUMMARY

47. To summarize, neither the Parking Garage nor the Hotel had the requisite valid approvals from the City of Beaufort for the HRB to proceed to consider these applications. Furthermore, the merits of each of these structures failed to meet even the minimal threshold of requirements of infill projects as clearly defined and articulated in Sections 4 and 9 of The Beaufort Code and the Beaufort Preservation Manual. The HRB failed as a matter of law to fulfill its responsibility under The Beaufort Code in approving these applications, and, as a result, those approvals must be reversed by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for this Honorable Court to reverse the actions of the HRB

and remand these matters to the HRB for further action and grant such other, further, or different relief as may be deemed just and proper.

Respectfully Submitted,

AUSTEN & GOWDER, LLC

/s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-0060
andy@austengowder.com

ATTORNEYS FOR PETITIONERS

July 8, 2021
Charleston, South Carolina

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ELECTRONICALLY FILED - 2021 Sep 13 9:34 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-01241
Historic Beaufort Foundation,	)	
	)	
Petitioner,	)	
	)	**RESPONDENT BEAUFORT INN, LLC'S RESPONSE TO PETITION OF HISTORIC BEAUFORT FOUNDATION**
v.	)	
	)	
City of Beaufort and City of Beaufort Historic District Review Board, and Beaufort Inn, LLC,	)	
	)	
Respondents.	)	

Respondent Beaufort Inn, LLC ("Beaufort Inn" and/or "Respondent") hereby answers the Petition of Historic Beaufort Foundation ("Petitioner" or "HBF") generally that each and every allegation of the Petition that is not expressly and specifically admitted herein is denied, and Respondent expressly and specifically responds to the allegations of the Petition as follows:

GENERAL STATEMENT OF DENIAL

Respondent denies all headings and subparts of the Petition that are not specifically numbered. Further, the Historic Beaufort Foundation through its designated representative on the City of Beaufort's Historic District Review Board ("HRB") was aware of the Hotel Project and the Parking Project since their inception, and the Historic Beaufort Foundation representative on the HRB not only did not oppose either project for four years, *the Historic Beaufort Foundation representative consistently voted to approve various requests by Respondent regarding these two projects until 2021*, when real estate developer Graham Trask made his opposition to the projects known.

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FOR A FIRST DEFENSE
(General Denial)

1. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of Paragraph 1 of the Petition, and so denies the same.

2. Respondent admits the allegations of Paragraph 2 of the Petition.

3. Respondent admits the allegations of Paragraph 3 of the Petition to the extent they are not legal conclusions.

4. Respondent admits the allegations of Paragraph 4 of the Petition.

5. Respondent admits the allegations of Paragraph 5 of the Petition.

6. Respondent denies the allegations of Paragraph 4 of the Petition.

7. No response is necessary to the allegations of Paragraph 7 of the Petition.

8. Respondent admits the allegations of Paragraph 8 of the Petition.

9. Respondent admits the allegations of Paragraph 9 of the Petition.

10. With respect to the allegations of Paragraph 10 of the Petition, Respondent alleges that the record before the HRB speaks for itself, and denies any allegation inconsistent with the same.

11. Respondent denies the allegations of Paragraph 11 of the Petition.

12. In response to the allegations of Paragraph 12 of the Petition, Respondent craves reference to the respective ordinances, which speak for themselves.

13. Respondent denies the allegations of Paragraph 13 of the Petition.

14. With respect to the allegations of Paragraph 14 of the Petition, Respondent alleges that the document referenced speaks for itself, and denies any allegation inconsistent with the same. Respondent further alleges that the Hotel project and the Parking Project were at all times

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subject only to the Unified Development Ordinance ("UDO") which remains the relevant ordinance applicable to the Hotel and Parking Garage projects notwithstanding the subsequent enactment of the current Beaufort Code, because Respondent obtained vested rights in those projects under the UDO before the Beaufort Code was enacted.

15. Respondent admits the allegations of the first sentence of Paragraph 15 of the Petition, but with respect to the second sentence, Respondent craves reference to the quoted ordinance, which speaks for itself.

16. In response to the allegations of Paragraph 16 of the Petition, Respondent craves reference to the cited ordinance, which speaks for itself.

17. Respondent denies the allegations of Paragraph 17 of the Petition.

18. Respondent denies the allegations of the first sentence of Paragraph 18 of the Petition, but with respect to the second sentence, Respondent craves reference to the quoted ordinance, which speaks for itself.

19. Respondent denies the allegations of Paragraph 19 of the Petition.

20. Respondent admits the allegations of Paragraph 20 of the Petition.

21. Respondent admits the allegations of Paragraph 21 of the Petition.

22. Respondent admits the allegations of Paragraph 22 of the Petition, but alleges that the Hotel project and the Garage Project were vested under the UDO.

23. Respondent denies the allegations of Paragraph 23 of the Petition.

24. Respondent denies the allegations of Paragraph 24 of the Petition.

25. Respondent denies the allegations of Paragraph 25 of the Petition.

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26. In response to the allegations of Paragraph 26 of the Petition, Respondent craves reference to the quoted ordinances, which speak for themselves.

27. In response to the allegations of Paragraph 27 of the Petition, Respondent craves reference to the applicable ordinance and law, which speak for themselves.

28. In response to the allegations of Paragraph 28 of the Petition, Respondent craves reference to the cited ordinance, which speaks for itself.

29. Respondent admits the allegations of Paragraph 29 of the Petition to the extent it references two letters, and Respondent alleges that the referenced documents and the record before the HRB speak for themselves, and denies any allegation inconsistent with the same. Respondent alleges that the letters contain a minor mistake, as upon information and belief they should have stated "final approval," not "certificate of appropriateness." Respondent denies all other allegations in this Paragraph.

30. Respondent admits the allegations of Paragraph 30 of the Petition to the extent it references a letter, and Respondent alleges that the referenced document and the record before the HRB speak for themselves, and denies any allegation inconsistent with the same.

31. Respondent denies the allegations of Paragraph 31 of the Petition.

32. Respondent denies the allegations of Paragraph 32 of the Petition.

33. Respondent denies the allegations of Paragraph 33 of the Petition.

34. Respondent admits the allegations of Paragraph 34 of the Petition; however these buildings are not subject to Special Exceptions as the UDO applies to them, not the Beaufort Code.

35. In response to the allegations of Paragraph 35 of the Petition, Respondent craves reference to the cited ordinance, which speaks for itself.

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36. Respondent denies the allegations of Paragraph 36 of the Petition.

37. Respondent admits the allegations of Paragraph 37 of the Petition, and alleges that because both the Hotel Project and the Parking Project were vested under the UDO, and the UDO did not require a Special Exception, then the Special Exception requirement is inapplicable to thse projects.

38. Respondent denies the allegations of Paragraph 38 of the Petition.

39. Respondent denies the allegations of Paragraph 39 of the Petition.

40. Respondent denies the allegations of Paragraph 40 of the Petition.

41. Respondent denies the allegations of Paragraph 41 of the Petition.

42. With respect to the allegations of Paragraph 42 of the Petition, Respondent alleges that the plans for the Parking Garage are in the record before the HRB and speak for themselves, and denies any allegation inconsistent with the same.

43. With respect to the allegations of Paragraph 43 of the Petition, Respondent alleges that the plans for the Hotel are in the record before the HRB and speak for themselves, and denies any allegation inconsistent with the same.

44. Respondent denies the allegations of Paragraph 44 of the Petition.

45. Respondent denies the allegations of Paragraph 45 of the Petition.

46. Respondent denies the allegations of Paragraph 46 of the Petition.

47. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of Paragraph 47 of the Petition, and so denies the same.

48. Respondent denies the allegations of Paragraph 48 of the Petition.

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49. Respondent denies the allegations of the first sentence of Paragraph 49 of the Petition. In response to the remaining allegations of Paragraph 49, Respondent craves reference to the cited ordinance, which speaks for itself.

50. Respondent denies the allegations of Paragraph 50 of the Petition.

51. Respondent denies the allegations of the first and third sentences of Paragraph 51 of the Petition. Respondent admits the allegations of the second sentence and alleges it was never asked to construct a sample wall by the HRB or the City.

52. Respondent denies the allegations of Paragraph 52 of the Petition.

53. In response to the allegations of Paragraph 53 of the Petition, Respondent craves reference to the cited ordinance, which speaks for itself.

54. In response to the allegations of Paragraph 54 of the Petition, Respondent craves reference to the cited ordinance, which speaks for itself.

55. Respondent denies the allegations of Paragraph 55 of the Petition.

56. In response to the allegations of Paragraph 56 of the Petition, Respondent craves reference to the quoted ordinance and documents, which speak for themselves, and Respondent denies any allegation inconsistent with the same. Respondent denies the allegations of the last sentence of Paragraph 56.

57. In response to the allegations of Paragraph 57 of the Petition, Respondent craves reference to the quoted ordinance and documents, which speak for themselves, and Respondent denies any allegation inconsistent with the same.

58. Respondent admits the allegations of the first clause of the first sentence of Paragraph 58 of the Petition, but denies all allegations thereafter starting with the word "however."

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59. Respondent denies the allegations of Paragraph 59 of the Petition.

60. Respondent denies the allegations of Paragraph 60 of the Petition.

FOR A SECOND DEFENSE
(Laches)

61. The Petitioner's claim is barred by the doctrine of laches, as the HBF representative on the HRB consistently voted in favor of the Hotel and Parking Garage projects at various stages of the approval process, and did not object until after Respondent had utilized significant time and money in the projects in reliance on those votes signifying HBF's approval.

FOR A THIRD DEFENSE
(Estoppel)

62. The Petitioner's claim is barred by the doctrine of estoppel, as the HBF representative on the HRB consistently voted in favor of the Hotel and Parking Garage projects at various stages of the approval process, and did not object until after Respondent had utilized significant time and money in the projects in reliance on those votes signifying HBF's approval.

FOR A FOURTH DEFENSE
(Waiver)

63. The Petitioner's claim is barred by the doctrine of waiver, as the HBF representative on the HRB consistently voted in favor of the Hotel and Parking Garage projects at various stages of the approval process, and did not object until after Respondent had utilized significant time and money in the projects in reliance on those votes signifying HBF's approval.

WHEREFORE, HAVING FULLY RESPONDED to the allegations of Petitioner's Petition, Respondent prays the Court for the following relief:

A. Dismissing all claims asserted against Respondent in Petitioner's Petition;

B. Awarding Respondent their attorneys' fees and costs in defending against

the claims in the Petition; and

C. For such other and further relief as the Court deems just and proper.

s/ Benjamin E. Nicholson, V
Benjamin E. Nicholson V, Esquire
SC Bar # 10137
nnicholson@burr.com
G. Wade Leach, III, Esquire
SC Bar # 104841
wleach@burr.com
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800

ATTORNEYS FOR BEAUFORT INN, LLC

September 13, 2021
Columbia, South Carolina

ELECTRONICALLY FILED - 2021 Sep 13 9:34 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

ELECTRONICALLY FILED - 2021 Sep 16 11:38 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01241
Historic Beaufort Foundation, Petitioner, v. City of Beaufort and City of Beaufort Historic District Review Board, and Beaufort Inn, LLC, Respondents.	)	**RESPONSE BY CITY OF BEAUFORT AND CITY OF BEAUFORT HISTORIC DISTRICT REVIEW BOARD TO PETITION OF HISTORIC BEAUFORT FOUNDATION**

Respondents City of Beaufort (City) and City of Beaufort Historic District Review Board (HDRB) hereby answers the Petition of Historic Beaufort Foundation ("Petitioner" or "HBF") generally that each and every allegation of the Petition that is not expressly and specifically admitted herein is denied, and Respondents expressly and specifically respond to the allegations of the Petition as follows:

GENERAL STATEMENT OF DENIAL

Respondents deny all headings and subparts of the Petition that are not specifically numbered. Further, the Historic Beaufort Foundation through its designated representative on the HDRB was aware of the Hotel Project and the Parking Project since their inception, and the Historic Beaufort Foundation representative on the HDRB not only did not oppose either project for four years, *the Historic Beaufort Foundation representative consistently voted to approve various requests by Respondent Beaufort Inn regarding these two projects until 2021*, when real estate developer Graham Trask made his opposition to the projects known.

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FOR A FIRST DEFENSE
(General Denial)

1. These Respondents are without information or knowledge sufficient to form a belief as to admit the allegations of Paragraph 1 of the Petition, and so deny the same.

2. These Respondents admit the allegations of Paragraph 2 of the Petition.

3. These Respondents admit the allegations of Paragraph 3 of the Petition to the extent they are not legal conclusions.

4. These Respondents admit, upon information and belief, the allegations of Paragraph 4 of the Petition.

5. These Respondents admit, upon information and belief, the allegations of Paragraph 5 of the Petition.

6. These Respondents deny the allegations of Paragraph 6 of the Petition.

7. No response is necessary to the allegations of Paragraph 7 of the Petition.

8. These Respondents admit the allegations of Paragraph 8 of the Petition.

9. These Respondents admit the allegations of Paragraph 9 of the Petition.

10. With respect to the allegations of Paragraph 10 of the Petition, Respondents would show that the record before the HDRB speaks for itself, and deny any allegation inconsistent with the same.

11. These Respondents deny the allegations of Paragraph 11 of the Petition.

12. In response to the allegations of Paragraph 12 of the Petition, Respondents crave reference to the respective ordinances, and the other ordinances of the City, which speak for themselves, and denies any allegation inconsistent therewith.

13. These Respondents deny the allegations of Paragraph 13 of the Petition.

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14. With respect to the allegations of Paragraph 14 of the Petition, Respondents allege that the documents referenced speak for itself, and deny any allegation inconsistent with the same. Respondents would further show that, as a result of applications, permits, agreements, actions and/or expenditures, Respondent Beaufort Inn received vested right to have the Hotel project and the Parking Garage Project considered and completed under the Unified Development Ordinance, ("UDO") which remains the relevant ordinance applicable to the Hotel and Parking Garage projects notwithstanding the subsequent enactment of the current Beaufort Code.

15. Respondents admit the allegations of the first sentence of Paragraph 15 of the Petition, but with respect to the second sentence, Respondents crave reference to the quoted ordinance, and the other ordinances of the City, which speak for itself.

16. In response to the allegations of Paragraph 16 of the Petition, Respondents crave reference to the cited ordinance, which speaks for itself.

17. Respondents deny the allegations of Paragraph 17 of the Petition.

18. Respondents deny the allegations of the first sentence of Paragraph 18 of the Petition, but with respect to the second sentence, Respondents crave reference to the quoted ordinance, which speaks for itself.

19. These Respondents deny the allegations of Paragraph 19 of the Petition.

20. These Respondents admit the allegations of Paragraph 20 of the Petition.

21. These Respondents admit the allegations of Paragraph 21 of the Petition.

22. These Respondents admit the allegations of Paragraph 22 of the Petition, but would show that the considerations of the Hotel project and the Garage Project were vested under the UDO.

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23. These Respondents deny the allegations of Paragraph 23 of the Petition.

24. These Respondents deny the allegations of Paragraph 24 of the Petition.

25. These Respondents deny the allegations of Paragraph 25 of the Petition.

26. In response to the allegations of Paragraph 26 of the Petition, Respondents crave reference to the quoted ordinances, and the other ordinances of the City, and would deny any allegation inconsistent therewith.

27. In response to the allegations of Paragraph 27 of the Petition, Respondents crave reference to the applicable ordinances and law, which speak for themselves, and would deny any allegation or innuendo inconsistent therewith.

28. In response to the allegations of Paragraph 28 of the Petition, Respondents crave reference to the cited ordinance, and the other ordinance of the City, and would deny any allegation or innuendo inconsistent therewith.

29. These Respondents admit the allegations of Paragraph 29 of the Petition to the extent it references two letters, and Respondents allege that the referenced documents and the record before the HDRB, and the minutes of the Board's actions, speak for themselves, and denies any allegation or innuendo inconsistent with the same. Respondents deny all other allegations in this Paragraph.

30. These Respondents admit the allegations of Paragraph 30 of the Petition to the extent it references a letter, and Respondents allege that the referenced document, the record before the HDRB, and the minutes and transcript of the HDRB actions, speak for themselves, and Respondents deny any allegation inconsistent with the same.

31. Respondents deny the allegations of Paragraph 31 of the Petition.

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32. Respondents deny the allegations of Paragraph 32 of the Petition.

33. These Respondents would crave reference to the ordinances of the City, the record before the HDRB, and the actions of the HDRB, which speak for themselves, and would deny any allegation inconsistent therewith.

34. These Respondents admit the allegations of Paragraph 34 of the Petition.

35. In response to the allegations of Paragraph 35 of the Petition, Respondents crave reference to the cited ordinance, and the other ordinances of the City, which speaks for itself.

36. These Respondents deny the allegations of Paragraph 36 of the Petition.

37. Respondents admit the allegations of Paragraph 37 of the Petition, and allege that because the City determined that both the Hotel Project and the Parking Project were vested under the UDO, and the UDO did not require a Special Exception, then the Special Exception requirement is inapplicable to these projects.

38. These Respondents deny the allegations of Paragraph 38 of the Petition.

39. These Respondents deny the allegations of Paragraph 39 of the Petition.

40. These Respondents deny the allegations of Paragraph 40 of the Petition.

41. These Respondents deny the allegations of Paragraph 41 of the Petition.

42. With respect to the allegations of Paragraph 42 of the Petition, Respondents allege that the plans for the Parking Garage are in the record before the HRB and speak for themselves, and deny any allegation or innuendo inconsistent with the same.

43. With respect to the allegations of Paragraph 43 of the Petition, Respondents allege that the plans for the Hotel are in the record before the HRB and speak for themselves, and deny any allegation or innuendo inconsistent with the same.

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44. These Respondents deny the allegations of Paragraph 44 of the Petition.

45. These Respondents deny the allegations of Paragraph 45 of the Petition.

46. These Respondents deny the allegations of Paragraph 46 of the Petition.

47. Respondents are without information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 47 of the Petition, and so deny the same.

48. These Respondents deny the allegations of Paragraph 48 of the Petition and would show that these issues were considered by Respondent HDRB, which approved the applications before it.

49. In response to the allegations of Paragraph 49, Respondents crave reference to the cited ordinance, the other ordinances of the City, and the actions of the HDRB, which speak for themselves, and would deny any allegation or innuendo inconsistent therewith..

50. These Respondents deny the allegations of Paragraph 50 of the Petition.

51. In response to the allegations of Paragraph 51 of the Petition, Respondents would crave reference to the ordinances of the City, the record before the HDRB, and the actions of the HDRB, which speak for themselves, and would deny any allegation or innuendo inconsistent therewith.

52. These Respondents deny the allegations of Paragraph 52 of the Petition.

53. In response to the allegations of Paragraph 53 of the Petition, Respondents crave reference to the cited ordinance, and the other ordinances of the City, which speak for itself, and would deny any allegation or innuendo inconsistent therewith.

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54. In response to the allegations of Paragraph 54 of the Petition, Respondents crave reference to the cited ordinance, and the other ordinances of the City, which speak for itself, and would deny any allegation or innuendo inconsistent therewith.

55. These Respondents deny the allegations of Paragraph 55 of the Petition.

56. In response to the allegations of Paragraph 56 of the Petition, Respondents crave reference to the quoted ordinance and documents, the other ordinances and guidelines of the City, the record before the HDRB and the actions of the HDRB, which speak for themselves, and Respondents deny any allegation or innuendo inconsistent with the same. Respondents denies the allegations of the last sentence of Paragraph 56.

57. In response to the allegations of Paragraph 57 of the Petition, Respondents crave reference to the quoted ordinance and documents, the other ordinances and guidelines of the City, the record before the HDRB, and actions of the HDRB, which speak for themselves, and Respondents deny any allegation or innuendo inconsistent with the same.

58. In response to the allegations of Paragraph 58 of the Petition, Respondents crave reference to the ordinances and guidelines of the City, the record before the HDRB, and actions of the HDRB, which speak for themselves, and Respondents deny any allegation or innuendo inconsistent with the same.

59. These Respondents deny the allegations of Paragraph 59 of the Petition.

60. These Respondents deny the allegations of Paragraph 60 of the Petition.

FOR A SECOND DEFENSE
(Laches)

61. The Petitioner's claim is barred by the doctrine of laches, as the HBF representative on the HRB consistently voted in favor of the Hotel and Parking Garage projects at

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various stages of the approval process, and did not object until after Respondent Beaufort Inn had utilized significant time and money in the projects in reliance on those votes signifying HBF's approval.

FOR A THIRD DEFENSE
(Estoppel)

62. The Petitioner's claim is barred by the doctrine of estoppel, as the HBF representative on the HRB consistently voted in favor of the Hotel and Parking Garage projects at various stages of the approval process, and did not object until after Respondent had utilized significant time and money in the projects in reliance on those votes signifying HBF's approval.

FOR A FOURTH DEFENSE
(Waiver)

63. The Petitioner's claim is barred by the doctrine of waiver, as the HBF representative on the HRB consistently voted in favor of the Hotel and Parking Garage projects at various stages of the approval process, and did not object until after Respondent had utilized significant time and money in the projects in reliance on those votes signifying HBF's approval.

FOR A FIFTH DEFENSE

64. The record reflects the applications, plans and other documents considered by the HDRB, which heard from members of the public, including representatives of the Petitioners, thoroughly discussed the Hotel and Parking Garage projects, and, after a 4-hour meeting, voted 3-1 in favor of approval of the applications for both projects. These decisions are fully supported by the evidence in the record, and are entitled to the deference accorded to HDRB decisions in such appeals.

FOR A SIXTH DEFENSE

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65. By virtue of the applications, decisions, approvals, and permits submitted by the Developers and/or granted by the City/HDRB, the agreements and assurances made by the City, and the actions taken and funds expended by the Developers, the Developers acquired certain vested rights to develop and/or continue the Hotel Project and the Parking Garage Project under the UDO.

WHEREFORE, HAVING FULLY RESPONDED to the allegations of Petitioner's Petition, Respondents pray the Court for the following relief:

A. Dismissing all claims asserted against Respondents in Petitioner's Petition;

B. Awarding Respondents their attorneys' fees and costs in defending against the claims in the Petition; and

C. For such other and further relief as the Court deems just and proper.

s/ WILLIAM B. HARVEY, III
William B. Harvey, III
HARVEY & BATTEY, PA
P.O. Box 1107
Beaufort, SC 29901
bharvey@harveyandbattey.com
843-524-3109
ATTORNEYS FOR CITY OF BEAUFORT AND CITY OF BEAUFORT HDRB

September 16, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Mar 11 2022
SC Court of Appeals

APPEAL FROM THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT

The Honorable Bentley D. Price

Circuit Court Case No. 2021-CP-07-01241

Historic Beaufort Foundation, ...Appellant,

v.

City of Beaufort, City of Beaufort Historic District Review Board,
and The Beaufort Inn, LLC,..... Respondents.

NOTICE OF APPEAL

Historic Beaufort Foundation ("HBF") hereby appeals (1) the January 20, 2022 Order issued by the Honorable Bentley D. Price denying the appeal of the City of Beaufort Historic District Review Board decision of June 9, 2021, and (2) the February 11, 2022 Order denying HBF's Motion to Reconsider. HBF received written notice of entry of the Order Denying Appeal on January 20, 2022, and the Order Denying Motion to Reconsider on February 11, 2022. A copy of each order is attached.

March 11, 2022

s/John A. Massalon
John A. Massalon, Esquire (SC Bar #10279)
Carissa J. Steichen, Esquire (SC Bar #104264)
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
csteichen@wmalawfirm.net

Attorneys for Historic Beaufort Foundation

Other Counsel of Record:

William B. Harvey III, Esquire
Harvey & Battey, P.A.
Post Office Box 1107
Beaufort, SC 29901-1107
843-524-3109
bharvey@harveyandbattey.com

Attorneys for City of Beaufort
and City of Beaufort Historic
District Review Board

Benjamin Nicholson V, Esquire
G. Wade Leach, III, Esquire
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800
nnicholson@burr.com
wleach@burr.com

Attorneys for Beaufort Inn, LLC

ELECTRONICALLY FILED - 2022 Jan 20 2:51 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01241
Historic Beaufort Foundation, Petitioner, v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	)))))))))))	**ORDER DENYING APPEAL**

RECEIVED
Mar 11 2022
SC Court of Appeals

This matter came before me on January 6, 2022 as an appeal ("Appeal") from the City of Beaufort Historic District Review Board decision of June 9, 2021 by the Petitioner Historic Beaufort Foundation ("Petitioner" or "HBF.")

Respondents City of Beaufort ("City") and City of Beaufort Historic District Review Board ("HRB") (collectively, "City Defendants") and Respondent Beaufort Inn, LLC ("Beaufort Inn") filed responses denying the allegations of the Appeal.

All parties filed memoranda in support or in opposition to the Appeal, and a transcript of the proceedings before the HRB was in the record. After consideration of the party's respective arguments, I DENY the Appeal on the grounds stated herein.[1]

[1] With the consent of all parties, this matter was heard simultaneously with a virtually identical appeal of the same HRB decision filed by West Street Farms, LLC and Mix Farms, LLC in Civil Action No. 2021-CP-07-01231. A separate but substantively identical order will be filed in that case.

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I. INTRODUCTION

A. General Background

The following background information is in the Record on Appeal. This matter arises from two long-pending development projects in the Historic District of downtown Beaufort: a hotel project ("Hotel Project") and associated parking garage project ("Parking Garage Project") being developed by Respondent Beaufort Inn, and the latest decisions of the City's Historic District Review Board (HRB) (an architectural review board) approving certain aspects of those projects. Notwithstanding years of approvals by these projects at various stages by the HRB starting in 2016, Petitioner waited until after the Parking Garage Project approval was nearly complete, and two years after the Hotel Project received final approval, to file an appeal of the last and latest HRB decisions of June 9, 2021 regarding these projects.

The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code § 6-29-710 *et seq*. Prior to the enactment of the Beaufort Code, the City's development code was known as the Unified Development Ordinance ("UDO") which had been adopted on January 28, 2003 (last revised September 14, 2012.) The Beaufort Code superseded the UDO when enacted. The UDO provided for a Historic District Review Board ("HRB") at Section 2.7 which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*. The Beaufort Code, when enacted, similarly provided for the HRB at Section 10.7.

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. B.C. § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort Historic District and "will seek to preserve and

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protect the historic character and architectural integrity of Beaufort's National Landmark Historic District." B.C. § 10.7.1.B. Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. B.C. § 10.7.2.B.1. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. B.C. § 9.10.A.1.

On large projects that can take years to develop, the HRB under both the UDO and the Code follows a stepped procedure of conceptual approval, preliminary approval, and final approval.[2] Each of these steps requires a public notice and a public hearing by the HRB, with time for citizen comment at these hearings. Even though a COA may be issued by the HRB, the City must still issue building permits for the work to be performed.

Both the UDO and the Beaufort Code are relevant to matters in this Appeal as both the Parking Garage Project and the Hotel Project received their first approvals in 2016 pursuant to the UDO, prior to the enactment of the Beaufort Code, so the two projects have traversed both the former and current codes over the years. Petitioner specifically challenge the application of the UDO and the Beaufort Code to these projects as part of the Appeal.

B. The Parking Garage Project

As mentioned, both the Parking Garage Project and the Hotel Project have been in process for years. The record reflects that the Parking Garage Project was first presented by Beaufort Inn to the HRB at its August 17, 2016 meeting. This was prior to the enactment of the Beaufort Code. After a lengthy meeting with much discussion, the HRB gave unanimous conceptual approval of

[2] *See* B.C. § 9.10.2 at diagram stating "HRB Review and Decision (Approved, Approved with Conditions, Denied) 2-3 Phases (Conceptual, Preliminary, and Final are Typical)." *Also see,* Appendix I to the UDO, which has similar descriptions.

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the Parking Garage, calling it a "496 space, 186,000 square foot parking garage." As noted in the HRB meeting minutes, the mass, scale and height of the proposed Parking Garage were discussed and approved.[3] The HRB (including the HBF's designee on the HRB) then unanimously gave conceptual approval of the mass, height and scale.

No party appealed the decision of the HRB granting conceptual approval of the mass, height and scale of the Parking Garage Project, including the HBF, which had its Executive Director present.

The HRB then at its November 9, 2016 meeting advised Beaufort Inn that a condition of further development of the Parking Garage was the demolition of a structure owned by Beaufort Inn at 310 West Street. The HRB voted unanimously to allow this demolition, and issued a COA dated November 14, 2016 granting Beaufort Inn permission for the demolishing of 310 West Street. By follow up hearing on February 8, 2017, and letter dated February 15, 2017, the HRB issued a COA to Beaufort Inn, LLC to relocate the building at 918 Craven Street, again as part of the Parking Garage Project. The City then issued permits for both this demolition and building relocation, which were completed by Beaufort Inn. There was no appeal of either of these decisions of the HRB.

On September 20, 2017, the HRB met and unanimously voted to grant preliminary approval to the Parking Garage Project as subsequently memorized by the City's October 9, 2017 letter. The preliminary approval did not change the height, mass and scale issues, which had previously received conceptual approval. Many members of the public, and representatives of

[3] Of note for this Appeal and the appeal of the HBF, the Executive Director of the Historic Beaufort Foundation at the time, Maxine Lutz, was present at the meeting and expressly stated "this seems like a wonderful way to develop this parcel," but then qualified that statement that the HBF was "primarily interested in the height, mass, and scale of a parking garage." Further, under the UDO, the HBF was able to designate a seat on the HRB, so the HBF's designee was sitting on the HRB at this time.

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HBF, were present and participated in this September 20, 2017 HRB meeting. There was similarly no appeal of this preliminary approval of the Parking Garage Project.

The Parking Garage Project was submitted to the HRB for final approval at its June 9, 2021 meeting. The final approval did not involve any elements of mass, scale or height but dealt with the architectural and aesthetic details set forth in preliminary approval. As noted the HRB's October 9, 2017 preliminary approval letter, the *only things that needed to be addressed* by Beaufort Inn for final approval were:

> the type and color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborist report and plan for the 'treatment of trees.' The HRB clarified that the current drawings were approved as submitted, and that the applicant was tasked with refining the details listed in order to receive final approval.

Thus, for all practical purposes, the hearing on final approval of Garage Parking Project had a very limited agenda and list of items to be considered.

After a 4 ½ hour hearing, involving many members of the public, the HRB voted 3-1 to give final approval to the Parking Garage Project. The HRB issued a letter dated June 15, 2021 confirming final approval.

C. The Hotel Project

The Hotel Project matter currently being appealed is a request for final approval of a change after certification. That is, the Hotel Project itself had already had final approval and a COA was issued in 2019. Beaufort Inn by its current application simply requested several changes to the original HRB COA approval to construct the Hotel Project. To that end, Beaufort Inn applied for a "Change after Certification" for the Hotel Project on December 25, 2020. Beaufort Inn obtained preliminary approval of the Change after Certification at the HRB's February 10, 2021 Meeting. Thus, the Hotel Project only came up at the June 9, 2021 HRB meeting for final approval of this

Change after Certification.

The items Beaufort Inn requested to be changed from the original approved COA were: (1) slight changes in exterior design for storefronts; (2) revised cornice design, (3) revised porte-cochere design, (4) change in type of doors, and (5) a proposed new roof deck. The rooftop change was to add a rooftop amenity space. However, in their Appeal, Petitioner attempt to reargue matters decided years ago by the HRB, and in doing so seek to vastly expand the scope of what was actually heard at the June 9, 2021 HRB meeting. The issues complained of now by the Petitioner involve elements of the Hotel Project which were approved in 2019, and which were not challenged or appealed at that time, and an element of the Hotel roof design that already received an unchallenged preliminary approval in February 2021.

The Hotel Project was first presented to the HRB, and it received unanimous HRB conceptual approval, on September 14, 2016. Therefore, like the Parking Garage Project, the Hotel Project began under the UDO. (Indeed, at the HRB meeting of June 9, 2021, the chair of the HRB recognized that the Hotel Project was vested in the UDO.) There was no appeal of the HRB's conceptual approval.

The Hotel Project's preliminary approval was issued unanimously by the HRB on July 25, 2017. There was no appeal of the preliminary approval of this COA approving the Hotel Project design.[4] The Hotel Project was granted a final approval and Certificate of Appropriateness at the HRB's October 9, 2019 meeting. The HRB issued its Certificate of Appropriateness by letter dated October 9, 2019. There was no appeal of this COA.

[4] The HRB also required that Beaufort Inn demolish the building at 812 Port Republic Street in order to build the Hotel Project, per the HRB meeting minutes for the November 13, 2019 meeting. The HRB granted Beaufort Inn a COA demolish this building on November 13, 2019. There was no appeal or other challenge from this decision. Beaufort Inn obtained a demolition permit from the City per this COA on December 17, 2020, and completed this demolition.

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As noted, the Hotel Project's Change after Certification received preliminary approval at the HRB's February 10, 2021 meeting. This included preliminary approval of the change in the mass and type of roof design. There was no appeal of this preliminary approval.

Notwithstanding Petitioner's claims, the HRB felt that the prior approvals of the Hotel Project were final and could not be changed by the HRB. At the beginning of the June 9, 2021 HRB meeting under appeal, the Chair noted:

> I will explain, also, at this point that we are at final, which means mass, scale, and all of those items have all been dealt with and voted upon in advance. We will not be relitigating them, we will not be going back over all of those details today. We're only here today to review the last details for this project and then to make a decision to approve or not.

This is consistent with the view the HRB took of prior approvals of the Parking Garage Project as well. The Change after Certification for the Hotel Project was then approved by a 3-1 vote of the HRB.

II. STANDARD OF REVIEW

The HRB is a board of architectural review as permitted by S.C. Code § 6-29-870 (Supp. 2020) and established by the Beaufort Code. B.C. § 10.7. "The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance." S.C. Code § 6-29-880. The Beaufort Code provides such authority at § 10.7.2.B.

"On appeal, the findings of fact by the [HRB] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code§ 6-29-930(A)(Supp. 2020) ("The findings of fact by the board of architectural review must be treated in the same manner as a finding of fact by a jury, and the court

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may not take additional evidence.") "A reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters*., 401 S.C. at 147-48, 735 S.E.2d at 661). "However, a decision of a [HRB] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id*. (quoting *Wyndham Enters*., 401 S.C. at 148, 735 S.E.2d at 661). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

III. PETITIONER'S ARGUMENTS

The relief sought by the Petitioner is that the approvals given the projects by the HRB be reversed and remanded by this Court to the HRB for further proceedings. Petitioner interprets further proceedings to mean that all approvals for the two projects must be vacated and Beaufort Inn must start the entire HRB approval process for each project anew. For the reasons stated below, Petitioner's Appeal is rejected.[5]

Before addressing any of the Petitioner's arguments, the Court must discuss the overriding legal principle that moots nearly all of the grounds for these appeals, that is, the timeliness of the

[5] Each basis outlined in this Order for the rejection of the Appeal is an independent and alternative basis for denial of the Appeal, and each basis thus stands on its own.

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Appeal with respect to the relief sought by Petitioner and the Court's subject matter jurisdiction to grant the relief requested.

A. Subject Matter Jurisdiction-Timeliness of Appeal

The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")[6]

"Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). These UDO and Beaufort Code deadlines are of critical importance to the Appeal, as it is well settled that the failure to appeal within the ordinance timelines renders a circuit court with no subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't,* 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and S.C.R.C.P. Rule 74.

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[6] Both time periods are as authorized by South Carolina law. *See* S.C. Code ¶ 6-29-900(A)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")

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Each conceptual, preliminary, and final approval by the HRB for both projects was indisputably a "decision" under the UDO and the Beaufort Code. Thus, if any party was aggrieved by the subject matter of any of those decisions, the time to appeal was with within thirty days of that decision per both the UDO and the Beaufort Code. The Petitioner has attacked both process (for example, contesting that extensions were not properly granted) and substance (whether or not the HRB decisions complied with the substantive requirements for the projects) with respect to approvals for these projects.

However, to the extent the matters they attack were decided at an HRB meeting prior to the June 9, 2021 meeting, the time for appealing those decisions has expired and those decisions cannot be challenged now. Nor can Petitioner use the final approval stage to reach back to prior approvals that were not appealed. Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.

The requirement of immediate appeal of HRB decisions on conceptual, preliminary and final approval is consistent with how the HRB itself views its processes. For example, the Petitioner attacks the Parking Garage Project and Hotel Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Petitioner claim are relevant. However, the HRB members specifically discussed whether or not the HRB could revisit prior approvals given to Beaufort Inn for the Parking Garage Project and the HRB specifically decided it could not revisit those approvals, as three of the four HRB members specifically stated that it was not their position to revisit approvals given by the HRB at prior meetings. Therefore, the HRB specifically discussed and rejected Petitioner's claims that the HRB

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could revisit matters already decided favorably to Beaufort Inn in prior HRB meetings. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).

This requirement for timely appeals is also consistent with the common law and avoids problematic situations where a property owner has relied on an HRB approval and created vested rights in the HRB approval by expending resources. It is axiomatic that when a government entity makes a land use decision regarding property, the property owner is entitled to rely on that decision and the government cannot later change that decision to the detriment of the property owner. *See e.g.*, *Nuckles v. Allen,* 250 S.C. 123, 130, 156 S.E.2d 633, 637 (1967).

The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given. The record is replete with evidence that Beaufort Inn, for both the Hotel Project and the Parking Project, obtained HRB conceptual approvals under the UDO, then obtained later preliminary approvals from the HRB, and were granted demolition and relocation permits from the HRB necessary for Beaufort Inn to proceed with the projects.

It is well established in South Carolina that a project that is begun under one ordinance cannot be stopped or limited by a subsequent change in that ordinance. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). If HRB conceptual and preliminary approval decisions could be challenged at the final approval stage, the

City Defendants could face legal challenges by property owners of interference with the property owner's vested rights.[7]

Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals. As the City Defendants cannot revoke the approvals, the Petitioner by the Appeal cannot force the City Defendants to do what they are otherwise legally prohibited from doing.

For these reasons, the Petitioner is precluded from appealing any matter that was the subject of the conceptual, preliminary, or final approvals of the Hotel Project, as final approval was granted to that project in October 2019. Likewise, Petitioner is precluded from appealing any matter that was the subject of the preliminary approval of the Change after Certification of the Hotel Project on February 10, 2021.

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[7] "Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986). However, Petitioner argues that Beaufort Inn may not claim a vested right, even though the City Defendants concede it has vested rights in the application of the UDO to the project, because Beaufort Inn has failed to comply with the Vested Rights Act, S.C. Code § 6-29-1510, *et. seq*. ("VRA"), and therefore it obtained no vested rights. This is incorrect for several reasons. First, the VRA nowhere states that it is the exclusive method of establishing vested rights by a property owner in South Carolina. It is well settled in South Carolina that a statutory scheme creating a remedy of some type is not deemed to create an exclusive remedy unless the statute expressly so provides. *See e.g*., *Tilley v. Pacesetter Corp*., 333 S.C. 33, 40–41, 508 S.E.2d 16, 20 (1998)(creation of specific remedy by statute did not mean it was the sole one at law); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986)(Collection of Rent by Distraint Statute not exclusive remedy); and *Wimberly v. Barr*, 359 S.C. 414, 419, 597 S.E.2d 853, 856 (Ct. App. 2004)(timber cutting statute not the exclusive remedy). Conversely, where the legislature intends a statute to create an exclusive remedy, it has expressly said so. *See e.g*., *Dickert v. Metro. Life Ins. Co.,* 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993)(workers compensation is exclusive remedy); *Wimberly v. Barr*, 597 S.E.2d at 857 (S. C. Tort Claims Act is exclusive remedy.) North Carolina, with its similar vested rights act, has recognized that its vested rights act is not meant to be the sole method of establishing vested rights, and that the traditional framework of substantial reliance on municipal actions is still an avenue of relief for property owners. *Simpson v. City of Charlotte*, 115 N.C. App. 51, 56, 443 S.E.2d 772, 776 (1994). The same reasoning applies here; the South Carolina Supreme Court has recognized "the purpose of the Act was to protect, preserve, and create vested rights in development permits." *Grays Hill Baptist Church v. Beaufort Cty*., 431 S.C. 630, 640, 850 S.E.2d 29, 34 (2020). Limiting the ability of a property owner to acquire vested rights to those under a statutory scheme is anathema to the purpose for the VRA. The VRA merely provides another vehicle by which a property owner and developer can achieve some certainly in the development process—but it is not the only method.

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The only issues that can be subject to any appeal by Petitioner are those matters before the HRB for the first time at the June 9, 2021 meeting and were additional design changes required by the HRB after preliminary approval of the Change after Certification request of Beaufort Inn. That included the proposed roof deck that was contested at the June 9, 2021 HRB hearing. As noted, the only matter at issue in the HRB June 9, 2021 hearing was final approval of the design changes to the roof and other parts of the Hotel Project, but Petitioner only challenges the roof design changes from that hearing—something that the HRB had already granted preliminary approval for at its February 10, 2021 hearing. Therefore, all of Petitioner's Appeal with respect to the Hotel Project is time barred.

Likewise, the Petitioner is precluded from appealing any matter that was the subject of the conceptual and preliminary approvals of the Parking Garage Project, and Petitioner can only appeal those matters decided for the first time at the HRB's June 9, 2021 meeting. That in this case would be just those matters that the HRB had to review in order to provide final approval to the Parking Garage Project.

B. The HRB's Final Approval Regarding the Change after Certification of the Hotel Project is supported by Evidence in the Record.

Petitioner at the June 9, 2021 HRB meeting did not directly challenge any of these changes to the Hotel Project except the rooftop change. Mr. Graham Trask complained at the meeting about mass and scale of the entire Hotel Project, not just the matters at issue with respect to the changes proposed at the meeting. Trask also claimed that the new "rooftop bar increases the size and scale of this hotel by 25 percent because it's a 4th floor." The HRB chair acknowledged that the HRB would consider that issue, but not the original mass and scale of the Hotel Project.

However, this claim by Trask was refuted by the Hotel Project design architect, Ken

Ramsey, who pointed to the plans and said that a 4th floor was not being added and the size of the building was not being increased by 25%. The HRB obviously accepted Mr. Ramsey's testimony over the opinion of Mr. Trask, as it approved Beaufort Inn's application. Assessing development plans, and differing interpretations of those plans, is part of the normal function of the HRB. In this case, after making such assessment, the HRB decided in favor of the applicant. There was clearly evidence in the record to support the HRB's decision. A court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995.)

C. The HRB Properly Granted the Parking Garage Project Final Approval.

Petitioner only advance two arguments with respect only to the Parking Garage Project. First, it argues that the time period for a final approval by the HRB had run, and so final approval should not have been granted. Second, it disagrees with the HRB's decision almost entirely on matters that were conclusively established at the conceptual and preliminary approval stages—that is the scale, size, height and mass of Parking Garage Project.

1. There was no error in the HRB accepting the extensions.

Petitioner argues that the prior approvals granted to Beaufort Inn for the Parking Garage Project expired before the June 9, 2021 HRB meeting, and thus the application for final approval was not properly before the HRB. Petitioner asserts that the UDO did not allow for an extension totaling more than 18 months, and there was more than an 18 month gap between the preliminary approval of the HRB on September 20, 2019 and the June 9, 2021 HRB meeting. Petitioner claims that the approvals granted previously on the Parking Garage Project had thus expired, and so Beaufort Inn was required to start the Parking Garage Project approval process again.

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However, the City granted two extensions to Beaufort Inn, one by letter of June 21, 2019 and one by letter of July 1, 2020, pursuant to § 9.1.4 of the Beaufort Code, which allows up to five one-year extensions. There are no time limitations on extensions for conceptual, preliminary, or final approvals for COAs other than those stated in § 9.1.4. See B.C. § 9.1.9.C. Thus, the City was within its discretion to provide such extensions, and such extensions were accepted by the HRB in its discretion. See *Gurganious v. City of Beaufort*, 454 S.E.2d at 916

Petitioner cites to § 1.4.2 (B) of the Beaufort Code stating that the City Defendants and Beaufort Inn were required to follow the UDO time limits on extensions. However, that is not what § 1.4.2(B) requires. This section does not address extensions of the application process other than to say the City "shall review and decide the application in good faith and in accordance with any time frame established by the prior standards." This language clearly requires the City not to use the crossover of applicable codes to delay a project; otherwise, there would be no need to reference a "good faith" requirement.

Cleary the HRB did not construe § 1.4.2 (B) to bar final approval of the Parking Garage Project. Given the many interrelated acts by the City requiring approvals on this Project at various stages, as well as interconnected approvals needed for existing structure demolition and relocation, it would be inequitable and patently unfair for the HRB to give Beaufort Inn written extensions and then have this Court vacate those extensions. Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*. The application of timelines in the UDO that do not exist or are no longer in the ordinance clearly would impair such rights. Simply put, § 1.4.2 (B) cannot be construed to make a project *harder* to develop simply because of a crossover of codes. That would not be the "good faith"

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required of the City.

Further, Petitioner ignores B.C. § 1.4.4.A: "Other Approved Development Permits and Approvals." Section 1.4.4.A provides:

> Any other development that has received approval of a development permit or approval of a portion of a development—including any required Traffic Impact Analysis and/or Archaeology Survey—before the effective date of this chapter or any amendments thereof **may** be carried out in accordance with the terms and conditions of the development permit or approval and the procedures and standards in effect at the time of the approval, provided the permit or approval does not expire and otherwise remains valid. If significant changes are made to the development, associated studies and surveys required as part of the development process shall be redone. If the development permit or approval expires, is revoked (e.g., for failure to comply with time limits or terms and conditions), or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

(Emphasis added.) In statutory construction, the use of the word "may" means the action is permissive. *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980)("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary."); *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 276, 834 S.E.2d 209, 212 (Ct. App. 2019).

B.C. § 1.4.4.A clearly gives the HRB the *discretion* to apply the UDO or the Code with respect to timelines it applied to the Parking Garage Project. Thus, the HRB staff was free to apply the Beaufort Code timelines per this section of the Code, and was not required to follow the UDO.[8] There was no error in the HRB allowing the extensions to stand and the Parking Project

[8] To the extent that B.C. § 1.4.4.A may be interpreted to conflict with § 1.4.2 (B), the interpretation of the HRB giving precedence to § 1.4.4.A must be given great weight. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), *quoting Purdy v. Moise*, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

to move to final approval.

2. There was evidence in the record supporting the HRB's final approval.

Second, Petitioner complains about the same matters that were approved at the conceptual and preliminary stages of the HRB approval process, the scale, size, height and mass of the Parking Garage Project. Petitioner claims there was no evidence before the HRB supporting the scale, size, height and mass of the Parking Garage Project. Petitioner by this position demonstrates the fallacy of its arguments. There were not thousands of pages of plans, specifications, and reports before the HRB because that back up documentation was presented to the HRB many years before at the prior approval stage. Nonetheless, from a review of the record before the Court, it is clear that there is sufficient evidence to support the HRB's final approval of the Parking Garage Project, so that its decision could in no way be characterized as arbitrary or capricious or contrary to law.

D. <u>There is No Requirement that the HRB Defer Decisions with Respect to Matters under the Jurisdiction of the City's Zoning Board of Appeals</u>.

Petitioner, citing no authority, claims that the HRB was precluded from hearing the Hotel Project matter and the Parking Garage Project matter because it alleges that neither project should be permitted under the Beaufort Code because both buildings are allegedly "Large Footprint Buildings" as defined at B.C. § 4.510 (B)(5). Large Footprint Buildings under this section of the Beaufort Code are required to have a Special Exception from the City of Beaufort's Zoning Board of Appeals ("ZBOA") to go forward. Thus, Petitioner reasons, the two projects do not qualify under applicable zoning and so should not be considered by the HRB. The Court rejects this argument.

First, as noted, the Parking Project and the Hotel Project were initiated under the UDO, not the Beaufort Code. As held by the HRB, and admitted by City Defendants, these two projects

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were to be assessed under the UDO, not the Beaufort Code. The Beaufort Code also provides that these projects are grandfathered under the UDO as they were initiated when the UDO was in effect. B.C. § 1.4.2.A. Critically, the UDO did not have a section like the Large Footprint Building in the Beaufort Code. Consequently, no Special Exception by the ZBOA was required for either the Hotel Project or the Parking Garage Project. Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*.[9]

Second, there is no provision in Beaufort Code requiring ZBOA approval of any project prior to HRB approval. Indeed, B.C. § 9.2.5 allows an applicant to apply for approvals concurrently at its own risk. Further, B.C. § 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioner's position that one must come before the other.

Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official" as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does

[9] This Appeal is but one part of a recent fight against the Hotel Project and the Parking Garage Project by West Street Farms, LLC and Mix Farms, LLC (collectively, the "Trask Petitioner"), two entities owned or controlled by Graham Trask, a real estate developer with property near the site of the Hotel Project and the Parking Project. Prior to this Appeal, the Trask Petitioners filed a declaratory judgment action against Beaufort Inn and the City on April 5, 2021 captioned "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates*," Civil Action No. 2021-CP-07-00663, which makes the same specious claim at they do here: that the Beaufort Code requires the Hotel Project and the Parking Garage Project to have Special Exceptions as Large Footprint Buildings.

not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to the arguments by Petitioner that the HRB was without jurisdiction over these projects or otherwise should have abstained from deciding anything because of its allegation that they needed Special Exceptions from the ZBOA.

IV. CONCLUSION

For the reasons aforestated, the Court DENIES the Appeal.

_____
The Honorable Bentley Price

January ___, 2022
_____, South Carolina

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Beaufort Common Pleas

Case Caption: Historic Beaufort Foundation VS Beaufort City Of , defendant, et al

Case Number: 2021CP0701241

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 Feb 11 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Historic Beaufort Foundation, Petitioner, vs. City of Beaufort and City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01241 **ORDER DENYING PETITIONERS' MOTION TO RECONSIDER** RECEIVED **Mar 11 2022** SC Court of Appeals
West Street Farms, LLC and Mix Farms, LLC Petitioner, vs. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	CASE NO.: 2021-CP-07-01231

The Petitioners Historic Beaufort Foundation, West Street Farms, LLC and Mix Farms, LLC ("Petitioners") filed a motion asking this Court to reconsider its January 20, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Petitioners' motion, the Court hereby DENIES Petitioners' Motion to Reconsider.

AND IT IS SO ORDERED.

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Beaufort Common Pleas

Case Caption: Historic Beaufort Foundation VS Beaufort City Of , defendant, et al

Case Number: 2021CP0701241

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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Mar 11 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2021-CP-07-01231

West Street Farms, LLC, and
Mix Farms, LLC

Appellants,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC,

Respondents.

NOTICE OF APPEAL

West Street Farms, LLC, and Mix Farms, LLC appeal the orders of the Honorable Bentley D. Price dated January 20, 2022, and February 11, 2022. Appellants received written notice of entry of the Order Denying Appeal January 20, 2022, and the Order Denying Petitioners' Motion to Reconsider on February 11, 2022.

March 11, 2022

/s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.
1629 Meeting Street, Suite A
Charleston, South Carolina 29405
(843) 727-0060
andy@austengowder.com
Attorney for Appellants

Other Counsel of Record:

Benjamin “Ned” E. Nicholson V
G. Wade Leach, III
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800
Attorneys for Beaufort Inn, LLC

William B. Harvey, III
Harvey & Battey, PA
P.O. Box 1107
Beaufort, SC 29901
(843) 524-3109
Attorneys for City of Beaufort and
City of Beaufort Historic District
Review Board

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01231
West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	)	**ORDER DENYING APPEAL**

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Mar 11 2022
SC Court of Appeals

This matter came before me on January 6, 2022 as an appeal ("Appeal") from the City of Beaufort Historic District Review Board decision of June 9, 2021 by the Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively "Petitioners.")

Respondents City of Beaufort ("City") and City of Beaufort Historic District Review Board ("HRB") (collectively, "City Defendants") and Respondent Beaufort Inn, LLC ("Beaufort Inn") filed responses denying the allegations of the Appeal.

All parties filed memoranda in support or in opposition to the Appeal, and a transcript of the proceedings before the HRB was in the record. After consideration of the party's respective arguments, I DENY the Appeal on the grounds stated herein.[1]

I. INTRODUCTION

[1] With the consent of all parties, this matter was heard simultaneously with a virtually identical appeal of the same HRB decision filed by the Historic Beaufort Foundation in Civil Action No. 2021-CP-07-0141. A separate but substantively identical order will be filed in that case.

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A. General Background

The following background information is in the Record on Appeal. This matter arises from two long-pending development projects in the Historic District of downtown Beaufort: a hotel project ("Hotel Project") and associated parking garage project ("Parking Garage Project") being developed by Respondent Beaufort Inn, and the latest decisions of the City's Historic District Review Board (HRB) (an architectural review board) approving certain aspects of those projects. Notwithstanding years of approvals by these projects at various stages by the HRB starting in 2016, Petitioners waited until after the Parking Garage Project approval was nearly complete, and two years after the Hotel Project received final approval, to file an appeal of the last and latest HRB decisions of June 9, 2021 regarding these projects.

The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code § 6-29-710 *et seq*. Prior to the enactment of the Beaufort Code, the City's development code was known as the Unified Development Ordinance ("UDO") which had been adopted on January 28, 2003 (last revised September 14, 2012.) The Beaufort Code superseded the UDO when enacted. The UDO provided for a Historic District Review Board ("HRB") at Section 2.7 which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*. The Beaufort Code, when enacted, similarly provided for the HRB at Section 10.7.

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. B.C. § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort Historic District and "will seek to preserve and protect the historic character and architectural integrity of Beaufort's National Landmark Historic

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District." B.C. § 10.7.1.B. Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. B.C. § 10.7.2.B.1. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. B.C. § 9.10.A.1.

On large projects that can take years to develop, the HRB under both the UDO and the Code follows a stepped procedure of conceptual approval, preliminary approval, and final approval.[2] Each of these steps requires a public notice and a public hearing by the HRB, with time for citizen comment at these hearings. Even though a COA may be issued by the HRB, the City must still issue building permits for the work to be performed.

Both the UDO and the Beaufort Code are relevant to matters in this Appeal as both the Parking Garage Project and the Hotel Project received their first approvals in 2016 pursuant to the UDO, prior to the enactment of the Beaufort Code, so the two projects have traversed both the former and current codes over the years. Petitioners specifically challenge the application of the UDO and the Beaufort Code to these projects as part of the Appeal.

B. The Parking Garage Project

As mentioned, both the Parking Garage Project and the Hotel Project have been in process for years. The record reflects that the Parking Garage Project was first presented by Beaufort Inn to the HRB at its August 17, 2016 meeting. This was prior to the enactment of the Beaufort Code. After a lengthy meeting with much discussion, the HRB gave unanimous conceptual approval of the Parking Garage, calling it a "496 space, 186,000 square foot parking garage." As noted in the

[2] *See* B.C. § 9.10.2 at diagram stating "HRB Review and Decision (Approved, Approved with Conditions, Denied) 2-3 Phases (Conceptual, Preliminary, and Final are Typical)." *Also see,* Appendix I to the UDO, which has similar descriptions.

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HRB meeting minutes, the mass, scale and height of the proposed Parking Garage were discussed and approved.[3] The HRB (including the HBF's designee on the HRB) then unanimously gave conceptual approval of the mass, height and scale.

No party appealed the decision of the HRB granting conceptual approval of the mass, height and scale of the Parking Garage Project, including the HBF, which had its Executive Director present.

The HRB then at its November 9, 2016 meeting advised Beaufort Inn that a condition of further development of the Parking Garage was the demolition of a structure owned by Beaufort Inn at 310 West Street. The HRB voted unanimously to allow this demolition, and issued a COA dated November 14, 2016 granting Beaufort Inn permission for the demolishing of 310 West Street. By follow up hearing on February 8, 2017, and letter dated February 15, 2017, the HRB issued a COA to Beaufort Inn, LLC to relocate the building at 918 Craven Street, again as part of the Parking Garage Project. The City then issued permits for both this demolition and building relocation, which were completed by Beaufort Inn. There was no appeal of either of these decisions of the HRB.

On September 20, 2017, the HRB met and unanimously voted to grant preliminary approval to the Parking Garage Project as subsequently memorized by the City's October 9, 2017 letter. The preliminary approval did not change the height, mass and scale issues, which had previously received conceptual approval. Many members of the public, and representatives of HBF, were present and participated in this September 20, 2017 HRB meeting. There was similarly

[3] Of note for this Appeal and the appeal of the HBF, the Executive Director of the Historic Beaufort Foundation at the time, Maxine Lutz, was present at the meeting and expressly stated "this seems like a wonderful way to develop this parcel," but then qualified that statement that the HBF was "primarily interested in the height, mass, and scale of a parking garage." Further, under the UDO, the HBF was able to designate a seat on the HRB, so the HBF's designee was sitting on the HRB at this time.

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no appeal of this preliminary approval of the Parking Garage Project.

The Parking Garage Project was submitted to the HRB for final approval at its June 9, 2021 meeting. The final approval did not involve any elements of mass, scale or height but dealt with the architectural and aesthetic details set forth in preliminary approval. As noted the HRB's October 9, 2017 preliminary approval letter, the *only things that needed to be addressed* by Beaufort Inn for final approval were:

> the type and color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborist report and plan for the 'treatment of trees.' The HRB clarified that the current drawings were approved as submitted, and that the applicant was tasked with refining the details listed in order to receive final approval.

Thus, for all practical purposes, the hearing on final approval of Garage Parking Project had a very limited agenda and list of items to be considered.

After a 4 ½ hour hearing, involving many members of the public, the HRB voted 3-1 to give final approval to the Parking Garage Project. The HRB issued a letter dated June 15, 2021 confirming final approval.

C. The Hotel Project

The Hotel Project matter currently being appealed is a request for final approval of a change after certification. That is, the Hotel Project itself had already had final approval and a COA was issued in 2019. Beaufort Inn by its current application simply requested several changes to the original HRB COA approval to construct the Hotel Project. To that end, Beaufort Inn applied for a "Change after Certification" for the Hotel Project on December 25, 2020. Beaufort Inn obtained preliminary approval of the Change after Certification at the HRB's February 10, 2021 Meeting. Thus, the Hotel Project only came up at the June 9, 2021 HRB meeting for final approval of this Change after Certification.

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The items Beaufort Inn requested to be changed from the original approved COA were: (1) slight changes in exterior design for storefronts; (2) revised cornice design, (3) revised porte-cochere design, (4) change in type of doors, and (5) a proposed new roof deck. The rooftop change was to add a rooftop amenity space. However, in their Appeal, Petitioners attempt to reargue matters decided years ago by the HRB, and in doing so seek to vastly expand the scope of what was actually heard at the June 9, 2021 HRB meeting. The issues complained of now by the Petitioners involve elements of the Hotel Project which were approved in 2019, and which were not challenged or appealed at that time, and an element of the Hotel roof design that already received an unchallenged preliminary approval in February 2021.

The Hotel Project was first presented to the HRB, and it received unanimous HRB conceptual approval, on September 14, 2016. Therefore, like the Parking Garage Project, the Hotel Project began under the UDO. (Indeed, at the HRB meeting of June 9, 2021, the chair of the HRB recognized that the Hotel Project was vested in the UDO.) There was no appeal of the HRB's conceptual approval.

The Hotel Project's preliminary approval was issued unanimously by the HRB on July 25, 2017. There was no appeal of the preliminary approval of this COA approving the Hotel Project design.[4] The Hotel Project was granted a final approval and Certificate of Appropriateness at the HRB's October 9, 2019 meeting. The HRB issued its Certificate of Appropriateness by letter dated October 9, 2019. There was no appeal of this COA.

As noted, the Hotel Project's Change after Certification received preliminary approval at

[4] The HRB also required that Beaufort Inn demolish the building at 812 Port Republic Street in order to build the Hotel Project, per the HRB meeting minutes for the November 13, 2019 meeting. The HRB granted Beaufort Inn a COA demolish this building on November 13, 2019. There was no appeal or other challenge from this decision. Beaufort Inn obtained a demolition permit from the City per this COA on December 17, 2020, and completed this demolition.

the HRB's February 10, 2021 meeting. This included preliminary approval of the change in the mass and type of roof design. There was no appeal of this preliminary approval.

Notwithstanding Petitioners' claims, the HRB felt that the prior approvals of the Hotel Project were final and could not be changed by the HRB. At the beginning of the June 9, 2021 HRB meeting under appeal, the Chair noted:

> I will explain, also, at this point that we are at final, which means mass, scale, and all of those items have all been dealt with and voted upon in advance. We will not be relitigating them, we will not be going back over all of those details today. We're only here today to review the last details for this project and then to make a decision to approve or not.

This is consistent with the view the HRB took of prior approvals of the Parking Garage Project as well. The Change after Certification for the Hotel Project was then approved by a 3-1 vote of the HRB.

II. STANDARD OF REVIEW

The HRB is a board of architectural review as permitted by S.C. Code § 6-29-870 (Supp. 2020) and established by the Beaufort Code. B.C. § 10.7. "The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance." S.C. Code § 6-29-880. The Beaufort Code provides such authority at § 10.7.2.B.

"On appeal, the findings of fact by the [HRB] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code§ 6-29-930(A)(Supp. 2020) ("The findings of fact by the board of architectural review must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.") "A reviewing court in a zoning case may rely on

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uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters*., 401 S.C. at 147-48, 735 S.E.2d at 661). "However, a decision of a [HRB] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id*. (quoting *Wyndham Enters*., 401 S.C. at 148, 735 S.E.2d at 661). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

III. PETITIONERS' ARGUMENTS

The relief sought by the Petitioners is that the approvals given the projects by the HRB be reversed and remanded by this Court to the HRB for further proceedings. Petitioners interpret further proceedings to mean that all approvals for the two projects must be vacated and Beaufort Inn must start the entire HRB approval process for each project anew. For the reasons stated below, Petitioners' Appeal is rejected.[5]

Before addressing any of the Petitioners' arguments, the Court must discuss the overriding legal principle that moots nearly all of the grounds for these appeals, that is, the timeliness of the

[5] Each basis outlined in this Order for the rejection of the Appeal is an independent and alternative basis for denial of the Appeal, and each basis thus stands on its own.

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Appeal with respect to the relief sought by Petitioners and the Court's subject matter jurisdiction to grant the relief requested.

A. Subject Matter Jurisdiction-Timeliness of Appeal

The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")[6]

"Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). These UDO and Beaufort Code deadlines are of critical importance to the Appeal, as it is well settled that the failure to appeal within the ordinance timelines renders a circuit court with no subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't,* 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and S.C.R.C.P. Rule 74.

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[6] Both time periods are as authorized by South Carolina law. *See* S.C. Code ¶ 6-29-900(A)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")

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Each conceptual, preliminary, and final approval by the HRB for both projects was indisputably a "decision" under the UDO and the Beaufort Code. Thus, if any party was aggrieved by the subject matter of any of those decisions, the time to appeal was with within thirty days of that decision per both the UDO and the Beaufort Code. The Petitioners have attacked both process (for example, contesting that extensions were not properly granted) and substance (whether or not the HRB decisions complied with the substantive requirements for the projects) with respect to approvals for these projects.

However, to the extent the matters they attack were decided at an HRB meeting prior to the June 9, 2021 meeting, the time for appealing those decisions has expired and those decisions cannot be challenged now. Nor can Petitioners use the final approval stage to reach back to prior approvals that were not appealed. Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.

The requirement of immediate appeal of HRB decisions on conceptual, preliminary and final approval is consistent with how the HRB itself views its processes. For example, the Petitioners attack the Parking Garage Project and Hotel Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Petitioners claim are relevant. However, the HRB members specifically discussed whether or not the HRB could revisit prior approvals given to Beaufort Inn for the Parking Garage Project and the HRB specifically decided it could not revisit those approvals, as three of the four HRB members specifically stated that it was not their position to revisit approvals given by the HRB at prior meetings. Therefore, the HRB specifically discussed and rejected Petitioners claims that the

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HRB could revisit matters already decided favorably to Beaufort Inn in prior HRB meetings. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).

This requirement for timely appeals is also consistent with the common law and avoids problematic situations where a property owner has relied on an HRB approval and created vested rights in the HRB approval by expending resources. It is axiomatic that when a government entity makes a land use decision regarding property, the property owner is entitled to rely on that decision and the government cannot later change that decision to the detriment of the property owner. *See e.g.*, *Nuckles v. Allen,* 250 S.C. 123, 130, 156 S.E.2d 633, 637 (1967).

The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given. The record is replete with evidence that Beaufort Inn, for both the Hotel Project and the Parking Project, obtained HRB conceptual approvals under the UDO, then obtained later preliminary approvals from the HRB, and were granted demolition and relocation permits from the HRB necessary for Beaufort Inn to proceed with the projects.

It is well established in South Carolina that a project that is begun under one ordinance cannot be stopped or limited by a subsequent change in that ordinance. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). If HRB conceptual and preliminary approval decisions could be challenged at the final approval stage, the

City Defendants could face legal challenges by property owners of interference with the property owner's vested rights.[7]

Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals. As the City Defendants cannot revoke the approvals, the Petitioners by the Appeal cannot force the City Defendants to do what they are otherwise legally prohibited from doing.

For these reasons, the Petitioners are precluded from appealing any matter that was the subject of the conceptual, preliminary, or final approvals of the Hotel Project, as final approval was granted to that project in October 2019. Likewise, Petitioners are precluded from appealing any matter that was the subject of the preliminary approval of the Change after Certification of the Hotel Project on February 10, 2021.

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[7] "Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986). However, Petitioners argue that Beaufort Inn may not claim a vested right, even though the City Defendants concede it has vested rights in the application of the UDO to the project, because Beaufort Inn has failed to comply with the Vested Rights Act, S.C. Code § 6-29-1510, *et. seq*. ("VRA"), and therefore it obtained no vested rights. This is incorrect for several reasons. First, the VRA nowhere states that it is the exclusive method of establishing vested rights by a property owner in South Carolina. It is well settled in South Carolina that a statutory scheme creating a remedy of some type is not deemed to create an exclusive remedy unless the statute expressly so provides. *See e.g*., *Tilley v. Pacesetter Corp*., 333 S.C. 33, 40–41, 508 S.E.2d 16, 20 (1998)(creation of specific remedy by statute did not mean it was the sole one at law); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986)(Collection of Rent by Distraint Statute not exclusive remedy); and *Wimberly v. Barr*, 359 S.C. 414, 419, 597 S.E.2d 853, 856 (Ct. App. 2004)(timber cutting statute not the exclusive remedy). Conversely, where the legislature intends a statute to create an exclusive remedy, it has expressly said so. *See e.g*., *Dickert v. Metro. Life Ins. Co.,* 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993)(workers compensation is exclusive remedy); *Wimberly v. Barr*, 597 S.E.2d at 857 (S. C. Tort Claims Act is exclusive remedy.) North Carolina, with its similar vested rights act, has recognized that its vested rights act is not meant to be the sole method of establishing vested rights, and that the traditional framework of substantial reliance on municipal actions is still an avenue of relief for property owners. *Simpson v. City of Charlotte*, 115 N.C. App. 51, 56, 443 S.E.2d 772, 776 (1994). The same reasoning applies here; the South Carolina Supreme Court has recognized "the purpose of the Act was to protect, preserve, and create vested rights in development permits." *Grays Hill Baptist Church v. Beaufort Cty*., 431 S.C. 630, 640, 850 S.E.2d 29, 34 (2020). Limiting the ability of a property owner to acquire vested rights to those under a statutory scheme is anathema to the purpose for the VRA. The VRA merely provides another vehicle by which a property owner and developer can achieve some certainly in the development process—but it is not the only method.

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The only issues that can be subject to any appeal by Petitioners are those matters before the HRB for the first time at the June 9, 2021 meeting and were additional design changes required by the HRB after preliminary approval of the Change after Certification request of Beaufort Inn. That included the proposed roof deck that was contested by Petitioners at the June 9, 2021 HRB hearing. As noted, the only matter at issue in the HRB June 9, 2021 hearing was final approval of the design changes to the roof and other parts of the Hotel Project, but Petitioners only challenge the roof design changes from that hearing—something that the HRB had already granted preliminary approval for at its February 10, 2021 hearing. Therefore, all of Petitioners' Appeal with respect to the Hotel Project is time barred.

Likewise, the Petitioners are precluded from appealing any matter that was the subject of the conceptual and preliminary approvals of the Parking Garage Project, and Petitioners can only appeal those matters decided for the first time at the HRB's June 9, 2021 meeting. That in this case would be just those matters that the HRB had to review in order to provide final approval to the Parking Garage Project.

B. The HRB's Final Approval Regarding the Change after Certification of the Hotel Project is supported by Evidence in the Record.

Petitioners at the June 9, 2021 HRB meeting did not directly challenge any of these changes to the Hotel Project except the rooftop change. Mr. Graham Trask, the owners of Petitioners, complained at the meeting about mass and scale of the entire Hotel Project, not just the matters at issue with respect to the changes proposed at the meeting. Trask also claimed that the new "rooftop bar increases the size and scale of this hotel by 25 percent because it's a 4th floor." The HRB chair acknowledged that the HRB would consider that issue, but not the original mass and scale of the Hotel Project.

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However, this claim by Trask was refuted by the Hotel Project design architect, Ken Ramsey, who pointed to the plans and said that a 4th floor was not being added and the size of the building was not being increased by 25%. The HRB obviously accepted Mr. Ramsey's testimony over the opinion of Mr. Trask, as it approved Beaufort Inn's application. Assessing development plans, and differing interpretations of those plans, is part of the normal function of the HRB. In this case, after making such assessment, the HRB decided in favor of the applicant. There was clearly evidence in the record to support the HRB's decision. A court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995.)

C. The HRB Properly Granted the Parking Garage Project Final Approval.

Petitioners only advance two arguments with respect only to the Parking Garage Project. First, they argue that the time period for a final approval by the HRB had run, and so final approval should not have been granted. Second, they disagree with the HRB's decision almost entirely on matters that were conclusively established at the conceptual and preliminary approval stages—that is the scale, size, height and mass of Parking Garage Project.

1. There was no error in the HRB accepting the extensions.

Petitioners argue that the prior approvals granted to Beaufort Inn for the Parking Garage Project expired before the June 9, 2021 HRB meeting, and thus the application for final approval was not properly before the HRB. Petitioners argue that the UDO did not allow for an extension totaling more than 18 months, and there was more than an 18 month gap between the preliminary approval of the HRB on September 20, 2019 and the June 9, 2021 HRB meeting. Petitioners claim that the approvals granted previously on the Parking Garage Project had thus expired, and so

Beaufort Inn was required to start the Parking Garage Project approval process again.

However, the City granted two extensions to Beaufort Inn, one by letter of June 21, 2019 and one by letter of July 1, 2020, pursuant to § 9.1.4 of the Beaufort Code, which allows up to five one-year extensions. There are no time limitations on extensions for conceptual, preliminary, or final approvals for COAs other than those stated in § 9.1.4. See B.C. § 9.1.9.C. Thus, the City was within its discretion to provide such extensions, and such extensions were accepted by the HRB in its discretion. See *Gurganious v. City of Beaufort*, 454 S.E.2d at 916

Petitioners cite to § 1.4.2 (B) of the Beaufort Code stating that the City Defendants and Beaufort Inn were required to follow the UDO time limits on extensions. However, that is not what § 1.4.2(B) requires. This section does not address extensions of the application process other than to say the City "shall review and decide the application in good faith and in accordance with any time frame established by the prior standards." This language clearly requires the City not to use the crossover of applicable codes to delay a project; otherwise, there would be no need to reference a "good faith" requirement.

Cleary the HRB did not construe § 1.4.2 (B) to bar final approval of the Parking Garage Project. Given the many interrelated acts by the City requiring approvals on this Project at various stages, as well as interconnected approvals needed for existing structure demolition and relocation, it would be inequitable and patently unfair for the HRB to give Beaufort Inn written extensions and then have this Court vacate those extensions. Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*. The application of timelines in the UDO that do not exist or are no longer in the ordinance clearly would impair such rights. Simply put, § 1.4.2 (B) cannot be construed to make a project

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harder to develop simply because of a crossover of codes. That would not be the "good faith" required of the City.

Further, Petitioners ignore B.C. § 1.4.4.A: "Other Approved Development Permits and Approvals." Section 1.4.4.A provides:

> Any other development that has received approval of a development permit or approval of a portion of a development—including any required Traffic Impact Analysis and/or Archaeology Survey—before the effective date of this chapter or any amendments thereof **may** be carried out in accordance with the terms and conditions of the development permit or approval and the procedures and standards in effect at the time of the approval, provided the permit or approval does not expire and otherwise remains valid. If significant changes are made to the development, associated studies and surveys required as part of the development process shall be redone. If the development permit or approval expires, is revoked (e.g., for failure to comply with time limits or terms and conditions), or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

(Emphasis added.) In statutory construction, the use of the word "may" means the action is permissive. *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980)("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary."); *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 276, 834 S.E.2d 209, 212 (Ct. App. 2019).

B.C. § 1.4.4.A clearly gives the HRB the *discretion* to apply the UDO or the Code with respect to timelines it applied to the Parking Garage Project. Thus, the HRB staff was free to apply the Beaufort Code timelines per this section of the Code, and was not required to follow the UDO.[8] There was no error in the HRB allowing the extensions to stand and the Parking Project

[8] To the extent that B.C. § 1.4.4.A may be interpreted to conflict with § 1.4.2 (B), the interpretation of the HRB giving precedence to § 1.4.4.A must be given great weight. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), *quoting Purdy v.*

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to move to final approval.

2. There was evidence in the record supporting the HRB's final approval.

Second, Petitioners complain about the same matters that were approved at the conceptual and preliminary stages of the HRB approval process, the scale, size, height and mass of the Parking Garage Project. Petitioners claim there was no evidence before the HRB supporting the scale, size, height and mass of the Parking Garage Project. Petitioners by this position demonstrate the fallacy of their arguments. There were not thousands of pages of plans, specifications, and reports before the HRB because that back up documentation was presented to the HRB many years before at the prior approval stage. Nonetheless, from a review of the record before the Court, it is clear that there is sufficient evidence to support the HRB's final approval of the Parking Garage Project, so that its decision could in no way be characterized as arbitrary or capricious or contrary to law.

D. <u>There is No Requirement that the HRB Defer Decisions with Respect to Matters under the Jurisdiction of the City's Zoning Board of Appeals</u>.

Petitioners, citing no authority, claim that the HRB was precluded from hearing the Hotel Project matter and the Parking Garage Project matter because they allege that neither project should be permitted under the Beaufort Code because both buildings are allegedly "Large Footprint Buildings" as defined at B.C. § 4.510 (B)(5). Large Footprint Buildings under this section of the Beaufort Code are required to have a Special Exception from the City of Beaufort's Zoning Board of Appeals ("ZBOA") to go forward. Thus, Petitioners reason, the two projects do not qualify under applicable zoning and so should not be considered by the HRB. The Court rejects this argument.

First, as noted, the Parking Project and the Hotel Project were initiated under the UDO, not

Moise, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

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the Beaufort Code. As held by the HRB, and admitted by City Defendants, these two projects were to be assessed under the UDO, not the Beaufort Code. The Beaufort Code also provides that these projects are grandfathered under the UDO as they were initiated when the UDO was in effect. B.C. § 1.4.2.A. Critically, the UDO did not have a section like the Large Footprint Building in the Beaufort Code. Consequently, no Special Exception by the ZBOA was required for either the Hotel Project or the Parking Garage Project. Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*.[9]

Second, there is no provision in Beaufort Code requiring ZBOA approval of any project prior to HRB approval. Indeed, B.C. § 9.2.5 allows an applicant to apply for approvals concurrently at its own risk. Further, B.C. § 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioners' position that one must come before the other.

Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official"

[9] This Appeal is but one part of a recent fight against the Hotel Project and the Parking Garage Project by Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively, the "Trask Petitioners"), two entities owned or controlled by Graham Trask, a real estate developer with property near the site of the Hotel Project and the Parking Project. Prior to this Appeal, Petitioners filed a declaratory judgment action against Beaufort Inn and the City on April 5, 2021 captioned "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates*," Civil Action No. 2021-CP-07-00663, which makes the same specious claim at they do here: that the Beaufort Code requires the Hotel Project and the Parking Garage Project to have Special Exceptions as Large Footprint Buildings.

as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to the arguments by Petitioners that the HRB was without jurisdiction over these projects or otherwise should have abstained from deciding anything because of its allegation that they needed Special Exceptions from the ZBOA.

IV. CONCLUSION

For the reasons aforestated, the Court DENIES the Appeal.

_____
The Honorable Bentley Price

January ___, 2022
_____, South Carolina

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Beaufort Common Pleas

Case Caption:	West Street Farms Llc , plaintiff, et al VS Beaufort City , defendant, et al
Case Number:	2021CP0701231
Type:	Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 Feb 11 3:32 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701231

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Historic Beaufort Foundation, Petitioner, vs. City of Beaufort and City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01241 **ORDER DENYING PETITIONERS' MOTION TO RECONSIDER** RECEIVED **Mar 11 2022** SC Court of Appeals
West Street Farms, LLC and Mix Farms, LLC Petitioner, vs. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	CASE NO.: 2021-CP-07-01231

The Petitioners Historic Beaufort Foundation, West Street Farms, LLC and Mix Farms, LLC ("Petitioners") filed a motion asking this Court to reconsider its January 20, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Petitioners' motion, the Court hereby DENIES Petitioners' Motion to Reconsider.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

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Beaufort Common Pleas

Case Caption:	West Street Farms Llc , plaintiff, et al VS Beaufort City , defendant, et al
Case Number:	2021CP0701231
Type:	Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

HB | HARVEY & BATTEY
ATTORNEYS AT LAW

W. BRANTLEY HARVEY, SR. (1893-1981)
W. BRANTLEY HARVEY, JR. (Retired)
COLDEN R. BATTEY, JR. (Of Counsel)
WILLIAM B. HARVEY, III (SC Circuit Court Mediator)

JOHN M. TATUM, III
THOMAS C. DAVIS
THOMAS A. HOLLOWAY (also admitted in PA and NJ)
EUGENE PARRS (also admitted in NY, NC, FL and GA)
J. SAMUEL SCOVILLE
KEVIN E. DUKES

ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

September 10, 2021

Ms. Jerri Roseneau
Beaufort County Clerk of Court
102 Ribaut Road, Ste. 208
Beaufort, SC 29902

Re: Historic Beaufort Foundation v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC.
Case No.: 2021-CP-07-01241

Dear Ms. Roseneau:

Enclosed please find the Transcript of Testimony of the June 9, 2021 meeting of the City Historic District Review Board, along with Exhibits 1-5 which are the documents that were part of the meeting record, which I am filing as counsel for and on behalf of the Beaufort Historic District Review Board, pursuant to S.C. Code Ann. 6-29-920, with regard to the above-referenced appeal.

Very truly yours,

HARVEY & BATTEY, P.A.

/s/William B. Harvey, III

William B. Harvey, III

WBH/kvm
Enclosure

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CITY OF BEAUFORT
STATE OF SOUTH CAROLINA

HISTORIC DISTRICT REVIEW BOARD MEETING
CHARLES STREET APARTMENTS
JUNE 9, 2021

---/

The following HDRB transcript was transcribed from an electronic audio/video file provided to Coastal Court Reporting, Inc., by Harvey & Battey, P.A.

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I N D E X

BOARD MEMBERS PRESENT:

John Dickerson, HRB Chairman
Stacy Applegate
Katherine Pringle
Bill Allison (via Zoom VTC)

TOWN STAFF PRESENT:

Jeremy Tate
David Pritchard

ALSO PRESENT:

Walter Nester, Burr Forman Law Firm
William B. Harvey, III, Harvey & Battey, P.A.
Lise Sundrula
Jeremy Tate
Mr. Harris
Thomas Kline
Kelli Kline
Ken Ramsey
Wayne Vance
Wallace Scarborough
Cynthia Jenkins
Mr. Ivey
George Trask
Ms. Andrilla
Maxine Lutz
Douglas Stores
Steve Harrison
Brenda Litchfield
Dick Stewart
Beth Grace
Catherine Gray

CERTIFICATE ---------- 176

(NO EXHIBITS)

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(Meeting called to order at 2:00 p.m.)

MR. DICKERSON: All right. Thank you. Thank you all for your patience.

Need a motion to move out of executive session.

MS. PRINGLE: I move we move out of executive session.

MR. DICKERSON: Second?

MS. APPLEGATE: Second.

MR. DICKERSON: All in favor?

(All aye.)

MR. DICKERSON: All right. Thank you, Bill.

This is the June 9, 2021 meeting of the Historic District Review Board. We have just come out of executive session and we have a review of minutes. We have the May 12th minutes.

Does anyone have an issue with those?

MS. PRINGLE: I do have an issue with it. It says we're -- it was held via Zoom. If it had been held via Zoom, I would have been here. It was

in-person, but then I found out later that Zoom was allowed. Too late, but it does say via Zoom, so perhaps there should be an update to an up close and personal.

MR. DICKERSON: I think it was actually a combined meeting because I was here via Zoom, but --

MS. PRINGLE: Right. But I wasn't aware of that when I left town.

MR. DICKERSON: Okay. All right. Anything else, Bill?

MR. ALLISON: I'm good.

MS. APPLEGATE: I'm good.

MR. DICKERSON: All right. We'll need a motion for the May 12th minutes?

MS. APPLEGATE: I make a motion to approve the May 12th minutes --

MR. DICKERSON: We have a second?

MS. APPLEGATE: -- with the Zoom and in-person, whatever the words are.

MR. DICKERSON: Okay. Change -- changing to Zoom and in-person. Okay.

MS. PRINGLE: And I'll second that. Thank you.

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MR. DICKERSON: After the second.
All in favor?
(All aye.)
MR. DICKERSON: May 26, 2021, special meeting minutes, any issues?
MR. TATE: I'd like to bring up one thing.
MR. DICKERSON: Okay.
MR. TATE: Just a formatting issue that under Item D, the 1103 Bay Street, formatting lines just needs to be returned and bound to become E.
MR. DICKERSON: Okay. So this is on page 2?
MR. TATE: Item D. You see at the very end of that, 1103 Bay Street in bold and underline, that should be letters -- letter E.
MR. DICKERSON: Yeah. Okay. So we need a -- All right. Anything else?
All right. Then we need a motion to approve the May 26th minutes -- oh, that's -- back to the top. Special meeting held viz Zoom. Okay. This -- also, page 1, Item 1, we need to have

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this be an in-person and Zoom meeting.

Anything else?

Need a motion.

MS. APPLEGATE: Make a motion to approve the May 26th minutes with the addition of in-person under called to order and with 1103 Bay Street as Item E.

MR. DICKERSON: Okay.

MS. PRINGLE: I'll second that.

MR. DICKERSON: Okay. All in favor?

(All aye.)

MR. DICKERSON: All right. That passes.

All right. Then we're going move on to applications, and I will inform everyone that today we are going to be working out of two different ordinances.

One is the Beaufort Code for Items A and B, and the UDO on C and D.

So the first one is 1002 Church Street. This is new construction. The applicant is Bill Harris, who is here.

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You know you're welcome to come up.

MR. ALLISON: And, John, excuse me, just note I am recusing myself from this one.

MR. DICKERSON: Okay. Thank you, Bill.

1002 Church Street, the applicant requesting preliminary approval for construction of a single-family residence on a vacant parcel.

Jeremy, would you give us the thumbnail sketch, please?

MR. TATE: Sure. This is 1002 Church Street. The subject property is in the Beaufort conservation neighborhood and the northwest quadrant.

A little bit of background, this project will receive preliminary approval at the special called April 28th Historic Review Board meeting. Here's the locator map, 1002 Church Street, and context photos provided by the applicant. This was the conceptual presentation, gives us the elevation of

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the vacant lot. And there's also a context drawing, neighbors to the south and north. This was the decision letter that was issued after the April 28th meeting.

And now we'll turn it over to the applicant for their presentation.

MR. HARRIS: Okay. We're back. We -- I believe, amended everything that we talked about in the meeting. I see there are some staff comments. I'm sure we'll go through those. And I feel like we have done what was asked. Again, story and a half cottage -- quadrant -- what we can to make it fit, so make it fit in. So seeing the context, seeing what's around, and here we go.

MR. DICKERSON: Okay. Very good.

So with that, we're going to have public comment. We're going -- because of the number of folks here, we're going to limit public comment to three minutes. And we also will limit repetitive things. So if you want to

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say the same thing over and over again, we just want to hear that once, we don't want to hear it over and over again.

So -- you had a comment?

MS. SUNDRLA: Yes. Thank you, Mr. Dickerson.

MR. DICKERSON: Thank you.

MS. SUNDRLA: Staff and board. And Hello, Mr. Harris.

Lise Sundrla, representing Historic Beaufort Foundation and our preservation committee, and we have worked with Mr. Harris and spoke with him over the last few days. Our preservation committee met on Friday. We have no observations to the design as presented or approval for it and we thank him for incorporating our suggestions from the last review. Thank you.

MR. DICKERSON: Thank you.

Anyone else?

All right. Then we'll close public comment.

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And you have anything you want to say?

MR. HARRIS: No.

MR. DICKERSON: No.

MR. HARRIS: So far, it sounds good.

MR. DICKERSON: So far it sounds good. All right.

All right. So with that, we'll move on to the recommendations to the board and notes and then changes.

MR. TATE: Okay. So we'll start with staff comments and start with staff acknowledgement first, then we'll move to conditions.

So staff would like to acknowledge that the applicant has made the following updates to this project that are compliant with conditions of preliminary approval for this project.

The applicant has noted that this project proposes 19.01 percent impervious lot coverage, which is compliant with the maxim percentage of impervious surface coverage noted in

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Section 2.4.1 of the Beaufort Code. This application proposes that the finished floor elevation of the structure is to be at 22 inches above grade, which is compliant with the conditions of preliminary approval for this project which required a minimum of 21.6 inches finished floor elevation with administrative adjustments.

The applicant has clarified that the proposed siding will be smooth fiber cement siding. Staff doesn't support the proposed entry door and the indication on the front elevation on Sheet 3 that the screen door design will be aligned to the design of the door.

The applicant has updated the detail at the exterior stairs to show that the wood stairs and posts will not come into contact with ground and will land on the concrete planter. The staff understands that the owner will be designing and submitting a shed structure as a separate future project,

so it's not being considered as part of this current application. Staff doesn't support the exterior submitted for this project.

Now we'll move to staff conditions. Number one, on the left elevation on Sheet 3, staff acknowledges that the first floor windows in the living room have been lengthened to match the height of the windows on the front side. Staff feels that the first floor living room windows should be widened to match the 2862 windows that occur on the front elevation and within the dining room. And just for purposes of clarity, it would be these two windows here.

Number two, jump ahead several pages, staff doesn't support the Marvin elevated windows for this project. Staff preferences that they are simulated, divided like with shadow bars.

And then condition number three, applicant to submit cut sheets for roof

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that show panel profile and determination details. Staff is in support of a standing seam metal roof and prefers the use of mechanical lock, standing seams and not snap lock seams in the historic district. Staff also prefers that the applicant utilize folded ridge and hip caps and not use heavy ridge and hip caps.

So with that, staff recommendation is final approval with the conditions noted.

MR. DICKERSON: Thank you.

So at this point, we will go ahead and go to full board discussion. Bill has recused himself and is out, so Stacy will start.

MR. TATE: John, should ask the applicant for correspondence.

MR. DICKERSON: Sorry.

MR. HARRIS: Conditions, seems -- the two of them seem fine and they're more builder's spec than anything else, that's -- we can absolutely submit those things. The windows getting

wider, again, this was a big discussion last time. We moved the windows and aligned them how it was discussed. We made them taller to match the front windows, and we come back and we're saying stick with wider dimension front windows.

I think this was seen -- what we have here was kind of seen as what was needed and different about it. I don't want to come back for another meeting. I'm not insisting that we're not going to do that, but if it's any kind of heartburn, I guess we would have to.

But I'm not sure why making each window 4 inches wider does something amazing for the exterior, but I know that it does limit how much wall the owner gets inside, which has been the -- kind of, the run the whole time. That's all.

MR. DICKERSON: Thank you. Stacy?

MS. APPLEGATE: I think it looks better. I think if you can make them wider, it would look better, but it's

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not --

MR. HARRIS: Okay.

MS. APPLEGATE: Otherwise, I'm good with it.

MS. PRINGLE: The three staff conditions, I was good with all of them. And in particular, this first one that was in regard to the window sizes, because that was actually my initial -- one of my initial comments was that the five -- there are seven windows in this open space, which is the living room and the dining room, and within that space, five out of seven windows are to age 2862. Seems to me to make the other two windows 2862 within that space, you have a consistency of window sizes.

MR. HARRIS: I understand. Yes. Okay.

MR. DICKERSON: I am fine with the as-drawn conditions, but I do agree that it would be better to have them all be of a similar size, same size visually, but, you know, again, I'm not

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going to force you to come back -- period of time.

MS. PRINGLE: Wouldn't that be staff approval?

MR. DICKERSON: Yeah. We can get that over to the staff approval.

So it sounds like we don't have any major issues here, so could I have a motion?

MS. PRINGLE: I move for a final approval with the three staff conditions to be met.

MS. APPLEGATE: Second.

MR. DICKERSON: Okay. Would you amend that to include staff review?

MS. PRINGLE: Yes. Yes, with the three staff conditions to be met, and upon the staff approval.

So we're giving final approval, but the staff will come back and look at it too for their final approval.

MR. DICKERSON: Work with the client to finalize.

MS. PRINGLE: Yeah, yeah, they'll talk.

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MR. DICKERSON: Okay. All in favor.

(All aye.)

MR. DICKERSON: Very good. Thank you.

MR. HARRIS: Thanks a lot.

MR. DICKERSON: All right. We're moving on to Item B, 702 East Street, alterations. The applicant is Thomas and Kelli Kline. The applicant is requesting final approval for paint color change and a front door change to a single-family residence at 702 East Street.

Jeremy?

MR. TATE: 702 East Street, this is a contributing structure in a historic district preservation neighborhood. A little background on the project, on June 10, 2020, the HRB approved alterations and additions to this residence that involved closing in an existing porch.

The project received approval as submitted with comments my staff for

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final. The applicant submitted revised plans dated July 1, 2020 for staff review and a final certificate of appropriateness was sent to the applicant on August 19,2020.

In March of 2021, the applicant alerted staff that the roof that was approved in July of 2020 was not going to work and submitted revised drawings for review. Staff provided comments to the applicant and altered and alerted the board. The revision was approved at staff level and the board chairman provided after the fact comments that the change was approved and supported.

The scope of work in this current submission is separate from what has previously been approved for this project, and only includes paint color changes and they changed the front door of the residence.

So this is 702 East Street, locator map. Here are the context photos of the current home, and we can let the applicant present the scope.

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MR. DICKERSON: Okay. Mr. Kline, you're invited to speak at this point, you've got something you'd like to tell us about the project?

MR. KLINE: Yes. I don't know if the video is on or not, doesn't look like I'm able to turn the video on from my location.

MR. DICKERSON: We have your picture on the screen, but no live video of you. You should be able to see you. Here we are. Okay. The -- you should be able to see --

MR. KLINE: Oh, here we are. Okay.

So, the -- well, first, thank you very much for having us and considering our application for new paint and a new door. We're looking at a paint, a new paint that's essentially required at this point. There has been many years since the last paint has been applied, in addition to the roof that has been since replaced.

The house itself is in dire need

of a new paint just for basic protection. So, assuming that we needed to do it, we have come up with a color palette that we believe is consistent with the -- the point area and the historic character of the community.

We have selected Benjamin Moore as the paint manufacturer and are looking at the body of the house as a -- green azure as the paint name of Benjamin Moore. So we are -- you are looking at an electronic version. I do believe that during the meeting, that staff may have actual paint samples that correspond with that main paint of the home, plus all of the trim for the windows, the louvers, the top of the front porch ceiling, and the ceiling -- the porch deck as well.

MR. DICKERSON: We do have all that.

MR. KLINE: Yes. The front door is something that we had considered when we first bought the house. So to

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the left is the existing door, that door we -- we believe is not original to the home. We thought it was very cute, but what we wanted to do is to be historically as accurate as possible.

So the door to the right of that is a door, but we intentionally selected that because it's very similar to the existing property just adjacent to us, 704 East Street. So the one on the right is the original door to the property, and so the door that we selected is very consistent with the original door as well as to the property that's just behind us on Prince Street.

MR. DICKERSON: Thank you. This is the part where we have public comment. Does anyone have any comments? Lise?

MS. SUNDRLA: Mr. Dickerson, Board. Hello, Mr. Kline, how are you?

MR. KLINE: Good. How are you, Lise.

MS. SUNDRLA: Good. Thank you.

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Thank you also for joining us for our preservation committee meeting last week, we enjoy getting to know you all a little bit.

And, what I would ask, if you could go back to the house color for a second, I want everyone in the audience and the board to know that that's not the true color. We had that same problem at our meeting the other day. These are the true colors, so this is a Caribbean, kind of, a green that y'all see coming out on the -- on the screen. Our committee was very positive with what you all have plans, not only for the paint color, but also for the door.

So we have no objections to this and to the approval. Thank you.

MR. DICKERSON: Anyone else have a comment? All right. We'll close public comment.

Mr. Kline, you can respond to that if you care to or you can just say thank you.

MR. KLINE: Yeah. Well, thanks

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very much, Lise, I appreciate all the consideration for the paint colors and the front door.

MR. DICKERSON: Very good. That concludes public comment and response by the applicant.

Staff?

MR. TATE: So staff acknowledgments, page 51 of the supplement states the following regarding paint color selections, arresting and spectacular effects, violent contrasts of materials or colors and intense or lurid colors are among the effects for which the Board of Architectural Review is to consider a design inappropriate requiring disapproval and resubmission.

It is not the HRB's clear mandate to require strict restoration and research fidelity to the determination and recreation of a historic building's colors upon its completion or a significant period of its history. HRB must allow the distinctions in color

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expression, which company the architectural style is represented in the district, while at the same time encouraging exterior color schemes which preserve the overall harmony and character of the district.

Further, the HRB is to prevent color schemes which disrupt that character. In other words, HRB is essentially ensuring that color schemes exemplify a continuity with Beaufort's architectural fabric rather than individualistic expression. Color schemes which appear to call attention to themselves as their primary goal are inappropriate.

So staff conditions. Staff is in support of the proposed paint colors and finds them to be in keeping with Beaufort's architectural fabric, as noted in the Preservation Manual supplement.

Condition two, staff agrees that the existing door shown in the application is likely not original to

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the structure and appears to be nonhistorical. Staff is in support of the new door. Staff recommendation of -- (audio interruption.)

MR. DICKERSON: Do you have any comment at this point? You don't have to, it's fine.

MR. KLINE: We're fine. Thank you for that.

MR. DICKERSON: You're welcome.

Okay. We'll do the full board discussion.

Bill, since you've been hiding out there up there on the screen?

MR. ALLISON: I'm in total agreement. I like the door replacement, and color is fine, so I'm in favor.

MR. DICKERSON: Great.

Stacy?

MS. APPLEGATE: I love the old door.

MS. KLINE: You want it? Drop us a line.

MS. APPLEGATE: I do love that old

door.

MS. KLINE: I actually liked it too. The only one --

MS. APPLEGATE: I can understand why you want to replace it.

MR. DICKERSON: Katherine?

MS. PRINGLE: I agree with Stacy, and I want the door, also. No, seriously, I'm so glad that we actually had real paint chips to look at, that really makes me feel so much more comfortable and want to copy it for my own self in the future. Thank you.

MR. DICKERSON: And I am totally in support of both the colors and the door.

So we need a motion for approval, please.

MS. APPLEGATE: I move for final approval with the staff conditions.

MS. PRINGLE: I'll second.

MR. DICKERSON: Okay. All in favor?

(All aye.)

MR. DICKERSON: Very good. Thank

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you.

All right. Now we're going to switch gears here. We're moving to a 812 Fort Republic Street. This is to be considered under the UDO, which is the codes that were in place before the Beaufort Code. This project started there then and so that's that.

And then we did receive, today, a letter to Bill Harvey concerning the legal action that's underway. None of this is germane to what we're doing today, but we will enter this letter into the minutes and we will not be reading it -- all eight pages of it into the minutes.

So with that, going to move on to 812 Port Republic Street, change after certification. The applicant is the Beaufort Inn. The applicant is proposing changes after certification of the Beaufort Inn Hotel that involved mass, fenestration, and detailed changes to the previous approved three stories of hotel space in addition to a

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new rooftop venue.

I will explain, also, at this point that we are at final, which means mass, scale, all of those items have all been dealt with and voted upon in advance. We will not be relitigating them, we will not be going back over all of those details today. We're only here today to review the last details for this project and then to make a decision as to approval or not.

So with that, Jeremy, would you bring us up to speed, please?

MR. TATE: Sure. This is proposed new construction of the hotel on a currently vacant lot. Background, Historic District Review Board granted final approval of this project on October 9, 2019. The HRB granted preliminary approval for the current proposed changes after certification February 10, 2021.

812 Fort Republic Street, there's a location map, here are the context photos of the site as it exists today.

Here's some aerial images, bird's eye view images of the vacant -- of the site. You know that it is the parking lot depicted, it's kind of central to these pictures.

This is the preliminary submittal, just for your reference as we go through it. You will see previously approved and current proposed. We provided this just as a refresher. Go through the plans and then into the elevations. Everything that was clouded previously was just over what was changing in the after -- change after certification application.

Quickly come to the applicant's presentation. Here we are. Okay. You can turn it over to the applicant.

MR. RAMSEY: Good afternoon, my name is Ken Ramsey, I'm an architect with Niles Bolton Associates. Again, this is just our site plan. First floor plan showing the hotel and amenity spaces, site context photos.

I think what we probably want to

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focus on is the fact that after the initial approval, we added a rooftop amenity space. So -- and during the course of the development of design, there are few details that we had modified or developed further. I think staff took exception to some of those details and let us know their thoughts on that. And in most of those cases, we went back to the original details that were approved.

So if we want to focus in on the rooftop amenity, you can go ahead and do that. So -- there you go. So basically, this entire drawing is clouded as it's a new -- new addition to the set of documents. You can see we have a bar area right there, and then behind that, we have a back of house for cooking and things like that.

We have access through elevators. We have men's and women's restrooms right where -- located right there. And then there's an outdoor space there with a screen wall behind it. We're

choosing to use like a living green wall for that screened wall, which I think had some favorable reviews.

And then to the right of your hand is the second means of egress that we had to add. It's a -- in the stair -- stairwell to go from that top level down to egress occupants off the rooftop. I think the -- and then the shaded area that you see in this roof plan is the area that would be dedicated for any kind of rooftop mechanical equipment.

We've located that zone. We don't have exact locations for each -- a specific piece of equipment, but we've dedicated a zone here. And if you notice, we've kept that zone at least 10 feet from the roof edge to help minimize any kind of potential views of any equipment from -- from the street level.

Go to the next page, this is just showing a photometric study for the rooftop, that was an area of concern.

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We're showing, on the upper part of that page, the lighting fixture that we're proposing. Yeah, it's kind of a backlit, kind of a -- a little bit more contemporary light fixture to kind of give some soft lighting up there, trying to avoid any kind of harsh lighting. We also have some down lights located in the roof that overhang, that extends beyond the restaurant and bar area.

And then this shows we're proposing to provide photovoltaic solar panels on top of the amenities space there, that's the hatched area that we're showing there. So that's the extent of the photo cells.

And then this is the elevation of the project, and primarily what we're showing here being clouded is the addition of the rooftop amenity. We also took a look at the porte-cochere. There was a few comments that staff wanted us to look at, and for the most part, went back to what we had before.

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Yeah, we also adjusted and addressed the parapet. There was some concerns regarding the parapets. I think we actually see this a little bit better in the perspective, but some of the parapets didn't extend back onto the roof far enough and it was felt that maybe you would be able to see that from the street, that it's not extending all the way back. So we extended those parapets to prevent -- to provide a better look.

Yeah, we did add -- on this upper elevation, we added a ramp, you see that's clouded, that -- that allow access from the first point of building out to Port Republic Street. The bottom portion, those are really windows that we went back to what was originally proposed. We had -- somehow we had shifted some windows that we didn't mean to be shifted and we've kind of lined them back to what they were before.

This is a schematic drawing

showing -- it's kind of hard to see, it's a little bit bright, but it shows view angles from the street and it shows -- like, you had 140 feet on that lower elevation, you still wouldn't see the rooftop amenity structure due to the parapets at the third floor level of the building. So this is just showing how far back you would actually have to be before you could even get a glimpse of any of the rooftop structure.

And then these are a series of renderings, perspectives. For example, on the top there, right there, yeah, you can see how it looks like this got shifted a little bit, but -- in this image, but we extended that parapet back, that's what I was mentioning earlier, so that it -- it wouldn't be visible at -- the end of that parapet would not be visible from the street.

You addressed the porte-cochere comments, and primarily gone back to what we had originally with the

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addition of some brick bases at the columns. Previously, we had just wood columns that went to grade. We added the brick bases as requested. We also adjusted the parapet, the lower parapet a little bit over to the left there, right there. It was intersecting the upper parapet at an awkward orientation and we've simplified it and kind of aligned the datum, the horizontal banding to align with the upper, taller parapet. I think that was received positively last time we presented.

We're going to the next slide, we had just adjusted some of the doors based on the unit plan development (audio interruption) that -- we did have to add a structural column, as you're seeing on the right hand side of that elevation, as we developed the design with the structural engineer. We were working out some of those details.

Again, the parapets, there was some detailing around the parking and

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that the trash -- I think we added a brick soldier course in this case that we had omitted through the development. That was something that was seen as being important and wanted to be brought back to the design.

Actually, on that last one, I think we adjusted that last beam, the beams weren't spaced evenly on the ends and it was brought to our attention that it might look better if that last beam facing matched the other one, so we adjusted that. We took a look at the types of lighting that we're showing at the roof terrace area here.

So we have a parapet wall with built-in lighting, kind of like a backwash of lighting. Again, not a very harsh light, but just more of ambient kind of light. We're showing some recessed light can pictures in the roof overhang over the doors. Showing the light fixtures. You see the green screen wall on the far right of this rendering.

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Details really didn't change. This was added, that -- the last detail was added, it was -- it's part of the amenity structure that was not part of the original package. And then these are the materials that we're planning on using for the hotel itself, and then this is -- yeah, I think the only thing that we added was the metal service doors there and we have it -- we didn't have a -- selected a storefront door previously. It was disgusted that, like, a dark bronze color would be preferred, so we're indicating that storefront door with an urban bronze color.

And then these are the materials for the amenity level. See we have dark glass garage doors, glass, dark aluminum storefront. We're showing the types of ceiling soffit of warm wood, stained material for the ceiling of the overhang at the amenity bar. And we're showing some colorings.

And then this is the standing seam

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metal panel product that we're proposing, we haven't selected. Over selecting the -- we're proposing the cityscape color and this is the dark bronze color we're showing. Windows. You see, windows meeting energy code and the hurricane wind zone loading. These are proposed pavers for the -- this is the manufacturer of the proposed pavers for the amenity area, solar panels.

MR. DICKERSON: Thank you. I appreciate you making some big changes since last time.

At this point, we would open up for public comment. You have -- actually, stand up, give us your name.

MR. VANCE: I'm Wayne Vance, I'm the chairman of the board of trustees at the Historic Beaufort Foundation. The critical procedural issues with this hearing today --

MR. DICKERSON: I'm sorry, Mr. Vance, we are not going to get into the legal issues that we -- this is a

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public comment. I'm sorry. It's a public comment. Any comment can be made.

MS. PRINGLE: The city has stressed transparency. I think the city needs to let --

MR. DICKERSON: Okay. I would ask that the public comments be specifically related to the application and building, things like that. The litigation that's going on is being litigated in the courts, not here. That's not our purview.

So I would ask you to limit your comments, comments about the building, comments about color, whatever it is about the building that you would like us to know about.

MR. VANCE: Okay. Thank you. I want to say -- let me finish. Andy Gauer's letter is specifically germane to this proceeding and to the proceeding regarding the garage. It specifically is why this proceeding and what's coming of it is illegal and the

garage proceeding is illegal, should not proceed. At the very least, this proceeding and the garage proceeding should be tabled until these issues are dealt with, perhaps when some of the litigation is dealt with.

But I want to associate myself, I was going to go on and on about the legal issues, but I want to associate myself specifically here for this hearing with those -- with those things that Andy Gauer said in his letter.

MR. DICKERSON: Okay. Okay.

MR. VANCE: As if it were read aloud, and I do hope it will be because those issues should be heard. And he speaks of this hearing, he speaks to the other hearing, he speaks to why this should not be under the UBC, but why it should, if it continues to be under the Beaufort Code, germane to this hearing, germane to the other hearing.

MR. DICKERSON: Well --

MR. SCARBOROUGH: Mr. Chairman, my

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name is Wallace Scarborough, I live at 1207 Bay Street. I, too, want to address the legal letter, and I know you don't want us to address it, but I think it's very much germane to what's going on, especially specific points that are stated in this letter.

When you -- under the Unified Development Ordinance, which was repealed July -- on June 27, 2017, the hotel never received anyone -- according to this letter, states that it never received any approval under the UDO, and as a result, should not be considered under the UDO.

Furthermore, Lauren Kelly, representing the City at the time, presented a hotel project in July 12, 2017. July 12, 2017 was approximately two weeks after the Beaufort Code was adopted. Furthermore, the approval, official July 12, 2017 minutes, Lauren Kelly states the project, the hotel is being evaluated under the new Beaufort Code, and y'all are talking about the

old code. Specifically, she stated, in July 12, 2017 it would be the new code.

So this -- the next approval we have for the hotel was almost 27 months later on October 9, 2019, which was a certification of appropriateness. Therefore, the hotel's preliminary approval expired prior to the ascertaining of the approval of the hotel's certificate of appropriateness.

As a consequence, the hotel and certificate appropriateness issued October of '19 should be null and void. Please note that the -- that no certificate of appropriateness has been issued for the parking garage or the hotel, and that's -- if the certificate of appropriateness were issued under the circumstances, according to this, would be illegal and a gross violation of the express standards of the City's governing ordinances, which, whether under the UDO or the Beaufort Code.

To summarize, in his letter, he states that neither the garage nor the

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hotel have valid approvals from the City of Beaufort. Furthermore, the entire process is riddled with errors, such errors require the HDRB void of existence approvals and force each of these projects to begin the application process again.

It's very important that we as a city follow our own rules and regulations, and if we're not following them correctly and if there is litigation going on currently, I agree that this should be tabled until such litigation is settled. Thank you.

MR. DICKERSON: Thank you. In -- just one moment, please.

In response to that, we're not going to go through the same thing over and over again. I mean, the letter is in the minutes and that's where it will be.

And then let me also say about whether it is germane or not for us to be reviewing this. If they're reviewed by attorneys, by the City, and the

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conclusion that has come forward is that it is appropriate for the HRB to review the stuff that is specifically for the HRB, not all this other legal stuff. That is the purview of the courts, our purview here is to deal with the UDO or the Beaufort Code relative to each application.

So that is our charge. We are not here to try to go through all the legal ramifications, we're not attorneys, this is not a court, this is specifically here to review the application changes and then to approve or deny. And so that's where we'd like to keep this focused on now.

MS. PRINGLE: I have a question regarding point of order for Bill, our attorney. So we have people who are making public comment. Let's say we have ten people who want to talk today, is it within our rules that the chairman comment on everyone's comments or do we let the public make their comments no matter whether they're

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reparative or not?

MR. HARVEY: That's the chairman's prerogative.

MR. DICKERSON: Yes, ma'am?

MS. JENKINS: Cynthia Jenkins with Historic Beaufort Foundation. I have a question. How many of y'all have a copy of the UDO? Members of the board, have you read it recently?

MR. DICKERSON: I've read it.

MS. JENKINS: And have you applied it to this project?

MR. DICKERSON: Ma'am, part of what is the responsibility of the City is to review and bring forward issues relative to the UDO.

MS. JENKINS: You've been reviewing those -- both of these projects for five years, supposedly, and I repeat, the June 2017 minutes for the hotel where this project was specifically directed by the city staff to be reviewed under the new Beaufort Code, not the UDO.

So I want to read my statement,

and if you will just give me a minute because I'm thinking about this today. I wrote separate -- separate comments.

The list of mistakes and violations of the City code and good historic preservation practice related to these two projects is as long as my arm. The City of Beaufort has placed tremendous pressure on your shoulders in asking you to give final approval to these buildings. I won't comment on violating the UDO, but after four years of the staff telling you to review the hotel under the Beaufort Code, you can't just arbitrarily change your mind.

You've made decisions related to height, mass, and scale in regard to these buildings that you're -- you wanting to vote on for final approval today. These are the largest buildings built in downtown Beaufort in years. They have required the National Park Service to put the City under a threat and to consider taking away the

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designation.

So you have no choice today. No choice at all but to say no to giving these projects final approval. I really do want to believe that y'all care, but I have to wonder. It is disappointing, and honestly shocking that no one in the city office in the city planning office followed through with the early suggestions of the staff, that you require scale model.

Never was done. That was suggested in 2016 by the city staff, and here you are today looking at final approval and not one of you have actually looked at the materials. You haven't touched them. You haven't requested that a sample wall be built. It shows you each one of those individual pieces of material and how they relate in the sunshine on site. That's a critical request to make of any applicant in a process like this, and certainly in a building like the hotel and the parking garage.

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The hotel is ten times larger than the Verdier House. One of the finest examples of federal period architecture in the state, which is going to be totally overshadowed by all of this, period. The hospitality industry is vital to Beaufort and we cannot let it become -- we cannot become a victim of that success.

It's ironic that tourism and big out of scale hotels and parking garages will lead to the loss of the proverbial goose that laid the golden egg. Thinking back 18 months ago when I returned to Beaufort and everybody's want, do not let Beaufort become Charleston. Well, guess why Charleston is the way it is today, it's big out of scale hotels and parking garages that don't fit the context of a national landmark district.

Exactly what you have the opportunity to say no to today. HBF has and always will support sensitive infill development that honors its

neighbors and the setting of its location by exhibiting good design, good materials, and workmanship. A good new building continues the long established feelings of association deserving of Beaufort and its national landmark status.

Unfortunately, neither of these two buildings rise to that look. As we await the National Park Service review and their study of the conditions of the City, it is only right for y'all to say no and deny this request for final approval today. Thank you.

MR. DICKERSON: Thank you.

All right. Would anyone else like to -- Yeah.

Mr. Ivey?

MR. IVEY: I want to publicly disagree with the chairman because the chairman and this committee has to deal with process. Even in -- the city attorney said in terms of the proposal made, in terms of speaking here, that it was the chairman's decision. So the

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city attorney is seeing -- is saying you're dealing with process.

So this committee has to operate under the law and under regulations. We all talk about all of these, but you cannot wash those away. You have to be concerned with process. All of you individually have to be concerned with process. And so for you to say, you're not going to talk about process today, and in that -- part of that letter that you will not read that put Barry in the record is dealing with process.

So you're being, in my opinion, malfeasant in your duty by not considering process because that is your responsibility.

MR. DICKERSON: All right. Mr. Trask.

MR. TRASK: Hi. I appreciate you guys letting me speak. I know that everyone on the HDRB has been coached by Bill Harvey in the executive session to handle this matter as John Dickerson is handling it. I do, however, want to

differ with his assertion that this application has nothing to do with mass and scale.

The applicant wants to increase the size of this hotel with a 4th floor and a rooftop bar. The mass and scale of that hotel with a rooftop bar is central to this application. The hotel is a million cubic feet. Its mass is 20 times larger than the Verdier House.

Cynthia said ten, it's actually 20 times larger in mass. The hotel will loom over downtown Beaufort as it will loom over the Verdier House. Saying that this application has nothing to do with mass and scale when, in fact, the most salient point in this application, which was highlighted by the Niles Bolton architect is, in fact, the rooftop bar which increases the size and scale of this hotel by 25 percent because it's a 4th floor.

Also of note is that none of the collateral material which was shown tonight, as far as materials and

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colors, has been presented in previous meetings, but yet the hotel has final approval. How can an HDRB sit there and give final approval and they haven't even seen all this material, which now the architect has slipped in as a change of the existing approval?

In previous meetings, has the -- has Bill Harvey and the HDRB specified that this project is being considered under the UDO or the Beaufort Code?

Mr. Dickerson, has it?

MR. DICKERSON: We are advised by counsel that the pleadings have been reviewed and it is and said to us that we are to consider it under the UDO. Those told us that -- just a second, Mr. Trask.

And all -- we've also been told that it is appropriate for us to go ahead and finish our review of these projects and that the areas that our -- the legal areas are to be dealt with by the courts. And so the areas that are specific to this application are to be

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dealt with by us. And so that's what we're doing.

MR. TRASK: Okay. And does the floor -- does the 4th floor on the hotel deal with mass and scale?

MR. DICKERSON: It does. And I didn't say we hadn't discussed mass and scale. What I did say was we are not going to go back and start over with mass and scale and all those issues. But this -- you know, the addition of the 4th floor is, of course, under consideration.

It is important to us that there's adequate screening for any equipment they would already have down there. It's important to us to be able to see where and what we'll be able to see --

MR. TRASK: This is my comment. This is my comment, not yours.

You've already had -- I'm sure you'll have your opportunity, and I believe, if I might, that we've ended up in this situation, in large part, because of your promotion of these

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projects, Mr. Dickerson, and I will continue to assert that this particular application tonight deals with mass and scale of that 4th floor.

I will also assert, Mr. Dickerson, that you, in your certificate of appropriateness on this hotel specifically said that the current Beaufort Code applied. If it -- if you had -- in your letter of certificate of appropriateness -- can you bring that up?

I'll bring -- I'll point it out to you. It's in the second to last paragraph, please be advised that the certificate will expire two years from the date of this letter as per Section 9.4.1 of the Beaufort Code. You did not say the UDO.

Now, I appreciate that Bill Harvey has told you all this, but if Bill Harvey told you to jump off the Beaufort bridge, would you do that? Now, why, Mr. Dickerson, and I'll let you apply -- you reply, why would you

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say that the Beaufort Code applies if, in fact, you're now saying the UDO applies? Because Bill Harvey told you to say that in your executive session?

MR. DICKERSON: I'm not going to go into what was said in the executive session because it is an executive session, however --

MR. TRASK: Answer this question: Why did you say Buford Code?

MR. DICKERSON: We were advised by the City that there had been a change in -- actually, not a change, a continuation of the code that it was originally started under and that they were going to specify this as a UDO project, and that's the same thing on the parking garage.

MR. TRASK: Okay. We'll get to the parking garage.

MR. DICKERSON: They said it was started under and that they would continue.

MR. TRASK: Okay. Well let me ask you another question since it's you and

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me, if preliminary -- under the UDO, if preliminary approval of the hotel expired nine months prior to the issuing of its certificate of appropriateness. Okay. So preliminary approval expired nine months before you issued your certificate of appropriateness.

And I know this is process, but in your humble opinion, is the certificate of appropriateness valid even though it was issued nine months after the expiration of the preliminary approval? Bill is going to tell you not to answer anything.

MR. DICKERSON: Okay. At this juncture, I'm going to say that, you know, we -- we're not here to go through all the legal issues and so I'm going to let you continue on with whatever -- whatever else you'd like to say, but we're just not going to go back and forth on this because it's not -- it's not applicable.

MR. TRASK: Okay. In mass and

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scale, then, on the -- because this does involve mass and scale, you are familiar with the Beaufort City Code?

MR. DICKERSON: I am.

MR. TRASK: And are you familiar with the large footprint building part of the --

MR. DICKERSON: Okay. Again, we're going off into an area -- I'm not going to get into a discussion back and forth like this. I'm sorry.

MR. TRASK: Okay. Let me see my other comments. So Cynthia ask about the UDO. I saw you raised your hand, John, has anybody else read the UDO? Stacy?

MS. APPLEGATE: I'm not --

MR. DICKERSON: The City has the UDO, and it's their responsibility to advise us.

MR. TRASK: I see. Okay. Are you also aware, HDRB, that the building which was demolished at 812 Port Republic Street, are you aware that it was demolished?

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MR. DICKERSON: We approved demolition it.

MS. PRINGLE: We approved it.

MR. TRASK: Hold on. If it was -- approved it subject to a building --

(Simultaneous speakers.)

MR. ALLISON: John? John, this is Bill Allison, this is not a question and answer session, this is supposed to be public comment.

MR. TRASK: Okay. Then I'll --

MR. ALLISON: You already mentioned that you were going to limit it to three minutes per person. This is not going to get us anywhere by having questions and answers, so we should not be answering this.

MR. TRASK: Okay. Well, I'll make a statement, then, just so, again, you guys can be aware of how out of control this process is.

The building at 812 Port Republic Street has been demolished. You guys approved it being demolished on a condition that the replacement

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building, a building permit would be issued, which is for this hotel, which we're still discussing.

No building permit has been issued, but the building is gone. Mr. Allison, who just spoke, in fact, made that motion and it was passed.

Are you guys going to do anything about it? Thank you very much.

MR. DICKERSON: Thank you, Mr. Trask.

Maxine Lutz? Maxine, you're up. Maxine, would you like to make a comment?

MS. LUTZ: Can you hear me now?

MR. DICKERSON: Yes, Maxine, go ahead.

MS. LUTZ: All right. Thank you. Just perhaps all of you aren't aware of this, but just last night, City Council decided to clear the slate of people sitting at the table today, except for Stacy Applegate. John Dickerson is going off the HRB. Katherine will be leaving. Bill Allison, who's on remote

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on Facebook or on Zoom will be leaving, and that puts this decision in the hands of people who are walking away from this table today.

They won't be sitting at it again and I really feel that there should be some continuity in the decision over this. There's only -- I think John is the only person at the table who has been around long enough to remember all the discussion about the parking garage and the hotel.

I also think that perhaps you should not take action on this today because HBS representative was disallowed from being there because he no longer owns property in the city, he has moved away. He moved away some time ago, but he was in on the last few board meetings and helping to make decisions, but he was asked not to be at this one.

So without the very important vote of Historic Beaufort Foundation, I respectfully ask that you all defer

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your decision until another board can assume your places at the table and refresh and be fully aware of all the issues, not just the legal ones concerning these projects. Thank you.

MR. DICKERSON: Thank you, Maxine.

Gentleman in the back had his hand up first, I think. Could you stand up and give us your name?

MR. STORES: I'm unable to stand up.

MR. DICKERSON: Oh, sorry.

MR. STORES: My name is Douglas Stores and I'm -- I am going to repeat, as long -- the question of what code is to be used and reviewed in this project is unclear and based upon the fact that so much in the review of this hotel occurred during the past year where the public meetings were not able to be held, the great majority of the public has not had the opportunity to review this building at an appropriate level.

And the fact that majority of you, as Maxine has said, other than Stacy,

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are no longer going to be on the board. You have no ability to maintain final determination or a final approval of this application when all of these issues remain open. And I strongly suggest that you either deny, or at a minimum, table this application until the new board can be seated and so a proper review can occur. Thank you.

MR. DICKERSON: Thank you, Mr. Stores.

MS. SCARBOROUGH: Yes, sir, I'm at 1207 Bay Street.

MR. DICKERSON: I'm sorry, I didn't hear your name.

MR. SCARBOROUGH: Name is Katherine Scarborough, 1207 Bay Street, and I've got all kinds of issues with this. One is I live downtown, I'm a permanent resident, and it does have to due with a little size and scale here going on because we're going up four floors.

I'm very sensitive to sound and I want to know if you've done any sound

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or noise projection studies on the bar which is going to be on the 4th floor of this? Have any sound projection studies been done?

MR. DICKERSON: This is public -- we're going to just --

MS. SCARBOROUGH: I know I'm asking a question.

MR. DICKERSON: I understand you're asking the question.

MS. SCARBOROUGH: Well, then I would ask that you vote no until you do a noise projection study because the neighbors, we are affected by the music district on Bay Street and we're a residential neighborhood. And also the traffic is an issue down there. And all -- have you done a traffic study and what that's going to do to the area? Has a traffic study been done with this? If not, I'd ask that you not approve any of this until a traffic study and a noise projection study be done and the impact on the city and its residents.

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MR. DICKERSON: Anything else?
MS. SCARBOROUGH: Pardon?
MR. DICKERSON: Anything else?
MS. SCARBOROUGH: That's pretty clear.
MR. DICKERSON: Thank you.
MS. SCARBOROUGH: Lights? Oh, I haven't thought about that, haven't gotten there. But there are all kinds of studies that should go on with this because we are a residential neighborhood and all you have to do is ask the mayor, new mayor, even, how often I call about noise downtown.
And so in trying to keep it a residential sweet, small southern town, and that's why the people come here because living downtown, I constantly have people visiting my yard. And I'll say, where are you from and why are you here? And it's not because of hotels and it's not because of bars, it's because they want to see a quaint little old southern city on the water.
MR. DICKERSON: Thank you.

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MS. SCARBOROUGH: But until those studies are done, I think the noise projection is a very serious issue.

MR. DICKERSON: Thank you.

MR. HARRISON: I'm Steve Harrison, I live at 415 Newcastle Street. And also, we own the Red House Inn and I've been here for 35 years. This is our primary residence. We gave up New York, come down here and I'm -- just a quote -- I'm going to try to make this in three minutes -- if it ain't broke, don't fix it.

And we grew up in New York City, we had children there, blah, blah, blah. Our son has now moved here to possibly take over the inn. This thing probably would be good for my business, right? I'd have more people coming into town, conventions, more people maybe renting rooms.

It would probably be good for the restaurants, it would probably be good for some of the stores, but it's not good for Beaufort. It ain't the right

thing to do. Sometimes you got to figure out what's not the right thing to do. This is not. We are very happy.

I'm not going to go through my history because it's not pertinent, but we -- we knew nothing about the south until we moved here and we moved here in 1986 because people said, hello, people waved, we were taken in as Yankees, appreciated for what we could add. We were told, don't criticize the southerners or whatever -- or what they do, listen to what they have to say.

In fact, the bumper sticker down here then was, we don't give a damn how you did it up north. I haven't seen one of those bumper stickers in ten years. Anyway, so money was not the object that we came here, it was the people, the way of life, and we decided to move here right away. We left New York, we left our friends, villas. We didn't know anybody here.

And this is a place of civility,

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history, the whole wonderful package. People don't come here to make a lot of money. No, I could have stayed in New York and made 20 times what I'm not making here. I like contributing to the way of life because that's who I am.

All right. I was told to listen to the southerners, listen to their ideas, the culture, don't tell them you know better. That was a good lesson for me. So we tried to fit in gracefully, we -- I served on the Chamber of Commerce, Mainstreet Board from the very beginning, the Historic Beaufort Foundation, the Board of Architectural Review, the Open Land Trust.

We love Beaufort and we want to die here. Not today, hopefully. Let Beaufort evolve naturally, not forcefully. This is a forced thing to bring conventions here because conventions we got -- or hotels, we got parking lot, we got Coney Island.

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Eventually, Myrtle Beach, possibly, but certainly Bluffton, 278.

When we got here, there were two plantations on 278, two, now there are 25. You want that to happen 15 miles from here? I mean, do you really? Do you, Mr. Dickerson? Came here and asked me about doing something about -- we want to do short-term rentals, we'll ought to do short-term rentals. And I, like a fool, bit into them. I thought, okay, short-term rentals.

Your son or relative, I didn't think he was going to start buying up properties and fixing up properties and trying to take over with short-term rentals, pushing that through. It was obnoxious. But I couldn't get anybody, I couldn't get the Beaufort Inn to even agree to go against this, much less the motels.

Nobody thought I knew what I was talking about. I knew it because in New York, it's against the law to have short-term rentals less than 30 days.

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On the point, it's the same thing, but everywhere else, two nights, maybe. One night, oh, book it for five days and we'll cancel --

MR. DICKERSON: Mr. Harrison?

MR. HARRISON: No, I'm sorry. I wanted to --

MR. DICKERSON: You're getting a little off --

MR. HARRISON: I'm sorry. What?

MR. DICKERSON: You're a little off the focus on the.

MR. HARRISON: I don't care. Let the growth happen. Okay. Again, I don't want to be Charleston and all these other places. I don't want people walking around here with placards saying, I'm here for the insurance society convention, like in Hilton Head all over the place. Okay?

Now, sure, business-wise, again, it would be good for us, we'd do more business. I don't -- it's not about money, it's about a way of life. People come here and either fall in

love with this place or they don't, but 90 percent of them fall in love and try to figure out how to make a living or retire or be here.

The rest, we don't care. Let them go to Myrtle Beach. If people can't -- well, parking, I've been fighting parking for 35 years with all the merchants who let their employees, blah, blah, blah. Nobody wants to walk two blocks here. Nobody -- nobody wants to make any effort at all, they just want to have it right there right in front of them.

You know, I feel that the Dick Stewart parking lot that we have now on Craven Street, nice, flat. I mean, it's ugly, but at least it's one level. It's never more than half full, ever, ever. So we can't fill that, you're going to build 400-car garage. Are we crazy? Doesn't anybody see this but me?

And I've had these meetings -- I don't know. Sure, build the convention

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center, build the garage, the building, the hotel with 100 rooms that tower over everything on Bay Street, and look at the view. Really? Is that why we moved or live here or want to retire and die here? Is this the right thing to do? I go back to that. Is this the right thing to do?

Maybe the height, we don't want to fight four stories will become -- three and a half stories because we'll -- they'll figure out a way to move something around. But is that the right thing to do? Is that what we want to do?

MR. DICKERSON: Mr. Harrison?

MR. HARRISON: I'm almost -- one more sentence and I'm done.

MR. DICKERSON: Okay.

MR. HARRISON: I may have already been done. So, you know, again, we have paradise, why put up a parking lot? Will we still want to wave to people in passing everywhere? I don't know, maybe or maybe not. Thank you.

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MR. DICKERSON: Thank you. Yes, sir?

MR. TRASK: I'll walk up here and stand next to Mr. Harrison, he's important.

MR. HARRISON: I got to get taller.

MR. TRASK: My name is George Trask, I lived at 1211 Bay Street. I grew up at 1305 Bay Street. I'm 81 years old. I have been here since I was five days old. I've seen Beaufort at its lowest and its highest. I've seen people who were born here and died here, and I've seen think people who have come here. I've especially seen people who have come here with grandiose plans.

The first man came here in 1946 and wanted to build a six story hotel on the Gold Eagle Tavern property. He left with his tail between his legs when he ran out of money because he didn't have any when he came here. I could go on and on about the proposals

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that have been made to destroy our waterfront.

One was to put a building the size of what I call the bank of Beaufort. What's called, Cindy, now?

MS. TRASK: Palmetto building?

MR. TRASK: I don't think so. It's the one next to Sea Island Inn.

MR. HARRISON: Oh, Wells Fargo.

MR. TRASK: It's the Wells Fargo building, a building that is grossly oversized that violates every standard in the Milder (phonetic) report, was allowed. It's a grotesquerie, it's empty. 15 years ago, our estimable Chamber of Commerce wanted to duplicate that building and put it in the parking lot directly across the street. The citizens rose up and got that killed.

Less than ten years ago, our esteemed mayor, Mr. William Keyserling promoted taking that same parking lot and allowing a company from Greenville, South Carolina to put apartment buildings, hotels, commercial

structures, and shops, and taking away -- take away the parking.

We killed that, we meaning the citizens, in two weeks. When Mr. Keyserling had the -- went to China, I think to line up the money, and we exposed that to the citizens through an outlet called Beaufort Tribune, which I have the pleasure to publish periodically and will continue to publish.

Now, I'm also a lawyer. I had the privilege of practicing law for ten years at the largest law firm in Atlanta, Georgia. In fact, the two largest law firms up there. King and Spalding and Austin, Miller & James, now called Austin & Herb.

My job there was to represent large developers, the same kind of developers that Mr. Stewart is. Mr. Stewart has had the experience of living in Atlanta, Georgia, the same place I practiced law, and his notion, apparently, of what's good for Beaufort

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is what's good for Atlanta.

I know what is good for Atlanta. What's good for Atlanta, which is what was there, the beautiful trees and beautiful neighborhoods. People living close to downtown. It was a beautiful city. It's now a disaster. And if you don't believe it, get in your car and drive over there any day of the week or on the weekend.

MR. HARRISON: You might need two days to get there.

MR. TRASK: You might need two days to drive through there if you don't get shot on the way.

Now, the architecture, I've looked, and with all due respect, this -- this architectural firm, I encourage you, this is the second architectural firm, by the way. This board here approved a hotel under some other architectural firm, and then suddenly a new firm is substituted.

I don't believe that this board, correct me if I'm wrong, went back and

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reevaluated, they just accepted the new plan, which I think is -- is illegal. Mr. Harvey. And believe me, the legality, which is process, is going to be challenged and it's going to be heard and it's going to take a long time. You're not going to cram down the throats of people who've been here and who are now coming here, a kind of stuff that is appropriate for Atlanta or New Orleans.

You look at what's up there on that screen today, that's New Orleans, I think. Look at what New Orleans is today. Do we want Bourbon Street in Beaufort? Fort Republic Street is going to be Bourbon Street, believe me, it's going to be Bourbon Street.

Mr. Stewart owns 55 percent of downtown Beaufort. You look at the square footage, it's 55 percent. He owns what he calls Beaufort Town Center, which he's designed or had designed to be, I guess, a foyer to our beautiful historic downtown.

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Now, if he wants that convention center so bad, he's got beautiful land out there all prepared ready for that convention center and for hotels and parking lots, everything he needs. He doesn't need to destroy beautiful Beaufort.

MR. NESTER: Mr. Chairman, you know, I appreciate that you're giving wide latitude, but personal attacks have no place here and I'm willing to share what my thoughts are, Mr. Stewart's thoughts, but personal attacks have no place in this -- in this -- for this body, and I would ask you -- I would ask that they -- I would ask that these gentlemen --

MR. TRASK: That's not parliamentary procedure.

MR. NESTER: -- retained their personal attacks and deal with the issues that are before the HRB.

MR. TRASK: Sir, would you be kind enough to repeat what Mr. Stewart stated to me when I walked by him right

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before this meeting? He called me a liar.

MR. NESTER: Mr. Trask, I'm not going to debate your theory --

MR. TRASK: He called me a liar, sir.

MR. NESTER: I'm not going to talk to you or debate --

MR. TRASK: Mr. Stewart, you called me a liar.

(Simultaneous speakers.)

MR. NESTER: This is not --

MR. TRASK: This is my time.

MR. NESTER: I'm responding to your question, sir.

MR. HARRISON: Sit down. You have no right to respond to his question.

MR. NESTER: Mr. Chairman, I just ask that you maintain decorum in here.

MR. HARRISON: Well, if you would sit down, it would be all right.

MR. DICKERSON: I agree. This is -- we have been trying to let everybody have their --

MR. HARRISON: Well, let him

finish.

MR. DICKERSON: I'm sorry, I'm speaking to the public. We're trying to give everybody an opportunity to speak. We seem to be getting way off the beam here.

MR. TRASK: No, no, we're right on it. I'll finish up. I'll finish up. If you'll be kind enough, I'll wrap it up in 30 seconds.

MR. DICKERSON: 30 seconds it is.

MR. TRASK: It may take me 30 seconds to get my composure here, calm down.

You walked into this meeting today and announced that this project was going to be decided on the old -- the old ordinance, UDO. For the last four years, you all have sat here and evaluated this project under the new ordinance.

The people around this table can't even tell us that they know what that old ordinance is, and yet you're asking them to vote today to give final

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approval under that old ordinance that they don't know to a project that they've been evaluating for four years under a new ordinance.

That is outrageous. It's illegal. It is a total slap in the face of the people of this community, people of this state, and this country. We are a people of laws and a constitution, and Mr. Harvey is derelict, in my humble opinion, in his duty to advise you to sit there straight faced and tell us that you're going to make that decision today under that older ordinance. It's outrageous and it will not stand. Believe me, it will not stand. Thank you, sir.

MR. DICKERSON: Thank you.

All right. Anyone else? Yes, sir?

MR. NESTER: Thank you, Mr. Chairman. My name is Walter Nester and I'm with the law from a Burr & Forman, and we represent the applicant in both of these applications. Because

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the Gauer letter has been discussed fairly significantly, I'd like to put into the record the answer to the complaint that has been -- that is the subject of that. If I could have that placed in the record.

I would -- I would also say that that Gauer letter states two things. Number one, many -- asserts many allegations, many of which have been repeated here today. Those are just allegations, they're not facts, they're allegations, allegations that are going to be resolved by a court of law and are currently before a court of law.

And legal matters are -- I respectfully submit, not the purview of this board. It's unfair that people have been trying to put this burden on the HRB. Legal matters are not within your discretion.

Number two, there are a number of issues that have been asserted with respect to Item 2 in that letter from Mr. Gauer that speaks to massing and

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scale, all those matters that have already been decided by the HRB, and we ask that you do approve the matter that is before you today.

This is unfortunate that you're left with this burden, but we ask that you just focus on the things that are in the application before you and rule in favor of the applicant. Thank you.

MR. DICKERSON: Thank you, Mr. Nester.

Got one more. Okay.

MS. LITCHFIELD: Hi, my name is Brenda Litchfield and I wasn't going to say anything today, but I first moved here in 1958 and I've seen a lot of changes in Beaufort. I went to elementary school here, middle school, high school. I don't think I knew Mr. Stewart, I think you're older than me. Anyway, I found this picture in the yearbook, you looked a little different.

Anyway, I just moved back here after a long time. My parents lived

here for 40 years and they just passed away and I don't know all the facts, all the figures, and all the legal stuff, but I just know that it just doesn't seem right to have such a huge building downtown.

I mean, the architecture is nice, and believe me, I'd like to be slugging some drinks down on that 4th floor, but -- and that rooftop, but I think maybe it would be better someplace else. You know, it's just -- it just doesn't seem right for Beaufort and the character.

I mean, I remember when there was nothing but Bay Street and everything closed on Wednesday afternoons. I mean, there was -- there was nothing here. If you wanted anything, you had to go to Charleston and Savannah. So, I mean, I think it's a great project but maybe a little farther out.

And going along with what Catherine said, I was just wondering if there's been any studies on the

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infrastructure on sewage? What are you going to do with all that sewage? I mean, that's a lot of extra stuff, and on the fire and the police.

So there's a lot of studies that I think that can help out, but I think maybe this is just not the right place for it.

MR. DICKERSON: All right. Thank you.

(Simultaneous speakers.)

MR. DICKERSON: George Trask? Okay. We're going to go --

MS. ANDRILLA: I'll go last.

MR. DICKERSON: Okay. Mr. Trask?

MR. TRASK: I'm sorry, I was just wondering who the gentleman in the blue blazer was, does he live in Beaufort?

MR. DICKERSON: He's an attorney. His name is Walter Nester.

MR. TRASK: Oh, I'm sorry, he's an attorney that's coming to make -- make his case to the HDRB, is that allowed, Mr. Harvey?

MR. HARVEY: It's no different

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than anyone else's opinion, sir.

MR. TRASK: Oh, I see.

MR. DICKERSON: Ms. Andrilla (Phonetic), it's your turn.

MS. ANDRILLA: Thank you. There's been a lot of talk today and I think, probably, Steve put it best when we were talking about it's a way of life in Beaufort. It's a way of life in Beaufort for us to enjoy our historic district, to enjoy knowing our neighbors when we walk out our front door, sit on our porch. To enjoy the hospitality that our community has been able to offer for hundreds of years to visitors who come to our community.

There's no question about that, but -- and without getting into all the legal questions, which we understand y'all have been instructed that that's not a role that you're supposed to engage in at this stage, I think the one important thing that has come out of this as to why y'all should vote no today or either vote to defer to the

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new board with the discussion is the fact that your own board members are not familiar with the UDO.

And if your board members are not familiar with the document that they are offering comment regarding, how can they take a vote? Thank you so much.

MR. VANCE: How about I got two minutes left.

MR. DICKERSON: I'm sorry, we had two hands go at the same time. I'll come back to you. You go ahead.

MR. VANCE: Okay. Let me mention our experience when we were told on Friday that this is going to be under the UDO. We don't have a copy the UDO. We tried to find a copy with the staff here, we really couldn't.

We finally got an old copy in digital form that was marked up for edits years ago. We know that people aren't familiar with the UDO. It's not on the City's website. You can't get a copy of the UDO under the City's website, and we're here today making a

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decision on the UDO that nobody has. That just doesn't sit.

One other thing on the UDO versus the Beaufort Code, the Beaufort Code says explicitly in its issue -- and it's part dealing with transition. You can choose to be under the old code if you're there awaiting final approval or you can go under the Beaufort Code, but you cannot mix them.

At the very best, this has been mixed from the beginning and then finally settled into the Beaufort Code, and that (unintelligible) were designed. And one important reason, too, is that if you proceed under the Beaufort Code, then you've got to go to the Zoning Board of Appeals for special exception for a big box, large footprint buildings like that.

And that's where we get to hear comments like some of these have been met, and it's important that they be heard and not skipped because you're going to drive it through under the UDO

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and not allow that special exception here.

MR. DICKERSON: Thank you.

MR. STEWART: I want to thank you for your service on the HRB. I'm pretty sure when they interviewed you, you weren't asked if you were going to be lawyers or jurists or anything else other than people who resolved, evaluated projects and whether or not they complied with the guidelines. I appreciate your efforts. I think the community has appreciated your efforts. The system has worked well for many decades, and you're the current version of that. I apologized for everything you've been through today and thank you for your service.

MR. HARRISON: Who are you? You didn't introduce yourself, so...

MR. TRASK: That's Dick Stewart, ladies and gentlemen.

(Simultaneous speakers.)

MR. STEWART: My name is Dick Stewart.

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MR. HARRISON: Does he live downtown?

MR. DICKERSON: Excuse me, take it back down.

Is there anyone else that would like to make a comment?

Okay. Then we're going to go ahead and close public comment at this point.

MS. GRACE: Just one thing, if I may.

MR. DICKERSON: Yes.

MS. GRACE: Sorry. I'm Beth Grace and I live in the city and I'm a good friend of Dick Stewart's and he's been a wonderful friend in Beaufort in many, many ways. But I think this reminds me, today, of the hours and hours. I mean, we were in county council meetings, where I was on for ten years, talking about growth management.

Hours could go on until midnight some nights, listening to people, and we gave them as much time as they wanted because that's what we felt like

public comment was back then. We wanted to hear what you had to say, pro or con, whatever, whether you were for what we were thinking at the time or not. But all of those questions are good and all of these questions and issues are very relevant today, and I think that this is the time to stand back.

We had a lot of very unhappy property owners when we tabled the ordinance for growth development, and we went back in 1996 and we said, okay, we'll start again. We had a fabulous foundation, our management consultants from Elizabeth Braybatten (Phonetic), I think she was from New Jersey, and she said it had to be -- growth management had to be based on geography, on floodplain level, it had to be all scientific.

We wanted it, we brought our plan out, and, I mean, the county erupted. We were just at panic level, and I think that's where we are right now. I

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think we've had a bad year and a half with the pandemic. You've had people not able to hear and see what's going on.

We need to review all of these details and we need the resolution between the UDO and the Beaufort Code and how we're going to analyze this because changes, a 4th floor change is mass and scale. So I think it would do the HDRB, the City of Beaufort. Mr. Stewart, it could do big favors if you could have some -- what we used to call those?

Yeah, we had these meetings of people coming in and that way you could review everything and see it, and the county still does that. They have the meetings, I think they're having two this week that they're having at Beaufort High School and someplace else.

But if everybody can come together and actually see the drawings, see the materials, and be able to have a

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resolution, a legal resolution on how are we evaluating it, UDO, Beaufort Code, and the massive scale and all of that. It all has to come in together. We have to have a peaceable resolution to this and we're not having that today.

I would highly recommend it. I know it's controversial, and I know it's hard to do because we did it, but we can table and we can -- and, I'm sorry, Dick -- but we'd have time to resolve this in a calmer venue. Thank you.

MR. DICKERSON: Thank you.

Okay. And with that, we'll close the public comment. Thank you all for your comments.

That brings us to -- yeah, would the applicant like to respond?

MR. RAMSEY: I'm sorry, to which question?

(Simultaneous speakers.)

MR. DICKERSON: If you -- you heard it all, if there's something

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you'd like to respond to, this is your opportunity. If you'd like not to, you don't have to.

MR. RAMSEY: All right. Well, one thing I've heard is we're adding a 4th floor to this project and we really aren't adding a 4th floor. We're not increasing the building 25 percent, we're adding a partial rooftop amenity. It's not a 4th floor. So that's just one thing that I heard.

I don't think -- I don't think there's a lot of architectural criticism that I've heard about the project. It really boils down to mass and scale. Really, I personally feel like this is an appropriate project for this site, this location. I've done a lot of projects, a lot of infill projects, doesn't seem to be out of the ordinary.

I understand the -- you know, the feelings running deep in this community and it's -- you know, there's a lot of emotional feelings about this project

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and this site and the city, and it's good to see that, but I just feel like maybe things have been exaggerated.

I heard there's 100 keys, we're really talking about 69 keys. You know, there's just these exaggerations about how big the building is. I've seen some graphics that show this building looking like it was a five story, six story building. I was published in the -- and it's really three story building and a partial amendment here on the 4th floor.

MR. DICKERSON: Thank you.

All right. Now, Jeremy, would you be so kind as come back to this -- the details that we have to consider?

MR. TATE: Sure. So from preliminary change-up certification, meaning staff has the following acknowledgements, staff's in support of the updated proposed storefront types on the north and east elevations. Staff is in support of the revised storefront alignment on the northeast

elevation where the signage element now aligns with the adjacent transom windows.

Staff is in support of the revised cornice design where different types of cornices intersect such as that which is showcased on Sheet A3-005. Staff is in support of the revised more simplistic porte-cochere design. Staff is in support of the revised brick detail at the back of the house service area.

In Section 8, windows, the applicant has submitted cut sheets for wood windows, aluminum clad windows, and vinyl windows; however, it doesn't appear that any window types are proposed to be changed with the previously approved submission. All window details on Sheet A3-013 show aluminum windows to match those that were previously approved. Staff is still in support of the aluminum windows that were previously approved.

Section 8, doors, the applicant

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has submitted cut sheets for wood doors, vinyl doors, and fiberglass doors, but appears that only wood doors are proposed in this project. Staff is in support of the Jeld-Wen doors submitted.

Staff is in support of the proposed lighter exposed wood beams and the re-spacing of them so that the corner conditions are better resolved. Staff is the support of the revised design of the roof forms at the rooftop terrace. Roof forms no longer intersect in the corner.

Applicant to note that current proposed Sheet A3-010 includes revision clouds around only lighting fixtures and seems to indicate changes from the February submission for this project while the rest of the submission has revision clouds to represent changes from the final approval granted to this project in 2019.

Staff wants to clarify that the entirety of the proposed new roof deck

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is a change from the original approval granted to this project in 2019, and all parts of it are considered in this staff report, even though only parts of it are clouded on Sheet A3-10 and A3-12.

Now we'll move to the staff conditions. Staff is in support of the submitted aluminum clad window -- aluminum clad wood storefront. Applicant to ensure that they are simulated and divided light must face the bars.

Okay. Staff is in support of the proposed MiraTEC exterior trim. Applicant to ensure that all synthetic claddings are smooth.

Proposed new roof deck, 3-8. Proposed lighting fixture L2 directs light outward. Proposed lighting fixture L4 directs light upwards and outward through a dusk you provided on Sheet A3-11. All lighting should be directed downwards. Applicant to submit light pictures that direct light

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downwards.

Staff assumes -- this is comment 3B, staff assumes that these service doors noted on the material -- materials board are metal. Applicant can clarify the materials of these doors. Comment 3C, the applicant has submitted a cut sheet for the roof of the room deck event space; however, no termination details were included in the submission. Applicant to submit drip edge rake and any other required termination details for review.

3D, applicant to clarify how the LSX module system will be installed over the proposed standing seam roof. Applicant to clarify how the support rails will be attached to and connected to the standing seam. And then comment 3E on Sheet A3-005, applicant to clarify the materials called out to be used on the porte-cochere. Stairs will also be used on the porte-cochere ramps and ramp on the west elevation.

Staff assumes that the exterior

ramp on the west elevation will have railings that match the rest of the project. Applicant to clarify and submit details for these areas. Staff recommendation, final approval with conditions noted.

MR. DICKERSON: Thank you. At this juncture, we'll go to full board discussions after our applicant has had a chance to respond.

If there's anything you'd like to add, you can.

MR. RAMSEY: Yeah. Yeah, I mean, the conditions are -- I think were all fine. We can provide further details on those things. Everything else seems to be -- need to get modified for your approval.

MS. APPLEGATE: I have a question.

MR. DICKERSON: Go ahead.

MS. APPLEGATE: Can you explain a little more about solar panels and might where they'll be?

MR. RAMSEY: Yeah, I think if you can go to that roof plan, we can show a

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little more about that. I will say, we've shown the location on the roof plan at -- the 4th floor roof plan, the zone where the solar panels will go.

Solar panels are really going to be a design build, the architect won't design those. There's specialists who actually will design and install those who are contracted by owner. So it's a little bit early to have an awful lot of details for the solar panels.

The owner has expressed an interest in providing as many -- there we go. In that hatched area, that's where the solar panels would go. So, obviously, the design builder will have to look at orientation, sun, and things like that in terms of how the panels are orientated, how densely they can put panels in there with a maximum output.

MS. APPLEGATE: So we don't know?

MR. RAMSEY: Yeah, we really don't. Yeah, sorry, it's something that's -- it's kind, like, inferred,

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it's something that's designed built, not designed by the architect.

MR. DICKERSON: And one further comment on that, the roof is oriented so that it is tilting up toward the sun and the aspect that comes across, so -- and it's not going to be -- I'm not going to say this for certain, but because you've got that lift already in the roof, that reduces the angle (unintelligible).

MR. RAMSEY: Is it a concern? Is it something that you would like us to focus on?

MS. APPLEGATE: No, I just was wondering what it would look like. I just didn't have a visual of that.

MR. DICKERSON: Okay. Okay. Anything else, Stacy?

MS. APPLEGATE: No, thank you.

MR. DICKERSON: Okay. Katherine?

MS. PRINGLE: Thank you for letting me go first, or second to your first. I understand that we are not to discuss anything about this project

other than what's before us and on our agenda, so I'm going to read that out loud to everybody again so that you know what it is we have been assigned to speak up about.

And as I read it out loud, I want to read it out loud as I read it to myself. Okay. For Port Republic, the application is proposing a lot of changes after certification under the UDO to the Buford Inn Hotel that involved massing, fenestration, and detailed changes to the previously approved three stories of hotel space in addition to a new rooftop venue, aka, 4th story.

So -- so I'm just saying that this -- there's more here than -- than what it says, and I realize there's a lot of legal stuff going on and all that is an aside to what we're looking at today.

And what I want to talk about next is what we're looking at today because when we receive our packets, we

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received them by e-mail. I don't have anything other than my home computer. I can't really easily maneuver looking at something huge and detailed. The City, through Julie, as a courtesy has made copies for me to have so I picked the copies up and here's what I get. Okay? You read that.

There are so many things, I can't read them. I bought myself a magnifying glass with a light on it, you know? So -- and I'm leaving, so what I think is what we need to do, as a courtesy to the next group of people, and Stacey, who are going to be looking at this is provide them with full scale, full size scale drawings so that they can look and make a decision, because right now on the staff conditions of however many blue cloud things are in here, there are only two being addressed. Two out of however many there are in here as in conditions. So that's one and two. Number three, propose a new roof deck.

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It's not a deck, it includes a deck, it's a building.

So I just feel like this thing needs to be deferred and a lot more study needs to be done by the new board before --

(Applause.)

MR. DICKERSON: Bill?

MR. ALLISON: Yeah, great. Actually, I disagree. This has all been approved preliminarily, this is just for final. We've already approved the massing, the scale of the 4th floor, if you want to call it that, or the rooftop bar, and the only thing that we're really reviewing right now are those details that were talked about. And I agree with Jeremy, I think that it's all okay and I think that I'm going to support approval with the staff conditions.

And I also want to say that I don't have a copy of the UDO, that I know of, but I did do a lot of work under the UDO back in the day and I

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don't think that there's very much change in the requirements for mass, scale, even for zoning from the UDO to what's currently on the Beaufort Code.

The main issue is the special exception. If it is supposed to be under the Beaufort Code, there is a specialist exception. But when you read the Beaufort Code, this is in T5, it's central business district. These buildings are allowed under the Beaufort Code, including the 4th floor, as long as the 4th floor is set back from the property line, and that has been done.

So I know that there's a lot of emotion, a lot of people are upset, but it's not this board to determine what those things are. We're only supposed to review what's put in front of us, and everything else will get sorted out either through appeal or through the courts.

So I don't think there's really any impediment for us to go ahead and

approve this, I think it's fine because ultimately, it's going to be decided. Whether it happens or not will be decided elsewhere, not on this board.

MR. DICKERSON: Thank you, Bill.

Stacy, did you have anything more?

MS. APPLEGATE: No. I just want to clarify that, you know, we have already -- or this board has already given conceptual, has already given preliminary, we are just looking at these particular things. Any other thing is really unfair to the applicant.

MR. DICKERSON: Right. Well, and -- and that's what I tried to express early on, is that we have a specific set of details and items that we're looking at today, finished details. We have been through a long process of reviewing the hotel grounds, and anything that is outside of what we've got here in our packet and the floor plans and all that, those floor plans, by the way, are available

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electronically.

But if you're having a hard time reading them, they also can be printed, and we have done this many times in the past, printing out in full sheets. And many times when applicants come, they bring full sheets to be able to review it.

So, you know, I can appreciate that it's hard to see it on a little screen, that's true, but by and large, when we have a big project like this, we, many times, we're seeing stuff in the full sheet size. We have details. If you go and -- Jeremy, would you bring up one of the detailed pages just like on piers and windows or something like that?

Because I want everybody to understand that we don't do this willy-nilly. I mean, we -- we spend hours and hours and hours looking at this stuff, reviewing it. We have an architect on the board on purpose. We have another architectural firm that

reviews all this stuff, on purpose, and gives us -- yeah, let's just zoom in on the right side there.

And next -- so we will have instances where we are directed to look at interior/exterior, all that detail, and we will go through and review, in great detail, how the intersection of that window is to the wall to the fenestration. We've really spent a lot of time trying to understand and make sure that this stuff works and it's right.

And, you know, there's been a lot of emotional stuff today, and that's fine, but the reality is is that we really worked very hard to make sure that the projects that come through comply with the code and are appropriate for Beaufort.

I'm sorry, we're done with public comment. I hope you understand.

MS. APPLEGATE: Remember what Ms. Pringle just did, she read the packet.

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MR. DICKERSON: Okay. Anyway, so what I'm trying to explain is that we really do try to follow the rules. We really do look at. I mean, if you go back and look at the packet, and you can download the whole thing off the website, we start off with the details of where it is, what it is, how far away from boundary lines it is. We do all that.

And we have, not only an architect on the board, but we have an architectural firm that does this as well. So we try to be as well versed in what we're doing as possible, but with the exception of Bill, we're not architects. You know, we are --

MS. PRINGLE: I practiced architectural design for 25 years.

MR. DICKERSON: My apologies.

Anyway, I'm just trying to make it clear that this is not a willy-nilly process, we do try to do it well.

MS. JENKINS: Mr. Chair, would you mind addressing my question about the

material sample board that needs to be built before you make a decision on a building of this size? That is before you tonight. You've not touched the materials, you've not seen the materials in person, you've seen pretty pictures. That is one of the main issues.

That, and Ms. Scarborough brought up noise. We don't know how bright the lights are going to be, it's going to destroy the bank sky. And we know from work in Charleston, it affects birds, it affects wildlife, and the white tops of the buildings.

So those things are things that you need to be discussing. That's why you need to defer it.

MR. DICKERSON: Will not need to defer it. So, with that in mind, we --

(Simultaneous speakers.)

MR. DICKERSON: Okay. With that, we now have had the full board have their comments. We'll have a motion and then -- I'm just going to go ahead

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and shoot the motion for final approval with conditions noted, specifically in the staff report.

MS. APPLEGATE: Second.

MR. DICKERSON: Second.

MS. PRINGLE: I have a simultaneous motion, is the first come, first serve?

MR. DICKERSON: What was your motion?

MS. PRINGLE: To defer. I would like to defer this project until the new board members have had an opportunity to see this in a larger scale, and also to review it under the UDO under which it was originally certified.

MR. DICKERSON: Okay. We have a second?

Motion failed for lack of a second.

So coming back to motion on approval, I move more final approval with conditions noted, and the staff conditions one, two, and three.

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Stacy seconded. Do a roll call vote.

Bill?

MR. ALLISON: Aye.

MR. DICKERSON: Stacy?

MS. APPLEGATE: Aye.

MR. DICKERSON: Okay. Katherine?

MS. PRINGLE: No.

MR. DICKERSON: And aye.

Motion passes.

Okay. Now, we're moving on -- Okay. We're going to take a five-minute break. We'll reconvene in just a few minutes. Thank you.

(Whereupon, a short break was taken.)

MR. DICKERSON: We're going back on the record at 4:38 p.m.

We're now going to go ahead and consider 918 Craven Street. Ladies and gentlemen, please take your seats.

On 918 Craven Street, it's new construction, Beaufort Inn. The applicant is requesting final approval for construction of the new four level

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structured parking deck with 483 parking spaces.

Jeremy, would you take us through where we are?

MR. TATE: So this is 918 Craven Street. A little bit of background, Historic Review Board granted conceptual approval of this project in August of 2016. HRB granted preliminary approval for this project September 2017. On June 21st, 2019 the applicant was granted an extension of the Historic Review Board's certificate of appropriateness for new construction located at 918 Craven Street, valid through September 19, 2020.

On July 1st, 2020, the applicant was granted a second extension of the Historic Review Board's certificate of appropriateness for new construction located at 918 Craven Street valid through September 19, 2021. Here's a locator map, 918 Craven Street. These are the aerial pictures of the site. This is the parking lot where the

parking garage will go.

Bear with me, I can't get this. I'm going to close this out and restart it. Okay.

MR. ALLISON: Can you hear me?

MR. DICKERSON: Yeah, we can hear you, Bill. We're -- we've had some technical issues.

MR. ALLISON: Okay.

MR. DICKERSON: We're trying to bring everything right back up.

MR. ALLISON: Sean just asked me to unmute so I wasn't sure.

MR. DICKERSON: Sorry about that, everyone.

MR. TATE: Okay. So looking at 918 Craven, there's the locator map, there's are the context photos, and what the applicant presents.

MR. DICKERSON: Okay. Great.

MR. TATE: Next slide is the -- I believe is the survey, it will come up here in a minute. It may be a large file.

MR. RAMSEY: It is.

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MR. TATE: Yeah.

MR. RAMSEY: We compressed it, but it's a little sluggish. Here we go.

I think there was a previous page, but this is fine. The previous page is just the survey. This is the site plan showing the building footprint on the existing site. This is a four level parking deck. It's a precast parking deck, is an open naturally ventilated parking structure.

I'm going to go to the next slide. Okay. At this -- this image is showing the existing trees. Those marked in blue will be removed for the construction. Remaining trees will be left to remain. So here's our first floor plan. This is actually showing a planting that's proposed primarily along the north and east sides. The southern portion of the site will be adjacent to the existing -- the existing structures that are there.

Go to the next slide.

MS. JENKINS: While we're waiting,

could you identify your name, please, sir?

MR. RAMSEY: My name is Ken Ramsey.

MS. JENKINS: Sorry?

MR. RAMSEY: Ken Ramsey with Bolton Associates.

MS. JENKINS: So you were not the original architect; is that correct?

MR. RAMSEY: That's correct.

Okay. So here we go, it's our first floor plan showing the layout of the parking spaces. There's some support spaces in this level as well, such as maintenance. Obviously, the vehicular access along West Street and Charles Street are shown there. We have vertical circulation in -- basically for the corners of the building. You can see the stairwells.

Go to the next image. Okay. This is a photometric study of the first level. Obviously, this is primarily showing lighting within the deck, but it also captures any kind of light

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spill that might be leaving the internal structure through openings in the deck, all relatively low level code minimum lighting that we're being -- that is being provided.

Next image. All right. Next. This is level two of the parking structure showing the ramping structure. The ramp is located in the middle of the deck with flat trays on either end, either side. Top and the bottom side of the structure has flat trays.

This is level two. Level three, you'll see is essentially the same as level two. You can kind of start to see in this building plan how the building is broken up into different masses. You can see the ins and outs of the facade and how we've articulated that facade. You'll see it much more when we get to the renderings and perspectives. But you can see we don't have any really long flat planes, they're all pretty well broken up.

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And within those planes, we've also further broken it up with different materials. Again, you'll see that in the elevations and probably more specifically in the renderings that we've provided.

Actually, this is fine, it's level four, this is the top level of the parking structure. This is a photometric study that was prepared for this level similar to that photometric study that was provided on the first floor. These are averaging 2- or 3-foot candles of light. So, again, relatively low levels of light. All the lights are downward focused.

Obviously, there's a code minimum requirement of at least 1-foot candle of lighting, so we're meeting code while not exceeding it or providing too much ambient light. And there's very little light spillage from this level parking deck.

This is the original elevations that were prepared and this is the

current. It's a little bit difficult, it looks a little bit washed out in this format, but you can start to see where we have the again, the building facade broken up into different masses. We're showing that some areas of green, green walls where we'll have living plants covering portions of the building to give it a more of a natural look in those areas.

Again, I think we'll see a little bit more of this in the perspective renderings. And this is the west and south elevation that was originally prepared. This is our current elevations, very similar. We made very few changes from the original submittal. Again, we're showing the green walls and different materials. We have precast -- exposed precast concrete, we have brick, veneer, we have a textured concrete to add a little bit more visual interest. We have wood, wood trellis over the vehicular entries, and we'll see

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details of all these things as we progress through the drawings.

Again, this is a -- kind of a context image that was done originally by the original architect, and then we've provided similar context showing comparable -- the mass and scale relative to surrounding buildings in the neighborhood.

So here's our first perspective. That green is really vibrant. I didn't think it would come out quite that green in this -- this format, but, again, it just shows a living wall. You can see the trellis over the vehicular entry. The tan or beige color is the brick veneer. We have pre-finished aluminum Bahama shutters to add a little bit of detail at punched openings.

We can go to the next image. Yeah, so here's a corner, corner shot. Again, you can see we've broken up the massing, not only in the plane of the building, but we've broken up in the

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height as well. So we've accented, we've brought some elements, architectural elements to be taller in the staircase -- stairwells, in this case, and then some of the elements kind of dropped down a little bit in height just to kind of break it up a little bit more. We realize it's a big building and we want to do everything that we could do to kind of help break it down into smaller pieces, a little bit more pedestrian friendly, pedestrian scale.

I think -- yeah, you can see we're showing a high level of detail in terms of cornices. We have brick bam boards -- or bricks soldier courses. We have joints scored in the concrete to add visual interest. Again, just to break up the size and massing and scale of the building on a total smaller scale.

This is showing with existing trees, and this is -- yeah, this is existing and proposed landscaping. And

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the next image is the same image, it just shows it without the landscaping in case you wanted to see a little bit better overall view of the building without being hidden by landscaping.

And then these are some details, more construction related details of the precast structure. We're showing a detail on the left with the Bahama shutters, were showing brick detailing. We also have -- yeah, we have the trellis detail on the right. These are all details that the board has asked us to provide in this final package of drawings. I think we've complied with the request by those details.

See the cornice detail in the upper left there, Bahama shutter in the middle, some brick veneer detailing. And then there's some questions regarding the stairs. The stairs will be precast concrete that we manufacture by the pre-caster who also manufacturers the parking deck itself.

We have metal rails, guardrails,

handrails, they'll be painted handrails and guardrails. This is a board showing the various materials. Again, I mentioned it'd be a brick veneer. We have concrete in the middle there. On the bottom, you can see the vertical texture. We have some panels in the building that have this kind of vertical fluted concrete texture. Again, just to get a little bit more visual interest.

You can see an image of the green wall, which is basically like a metal structure that allows plants such as creeping fig or other plants to grow up onto that screen. We're showing a detail of the wood trellis that would be constructed at the vehicular entries. Some of the cornice details, the Bahama shutters, the finished metal railings for the stairs, and then pavers and wood bench.

So we were asked to provide specific cut sheets for different materials. What we've just discussed

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here is the green living wall. It's used quite a bit in parking decks, Bahama shutters. These are pre-finished metal Bahama shutters. Lighting fixtures. And that's it.

MR. DICKERSON: Thank you very much. This is the part where we come to public comment, and I would ask you to keep your comments to approximately three minutes. And who would like to go first?

MR. IVEY: All of your renderings for dealing with the structure itself, normally, at least if I were going to see how the structure would compare to the neighboring structures around it, particularly -- you know, you have the Beaufort Inn and all of that construction, you know, to the east, you have the dwellings on Craven Street, but you're not presenting any of that.

MR. RAMSEY: I think -- is that what you're going to pull up?

MR. TATE: Well, yeah, I can.

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MR. IVEY: Do you have that? Okay. Thank you.
MR. RAMSEY: He's pulling it up.
MR. IVEY: Will we be able to look at it? I know I can't ask questions.
MR. TATE: There we go. And it's the one before that.
MR. RAMSEY: So these are streetscape elevations showing our building in context with the existing buildings along the various streets. Okay. If you zoom in -- and they might be missing, structures may come out a little bit darker. All right.
MR. IVEY: Okay. Thank you.
MR. DICKERSON: All right. Lise?
MS. SUNDRLA: Thank you. Lise Sundrla with the Historic Beaufort Foundation. Our preservation committee met on Friday to review this project. We had invited the applicants to participate but they were unable to join us for that meeting. We did have a few specific comments that I wanted to share.

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One with regards to the height of the structure. If -- Jeremy, if you could pull back up the one design that you showed that had the house right next to it. I think this was the one item, Mr. Ivey, where they were showing it in context with the house.

The way that it's viewed in that picture is that the garage is lower than the house and in case -- there must be something wrong with the scale on the elevation because the height of that historic home is actually 37 feet versus the 38 feet that you have for the hotel. So the garage is actually higher than the house.

I just wanted to bring that up as a point.

MR. RAMSEY: That's the top of the ridge.

MS. SUNDRLA: So I just wanted to bring that point up. Also, from the standpoint of your recommendations and changes that are supposed to relate to pedestrian scale, the committee did not

feel that it successfully achieved that. One, from the standpoint of visual interest, no amount of scoring or soldier coursing, decorative treatment, Bahama shutters, or green living walls would diminish the size or mass or scale of that structure. They felt very strongly about that.

And then the one other item, which hopefully each of y'all have -- well, I know you received a copy of it with Mr. Gauer's letter, but hopefully you received a copy of it last week from Mr. Pritchard because we sent it to him. It was a letter that was -- should have been entered into the minutes in August 2016, which was sent to Ms. Lauren Kelly, who has been acting as staff for the City of Beaufort with regards to the review board.

The letter was from Dr. Eric Emerson, who is the state historic preservation officer with the South Carolina Department of Archives and

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History. That letter should have been included in the minutes. That letter was not included further, and should have been included in every single packet that y'all have had with regard to discussion about this parking deck, and it has not been.

We made sure last week that that letter has been sent, a copy of it, to the city manager, to the city clerk, and also to Mr. Prichard. And specifically in that letter, I'd like to quote, and he was invited by Ms. Kelly, Lauren Kelly, to comment on the potential of adverse effect of this parking garage when it was first presented back in 2016.

And I quote from what Mr. Emerson's letter says -- excuse me, I'm blind as a bat. We know that the garage is proposed for a transition block in Beaufort Historic District between the densely developed commercial area along Port Republic Street and the less dense residential

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area to the north. In another city with a more densely developed scale on all four sides, a similar setting might be ideal for such a project.

Regrettably, given the low density of the residential area that borders the property on all three sides, this particular design is to dense for the particular site. Further, the design relies much too heavily on plat reforms, front and side setbacks, and other architectural vocabulary of the commercial buildings that has no connection to the hipped and gable roof forms, setbacks and architectural vocabulary of the residential buildings.

In this particular context, we doubt a building of this height and large mass can be made compatible by applying architectural details, elevations to the facade, use of liner building or through the use of vegetative screening which could soften, but not hide the massing and

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scale.

Furthermore, he says, if this agency were consulted under Section 106 of the National Historic Preservation Act, we would consider this parking garage to have an adverse effect on the Beaufort Historic District.

I would like this entered into the minutes today and to have some explanation why it was never entered into it before. Thank you.

MR. DICKERSON: All right.

MR. VANCE: Wayne Vance again with the Historic Foundation. Of course I want to say, again, I want to associate myself with the remarks provided by the lawyer, and I think they pertain to this as well.

Secondly, I, again, want to say that it's really unfortunate. It's not fair to the citizens of Beaufort to try to push this through under the UDC in order to avoid a special exception hearing before the Zoning Board of Appeals for a large footprint, big box

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style size building. That should be done. It's wrong and it's being avoided.

Now, let me pick up on what Lise said because I was going to bring that up too. And when that was heard -- find myself here. When that was heard in 2016, was it, 2016, there was some discussion of it at the review board, and the chairman of the review board; however, said, basically, well, it's nice for them to have an opinion, but they're not from here and just don't understand what we need.

I think that's embarrassing, that would be treated that way. Now, we have the National Park Service comes and wants to do a study. They have said the National Park Service believes that a comprehensive study can serve as a guidepost for those involved in the future decision making and will be helpful for the district.

It has learned of concerns up in the Beaufort District and from the

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Beaufort community about potential threats to the historic character of the Beaufort National Historic Landmark district. Now, then, are we going to say, by proceeding to find with this, before they ever come here and do study, as was suggested to the state agency, we don't care what you have to say, we're going ahead, we're doing it, we don't need your opinion.

I think that -- I think that it's wrong and we need it terribly. The review board needs exactly what they're going to be looking at, exactly what was said, you need to see exactly what they're going to come up with and it's going to give you a good footprint that -- to work from. It's also going to provide the citizens of Beaufort opportunities to discuss just these things, and it's wrong to go ahead and do it without it.

And one other thing, on their suggestion regarding the state agency, well, they don't live here and they

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don't know what we need, National Park Service is a neighbor now, they do live here. We invited them part of the reconstruction program. They live next door to where this 4th story block long parking garage is going to be.

I think it's wrong not to hear from them and their study, which is going to begin in July, I understand. And for the review board to be able to work with that and give the public an opportunity.

MR. DICKERSON: Thank you, Mr. Vance.

Okay. Mr. Trask, you're up.

MR. TRASK: Hi, thank you. So I was just hoping that the HDRB could produce the certificate of appropriateness that's apparently been approved for this project. Can anyone?

MR. DICKERSON: We're going to -- this is public comment, Mr. Trask, so if you have a comment about the building.

MR. TRASK: I don't -- I don't

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believe a certificate of appropriateness has been issued for this project. There certainly was not one in the -- in your documents, if you could look through. So that's my first point.

So if there's no certificate of appropriateness, I'm puzzled why we're proceeding to final review. Could -- could whomever is driving the screen put that scale, the mass and scale model back up?

So people have already commented on the height and I guess the mass, but I want to talk about the mass and in that context, the length of this building. As you know, it's four stories tall. That facade that you see in the top left is 300 linear feet.

Please compare that to the building to the right, which is typical of buildings in downtown Beaufort, and then compare the length of that building to every other building that's presented on that page and tell me if

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that parking garage is in concert with any of those other buildings.

That parking garages is 160,000 square feet. It has 3 million cubic feet. It's going to accommodate 475 vehicles. 3 million cubic feet is 60 times the size of the Verdier House.

Jeremy, can -- do you guys have the Preservation Manual that you can pull up very quickly?

MR. TATE: Not that I can pull up quickly, no. Not on the screen, at least.

MR. TRASK: Can I pull it up, then? Can I share?

MR. DICKERSON: To what end?

MR. TRASK: I want to show you how the Preservation Manual compares to these pictures because you assert that this is under the UDO, well, the Preservation Manual and mass and scale is part of the UDO so I want to show those pictures and show you how they relate to these pictures right here.

And since you don't have the

Preservation Manual nor the UDO, I can provide it if that would be helpful. You going to let me do that or no?

MR. DICKERSON: I was just conferring. The UDO did not have the Preservation Manual inserted in it as the Beaufort Code does. It was used as a -- as an important guideline --

MR. TRASK: But it refers -- it refers to it, yes, it does.

MR. DICKERSON: That's the Beaufort Code.

MR. TRASK: No, no, the UDO does.

MR. DICKERSON: Yeah. Okay. So -- I'm sorry, That's a misstatement. It is there and I had asked if it was specifically embedded, and it's not, but it is -- it is listed. I'm sorry about that. But I don't think we have a way to just quickly draw -- pull that up in the three minute.

MR. TRASK: And I can't share my -- my screen?

MR. IVEY: I'll yield my time so he can pull it up.

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MR. DICKERSON: Okay. By the way, you yield his time.

MR. IVEY: Well, you're giving everybody three minutes, I -- I want to yield my time, if you want to do that.

MR. DICKERSON: So I'm accepting of that.

MR. TRASK: I'm a panelist, all right. Can I -- oh, can share my screen now?

MR. DICKERSON: Go ahead. Which page was it again?

MR. TRASK: Which page of what?

MR. DICKERSON: Of the Preservation Manual.

MR. TRASK: 43. So here's the Preservation Manual that talks about new construction design criteria. Talks about scale and absolute size. And then it has these little -- you see my screen, yeah? You see the Preservation Manual?

MR. DICKERSON: Yes.

MR. TRASK: And then it has these drawings, which everybody makes fun of,

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but I think they're pretty instructive because a ten-year old can understand them. And you see these little crosshatch boxes here and what they're presenting here is a building which is much wider, and in this case, lower than the surrounding buildings. And it's saying quite clearly, no, that's not something that's in concert with the Preservation Manual.

It then goes on and it shows, again, buildings that are too high. In this case, four stories for 300 linear feet or wide, which are a no. And so as -- apparently, you guys assert this is being evaluated under the UDO, of which the Preservation Manual is referred to and the HDRB is required to refer to, I wanted to point out the Preservation Manual and contrast it and compare it quite clearly with those previous massing drawings for the benefit of the HDRB. Thank you very much.

MR. DICKERSON: Okay. Who's next?

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Ivey has given his time away. Go ahead -- for a good cause.

MS. JENKINS: Mr. Chairman, Cynthia Jenkins from the Historic Beaufort Foundation. Where are the samples? We ask for samples of little one-story houses. The biggest building ever built in the historic district and you do not have an on site anchor wall built. This building is the size of a small Walmart, for God's sakes, nestled into the historic district and you're not asking for samples.

I'm disappointed in you, Jeremy, I really am. I had such great respect for you, and not to require that on a project like this in this location, that is just clear bald face stupid. I cannot believe that you would move forward and even consider final approval on that.

And for planes being broken up, I had to laugh. I'm sorry. Those little -- how big are those indentions along those long walls? How deep are

they?

MR. RAMSEY: About 4 feet.

MS. JENKINS: 4 feet. How about 10 feet? How about something that really reflects an inset, one, two, evidence shows us that parking garages built today with ramps sloping down are obsolete or will be within the next five to ten years. Parking garages of this mass and scale and this number of parking places in a city like Beaufort will probably derelict in a few years.

Towns of 12,000 people, it's proven that parking garages just sit vacant. One of the best examples in the country is Meridian, Mississippi where the city had to build a parking garage for their arts district in 2005, by 2015, the building is abandoned. There are junk cars, including junk police cars parked in the garage because, one, nobody would use it, it's a small town, and small town, by the way, it's about 40, 45,000 population, so it's three or four times bigger than

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Beaufort.

This is absolutely nuts, and if you all do not deny this request for final group at this meeting today requiring further study, bring the samples in. Jeremy says to me, they're typical samples, we don't need to see. Well, they may be typical in Charleston, but believe me, we don't have a typical samples like that in Beaufort because we don't have any buildings like this in the historic district.

So I urge you to step up and do the right thing. Support the historic district. This is just absolutely -- I can't believe it's happening. I'm disappointed in all of you. Thank you.

MR. DICKERSON: I'm going to reply to that one because this has been an ongoing for years. You weren't here when the charrettes where held, and they brought in -- they manufactured, they brought in samples, they had all kinds of stuff.

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MS. JENKINS: And how many people were on the review board then, Mr. Chair?

MR. DICKERSON: I was on the review board.

MS. JENKINS: You were?

UNKNOWN SPEAKER: Bill Allison was as well.

MS. JENKINS: So two of you. Bill's not in the room. The public hasn't seen them.

MR. DICKERSON: But participated.

MS. JENKINS: How many years ago was that? I mean, really.

MR. DICKERSON: Shame on me for responding, but the reality is that this has been ongoing for a long time, there have been charrette, we have seen -- all the different pieces and parts came to town on a road show. We saw them then, and so that we're going to need to go back and do it again now, I don't think that's appropriate.

I understand your concern, but you haven't been here when --

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MS. JENKINS: I've been here for two years and nobody has seen them. I mean, this is just a -- I mean, you're having charrette ten years ago, five years ago. I mean, really, are we supposed to remember everything that happened 20 years ago, ten years ago?

MR. DICKERSON: You're just making that up. The reality is when you go back and you look at when we -- when this was originally done, there was a lot of information, there was a lot of materials presented. There was stuff right here in this room that was shown as part of the process. So your thought that this hasn't been done is incorrect.

MS. JENKINS: My point is -- my point is this is final approval and a final approval is when you look at materials, when you look at textures, when you look at codes. It wasn't five years ago, that's when you were supposed to be looking at height, mass, and scale, and apparently weren't.

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So my point is, today, the issue before you, as you repeatedly told us, is final approval for materials, colors, landscaping, et cetera, and yet you have nothing. And to show colors that are lime green, I mean, they don't even come close to, I hope, what the colors going to be. But how the heck do I know? What you're showing is a ridiculous color scheme.

MR. DICKERSON: Anyone else?

MS. SCARBOROUGH: Yes, sir. 1207 Bay Street. I've served on community boards and other political events, and I'd just like to say, I've never seen a body of people disregard the public. You had a whole room full of people here today that were concerned about this project, why it would be such a terrible thing to wait, because as -- you know, Mr. Stewart's not going to start building tomorrow, so why this would be such a problem to wait and vote later after you give the community an opportunity.

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We've all been sheltering in place for two years because of COVID. I mean, and now we find out about this and we're supposed to remember what happened, but just as somebody that's tried to serve the community in a lot of ways, and I want to see progress in Beaufort, I've lived here, I love this town, but I think there's a right way and a wrong way to do things.

And to wait -- just to wait until you present it to the people who now can take off their masks and come to a meeting. This is the first meeting you've had with people here. I mean, I don't see the necessity to rush that and I don't see the necessity to rush the other piece, and I'm a little disappointed that -- that Mr. Harvey's process doesn't matter because I have a letter here, which I'll be glad to share with Lolita, from a lawyer that says a lot of this is just -- there's so many errors on this.

And, I mean, I think it does --

from somebody that lives here, I have to come in front of this board if I want to change the color of the door on my house. And I've had such respect for this group because what you do is important to this community. Well, I don't feel like you're hearing the community because we all live here.

This gentleman does not live here, and you talk about other groups that don't matter when we live here and we told you, why can't you wait in the nicest of terms? And you feel -- still feel the necessity to cram this on down and through, and I don't think that that's being considerate of the people that live here.

I've worked with Mr. Stewart, I've known him for a long time, he's done a lot of good stuff, but this can just wait until everybody gets a different comfort level. And you're going to chalk it up as emotions, but it's not just emotions, it's how we live in this community.

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And it's just not the way that this board has ever done things in the past. They don't -- they haven't. I mean, I've just never seen this kind of level of just disregard for the public. And I'm going to call the mayor about it, but none of y'all are elected officials so you don't care.

As a matter of fact, you're stepping off the board, you don't care what happens. And I'd almost like to know where all y'all live. Thank you.

MR. DICKERSON: Thank you. Yes?

MR. STORES: Thank you. Douglas Stores again. It's been shown that time and time again that nothing degrades the public realm more than a parking garage frontage, and your responsibility is to make sure that you're preserving the historic character of our community, and this building does nothing but degrade that character.

If you're going to have a parking garage, it has to have appropriate

setbacks to provide for liner buildings and others that can enhance the public realm and not degrade at this point. And don't tell the people it can't happen because I've seen it happen many other times.

Our company purchased a garage and inserted liner buildings into it just for that reason. You cannot, as a board, allow this building, this site plan to be improved and fulfill your responsibility as being members of the Historic District Review Board, it's simply not possible.

And I'm really taking exceptions here to your comment on the previous hearing that this will not be tabled. You cannot, as a chairman, speak for the board before any motion is made. That was hugely inappropriate, and I trust that this board will just table this motion and let the next board deal with the issues at hand, let the next board deal with the site plan, appropriate site plan that's going to

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address massing and scale, and let's not ruin downtown Beaufort.

It's your responsibility. I can't imagine for a moment -- any moment to approve a site plan just as this.

MR. DICKERSON: Thank you.

Would you like to know my name, ma'am? I'm John Dickerson, if you wanted to know who I am.

MS. JENKINS: Well, I heard you don't live here anymore.

MR. DICKERSON: I'm sorry?

MS. JENKINS: Where do you live?

MR. DICKERSON: 404 Merita. If you'd like to ask me a question, go ahead. What's your question?

MS. JENKINS: You've been in North Carolina Zooming for every one of these meetings for the last ten months; correct?

MR. DICKERSON: Not everyone, no. Most of them, yes.

MS. JENKINS: 90 percent.

MR. DICKERSON: And I live here. I have a business here. I have four

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properties here that I own. And so you're -- you're thought of, oh, he's not supposed to be on the board, I think I'm intimately qualified to be on this board.

MS. JENKINS: Well, that's questionable, sorry.

MR. DICKERSON: Okay. Yes, ma'am?

MS. GRAY: Catherine Gray, 1300 Barnwell Bluff. I'd just like to remind everybody that as a national reconstruction site now, a lot of attention is being focused on Tabernacle Baptist Church. It's also the site where we have the Robert Smalls monument and a proposed Harriet Tubman monument, and that is directly across from the proposed garage.

MR. DICKERSON: Thank you. Mr. Harrison?

MR. HARRISON: First of all, I apologize for the outbreak -- the outburst I had about the other situation, hotel. I apologize, I just got carried away. So I hope you all

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accept that.

I don't have much to say about this. So are -- are Inn, where we live, is a primary residence, is on 1009 Craven Street. You all -- it's catty corner to an empty space that we're talking about. So we have guests, I hope we have guests, last year, not so much, but we have -- we're full, happy to say, and our guests walk out on the front door and they walk across the street and they walk right past the parking, as it is now.

Sometimes they walk on the -- where the Robert Smalls is, and over the 35 years that we've been here, we've had robberies, people -- how do I say this? People grabbing handbags, people coming out of the shadows of some of those buildings, construction. Now, I know a lot about garages because I've had to park in them all my life, but I also know that they're dangerous. I also know -- somebody said they're going to be obsolete in five years or

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ten, there's a lot of danger when people who work in the stores and restaurants have -- wherever they park, they're always afraid.

At one time, we used to have people escorting them to their cars. Do it at the marina or whatever. And I have -- I have missed -- I don't know how I missed it. As Bill says, as you can see, I'm very involved with Beaufort, I don't know how I missed all these meetings. I almost feel like they were slipped by me. I know that's not true.

I'm concerned about the security and the safety of this situation because that's where people, nefarious people hide, behind buildings, in garages. It's a great place to grab a car, a great place to commit a crime. So I don't know if you've discussed this in the -- in the previous because -- in here, but I haven't -- I haven't heard about lighting on the sidewalks.

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I'm concerned about me and my guests, particularly. It's kind of a dead area, that street. Granted, you know, it is a dead area, but what I'm afraid of is it could become -- but it's -- at least it's an open area. By building a four story garage, you're going to make it a live area. I think very few people are going to use it, particularly at night because of the dangerous security matter. Just my opinion.

I don't know how this all got to be here, I'm really befuddled, but thank you for letting me share.

MR. DICKERSON: Thank you, Mr. Harrison.

Way in the back, yes?

MR. SCARBOROUGH: Yes, I'm Wallace Scarborough, 1207 Bay Street. I'll try to be brief. 1207 Bay Street.

You know, when you look at your name, Historic District Review Board, you're really here to the reserve the historic district of Beaufort, and you

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have to ask yourselves, is this truly, truly preserving the historic district of Beaufort? You got to kind of say, probably not.

I'm from Charleston originally, been here 13, 14 years. We love Charleston, proud of Charleston, proud of being from Charleston, but, you know, what I was told more and more when I came here first, don't ever say you're from Charleston, we don't want to be like Charleston.

Well, let me tell you, by building the hotel, by building the parking garage, we are becoming Charleston. People come here now and they stop in my front yard, talk to me about Beaufort. I am so proud, so proud. It is the most beautiful city in the world, and I've traveled all over this world.

And when you put more cars and more people in an area that is not designed for that area, what do you have? You end up with more crime, more

problems, more stress on the environment, more stress on our utilities, and it's going to hurt the livability, the livability. So you're also charged with helping the livability in the downtown Beaufort area.

When you add more cars, more people, more stress than the streets are designed for, you get gridlock. We're starting to get some of it now because Lady's Island is building out tremendously and people are coming through here and we're getting traffic jams like we've never had before.

Yet, tell me, where are we going to build more roads to handle the traffic problems that are going to come with a big hotel, parking garage? You're inviting more and more people to downtown. It's going to cause the livability of downtown to diminish.

I tell you what you ought to do, is you ought to go downtown Charleston and you ought to walk in some of those

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parking garages, you'd be appalled. That smell of urine and feces that are all over those parking garages. And it's the truth. I lived in Charleston. I know.

Homeless live in parking garages. It's not a crime to be homeless, but that's where they migrate to when they need to get out of the weather. And without proper bathrooms, proper facilities, they will use the corner of the parking garage. Seen it, been around it, know it. I would challenge y'all to go to Charleston and walk through any parking garage and tell them you don't smell that smell of urine in the parking garage.

Also, go look at police reports. Look at the police reports where the crime is committed in downtown Charleston, they're around the parking garages. So I know what I'm talking about, I was a state representative in Charleston. I served on many committees in city council, I served

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the city on many adopt-a-highway programs as chairman, adopt-a-highway program in Charleston County. I know what I'm talking about. You're inviting a bad element, one that you cannot retreat from once it's done. Thank you.

MR. DICKERSON: Thank you. Thank you, Mr. Scarborough.

Anyone else? Yes, sir?

MR. NESTER: Mr. Chairman, Walter Nester again, a representative, legal counsel to the applicant. A couple of things that I'd just like to point out.

First of all, the specific master plan, which was approved by the Metropolitan Planning Commission, calls for a parking garage in the -- in this district. I would also refer the HRB to the minutes of the preliminary approval back in 2007 -- excuse me, 2017, which was before the COVID-19 pandemic, where there was preliminary approval and the Historic Beaufort Foundation came and spoke on behalf --

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on behalf of the foundation, and it's in the minutes what they provided.

They wanted to look more like -- Ms. Lutz stated that she wanted it to look more like a parking garage and it should have -- you should be able to see the automobiles. And the preliminary approval letter that the applicant received from the Town -- Excuse me, from the City actually said that your design is done, massing and scale, that's done, you just need to finish up these other items.

And so Mr. Trask, earlier today, spoke about the constitution, right? Well, this applicant has been working on this project since 2016, and each step along the way, has advanced because of an approval, an approval by the city staff or an approval by a board of commission.

And preliminary approvals have been given, and in response to the comments, in response to those approvals, the applicant goes back,

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engages consultants to have -- to have a plan that is reflective of the comments from staff and the comments from the citizens that were there at that time.

So again, we believe that this applicant has been responsive and has done what is necessary to adhere to all the requirements of the ordinances that it's subject to, and we ask -- respectfully ask that you approve this application tonight. Thank you.

MR. DICKERSON: Thank you, Mr. Nester.

All right. George Trask, three minutes, please. You're muted.

MR. TRASK: I appreciate the lawyer bringing up the process because that's what is so important about this situation. And I agree with the lawyer whose name, I'm sorry, I didn't catch, the preliminary approval was given for the garage, it was given on September 20th -- Sorry, yes, it was given in an October 9th letter, 2017, from Lauren

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Kelly referring to a September 20, 2017 meeting under the UDO, preliminary approval expires after 18 months.

I'll let you do the math, but I'll do it for you. That means that the preliminary approval expired on March 20th, 2019. Today's date is June 9, 2021. That's 45 months after the preliminary approval and 27 months after its expiration.

So therefore, in my opinion, these facts prove that this garage has no approval. You cannot present a certificate of appropriateness and the preliminary approval has expired. Thank you.

MR. DICKERSON: All right. Go ahead.

MR. STEWART: I'm Dick Stewart, I'm one of the applicants, along with a group of other people that have kids at schools in Beaufort, things like that.

I thank you for the service that you're providing. These commentaries about things in the past and the

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personal attacks that occurred earlier, and I hope don't happen, they should not. I apologize in advance to the community if any of you are subjected to that. I appreciate your service and appreciate the deliberations you keep undertaking today and in the years gone by.

MR. DICKERSON: Thank you very much. All right.

MS. JENKINS: Mr. Chairman, just as a point of clarification, the city design master plan is not regulatory, it is a recommendation or a suggestion of what might be done. There is no legal requirement that a parking garage be built.

MR. DICKERSON: Thank you.

All right. With that, we'll close public comment and give the applicant an opportunity to respond.

MR. RAMSEY: I'd just like to say, we really have -- the design team really has taken quite a bit of time in looking at the design materials, the

scale, and the massing. We have provided samples that are in this packet of information we looked at showing brick and the color of the precast. A mockup wall, at some point, may be appropriate prior to the completion of construction. But usually -- typically, it's not at this point in the -- in the design.

So again, I just want to address that we really have looked at all those different materials and colors and I think the owner has really gone to great lengths to break up this building. I mean, most parking decks, there are no offsets. You know, you may not like a 3- or 4 foot offset that -- there are no offsets. Typically, parking decks are just rectangular buildings that's the most efficient way to build on.

We've gone the lengths to break those up into different smaller segments with varying route -- so, I think we really have -- this is really

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one of the nicest parking decks I've worked on, honestly. Most parking decks -- most parking decks are very simple. They're just precast, exposed precast, there's no brick veneer, there's no -- there's no wood trellises at the entrances. Believe me, this is -- actually, it's a very nice parking deck.

And then one other thing I noticed, that in the Preservation Manual, we're looking at some buildings and they were showing massing and scale, it looked like those were infill buildings. It's just kind of an observation and not a freestanding new construction.

So I'm not sure how that Preservation Manual, those particular details apply to this project. Again, just an observation.

So yeah, again, I really want to let everybody know that this design team really has put a lot of time, and parking are a little bit --

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particularly, they're technically -- it's very difficult to have a 10-foot deep recess, it just doesn't work with the beige and the structure. So I think we've really going the extra length with brick.

MR. DICKERSON: Okay. Thank you very much.

All right. Okay.

MR. TATE: All right. We'll start with the staff acknowledgements.

MR. DICKERSON: Actually, Jeremy, you have a time crunch, can you step over the acknowledgements and go right to the recommendations? Would that be okay?

MR. TATE: That's fine. Staff conditions, number one, a certified arborist's report dated March 15, 2021 was submitted as part of this request for final approval application. The report includes a tree evaluation for all existing trees and tree protection and maintenance recommendations for trees identified to remain during and

after construction. This report will be used to inform tree removal permitting, tree mitigation, and tree protection zone requirements.

Number two, applicant to provide bicycle parking within the structure.

Number three, in the current application, the applicant submitted a photometric plan that includes locations and luminous levels of lighting, associated cut sheets. All lighting should be directed downward.

Additional lighting requirement comments specific to the lighting cut sheets are as follows: 3A, staff is in support of the submitted half cylinder wall bracket light fixture and the gooseneck outdoor sconce. Applicant to clarify if the half cylinder wall bracket will direct light downward and submit a new fixture for review at night.

3B, the proposed lighting fixtures on Sheet E-0.014 do not clearly demonstrate that lighting will be

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directed downward. Applicant to clarify that these lights will include any cutoff lenses that would be required to assure light is directed downwards.

Condition four, from discussions with the applicant, staff understands that there is minimal mechanical equipment to be screened. The only equipment that will be -- that will require screening will be some duct work from the maintenance and service rooms on the first floor. This is screened on the south elevation by two 8-foot louvers. Staff is in support of this location. The staff recommends relocating the louvers to have more -- a more purposeful engagement with soldier course brick band on this facade.

Comment number five, at the entryways on the Charles Street and West Street facades, staff recommends extending the trellis to cover the pedestrian entry as well. Staff feels

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that this will help achieve a more balanced facade.

Condition six, regarding the section detail of the proposed trellis, Drawing 4 on Sheet A4-001, applicant to clarify whether additional brackets will be used to connect the wood rafters to the engineered support beam below and to the adjacent ledger. If additional brackets will be used, applicant to verify if brackets will be visible or if concealed fasteners will be used. If visible brackets are used in either location, they must be submitted for review.

Condition seven, the preliminary application for this project proposed punched openings on the large blank wall on the south elevation. In the current, final application, the applicant has indicated trim detailing to mimic a punched opening. Staff recommends changing these to true punched openings, if feasible. If this is not feasible, applicant to ensure

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that the panel within the trim detailing is recessed to create a shadow line. Another acceptable option would be to install Bahama shutters in closed positions in these locations.

Condition number eight, applicant to clarify the precast spandrel vertical texture selection shown on the materials board. Two different vertical patterns appear to be shown, and the picture provided appears to be brown and white. Applicant to clarify which vertical pattern will be used and whether the panels are simply textured or if color will be used. Staff preference is that the pattern with smaller spacing of stripes is used and that the panel is textured without any additional color to create a more timeless and natural design.

Staff recommendation is final approval with conditions noted.

MR. DICKERSON: Thank you. We'll go to full board discussion after comments from applicant.

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MR. RAMSEY: So these samples and the precast in terms of color, material, texture. These are the most prominent materials on the project. These are the color materials that are shown in the colored images in the packet.

MR. DICKERSON: And there was a question about the green.

MR. RAMSEY: The green, that's actually vegetative materials, the plants, so it's just a matter of how it was rendered. I mean, it will be live plants. So it depends on what species of plant is selected, but obviously, a hardy species of plant that's used -- to plant in this location will be used.

MR. DICKERSON: All right. Very good. Thank you.

So, Katherine, would you like to go first?

MS. PRINGLE: Love it. You know, just like this last project we looked at under the same developer, it's -- the decision has already been made on

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the big picture. This is like a -- I'm not going to say monster, but this massive thing has been hanging around for years and now it's our turn to give final approval and it's my turn to see it for the first time.

I was not here, I was not on the board, I have -- I have no prior knowledge of this. I've never seen the drawings until it came before -- you know, we got them a week ago, and it doesn't really matter because we don't have any decisions to make on that, all we have are these fluff details.

So I'd just like to go on record and say that had I been on the board at the time this initially came before the board, I would have said no.

MR. DICKERSON: All right. Thank you.

Stacy?

MS. APPLEGATE: This has been a hard one for me. I feel like, you know, the applicant has gotten preliminary approval, conceptual

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approval, and he's coming to us for final approval. And I read all the minutes from 2017 and public comment, and the board made their decision at the time, and I have to respect their decision.

Whether it would have been my decision doesn't matter. So I'm looking at what we're charged to look at today.

MR. DICKERSON: Okay. Bill?

MR. ALLISON: Well, first, Stacy and Katherine, it is part of our dilemma, I guess, being on a review board like this and that not all projects happen immediately and that we're -- we often find ourselves reviewing projects the previous board approved, whether we like it or not.

I think, Stacy, you're right, we have to respect what that previous board did. I, for example, stepped onto this board after the mass and scale was approved, and be that as it may, from what I've seen in the years

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that have proceeded since, there have been big improvements on this building that the applicant has really tried very hard to make it look better, and I do think it is one of the more attractive parking garages that I've ever seen. And so I really appreciate the efforts that they've shown.

The fact is, we cannot dictate whether or not there can be a parking garage, that's out of our hands. And I think the comments Jeremy made were good, appropriate, I approve of them and we just need to go on from there.

MR. DICKERSON: All right.

MS. APPLEGATE: Can I make a comment?

MR. DICKERSON: Sure.

MS. APPLEGATE: I mean, I've been on the other side of this. So, I mean, I feel like the applicants really worked with the city and has spent a lot of money and really done his best to do what they've asked him to do. So, I mean, it puts people -- it --

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people have to trust the process.

MR. DICKERSON: Right. And the process has been very long, you're right. It has been long, three years with this particular project. You know, you had successive boards that have looked at this, approved it, you have extensions to approvals. You know, all those things going on here.

Thank you for your comments.

And so you're right, we do have to trust it. All on the board have operated in our best effort to do the best we can with information that comes before us.

MS. APPLEGATE: I mean, I totally understand public comment. I mean, I live --

MR. DICKERSON: I do too.

MS. APPLEGATE: I live downtown and I don't want it to be Charleston either. And I don't think it will be, but I feel like, for these projects, we're asked to do one specific thing --

MR. DICKERSON: Yep.

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MS. APPLEGATE: -- and I want the public to know that's what we're charged with.

MR. DICKERSON: Right. This is what we're charged with and it's what each one of the successive boards that has dealt with has been charged with. So, you know -- you know, we don't start all projects over at the beginning at the end, it's just not how -- how we're able to do that. So anyway, I know this, again, is one of those really tough items.

I'll go ahead and make the motion for final approval with conditions noted.

We have a second?

MR. TATE: What conditions, staff conditions?

MR. DICKERSON: Yes, with staff conditions on pages 259 and 260.

We have a second?

MR. ALLISON: I'll second it.

MR. DICKERSON: We have a second.

Okay. We'll do a roll call vote.

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Katherine?

MS. PRINGLE: No.

MR. DICKERSON: Stacy?

MS. APPLEGATE: Aye.

MR. DICKERSON: Bill?

MR. ALLISON: Aye.

MR. DICKERSON: And aye as well.

So the motion carries. Thank you all, appreciate your efforts.

Well, I would like to say one thing before we adjourn, and that's that we have all worked very hard to make this board -- thank you. Thank you to Chuck. Thank you, Bill.

MS. PRINGLE: John. Continued thanks to Stacy.

MR. DICKERSON: Stacy, going to stay in place. All right.

MS. PRINGLE: Motion to adjourn.

MS. APPLEGATE: Second.

MR. DICKERSON: With that, thank you all. We are adjourned.

(Meeting adjourned at 6:00 p.m.)

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C E R T I F I C A T E

STATE OF GEORGIA:

CHATHAM COUNTY:

I, Kyle J. Saniga, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Kyle J. Saniga

Kyle J. Saniga, CCR
Notary Public, B-2038
Savannah, Georgia

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APPLICANT PRESENTATION

812 PORT REPUBLIC STREET

EXHIBIT 1

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CITY OF BEAUFORT
HISTORIC REVIEW BOARD
1911 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902
(843) 525-7011 FAX: (843) 986-5606

CERTIFICATE OF APPROPRIATENESS

October 9, 2019

Beaufort Inn, LLC
2015 Boundary street
Beaufort, SC 29902

RE: 19-13 HRB.1 The Beaufort Inn – 214 Scott Street/812 Port Republic

Dear Beaufort Inn:

On October 9, 2019, the City of Beaufort Historic District Review Board (HRB) met to review your application for new construction of a hotel. The board granted final approval with the exception of changing the false doors to windows. The Board also granted a design exception, allowing the applicant to have up to 6'-6" portico on Scott Street.

This Certificate of Appropriateness applies only to the requirements of the Beaufort Historic District and does not supersede other City ordinances. Compliance with all other provisions of the City of Beaufort Code of Ordinances is required. Please contact the City Building Codes Office located at 1911 Boundary Street, (843) 525-7049, to apply for the necessary permits. A copy of this letter should be submitted with your application for a permit.

Be advised that the certificate will expire two years from the date of this letter as per Section 9.4.1of the *Beaufort Code*. If you make any changes in your project that are not part of the approved plan, you will need to submit an application for a Change After Certification.

If you have any questions, feel free to call the Planning Department at (843) 525-7011. Thank you for your patience and cooperation during the review process.

Sincerely,

John Dickerson
Acting Chair, Historic Review Board Chairman

Existing Landscape To Be Removed

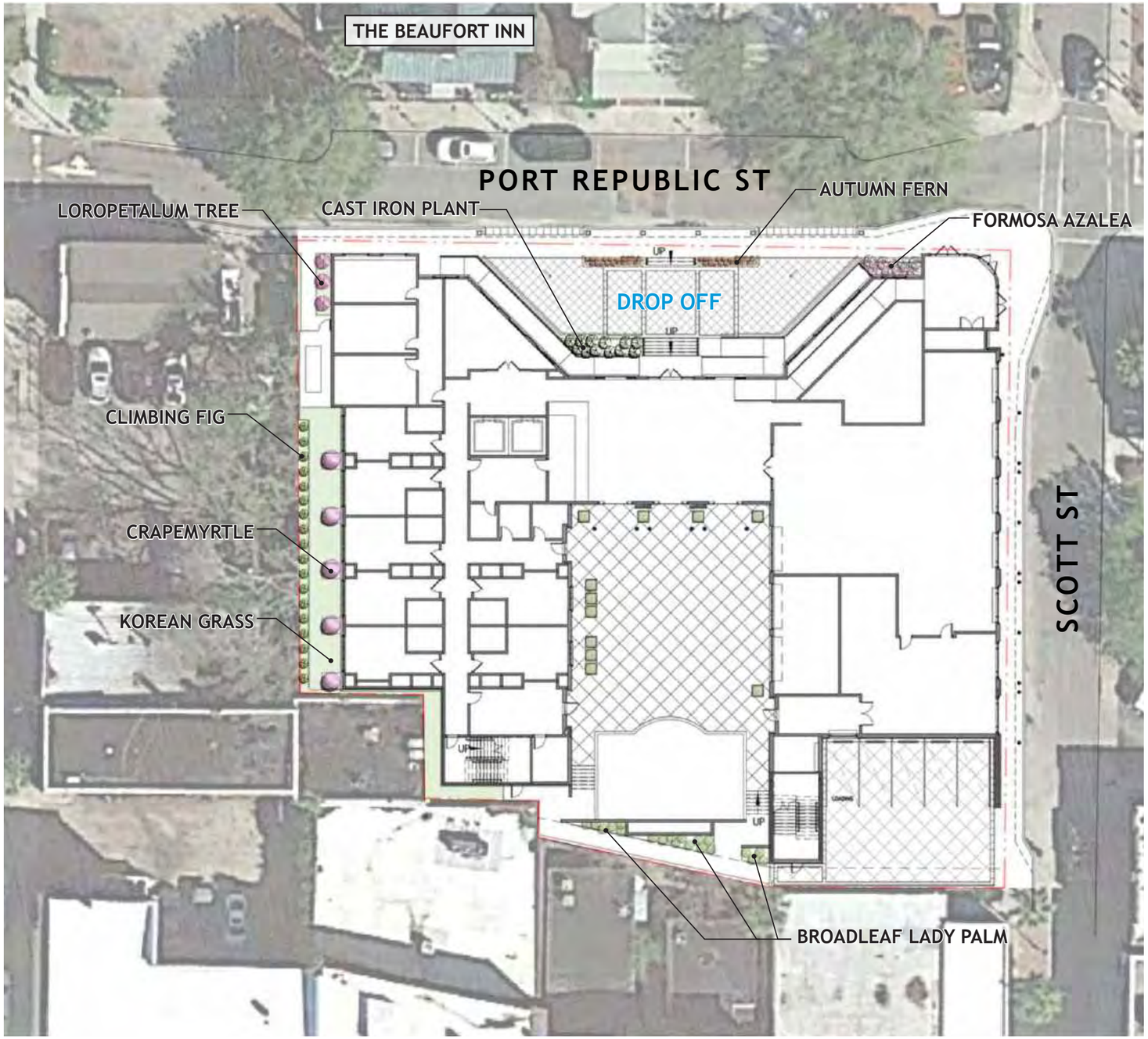
Beaufort Inn Expansion- Beaufort, SC



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Proposed Landscape Plan

Beaufort Inn Expansion- Beaufort, SC



COMMON NAME / BOTANICAL NAME	HEIGHT / SPREAD
TREES	
CRAPE MYRTLE / LAGERSTROEMIA X ‘NATCHEZ’	8-10’
SHRUBS	
FORMOSA AZALEA / AZALEA INDICA	30-36”
‘EVER RED’ LOROPETALUM / LOROPETALUM CHINENSE	3-6’
GROUND COVERS	
AUTUMN FERN / DRYOPTERIS ERYTHROSORA	10-12”
CLIMBING FIG / FICUS PUMILA	8-10’
BROADLEAF LADY PALM / RHAPIS EXCELSA	5-10’
CAST IRON PLANT / ASPIDISTRA ELATIOR	12-24”
SOD/SEED	
KOREAN GRASS / ZOYSIA JAPONICA ‘EMPIRE’	

N

0’ 15’ 30’ 60’

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Site Analysis - Existing Site Photos

Beaufort Inn Expansion- Beaufort, SC



STREET VIEW AT INTERSECTION OF PORT REPUBLIC ST AND SCOTT ST



STREET VIEW LOOKING SOUTHEAST FROM PORT REPUBLIC ST



STREET VIEW LOOKING NORTHWEST FROM SCOTT ST

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Site Analysis - Existing Site Photos

Beaufort Inn Expansion- Beaufort, SC



BIRD'S EYE VIEW LOOKING NORTHWEST



BIRD'S EYE VIEW LOOKING SOUTHEAST

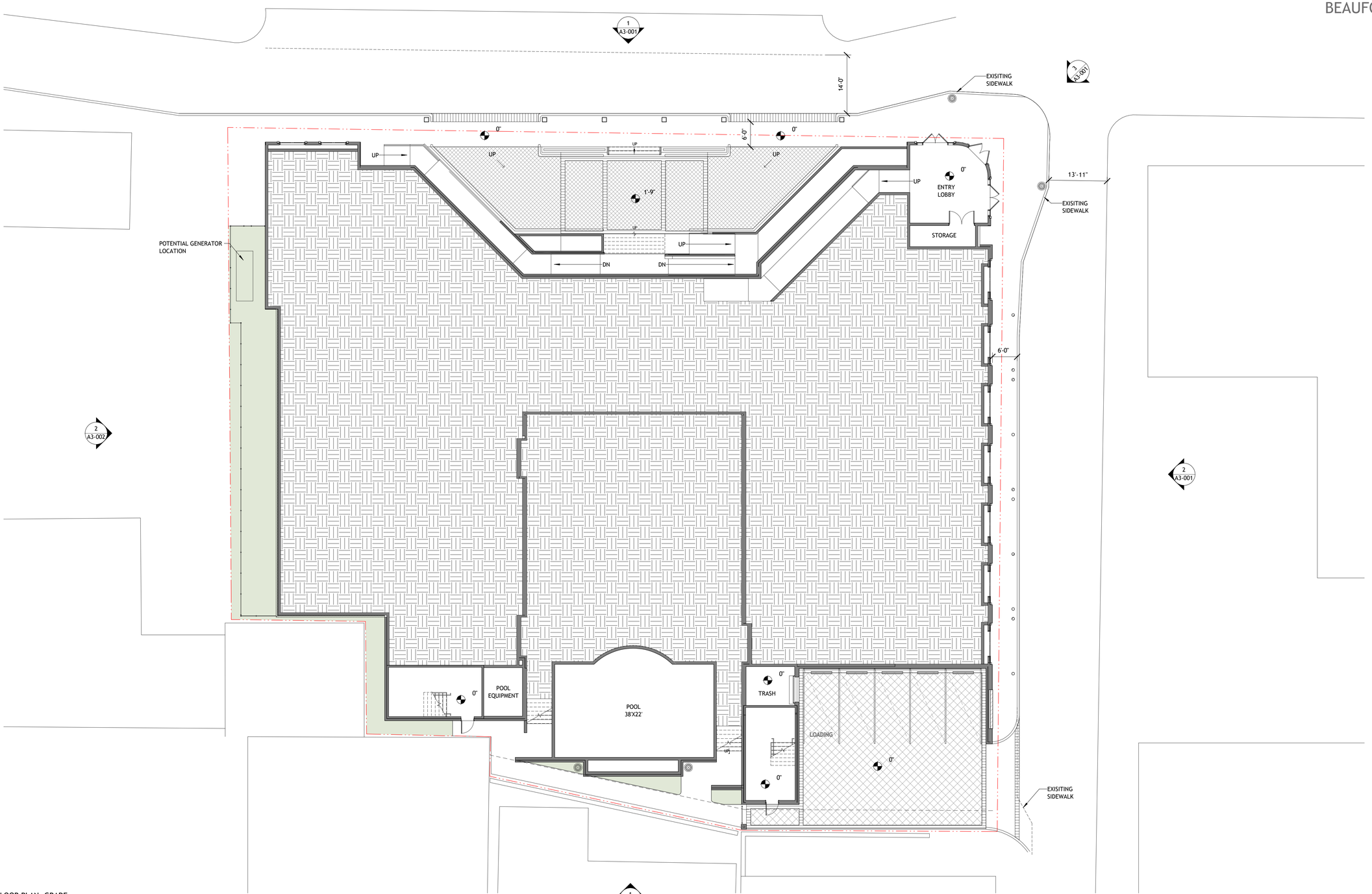


BIRD'S EYE VIEW LOOKING SOUTHWEST

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PLAN- GRADE

BEAUFORT INN



1 / A1-001 PRESENTATION FLOOR PLAN- GRADE
3/32" = 1'-0"

A1-001

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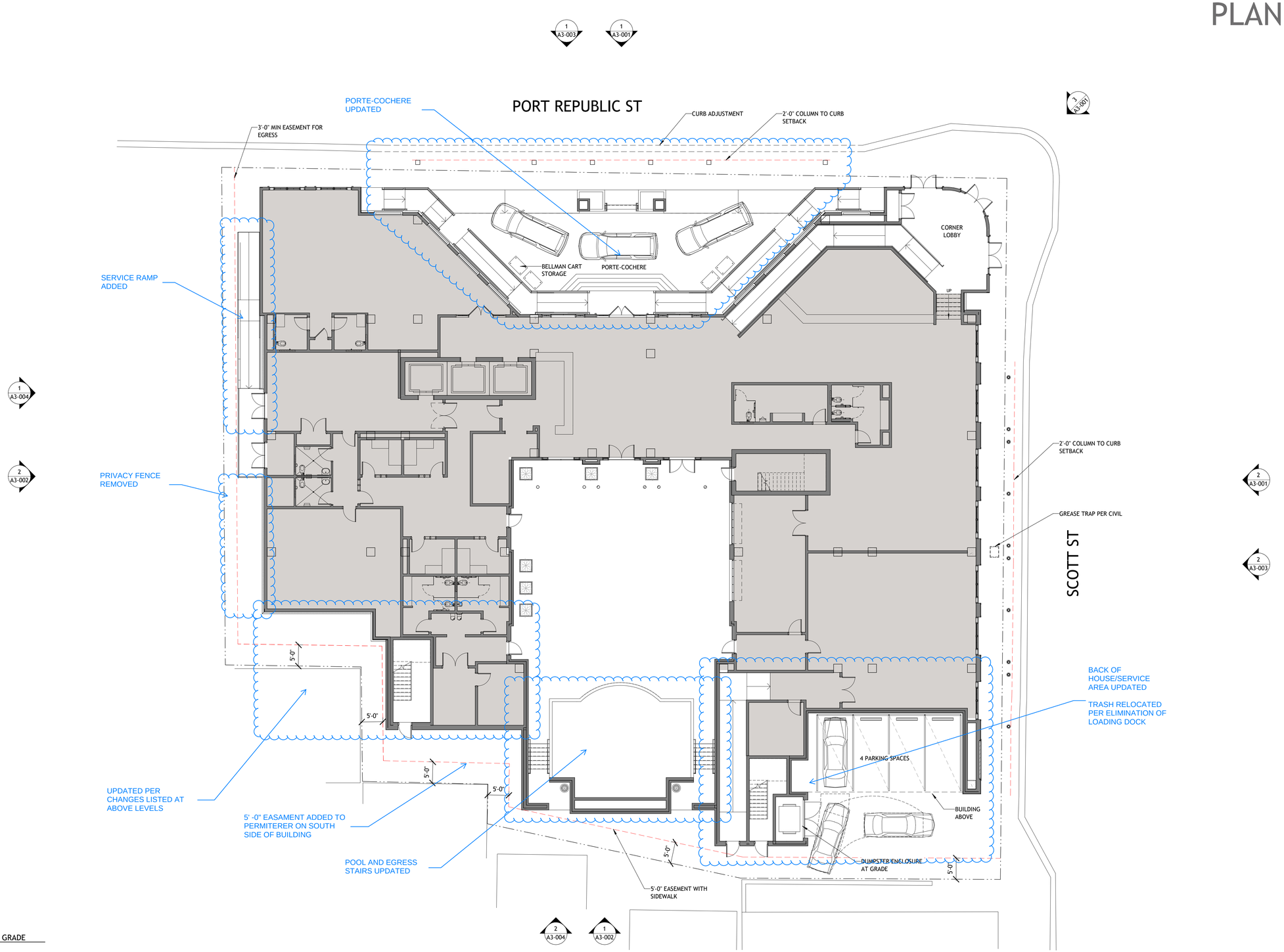
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PLAN- GRADE

BEAUFORT INN



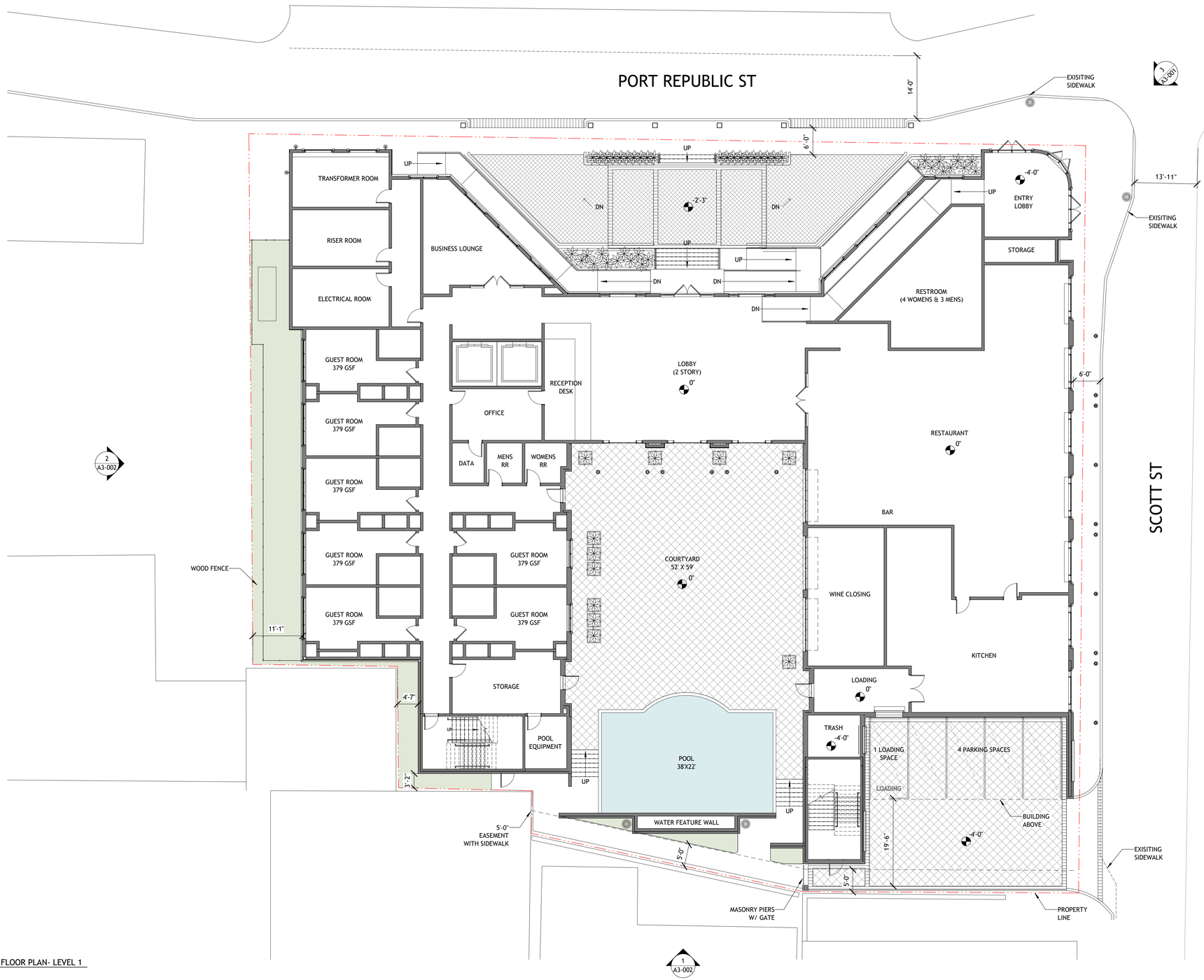
1 A1-000 PRESENTATION FLOOR PLAN- GRADE
3/32" = 1'-0"

BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

PLAN- LEVEL 1

BEAUFORT INN



BUILDING AREAS:
LEVEL 1: 16,025 SF GBA
LEVEL 2: 18,760 SF GBA
LEVEL 3: 18,760 SF GBA
GRAND TOTAL: 53,545 SF GBA

ROOM COUNT:
LEVEL 1: 7
LEVEL 2: 31
LEVEL 3: 34
GRAND TOTAL: 72 KEYS

1 A1-011 PRESENTATION FLOOR PLAN- LEVEL 1
3/32" = 1'-0"

A1-011

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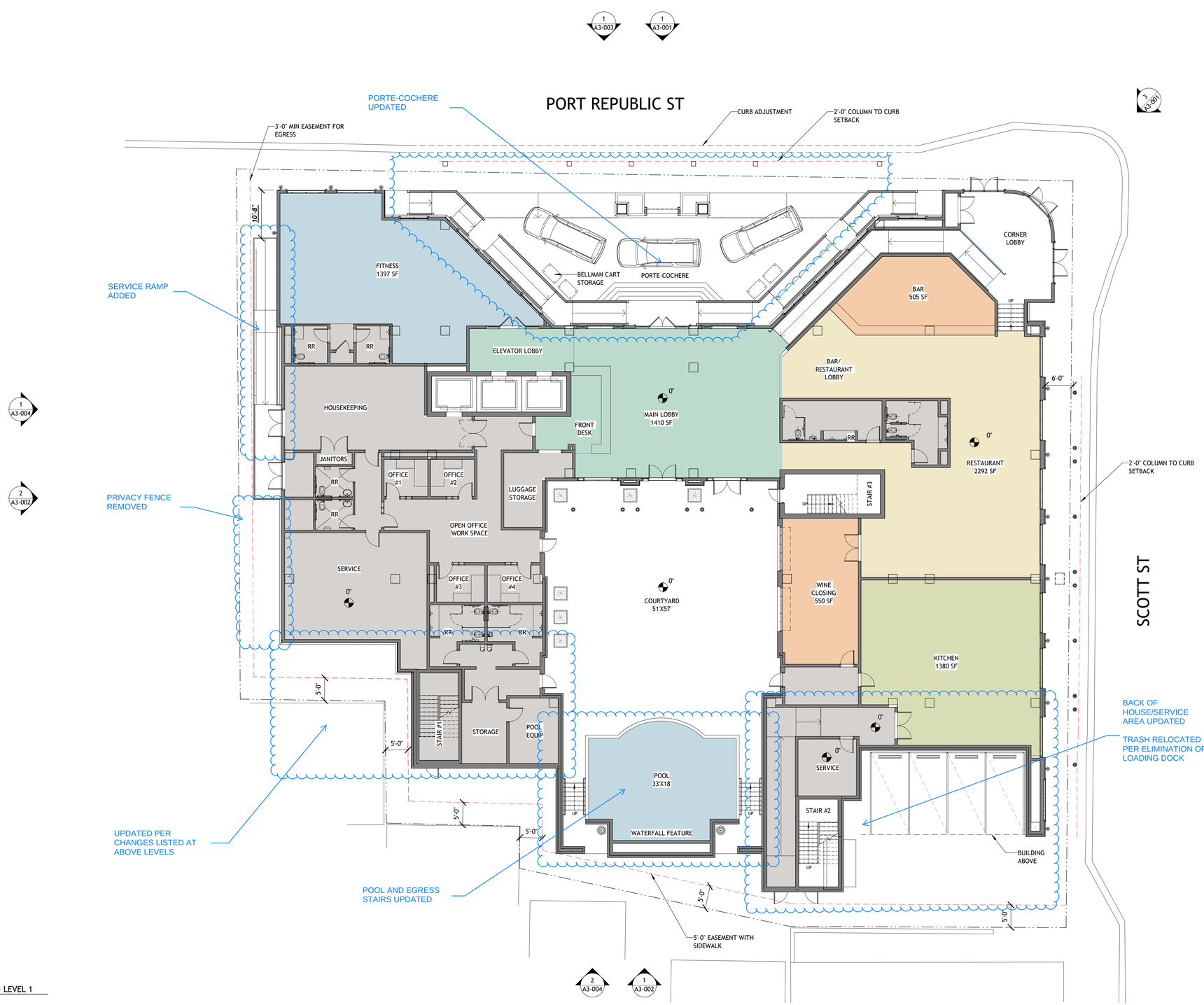
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PLAN- LEVEL 1

BEAUFORT INN



BUILDING AREAS:
LEVEL 1: 15,529 SF GBA
LEVEL 2: 18,054 SF GBA
LEVEL 3: 18,054 SF GBA
ROOF: 5,950 SF GBA
GRAND TOTAL: 57,587 SF

ROOM COUNT:
LEVEL 1: 0
LEVEL 2: 31
LEVEL 3: 34
GRAND TOTAL: 65 KEYS

1 A1-011 PRESENTATION FLOOR PLAN- LEVEL 1
3/32" = 1'-0"

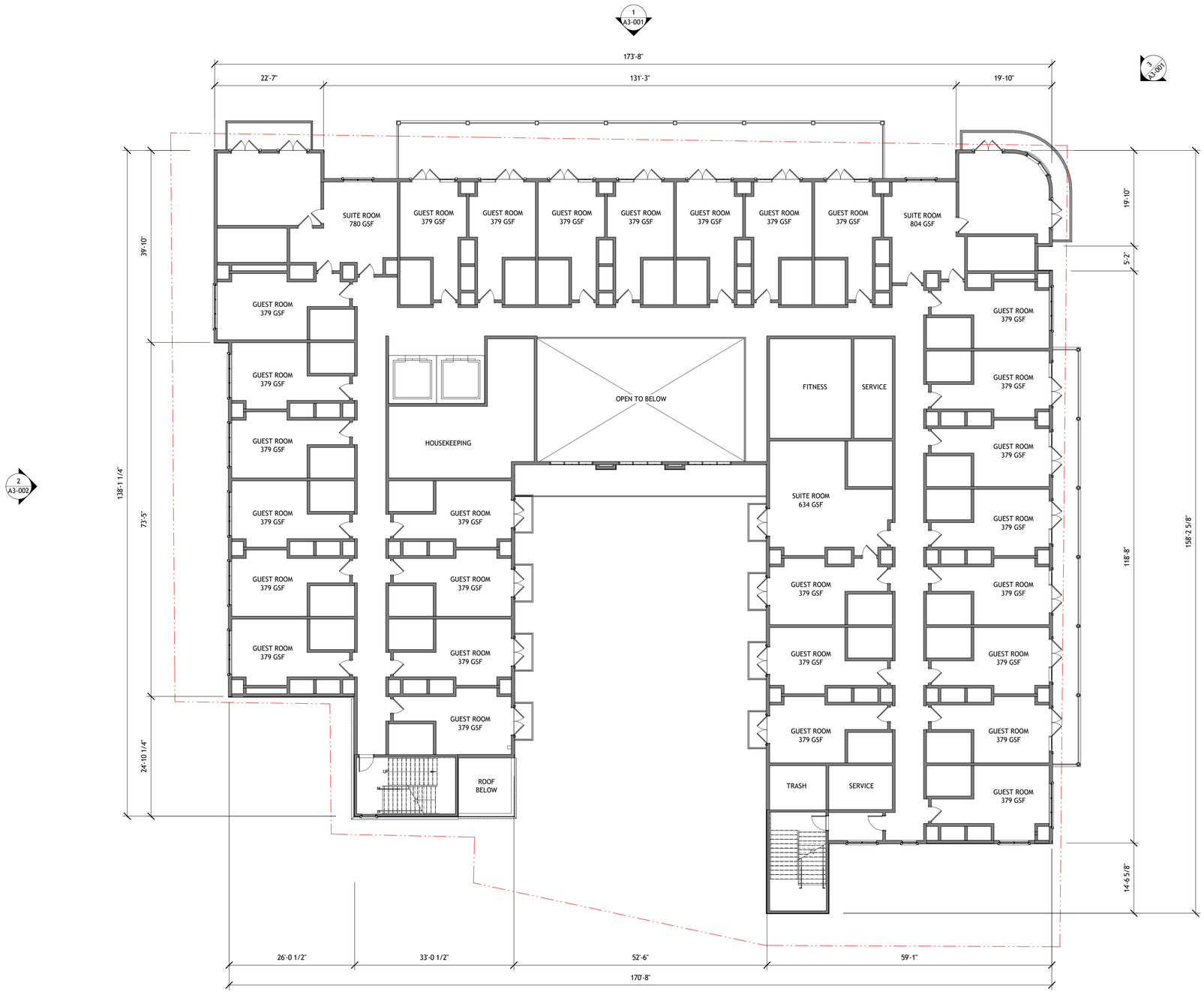
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PLAN- LEVEL 2

BEAUFORT INN



BUILDING AREAS:
LEVEL 1: 16,025 SF GBA
LEVEL 2: 18,760 SF GBA
LEVEL 3: 18,760 SF GBA
GRAND TOTAL: 53,545 SF GBA

ROOM COUNT:
LEVEL 1: 7
LEVEL 2: 31
LEVEL 3: 34
GRAND TOTAL: 72 KEYS

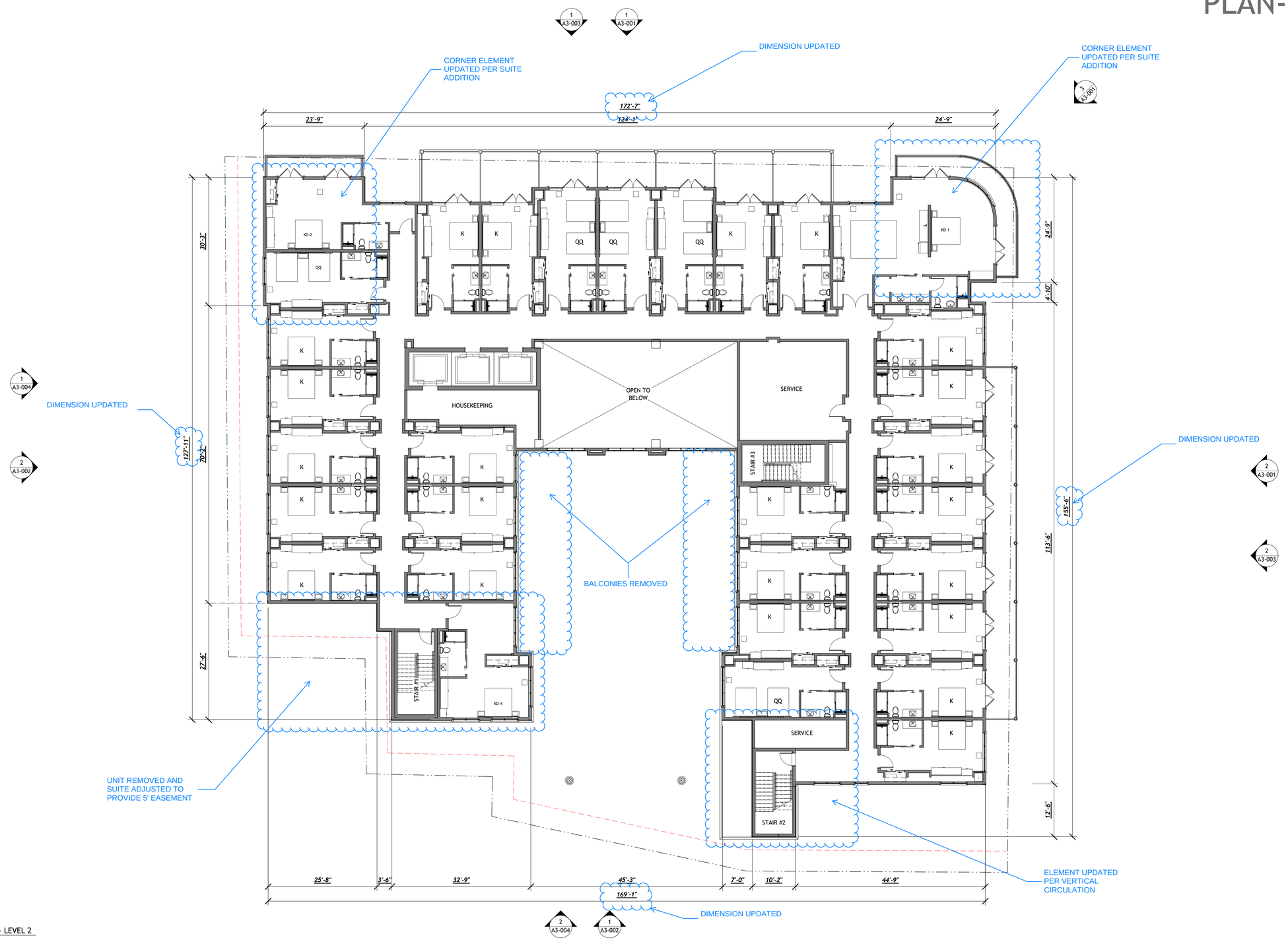
1 / A1-021 PRESENTATION FLOOR PLAN- LEVEL 2
3/32" = 1'-0"

A1-021

PLAN- LEVEL 2

BEAUFORT INN

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1 A1-021 PRESENTATION FLOOR PLAN- LEVEL 2
3/32" = 1'-0"

A1-021

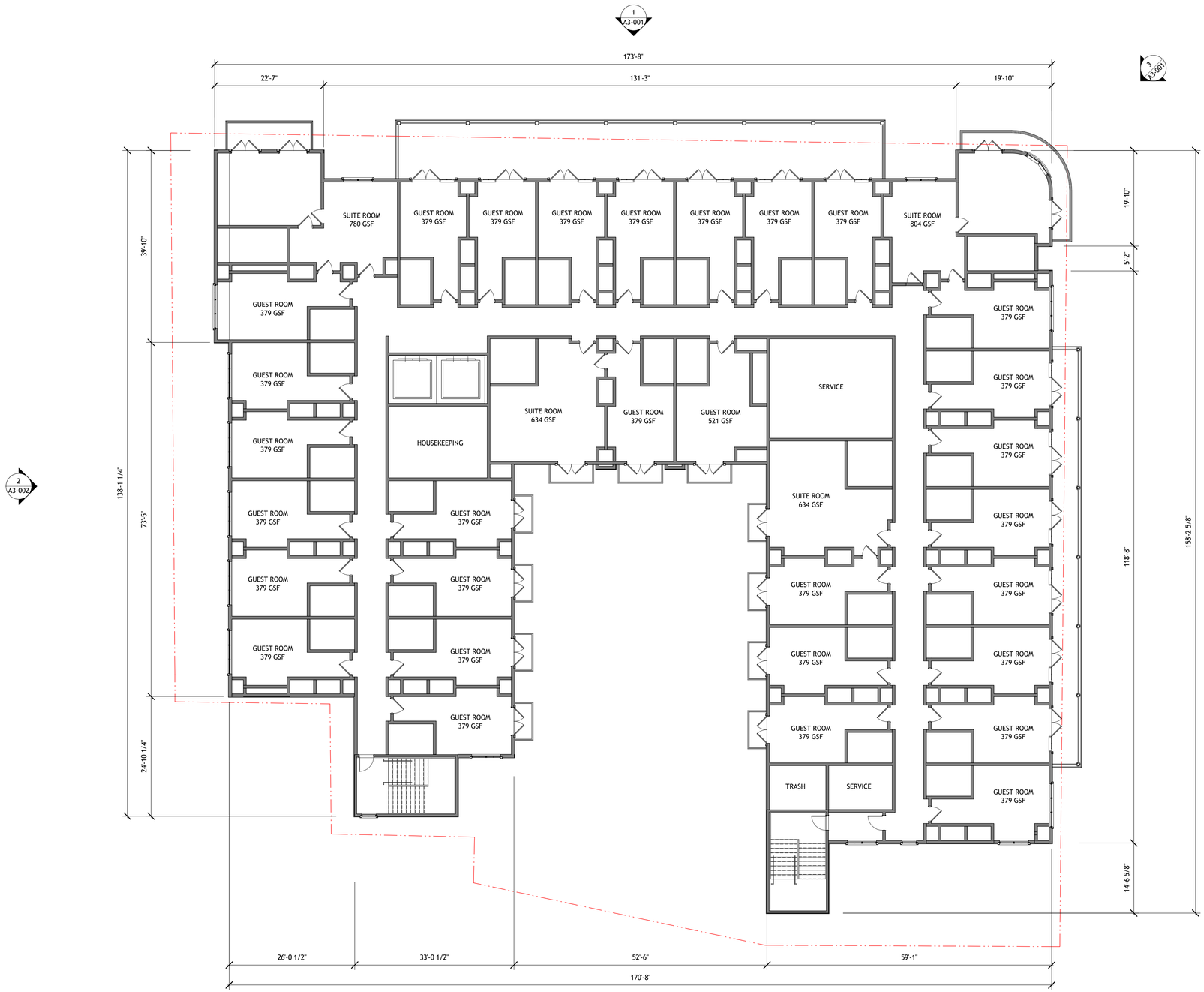
BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

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PLAN- LEVEL 3

BEAUFORT INN



BUILDING AREAS:

LEVEL 1: 16,025 SF GBA
LEVEL 2: 18,760 SF GBA
LEVEL 3: 18,760 SF GBA
GRAND TOTAL: 53,545 SF GBA

ROOM COUNT:

LEVEL 1: 7
LEVEL 2: 31
LEVEL 3: 34
GRAND TOTAL: 72 KEYS

1 / A1-031 PRESENTATION FLOOR PLAN- LEVEL 3
3/32" = 1'-0"

A1-031

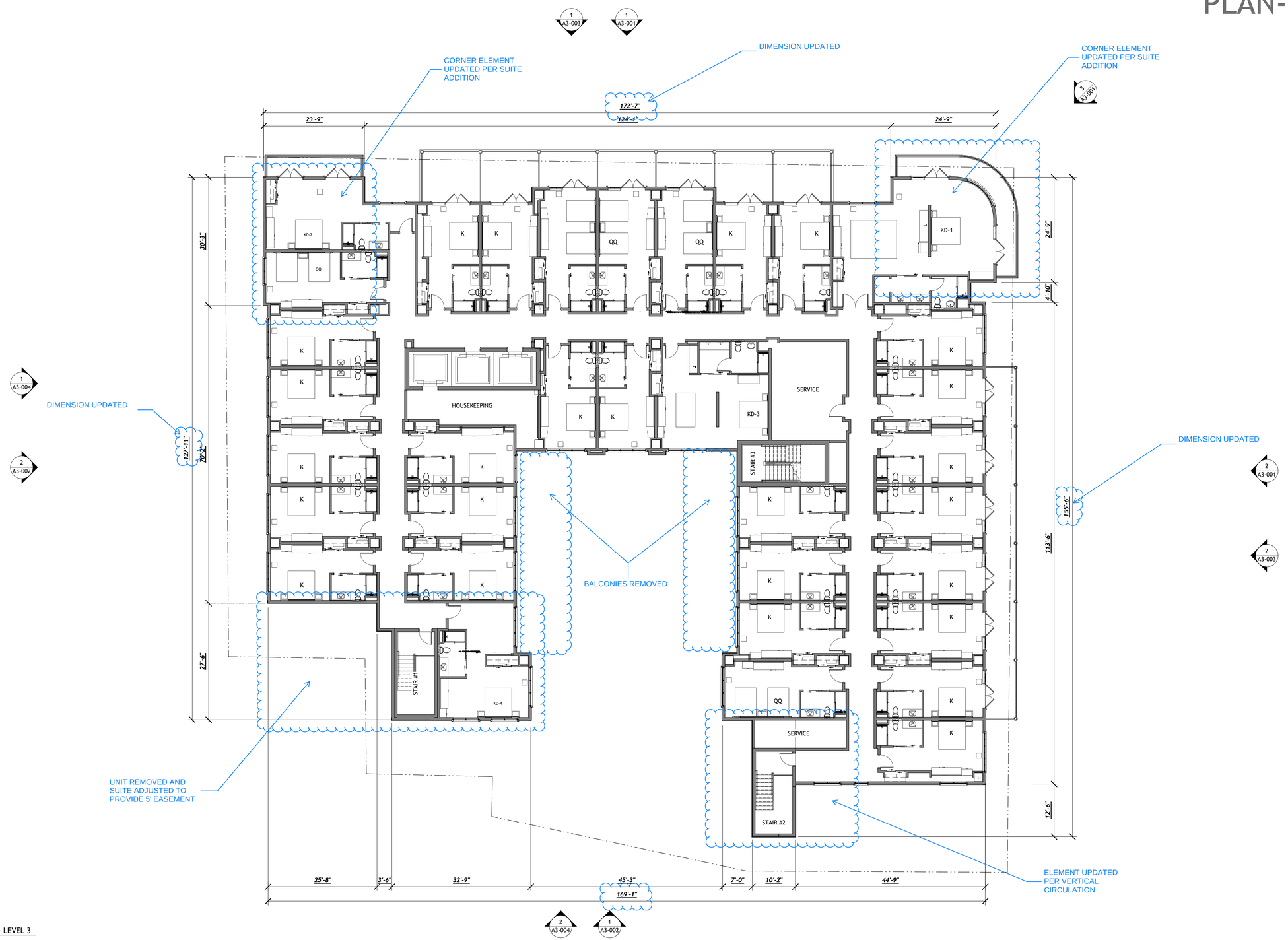
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NILES BOLTON ASSOCIATES

PLAN- LEVEL 3

BEAUFORT INN

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1 A1-031 PRESENTATION FLOOR PLAN- LEVEL 3
3/32" = 1'-0"

A1-031

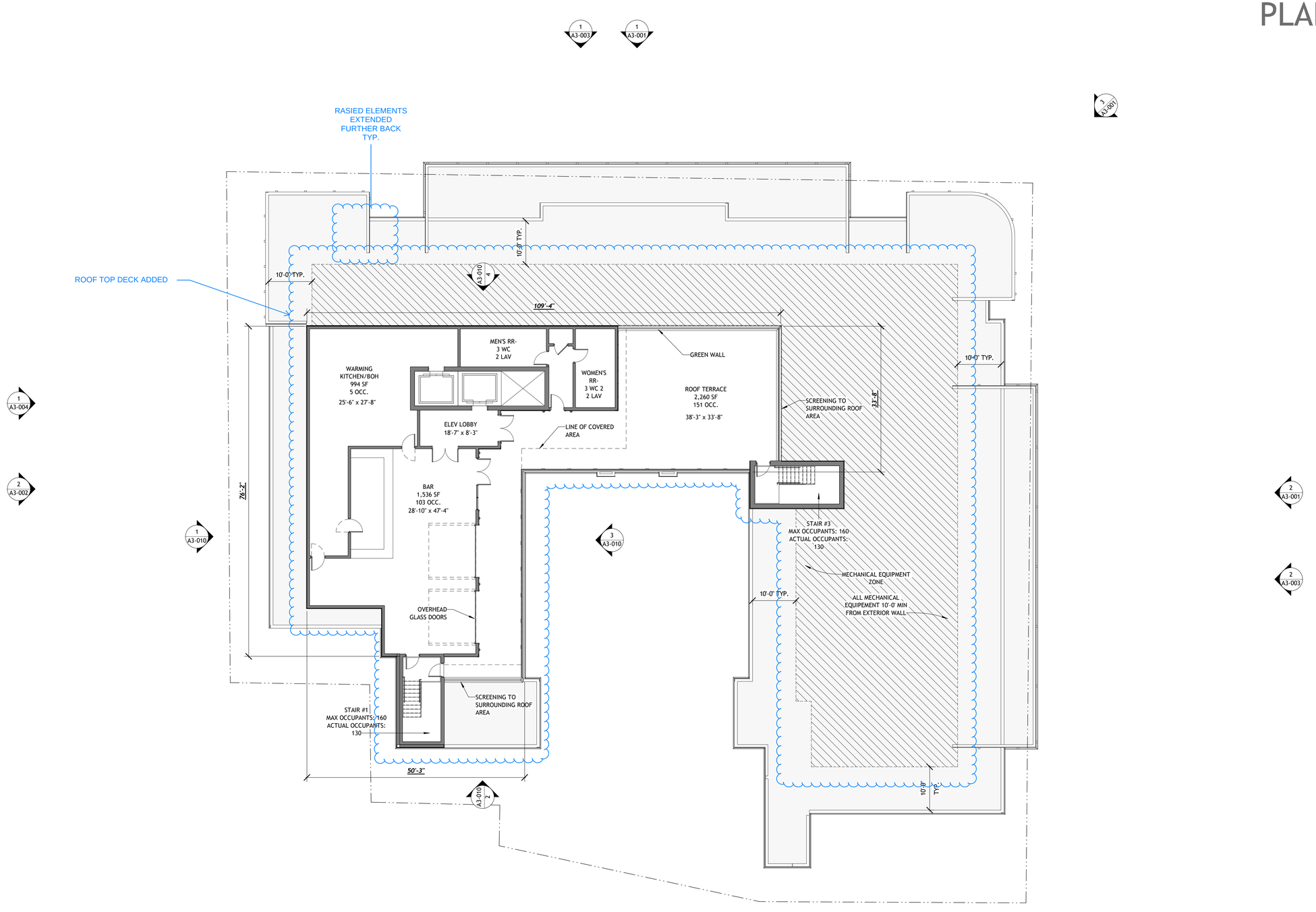
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PLAN- ROOF

BEAUFORT INN



1 A1-R10 PRESENTATION FLOOR PLAN- LEVEL 4 ROOF PLAN
3/32" = 1'-0"

BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES


L1

VESSEL LED Outdoor Flush Mount
FM-W9100

MODERN FORMS

Fixture Type:
Catalog Number:
Project:
Location:

PRODUCT DESCRIPTION
Minimalistic and modern, three-ring-lit cylindrical project wall/ceiling light made and out with advanced proprietary LED technology. Crafted from die-cast aluminum, Vessel provides effortless versatility with its easy-to-pair clean and neutral finishes.

FEATURES
- Universal driver (120V-277V)
- Color Temp 3000K
- CRI 90

SPECIFICATIONS
Construction: Die-cast aluminum construction with silk-screened glass
Light Source: High output LED
Dimming: ELV, 0-10V
Mounting: Mounts directly to junction box.
Finish: Painted Aluminum (AL), Black (BK), Bronze (BZ), White (WT)
Standards: ETL & CETL Wet Location Rated, IP 65 Rated

Title	Model	Wattage	LED Delivered Lumens	Lumens	Rated Life	Photometric	Finish
	FM-W9100						AL BK BZ WT

Example: **FM-W9100-WT**
For 2700K add "-27", 4000K add "-40" before the finish: **FM-W9100-27-WT**

modernforms.com
Phone: (800) 526.2588
Fax: (800) 526.2585

Headquarters/System Distribution Center
44 Harbor Park Drive
Port Washington, NY 11050

Central Distribution Center
1900 Chamberlain Ct
Echo Speigle, CA 92121

Western Distribution Center
11750 Ashwood Avenue
Corcoro, CA 91746

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L2



ALVALIGHT.COM P: 510 903 0898 Headquarters: 2300 4th Street Berkeley, CA 94710

Specification Sheet
L3

lumenfacade
Inground Direct View
LDIG
THREE AXIS STATIC EXCLUSIVE

Project Name
Type
Catalog / Part Number:
Qty





Photometric Summary

Delivered output (lm)	Intensity (peak cd)
830	316

Optics

Colors and Color Temperatures
3000K 3700K 3200K 3500K 4000K
Red Green Blue

Controls
ON/OFF 0-10V DALI
lumenOS colorOS Bluetooth Mesh

Ratings
IP68 IK10

Certifications

Description

Features

Construction	Wide, one-piece cast up to 550 lbs. in any type of concrete. Wide-one-piece mount up to 1900 up to per UHPC
Color and Color Temperature	2200K, 2700K, 3000K, 3200K, 3500K, 4000K, Red, Green, Blue
Length (nominal)	12 in, 24 in, 36 in, 48 in
Optics	Direct view
Options	Anti-slip mesh, CSA certification, solvent treatment, Economic Assist
Power Consumption	0.90W Typically 68% higher for 12 in. fixture lengths
Warranty	5-year limited warranty

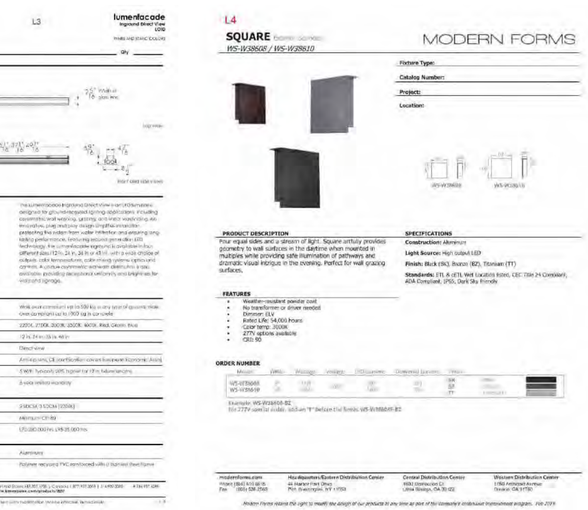
Performance

Color Consistency	3 SDCM, 3 SDCM (2200K)
Color Rendering	Minimum CRI 80
Lumen Maintenance	L70 (60,000 hrs), L90 (36,000 hrs)

Physical

Optical Chamber Material	Aluminum
Blockout Material	Polymer reinforced PVC reinforced with UV stabilized fixed frame

lumenpulse
1220 rue St-Jean-Baptiste, Québec (QC) G2E 5N8 CA
1-855-586-3568 www.lumenpulse.com


L4

SQUARE Exterior Sconce
WS-W28605 / WS-W28610

MODERN FORMS

Fixture Type:
Catalog Number:
Project:
Location:

PRODUCT DESCRIPTION
Four equal sides and a stream of light. Square artfully provides polymers to wall surfaces in the darkness when mounted in multiples while providing safe illumination of pathways and dramatic visual intrigue in the evening. Perfect for wall grazing surfaces.

FEATURES
- Weather-resistant exterior coat
- No transformer or driver needed
- Dimmer: ELV
- Rated Life: 54,000 hours
- Color temp: 3500K
- 277V options available
- CRI: 90

SPECIFICATIONS
Construction: Aluminum
Light Source: High Output LED
Finish: Black (BK), Bronze (BZ), Titanium (TT)
Standards: ETL & cETL Wet Location Rated, CEC Title 24 Compliant, ADA Compliant, IP55, Dark Sky Friendly

ORDER NUMBER

Model	Wattage	Voltage	CRI	Lumens	Ordering Lumens	Finish
WS-W28605 WS-W28610	7 14	120 277	90	504 1008	504 1008	BK BZ TT

Example: WS-W28605-BZ
For 277V special order, add an "F" before the finish: WS-W28605-BZF

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Phone: (800) 526.2588
Fax: (800) 526.2585

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11750 Ashwood Avenue
Corcoro, CA 91746

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WPX LED
Wall Packs
L5

Specifications



Front View Side View

Luminaire	Depth (D)	Width (W)	Height (H)	Mounting Arm Length (A)	Mounting Arm Length (B)	Weight
WPX1	6.6" (16.8 cm)	13.9" (35.3 cm)	6.9" (17.5 cm)	4.6" (11.7 cm)	6.6" (16.8 cm)	6.1 lb. (2.8kg)
WPX2	8.1" (20.5 cm)	15.3" (38.9 cm)	8.4" (21.3 cm)	4.7" (11.9 cm)	8.1" (20.5 cm)	8.4 lb. (3.8kg)
WPX3	8.1" (20.5 cm)	15.3" (38.9 cm)	9.3" (23.7 cm)	4.7" (11.9 cm)	8.1" (20.5 cm)	9.9 lb. (4.5kg)

Introduction
The WPX LED wall packs are energy-efficient, cost-effective, and aesthetically appealing solutions for both HID wall pack replacement and new construction opportunities. Available in three sizes, the WPX family delivers 1,300 to 9,200 lumens with a wide, uniform distribution.

The WPX full cut-off executions fully cover the footprint of the HID glass wall packs that they replace, providing a neat installation and an upgraded appearance. Reliable IP66 construction and excellent LED lumen maintenance ensure a long service life. Photocell and emergency egress battery options make WPX ideal for every wall mounted lighting application.

Ordering Information EXAMPLE: WPX2 LED 40K MVOLT DDBXD

SERIES	DESCRIPTION	LENGTH	OPTICS	DISTRIBUTION	VOLTAGE	MOUNTING	CONTROL	OPTIONS	FINISH
WPX1 LED P1 WPX1 LED P2 WPX2 LED WPX3 LED	1,300 lumen, 10W 2,600 lumen, 20W 4,200 lumen, 29W 9,200 lumen, 58W	1M 4M 5M	40K 50K	MVOLT 347	120-277V 347	Shpkt Wall Surface	Blank DMG DTHR	Blank Emergency battery backup (CEC compliant) Emergency battery backup (CEC compliant)	XD BZ BK

Note: The lumen output and input power shown in the ordering tree are average representations of all configuration options. Specific values are available on request.

NOTES
1. All WPX wall packs come with 4kV surge protective standard, except WPX1 LED P1 package, which comes with 2.5kV surge protection standard. Add SPDWV dimmer to get 4kV SPD for WPX1 LED P1 package.
2. Sample nomenclature: WPX1 LED P1 3K MVOLT DMG DDBXD
3. Battery pack options only available on WPX2 and WPX3
4. Retrofit pack options not available with 347V or MVOLT options

FEATURES & SPECIFICATIONS

INTENDED USE
The WPX LED wall packs are designed to provide a variety of outdoor, energy-efficient options for the most common residential & commercial HID wall packs. The WPX1, WPX2 and WPX3 are ideal for replacing 70W, 150W, 250W, and 400W HID fixtures respectively. WPX luminaires deliver a uniform and IESNA cutoff distribution.

CONSTRUCTION
WPX luminaires are rated for installation in any orientation and have a universal mounting arm that easily attaches to most outlet boxes. The housing is made of die-cast aluminum for long-lasting corrosion resistance. The LED modules are IP66 rated, and provide superior thermal management.

ELECTRICAL
WPX luminaires are designed and tested to IP rating and ANSI C136.41 dimming requirements. Available in 120-277V (50/60 Hz) or 347V (60Hz). Integral 0-10V dimming driver is standard on all WPX luminaires. Optional 4kV surge protection device is available on all WPX luminaires. Optional 0-10V dimming driver is standard on all WPX luminaires. Optional 4kV surge protection device is available on all WPX luminaires. Optional battery backup is available on all WPX luminaires. Optional battery backup is available on all WPX luminaires. Optional battery backup

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PLAN - PENTHOUSE ROOF

BEAUFORT INN



1 PRESENTATION- ROOF PLAN
A1-R11 3/32" = 1'-0"

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ELEVATIONS
BEAUFORT INN

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2 / A3-001 PRESENTATION-ELEVATION-EAST
3/32" = 1'-0"



3 / A3-001 PRESENTATION-ELEVATION-NORTH EAST
3/32" = 1'-0"

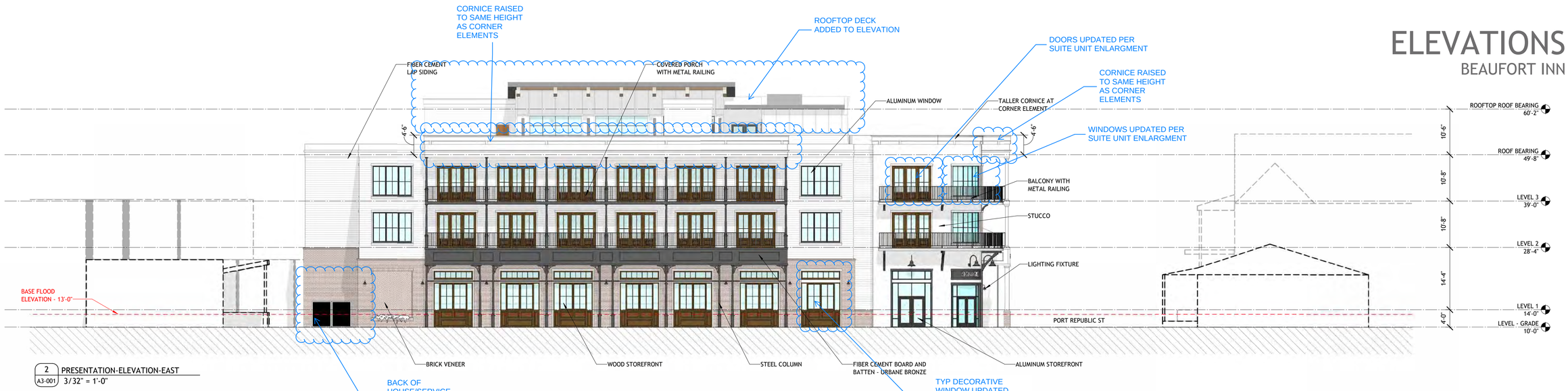


1 / A3-001 PRESENTATION-ELEVATION-NORTH
3/32" = 1'-0"

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NILES BOLTON ASSOCIATES

ELEVATIONS
BEAUFORT INN



2 A3-001 PRESENTATION-ELEVATION-EAST
3/32" = 1'-0"



3 A3-001 PRESENTATION-ELEVATION-NORTH EAST
3/32" = 1'-0"



1 A3-001 PRESENTATION-ELEVATION-NORTH
3/32" = 1'-0"

A3-001

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ELEVATIONS
BEAUFORT INN

ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM- BEAUFORT - COMMON PLEAS - CASE#2021CP0701241



2 / A3-002 PRESENTATION-ELEVATION-WEST
3/32" = 1'-0"

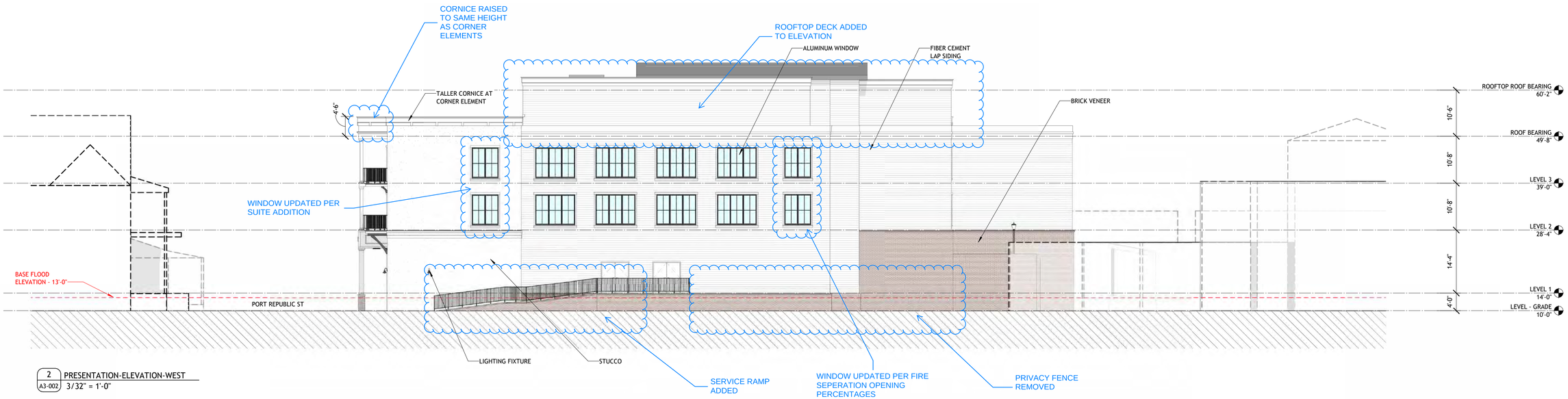


1 / A3-002 PRESENTATION-ELEVATION-SOUTH
3/32" = 1'-0"

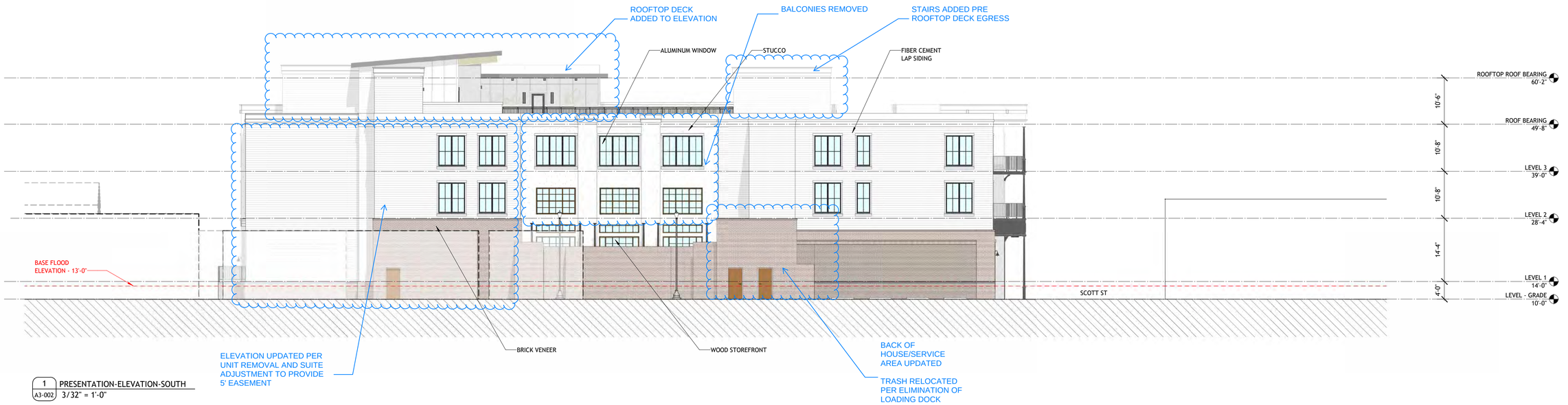
BEAUFORT INN, LLC | 10/09/2019 | PREVIOUSLY APPROVED

NILES BOLTON ASSOCIATES

ELEVATIONS
BEAUFORT INN



2 / A3-002 PRESENTATION-ELEVATION-WEST
3/32" = 1'-0"



1 / A3-002 PRESENTATION-ELEVATION-SOUTH
3/32" = 1'-0"

A3-002

BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

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SITE ELEVATION

BEAUFORT INN



1 A3-003 PRESENTATION-ELEVATION-EAST - SITE
1/16" = 1'-0"



2 A3-003 PRESENTATION-ELEVATION-NORTH - SITE
1/16" = 1'-0"

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SITE ELEVATIONS

BEAUFORT INN



1 A3-003 PRESENTATION-SITE ELEVATION-PORT REPUBLIC ST
1/16" = 1'-0"



2 A3-003 PRESENTATION-SITE ELEVATION-SCOTT ST
1/16" = 1'-0"

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SITE ELEVATIONS

BEAUFORT INN



2 A3-004 PRESENTATION-SITE ELEVATION-BAY ST
1/16" = 1'-0"



1 A3-004 PRESENTATION-SITE ELEVATION-WEST ST
1/16" = 1'-0"

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3D VIEWS

BEAUFORT INN



A3-004

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PERSPECTIVES

BEAUFORT INN



A3-005

BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

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3D VIEWS

BEAUFORT INN



PERSPECTIVES

BEAUFORT INN

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A3-006

BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

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3D VIEWS

BEAUFORT INN



ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

PERSPECTIVES

BEAUFORT INN



A3-007

BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

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3D VIEWS

BEAUFORT INN



A3-007

ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

PERSPECTIVES

BEAUFORT INN



A3-008

BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

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3D VIEWS

BEAUFORT INN



A3-008

ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

PERSPECTIVES

BEAUFORT INN



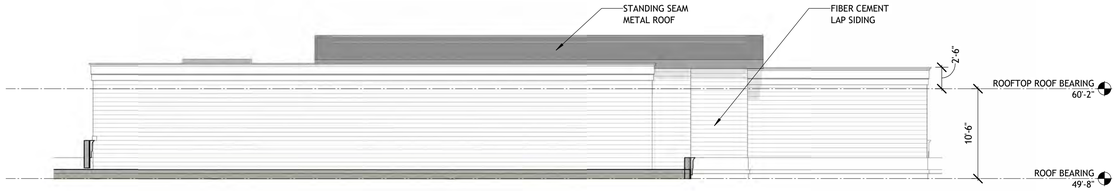
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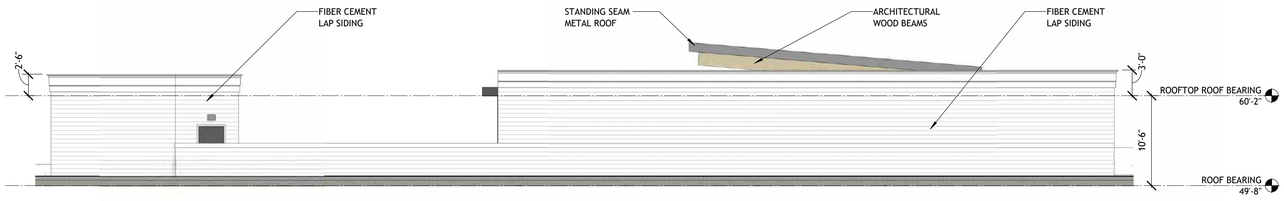
NILES BOLTON ASSOCIATES

ELEVATIONS - ROOFTOP

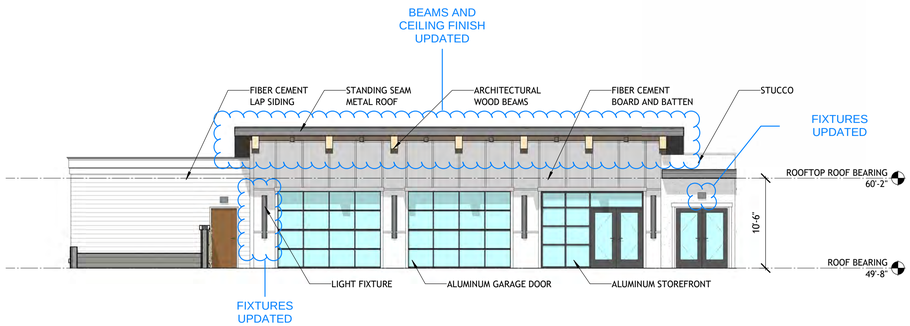
BEAUFORT INN



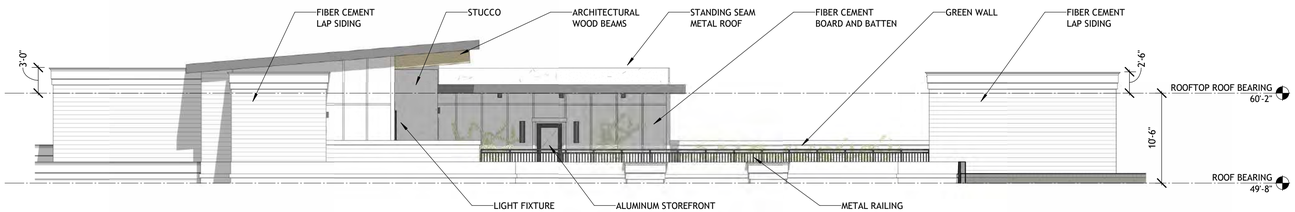
1 A3-010 PRESENTATION-ELEVATION-ROOFTOP-WEST
1/8" = 1'-0"



4 A3-010 PRESENTATION-ELEVATION-ROOFTOP-NORTH
1/8" = 1'-0"



3 A3-010 PRESENTATION-ELEVATION-ROOFTOP-EAST
1/8" = 1'-0"



2 A3-010 PRESENTATION-ELEVATION-ROOFTOP-SOUTH
1/8" = 1'-0"

ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

ROOFTOP - PERSPECTIVE

BEAUFORT INN



DUSK VIEW



A3-011

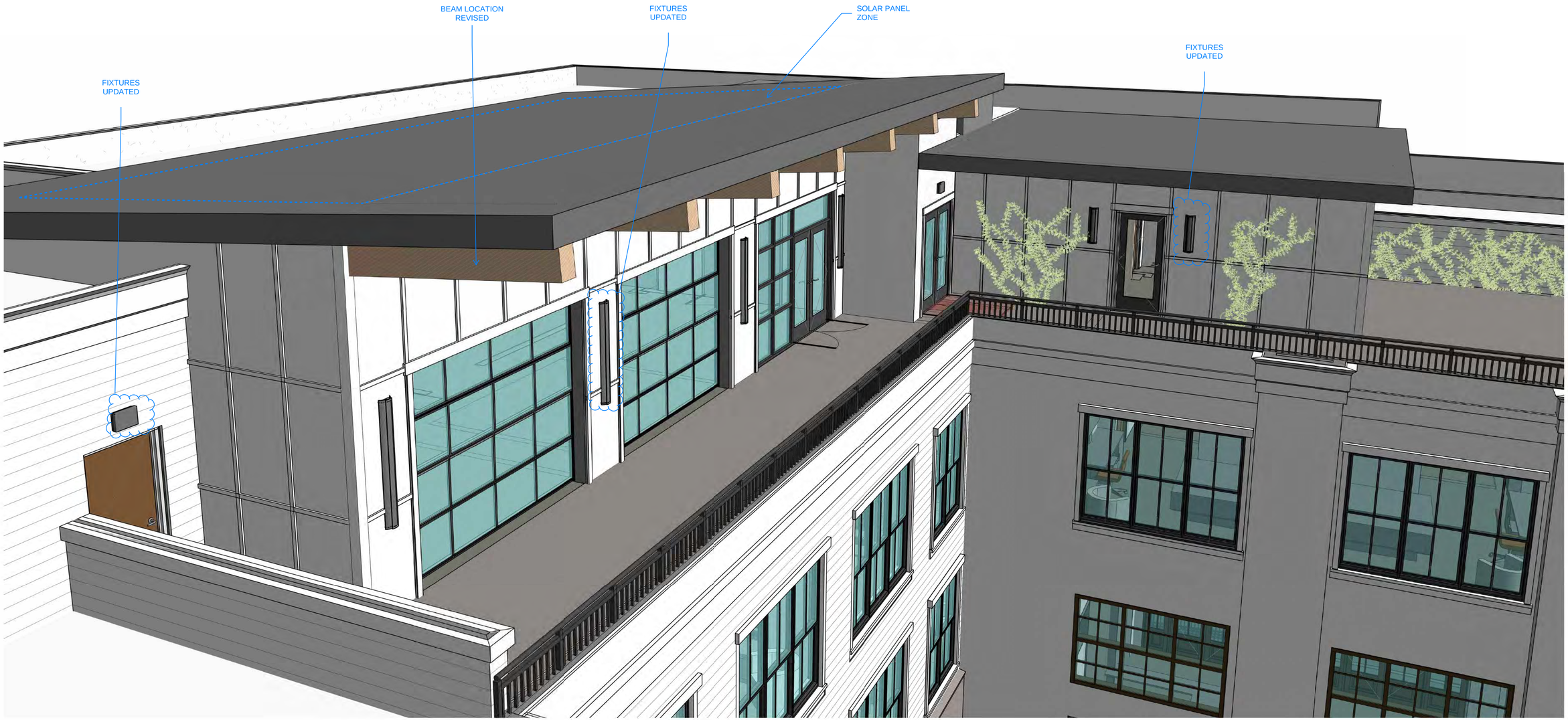
BEAUFORT INN, LLC | 03/26/2021 | CURRENT PROPOSED

NILES BOLTON ASSOCIATES

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ROOFTOP - AERIAL

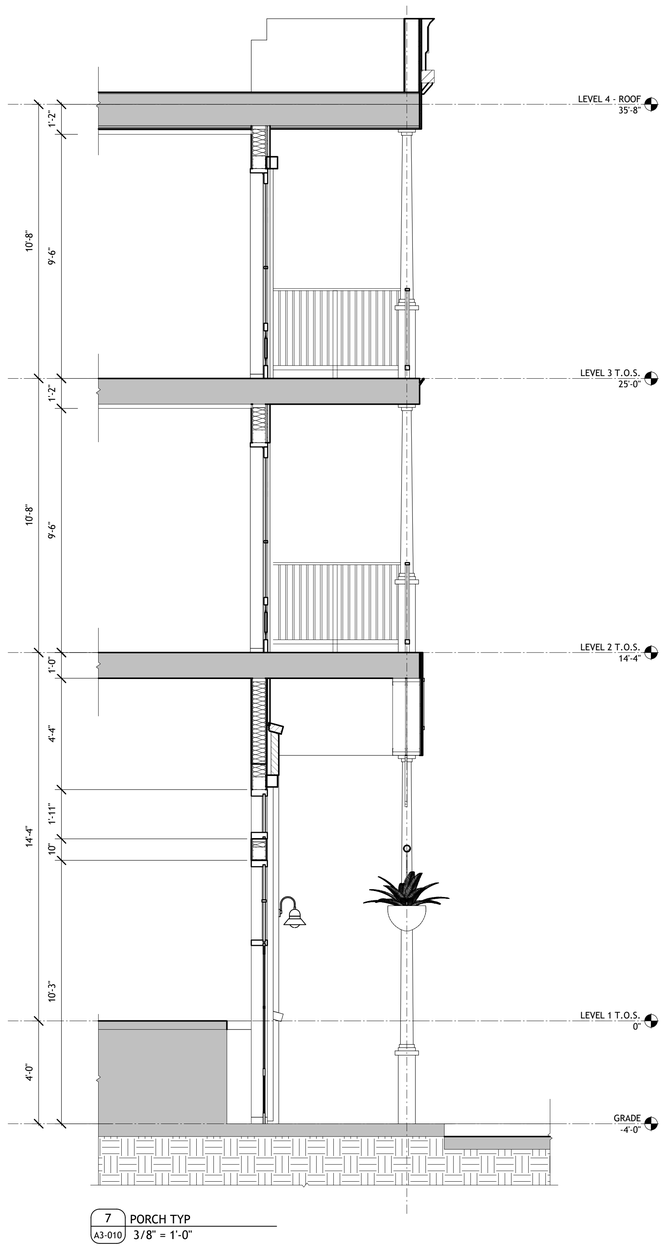
BEAUFORT INN



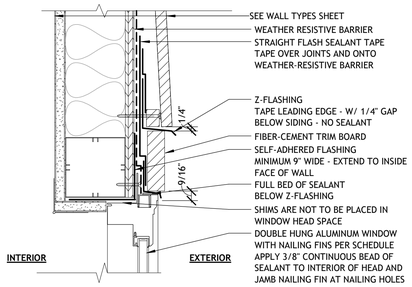
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WALL SECTION

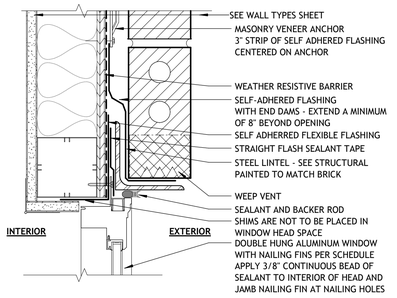
BEAUFORT INN



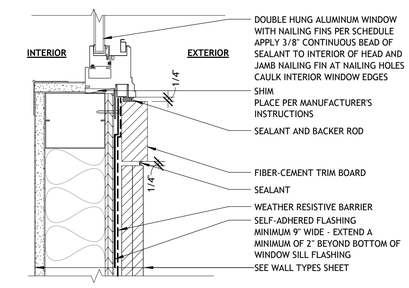
7 A3-010 PORCH TYP
3/8" = 1'-0"



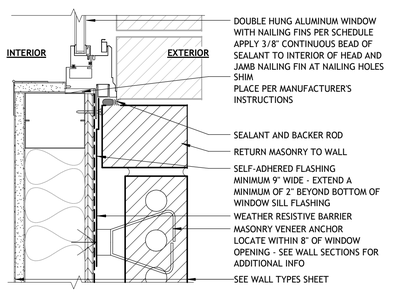
6 A3-010 WINDOWS- WD STUD- FC-SIDING-EXT-VINYL-WINDOW- HEAD
3" = 1'-0"



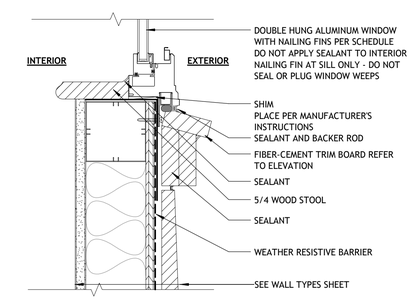
3 A3-010 WINDOWS- WD STUD- BRICK-EXT-VINYL-WINDOW- HEAD
3" = 1'-0"



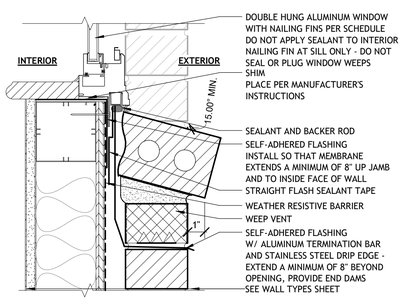
5 A3-010 WINDOWS- WD STUD- FC-SIDING-EXT-VINYL-WINDOW- JAMB
3" = 1'-0"



2 A3-010 WINDOWS- WD STUD- BRICK-EXT-VINYL-WINDOW- JAMB
3" = 1'-0"



4 A3-010 WINDOWS- WD STUD- FC-SIDING-EXT-VINYL-WINDOW- SILL
3" = 1'-0"

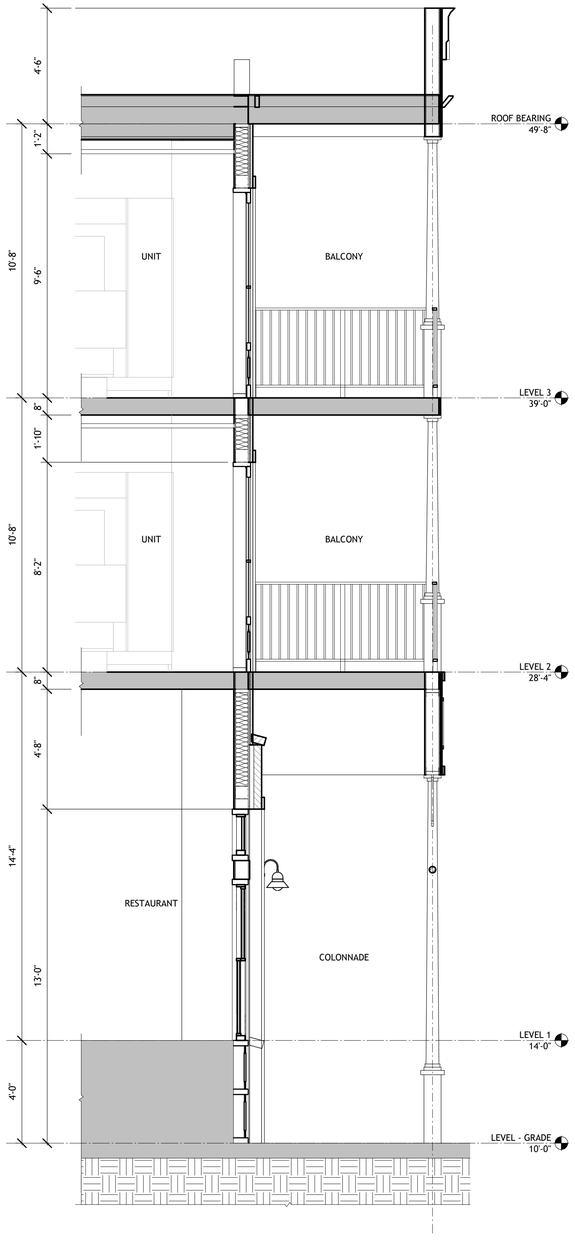


1 A3-010 WINDOWS- WD STUD- BRICK-EXT-VINYL-WINDOW- SILL
3" = 1'-0"

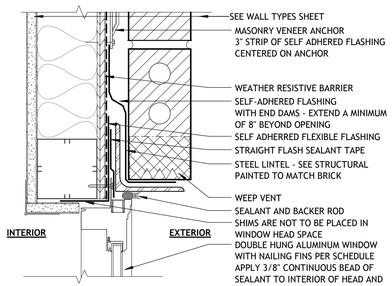
ELECTRONICALLY FILED - 2021 Sep 10 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701241

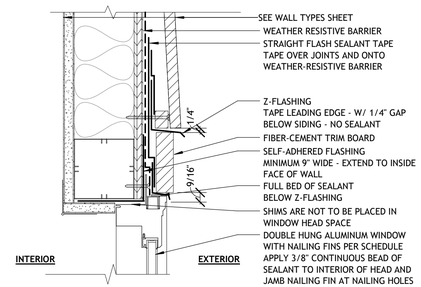
WALL SECTION

BEAUFORT INN

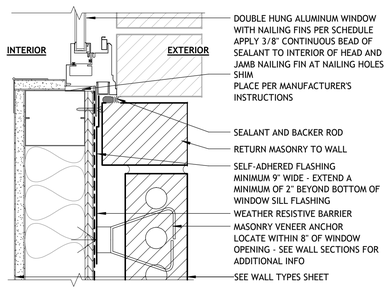


1 A3-013 PORCH TYP
3/8" = 1'-0"

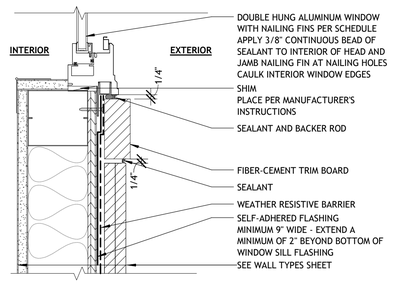




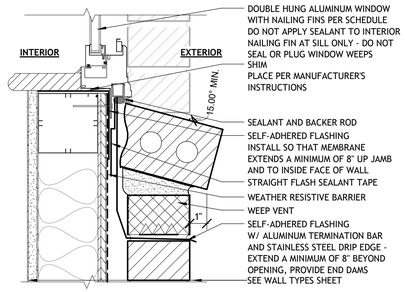
3 A3-013 WINDOWS- WD STUD- BRICK-EXT-VINYL-WINDOW- HEAD
3" = 1'-0"



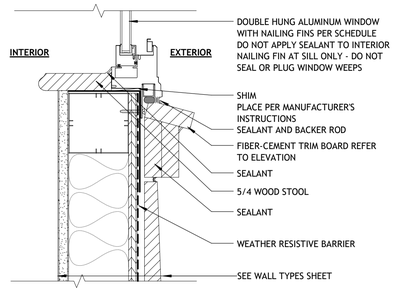
5 A3-013 WINDOWS- WD STUD- FC-SIDING-EXT-VINYL-WINDOW- HEAD
3" = 1'-0"



2 A3-013 WINDOWS- WD STUD- BRICK-EXT-VINYL-WINDOW- JAMB
3" = 1'-0"



6 A3-013 WINDOWS- WD STUD- FC-SIDING-EXT-VINYL-WINDOW- JAMB
3" = 1'-0"

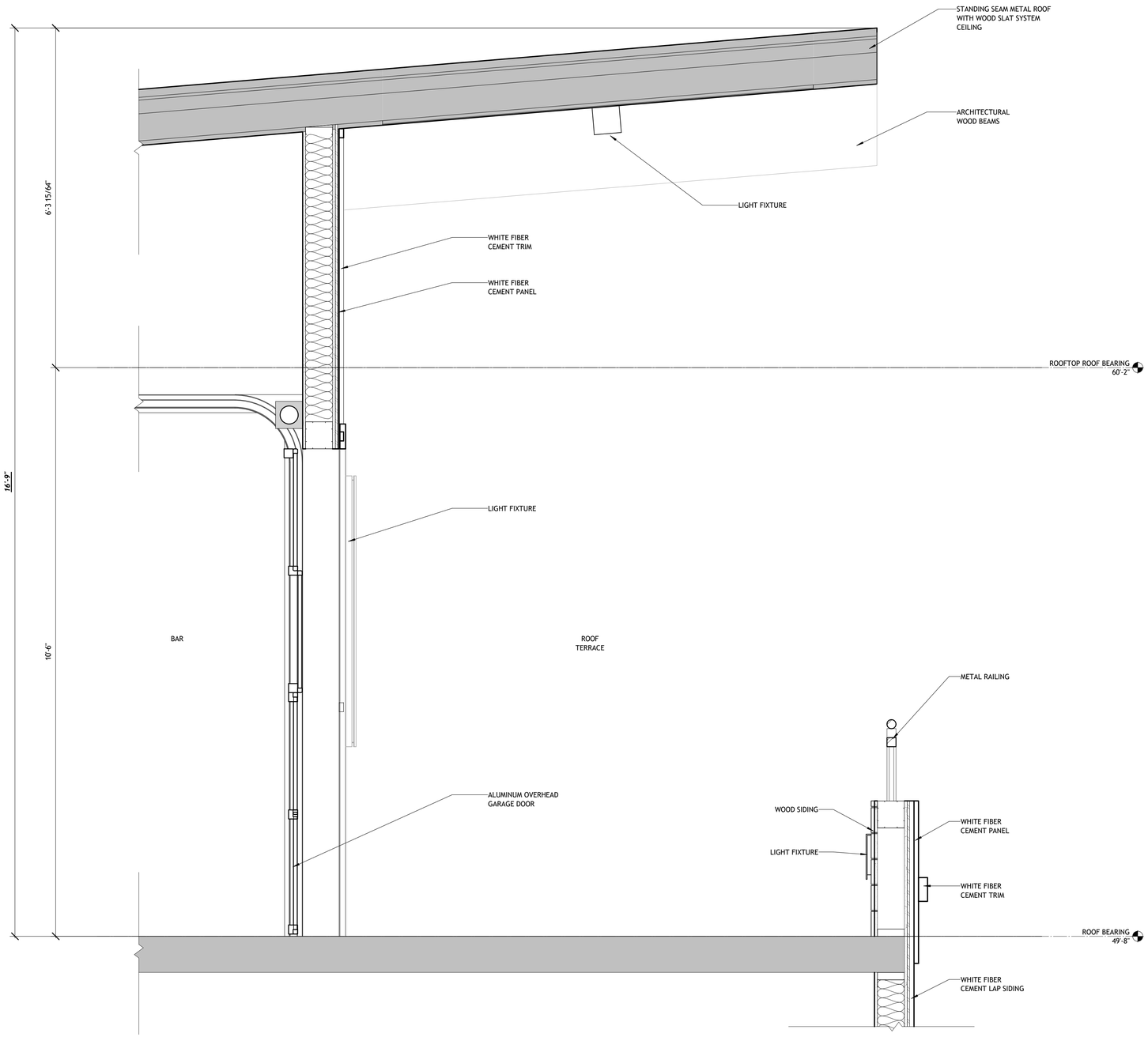


4 A3-013 WINDOWS- WD STUD- BRICK-EXT-VINYL-WINDOW- SILL
3" = 1'-0"

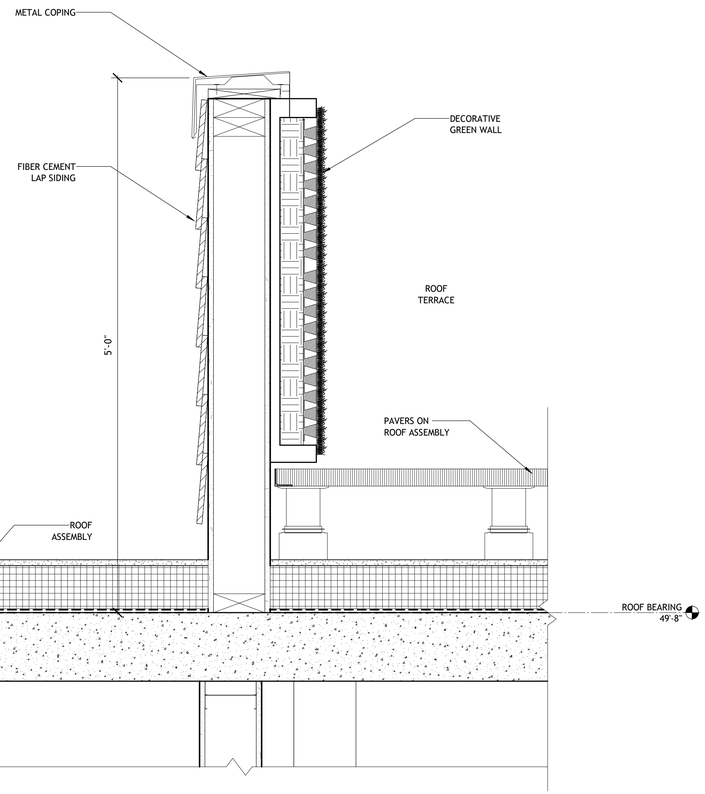
7 A3-013 WINDOWS- WD STUD- FC-SIDING-EXT-VINYL-WINDOW- SILL
3" = 1'-0"

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WALL SECTION
BEAUFORT INN



1 A3-014 ROOFTOP EXTERIOR WALL @ GARAGE
1" = 1'-0"



2 A3-014 MECHANICAL SCREEN WALL TYP.
1 1/2" = 1'-0"

A3-014

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Materials Board

Beaufort Inn Expansion - Beaufort, South Carolina



FIBER CEMENT
LAP SIDING - SW 7006 EXTRA WHITE



FIBER CEMENT
BOARD & BATTEN - SW 7048 URBANE BRONZE



EXTERIOR LIGHT - LARGE



EXTERIOR LIGHT - SMALL



CAST IRON BRACKET - SW 7048 URBANE BRONZE



STUCCO - SW 7006 EXTRA WHITE



FIBER CEMENT
BOARD & BATTEN - SW 7006 EXTRA WHITE



CAST IRON COLUMN - SW 7048 URBANE BRONZE



WOOD DOOR - 4 PANEL STYLE



BRACKETS - LARGE



BRICK VENEER - CHEROKEE SAVANNAH GRAY



WOOD PRIVACY FENCE



WOOD STOREFRONT - PANEL STYLE



WOOD DOOR - STAIN



BRACKETS - SMALL

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Materials Board - Hotel

Beaufort Inn Expansion - Beaufort, South Carolina



FIBER CEMENT
LAP SIDING - SW 7006 EXTRA WHITE



FIBER CEMENT
BOARD & BATTEN - SW 7048 URBANE BRONZE



EXTERIOR LIGHT - LARGE



EXTERIOR LIGHT - SMALL



CAST IRON BRACKET - SW 7048 URBANE BRONZE



STUCCO - SW 7006 EXTRA WHITE



FIBER CEMENT
BOARD & BATTEN - SW 7006 EXTRA WHITE



CAST IRON COLUMN - SW 7048 URBANE BRONZE



WOOD DOOR - 4 PANEL STYLE



BRACKETS - LARGE



BRICK VENEER - CHEROKEE SAVANNAH GRAY

WOOD FENCE REMOVED, TRASH ENCLOSURE DOORS ADDED



SERVICE DOORS - SW 7048 (URBANE BRONZE)





WOOD STOREFRONT - PANEL STYLE & STAIN

ALUMINUM STOREFRONT ADDED



ALUMINUM STOREFRONT - URBANE BRONZE



BRACKETS - SMALL

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Materials Board - Rooftop

Beaufort Inn Expansion - Beaufort, South Carolina



FIBER CEMENT
LAP SIDING - SW 7006 EXTRA WHITE



FIBER CEMENT
BOARD & BATTEN - SW 7048 URBANE BRONZE

LIGHT FIXTURES UPDATED



EXTERIOR LIGHT - GARAGE DOORS



FIBER CEMENT
LAP SIDING - MECHANICAL SIDE



ROOFTOP SOFFIT - WOOD

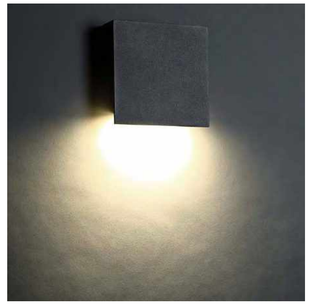
VISIBLE SOLAR PANELS REMOVED, EXPOSED WOOD SOFFIT ADDED



STUCCO - SW 7006 EXTRA WHITE



FIBER CEMENT
BOARD & BATTEN - SW 7006 EXTRA WHITE



EXTERIOR LIGHT - COURTYARD HALF WALL



GREEN WALL - ROOF DECK SIDE

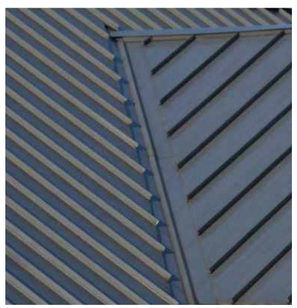


RAILINGS - CRAVEN COTTAGE

STANDING SEAM METAL ROOF ADDED



WOOD BEAM - METAL ROOF



STANDING SEAM METAL ROOF



ALUMINUM GARAGE DOOR - PANEL STYLE



STOREFRONT DOOR - ALUMINUM

PAVERS UPDATED



PAVERS - ROOF DECK

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07 - STANDING SEAM METAL ROOF

TITE-LOC PLUS PANEL

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MATERIALS

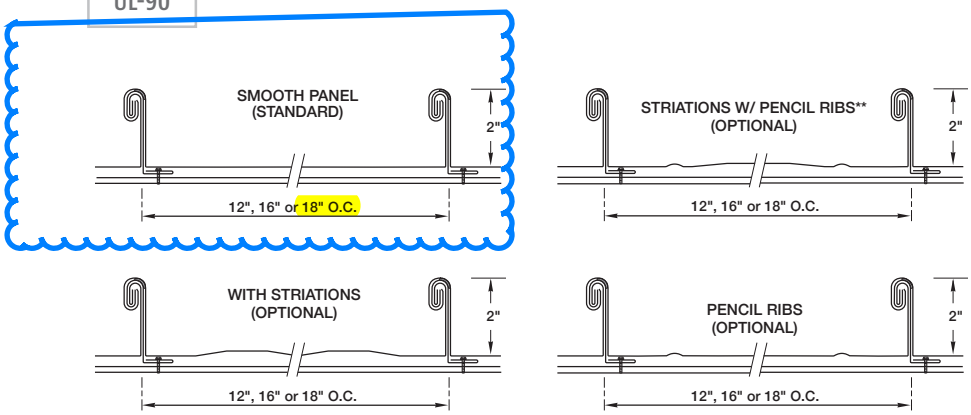
.032 aluminum*
.040 aluminum*
24 gauge steel*
22 gauge steel*

SPECS

12", 16" or 18" O.C.
2" High



UL-90



PRODUCT FEATURES

- Herr-Voss corrective leveled
- Pencil ribs and striations are only available by request
- 30-year non-prorated finish warranty
- Maximum factory-produced panel length is 64' (check w/factory for longer lengths)
- Weathertightness warranty available

MATERIAL

- 43 stocked colors (24 gauge steel)
- 16 Stocked colors (22 gauge steel)
- 36 stocked colors (.032 aluminum)
- 22 stocked colors (.040 aluminum)
- Galvalume Plus available

UL CLASSIFICATION

- UL-580 Class 90 rated up to 18" O.C.
- UL-1897 wind uplift
- UL-790 Class A fire rated
- UL-263 fire resistance rated
- UL-2218 impact resistance rated

TESTS (TITE-LOC PLUS ONLY)

- 24 Gauge steel SSTD Missile Impact Tested - Passed
- .032 aluminum SSTD Missile Impact Tested - Passed

ASTM TESTS

- ASTM E1592 tested
- ASTM E331/1646 tested
- ASTM E283/1680 tested
- ASTM E2140 (Tite-Loc Plus only)

FLORIDA BUILDING & MIAMI-DADE PRODUCT APPROVALS

Please refer to pac-clad.com or your local factory for specific product approval numbers for Tite-Loc Plus.

*24 gauge and 22 gauge steel and .032 and .040 aluminum panels are UL-90 classified over solid substrate. See roof deck construction in Underwriters Laboratories roofing materials and systems directory. 24 gauge and 22 gauge Tite-Loc Plus panels are FM Approved in 12" and 16" widths over 16 gauge open purlins only.

** Not available in all locations. Consult PAC rep for availability.

Not all panel conditions are available in each Petersen branch; additional freight charges might apply if specific panel condition is required. Tite-Loc and Tite-Loc Plus panels are supplied "smooth" as standard. Customer must advise if additional panel conditions are required.

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PAC-CLAD

PETERSEN

A CARLISLE COMPANY

Color Guide


FOREST GREEN


HARTFORD GREEN


▲★ MILITARY BLUE


BERKSHIRE BLUE


▲★ SLATE BLUE


AWARD BLUE


▲ AGED BRONZE


▲★ MEDIUM BRONZE


▲★ CARDINAL RED


▲★ COLONIAL RED

▲★ SANDSTONE

▲★ ALMOND

▲★ STONE WHITE

▲★ BONE WHITE

PAC-CLAD.COM

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Premium Colors



●▲♛$$ ANODIC CLEAR



●▲♛$$ SILVERSMITH



●▲★♛$ SILVER



●▲★♛$ CHAMPAGNE



●▲★♛$ ZINC



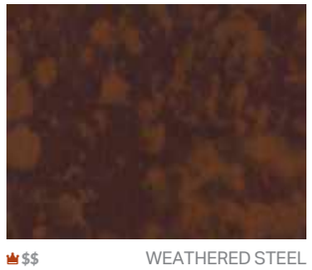
●▲★♛$ WEATHERED ZINC



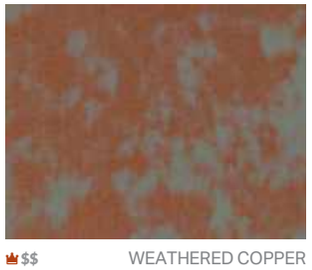
●▲★♛$ COPPER PENNY



●▲★♛$ AGED COPPER



♛$$ WEATHERED STEEL



♛$$ WEATHERED COPPER

Kynar 500® or Hylar 5000® pre-finished steel and aluminum for roofing, curtainwall and storefront applications.

●Metallic Colors ★ENERGY STAR® Colors $Pricing
▲Cool Colors ♛Premium Colors

See back for color availability chart.

Standard Colors



▲★ PATINA GREEN



▲★ TEAL



▲★ HEMLOCK GREEN



FOREST GREEN



HARTFORD GREEN



▲★ EVERGREEN



▲★ HUNTER GREEN



▲★ ARCADIA GREEN



▲★ MILITARY BLUE



BERKSHIRE BLUE



▲ GRAPHITE



▲★ CHARCOAL



INTERSTATE BLUE



▲★ SLATE BLUE



AWARD BLUE



MATTE BLACK STEEL



BLACK ALUMINUM



▲★ DARK BRONZE



▲ BURNISHED SLATE



▲ AGED BRONZE



▲★ MEDIUM BRONZE



▲★ MANSARD BROWN



BURGUNDY



▲★ TERRA COTTA



▲★ CARDINAL RED



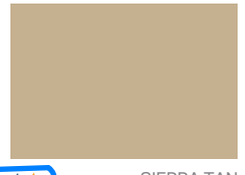
▲★ COLONIAL RED



MIDNIGHT BRONZE



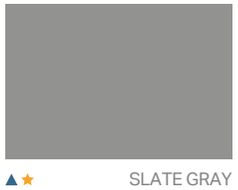
▲★ MUSKET GRAY



▲★ SIERRA TAN

▲★ SANDSTONE

▲★ ALMOND



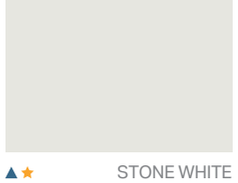
▲★ SLATE GRAY



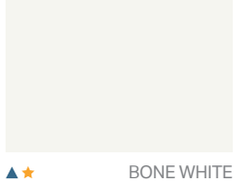
▲★ CITYSCAPE



▲★ GRANITE



▲★ STONE WHITE



▲★ BONE WHITE

PAC-CLAD
PETERSEN
A CARLISLE COMPANY

IL: 800 PAC CLAD **TX:** 800 441 8661 **MD:** 800 344 1400
AZ: 833 750 1935 **GA:** 800 272 4482 **MN:** 877 571 2025

PAC-CLAD.COM

ROA 380

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PAC-CLAD® Color Availability

PAC-CLAD STANDARD COLORS	REFLECTIVITY	EMISSIVITY	3 YEAR EXPOSURE	SRI	STEEL		ALUMINUM				20-IN. COIL		ENERGY STAR
					24 GA.	22 GA.	.032	.040	.050	.063	24 GA.	.032	
AGED BRONZE	0.29	0.87	0.27	29	✔								
ALMOND	0.56	0.86	0.55	65	✔	✔	✔	✔	✔		✔		★
ARCADIA GREEN	0.29	0.87	0.29	29	✔		✔						★
AWARD BLUE***	0.24	0.86	0.23	22	✔		✔		✔				
BERKSHIRE BLUE*	0.30	0.87	0.27	31	✔								
BLACK ALUMINUM**	0.04	0.89	0.04	-2			✔	✔	✔	✔			
BONE WHITE	0.70	0.86	0.69	85	✔	✔	✔	✔	✔	✔	✔	✔	★
BURGUNDY	0.14	0.85	0.13	9	✔		✔		✔				
BURNISHED SLATE	0.32	0.87	0.31	33	✔								
CARDINAL RED***	0.44	0.86	0.44	49	✔		✔		✔				★
CHARCOAL	0.30	0.86	0.30	30	✔		✔	✔	✔		✔	✔	★
CITYSCAPE	0.49	0.86	0.50	56	✔	✔	✔	✔	✔		✔	✔	★
COLONIAL RED	0.31	0.86	0.31	31	✔		✔	✔	✔				★
DARK BRONZE	0.29	0.86	0.29	29	✔	✔	✔	✔	✔	✔	✔	✔	★
EVERGREEN	0.28	0.86	0.26	27	✔		✔						★
FOREST GREEN	0.10	0.86	0.10	4	✔	✔	✔	✔	✔				
GRANITE*	0.33	0.87	0.33	34	✔	✔	✔	✔	✔				★
GRAPHITE	0.29	0.87	0.28	29	✔								
HARTFORD GREEN	0.08	0.88	0.08	3	✔		✔	✔	✔				
HEMLOCK GREEN	0.31	0.87	0.30	32	✔		✔		✔				★
HUNTER GREEN	0.28	0.86	0.27	27	✔		✔						★
INTERSTATE BLUE	0.16	0.87	0.15	12	✔		✔		✔				
MANSARD BROWN	0.31	0.86	0.31	31	✔	✔	✔	✔	✔				★
MATTE BLACK STEEL**	0.26	0.86	0.25	25	✔	✔					✔		
MEDIUM BRONZE	0.30	0.87	0.29	31	✔	✔	✔	✔	✔	✔	✔	✔	★
MIDNIGHT BRONZE	0.06	0.87	0.06	0	✔			✔					
MILITARY BLUE	0.31	0.86	0.30	31	✔		✔						★
MUSKET GRAY	0.32	0.86	0.31	33	✔	✔	✔		✔				★
PATINA GREEN	0.33	0.86	0.32	34	✔		✔						★
SANDSTONE	0.48	0.86	0.48	54	✔	✔	✔	✔	✔	✔	✔	✔	★
SIERRA TAN	0.32	0.82	0.31	31	✔	✔	✔	✔	✔		✔		★
SLATE BLUE	0.28	0.86	0.27	27	✔		✔						★
SLATE GRAY	0.38	0.86	0.37	41	✔	✔	✔	✔	✔		✔	✔	★
STONE WHITE	0.69	0.86	0.67	84	✔	✔	✔	✔	✔	✔	✔	✔	★
TEAL	0.32	0.86	0.32	33	✔		✔						★
TERRA COTTA	0.34	0.87	0.33	36	✔		✔		✔		✔	✔	★
PAC-CLAD PREMIUM COLORS													
AGED COPPER	0.55	0.80	0.53	62	✔		✔						★
ANODIC CLEAR	0.32	0.83	0.31	31				✔					
CHAMPAGNE	0.50	0.85	0.49	57	✔		✔	✔	✔				★
COPPER PENNY	0.52	0.81	0.52	58	✔		✔	✔	✔		✔		★
SILVER	0.47	0.87	0.46	53	✔	✔	✔	✔	✔		✔	✔	★
SILVERSMITH	0.32	0.88	0.32	34				✔					
WEATHERED COPPER	0.45	0.88	N/A	51	✔								
WEATHERED STEEL	0.32	0.89	N/A	34	✔								
WEATHERED ZINC	0.48	0.82	0.46	53	✔	✔	✔		✔				★
ZINC	0.42	0.82	0.38	45	✔		✔	✔	✔				★
CLEAR-COAT ACRYLIC FINISH (NON-KYNAR)													
GALVALUME PLUS	0.68	0.14	0.55	57	✔	✔					✔		★

PAC-CLAD Premium finishes are available from stock at a moderate extra cost. PAC-CLAD Copper Penny is a Non-Weathering finish. Solar Reflectance Index calculated according to ASTM E-1980.
*Low Gloss/Low Sheen, 70% PVDF finish ** Appearance differs for Black Aluminum and Matte Black Steel *** 10-year finish warranty

ENERGY STAR PERFORMANCE CRITERIA:
Emissivity uses ASTM C1371 Reflectivity uses ASTM C1549.

TECHNICAL DATA FOR KYNAR 500/HYLAR 5000 COATING:

- South Florida Exposure: Color (ASTM D 2244) - No more than 5ΔE Hunter units at 20 years; Chalk (ASTM D 4214) – Rating no less than 8 at 20 years; Film integrity – 20 years.
- Accelerated Weathering (ASTM D 4587, ASTM G 154): 5000 Hours; Chalk, per ASTM D 4214, rating of 6 or better; Color, per ASTM D 2244, < 5ΔE (Hunter Units) color change.
- Humidity Resistance (ASTM D 2247): Galvalume or HDG, 100% RH, 2000 hours – No field blisters; Aluminum, 100% RH, 3000 hours – No field blisters
- Salt Spray Resistance (ASTM B 117): Aluminum, 3000 hours, Galvalume or HDG, 1000 hours – Creep from scribe no more than 1/16", no field blisters
- Chemical/Acid Pollution Resistance (ASTM D 1308): Pass
- T-Bend (ASTM D 4145): 1T – 3T with no loss of adhesion
- Pencil hardness (ASTM D 3363): HB – 2H
- Specular Gloss (ASTM D 523) @ 60 degrees: Typical – 20 – 35
- Abrasion Resistance (ASTM D 968): 67 +/- 10 liters
- Cross Hatch Adhesion (ASTM D 3359): No loss of adhesion
- Reverse Impact (ASTM D 2794): Galvalume or HDG, 2x metal thickness inch-pounds, no loss of adhesion; Aluminum, 1.5x metal thickness inch-pounds, no loss of adhesion
- Flame Test (ASTM E 84): Class A Coating

PAC-CLAD is a registered trademark of Petersen Aluminum Corp. Kynar 500 is a registered trademark of Arkema Inc. Hylar 5000 is a registered trademark of Solvay Solexis. 2/21

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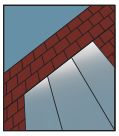
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08 - ALUMINUM STOREFRONT

YES 40 FS/FI

Outside Glazed, Center Set Storefront System

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STOREFRONT SYSTEM

Product Description

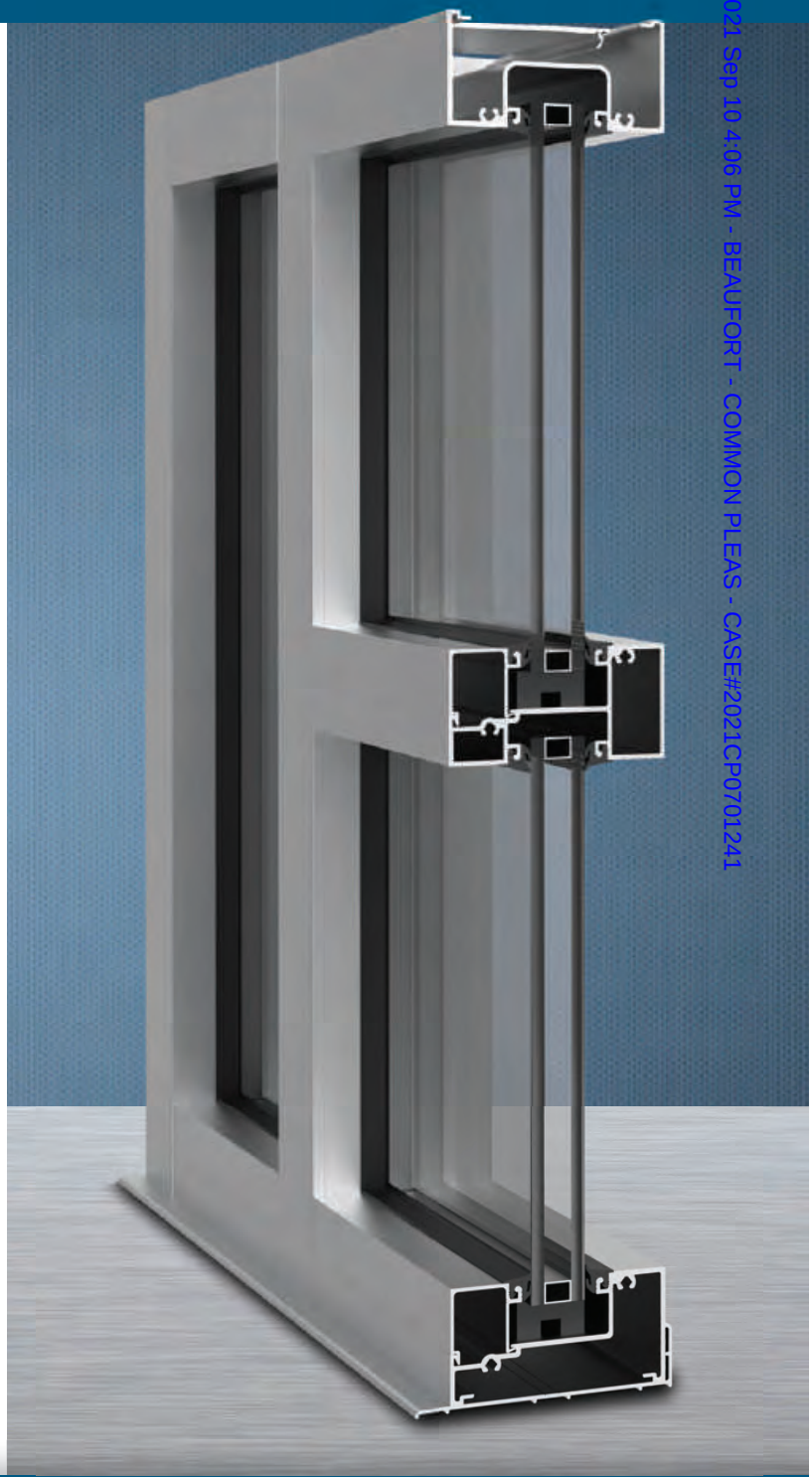
The YES 40 FS (1-3/4" x 4") is a center set, flush glazed framing systems designed primarily for 1/4" glass or infill panels 1/4" to 3/8" thick. The YES 40 FI (2" x 4") is a center set, flush glazed framing system developed for 1" insulating glass and other types of infill panels of varying thicknesses. Both systems will accommodate YKK AP's hinged mullion, as well as our flexible mullion; these mullions allow more creative freedom where curves and angles become a functional part of the design.

Product Options & Features

- FS: 1-3/4" Face and 4" Mullion Depth
  FI: 2" Face and 4" Mullion Depth
- Outside Glazed
- Screw Spline or Shear Block Assembly
- Gasket With Stretch-Resistant Cord
- Integral Entrance Door Frames
- Enhanced Water Infiltration Resistance



YKK AP Quality inspires®



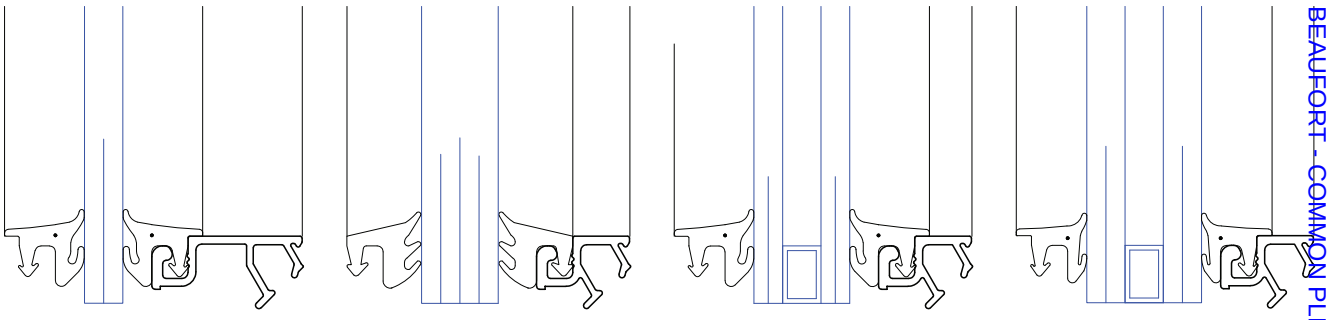
YES 40 FS/FI

SYSTEM SPECIFICATIONS

System Sightline	Base Depth	Glazing & Config	Glass	Air Infiltration	Water Infiltration	Thermal Performance	Acoustical Performance
1-3/4 (FS) and 2" (FI)	4"	Outside & Center Set	1" IGU with Low-E (C.O.G. U-factor: 0.29)	0.06 CFM/FT² (1.10 m³/h·m²) @ 6.24 PSF (299 Pa)	YES 40 FS: 10 PSF (479 Pa) YES 40 FI: 12 PSF (575 Pa)	U-factor: 0.50 BTU/HR•FT²•°F* CRF: Minimum of 33 on frame**	Std STC: 32 Std OITC: 27 Lam STC: 37 Lam OITC: 30
Testing Standards				ASTM E 283	ASTM E 331 & AAMA 501	* NFRC 100 & ** AAMA 1503	ASTM E 90 & 142
Installation Options				Screw Spline or Shear Block with Monolithic or Insulating Glass			
Available Finishes				Factory Anodized (AAMA 612) and Organic Paints (AAMA 2604 & AAMA 2605)			

GLAZING OPTIONS

Various sized glazing is available to fit your project specifications.



1/4" 1/2" 5/8" 3/4"



The Borghese - Atlanta, GA



QS / 1 Data Systems - Spartenburg, SC

Additional information including CAD details, CSI specifications, Test Reports and Installation instructions are available online at:
www.ykkap.com/commercial/product/storefronts/yes-40-fs/ **www.ykkap.com/commercial/product/storefronts/yes-40-fi/**

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Anodized Plus®

YKK AP Standard Anodized Finishes

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*** Normally in stock for quick delivery. Consult your local YKK AP Branch or Center for availability.**

The samples shown are reproduced as closely as possible to the actual colors on the system and is only used as a guide. For actual anodized aluminum samples, contact your local YKK AP sales rep at 1-800-955-9551 or at **www.ykkap.com**.

Entrances | Storefronts | Curtain Walls | Window Walls | Sun Controls | Windows | Balcony Doors

YKK ap® Quality inspires®

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08 - WINDOWS

JELD-WEN WINDOWS & DOORS

Windows and Doors Built for Coastal Environments



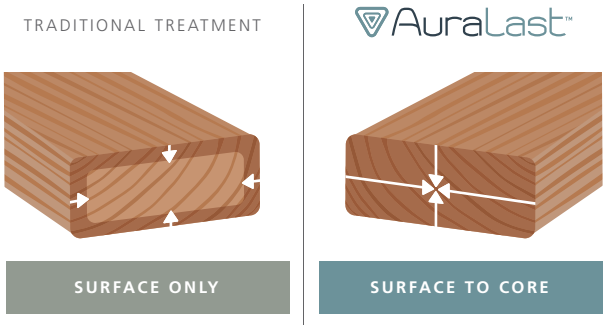
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AuraLast™

SURFACE TO CORE PROTECTION

AuraLast® pine is a patented wood product that provides protection against wood rot, water damage and termites. This water-based process fortifies wood all the way to the core, providing an exclusive level of protection you'll only find through JELD-WEN.





ONLY JELD-WEN MAKES WINDOW AND DOOR PRODUCTS WITH AURALAST® SOLID PINE.



EASY ON THE ENVIRONMENT

Water-based treatment releases up to 96 percent fewer volatile organic compounds (VOCs) during the manufacturing process than traditional solvent-based methods.

WET WEATHER PROTECTION

Whatever the climate, AuraLast® pine protects against water damage and rot like no other. Whether it's humidity, storms or dampness, AuraLast® pine stands up to the rigors of wet weather.

TERMITE PROTECTION

Termites can be devastating to windows and doors, but not to those built with AuraLast® pine. It safely and effectively repels termites, preserving the beauty of your investment.

LIFETIME LIMITED WARRANTY

Wood windows, patio doors, door frames and components made with AuraLast® pine are backed with a Limited Lifetime Warranty.*

*For warranty details, visit jeld-wen.com, scroll over Product Support and select Warranty Information.

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ROA 388

Scenic Views Balanced with Safety

A scenic coastal view is a focal point of every beach home. When choosing the right windows and doors for a beach home, considerations for safety are just as important as the view. To help keep glass from shattering, select JELD-WEN products feature ImpactGard™ impact-resistant glass.



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WITH IMPACTGARD™



ImpactGard™ glass is designed to withstand a nine-pound piece of lumber launched at 34 mph. In most jurisdictions, ImpactGard satisfies impact protection codes. Check with your local building official.

WITHOUT IMPACTGARD™



In hurricanes and other storms, winds can get inside your home through breaches. If a window is knocked out, the roof can be the next thing to go, getting torn off from the inside out. ImpactGard™ protects against that.

LESS CHANCE OF GLASS SHARDS



In the event of breakage, most of the broken glass adheres to the protective inner layer or falls to the outside of your home. There is minimal chance of glass shards falling into the structure.

ROA 389

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Windows for Coastal Environments

JELD-WEN offers a variety of windows for coastal environments. With optional ImpactGard™ impact-resistant glass, these windows are built for coastal living.





CUSTOM™ WOOD WINDOWS

- Made with AuraLast® pine
- 42 exterior metal-clad colors with commercial-grade finish
- AAMA 2605 finish available
- Fourteen interior finishes (natural, primed, prefinished or stained interiors)
- Wood species: Mahogany, Fir or custom exterior wood
- Concealed jamb liners
- PG35 and PG50 ratings for double-hung, casement and awning
- Wind zone 3 and wind zone 4 available
- For use inside High-Velocity Hurricane Zones (HVHZ)
- Standard LoĒ³-366® and Neat® glass
- Limited Lifetime Warranty*

SITELINE® COLLECTION

- Made with AuraLast® pine
- Nine standard and 12 optional aluminum exterior clad colors (extruded clad frame and sash) as well as seven anodized clad finishes
- AAMA 2605 finish available
- Pine, Alder or Fir species with fourteen interior finishes (natural, primed, prefinished or stained interiors)
- Eight exterior trims
- Concealed jamb liners
- PG35 and PG50 ratings for double-hung, casement and awning
- Wind zone 3 available
- Standard LoĒ³-366® and Neat® glass
- Limited Lifetime Warranty*

LoĒ³-366® and Neat® glass coating are trademarks of Cardinal Glass Industries.
*For warranty details, visit jeld-wen.com, scroll over Product Support and select Warranty Information.

ROA 390

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PREMIUM ATLANTIC™ VINYL & PREMIUM™ VINYL WINDOWS*

- Clean design with minimal maintenance
- Casement, awning, single-hung, double-hung, fixed, radius and geometric
- Three standard interior and exterior finishes, two interior laminate woodgrains and eight exterior colors
- Glass options: Low-E, double- and triple-pane, tinted and textured
- Seven hardware finishes for windows; 10 for patio doors
- Hybrid sill provides improved protection from water infiltration
- Wind zone 2 and wind zone 3 available
- Limited Lifetime Warranty**

*Limited to regional availability.
**For warranty details, visit jeld-wen.com, scroll over Product Support and select Warranty Information.

ROA 391

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08 - DOORS



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Patio Doors for Coastal Environments

JELD-WEN offers beautiful patio doors in configurations from one to six panels. With optional ImpactGard™ impact-resistant glass, these patio doors are designed to withstand coastal environments.

WOOD PATIO DOORS

- 41 exterior metal colors which meet or exceed AAMA 2605 standards
- Three optional interior wood species
- 1- or 2-panel configurations
- Low-E glass standard; LoĒ³-366® available for even greater energy efficiency
- Outswing or sliding configurations
- 20-year limited warranty*

PREMIUM™ VINYL MULTI-SLIDE PATIO DOORS

- High-quality vinyl won't chip or peel; never needs painting or staining
- Multiple color options
- Low-E glass standard; LoĒ³-366® available for even greater energy efficiency
- 1-, 2-, 3-, 4-, 5- or 6-panel configurations
- Up to 10' tall
- Wind zone 3 and wind zone 4 available
- For use inside High-Velocity Hurricane Zones (HVHZ)
- Limited Lifetime Warranty*

LoĒ³-366® is a trademark of Cardinal Glass Industries.
*For warranty details, visit jeld-wen.com, scroll over Product Support and select Warranty Information.

ROA 393

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Aurora® Fiberglass Exterior & Patio Doors

Every Aurora® door is crafted by hand and made to order with your specifications. Select Aurora door systems are wind zone 3 certified. See your local dealer for more information.

- Built to withstand climatic conditions
- Grain detail authentically replicates the look of real wood
- Available in up to 10' tall options for wind zone 3 certification*





*The wind zone 3 certification applies to single doors up to 4' wide and 10' tall with a 2-1/4" thickness. The door can be either inswing or outswing. Opaque and glazed designs are available.
Hardware is used for illustrative purposes only. Please see your local dealer to choose the correct hardware for your requirements.



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MiraTEC® Exterior Trim

Unlike other materials used for trim, MiraTEC® is specifically designed and engineered to meet the rigors of almost any environment. It offers the durability and performance of a composite product at a value.



- Resists moisture, rot and termites
- Reversible with a woodgrain texture on one side and a smooth surface on the other
- Available in 5/8", 3/4", 1" and 1-1/4" thicknesses and in widths from 3" to 16" and 2" batten
- MiraTEC® Smooth Select™ (not shown) delivers an ultra-smooth finish and a nearly square edge for a distinctive aesthetic. Available in 3/4" and 1" thicknesses and in widths from 3" to 16" and 2" batten
- Handles like wood; easy to machine, cut and nail – it won't split or crack
- Ready to paint: each board is primed with an ultra-low VOC primer containing a mildewcide
- 50-year limited warranty

Visit miratectrim.com for product-specific warranty information and installation, care and maintenance instructions.

ROA 396

Testing & Certifications

PERFORMANCE APPROVED

JELD-WEN® windows and doors are tested to ensure their conformance to specific industry standards. These tests are certified and audited by various independent third parties to ensure that manufacturers are following strict quality control guidelines. To view testing by each product, visit jeld-wen.com.

NFRC® CERTIFICATION

The National Fenestration Rating Council® (NFRC) establishes standards for rating energy efficiency based on the performance of the whole product—not just the glass alone. Many JELD-WEN windows and doors meet NFRC energy efficiency standards. Tests administered by independent third-party labs determine the ratings a window or door receives in the following areas:

- U-factor: This is the amount of heat flow through a product. The lower the number, the more energy efficient the product.
- Solar heat gain coefficient (SHGC): This indicates a window or door's ability to block heat generated by sunlight. The greater the blockage, the lower the SHGC number.
- Visible transmittance (VT): This is the percentage of visible sunlight that penetrates a window or door. A higher number means more light is entering through the glass.

AAMA®, NFRC®, ENERGY STAR®, CSA®, NAMI® AND WDMA CERTIFICATION

The certification label informs users that a sample of the product has been verified as conforming to the standards and requirements through independent laboratory testing and follow-up on-site inspection of the manufacturer's production line.

NAFS

The North American Fenestration Standard (NAFS) was developed jointly under the guidance of the Canadian Standards Association (CSA), AAMA and the Window & Door Manufacturers Association (WDMA). This standard allows for harmonization of testing standards for windows, doors and skylights based on AAMA 101, WDMA I.S.2 and CSA A440.

FIRE RATINGS

Fire ratings are available on select door products. There may be restrictions based on size and regional availability. All door slabs must be used with fire-rated door systems for true fire protection. A door system consists of the door slab, frame, hardware and components. You can find fire rating information at jeld-wen.com.

ACOUSTICS

In the building products industry, there are two main rating systems used to communicate how well products block sound: Sound Transmission Class (STC) and Outdoor/Indoor Transmission Class (OITC). Acoustic ratings for products are available at jeld-wen.com.

TO LEARN MORE ABOUT THE PROCESSES FOR CERTIFICATION AND THE ORGANIZATIONS THAT AWARD THEM, VISIT THESE SITES:

AAMA®: aamanet.org

CSA®: csagroup.org

ENERGY STAR®: energystar.gov

NAMI®: namicertification.com

NFRC®: nfrc.org

WDMA: wdma.com

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ROA 397

Hurricane Area Requirements

RESPONDING TO HAZARDOUS CONDITIONS

Hurricanes are a threat to coastal areas, often causing loss of life and billions of dollars in property damage. In an effort to curtail damage caused by hurricanes, building code certification requirements were created for windows and doors installed in coastal areas prone to hurricanes and strong winds.

These requirements are designed to help homes withstand extreme weather. In fact, windows and doors are crucial to maintaining a home's structural integrity.

WINDBORNE DEBRIS REGIONS

Areas subject to hurricanes where wind speeds exceed 130 mph are considered windborne debris regions. These are categorized into four different wind zones. The zone you live in determines the design rating your home's windows and doors must meet to comply with building codes.

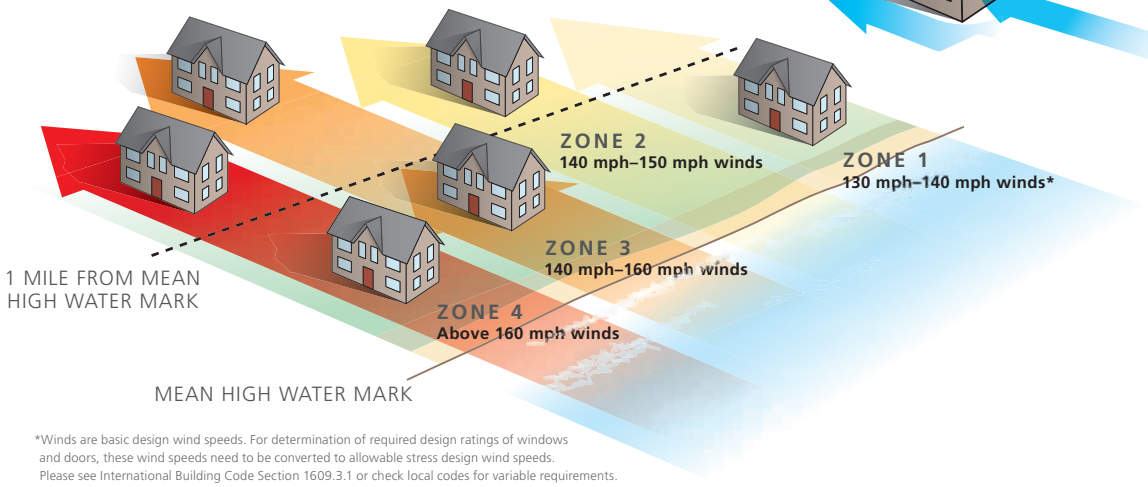
STRUCTURE BREACHED

When strong winds enter a home through a broken window or door, the increased pressure can lift the roof and push walls outward.†



STRUCTURE PROTECTED





*Winds are basic design wind speeds. For determination of required design ratings of windows and doors, these wind speeds need to be converted to allowable stress design wind speeds. Please see International Building Code Section 1609.3.1 or check local codes for variable requirements.

WINDBORNE DEBRIS**	
ZONE 1	Areas within 1 mile of the mean high water mark with winds 130 mph and up to 140 mph
ZONE 2	Areas more than 1 mile from the mean high water mark with winds 140 mph and up to 150 mph
ZONE 3	Areas with winds 150 mph and up to 160 mph; or 140 mph and up to 160 mph within 1 mile of the mean high water mark
ZONE 4	All areas with winds in excess of 160 mph (high-velocity wind zones)

**As defined by ASTM E1996 and ASCE-7-05

†SOURCE: Federal Emergency Management Agency

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Performance Ratings

Building codes require windows and doors be designed to meet design wind loads for the area where they are being used in construction. Products are tested and labeled with performance grade (PG) ratings showing compliance with the codes. PG ratings are based on the window's air infiltration resistance, water penetration resistance, uniform load deflection ability, forced entry resistance and operating force (operable windows only).

HURRICANE AREA REQUIREMENTS

JELD-WEN® products are designed to meet the code requirements for opening protection by using impact-resistant glazing.

In Florida, the building code requires that structures built in the High-Velocity Hurricane Zones (HVHZ), defined as Broward and Miami-Dade counties, are tested and certified to meet the design wind loads using Test Application Standard (TAS) 202. In addition, products that carry impact-resistant certification must be tested to TAS 201 and 203.

Outside of the HVHZ, products are tested to either NAFS for a PG rating or the ASTM E330 for a structural load rating only. For impact-resistant products outside the HVHZ, ratings are determined through testing to ASTM E1996. Florida also allows testing outside the HVHZ to TAS 201, 202 and 203.

Different testing requirements must be met in each of the four windborne debris regions. Many JELD-WEN® windows and doors have passed these necessary tests; for the most current listing of certified products, please visit jeld-wen.com.



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Energy Efficiency & Protection

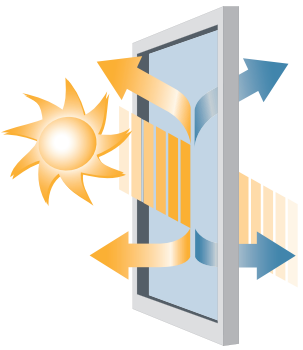
LOW-E INSULATING GLASS

Low-E insulating glass comes standard and helps lower energy costs. This high-performance glass keeps homes cooler in the summer and warmer in the winter. It also protects against fading of interior furnishings, reduces condensation and delivers greater visible light transmittance than tinted glass.

Some JELD-WEN® windows and patio doors with Low-E glass are ENERGY STAR® certified. ENERGY STAR products can help save energy and money while also reducing carbon footprints. ENERGY STAR criteria for windows are based on the U-factor and solar heat gain coefficient (SHGC) combinations.

For more energy-efficient windows, request those that are ENERGY STAR® certified for your climate zone. Learn more at jeld-wen.com.

In cold weather, Low-E glass reduces the amount of heat lost by reflecting it back inside.



In warm weather, Low-E glass reflects the sun's energy and prevents it from entering the home.

ENERGY STAR®

ENERGY STAR is a voluntary program created by the EPA that helps businesses and individuals reduce energy consumption, which may help to save money and protect the environment. JELD-WEN has participated in ENERGY STAR since 1998, when the windows category was first created. For more information on energy savings, visit the ENERGY STAR website.

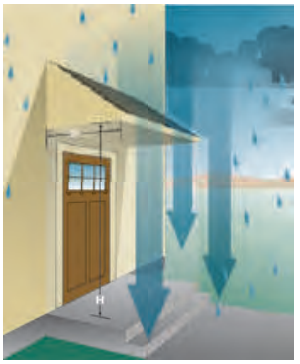
APPROPRIATE PROTECTION FOR EXTERIOR DOORS

To adequately protect your door and extend its life, several factors must be considered. Door type, climate, exposure, color choice and the use of a storm door can affect the durability of a door.

Every door type weathers differently. Wood doors, for example, are more susceptible to the elements than steel or fiberglass.

An overhang, as shown, is required for wood doors and recommended for steel and fiberglass doors. Overhangs protect the door's finish, minimize the need for refinishing, and help keep the weather out of the home.

Learn more about how materials, overhang protection and other factors impact the long-term performance of the door at jeld-wen.com.



ENERGY STAR® is a trademark of the US Environmental Protection Agency.

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ROA 400

Features for Coastal Homes

ENGINEERED TO PERFORM

JELD-WEN offers a wide variety of products that help to withstand specific coastal challenges. Since weather conditions and code requirements vary by region, please check with your local dealer to ensure the product meets your area's requirements.



COMMERCIAL-GRADE CLADDING

We offer many commercial-grade cladding color finishes for our Custom™ Wood windows and patio doors as well as the Siteline® product line. Our commercial-grade 70 percent PVDF finish meets or exceeds the AAMA 2605 paint standard.



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ROA 401

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08 - WOOD STOREFRONT

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WOOD

Pella® Architect Series® Traditional

$$$–$$$$



Pella Architect Series Traditional double-hung window

FEATURES

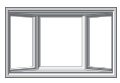
- Classic aesthetics featuring fine-furniture details
- Virtually unlimited design choices including custom sizes and grille patterns
- Stunning hardware in rich patinas and other timeless finishes

WINDOW STYLES

Custom sizes and fixed configurations are also available.



AWNING



BAY OR BOW



CASEMENT



DOUBLE-HUNG



SINGLE-HUNG

PATIO DOOR STYLES



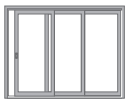
SLIDING



HINGED



BIFOLD



MULTI-SLIDE

Colors & Finishes PELLA® ARCHITECT SERIES® TRADITIONAL

WOOD TYPES

Choose the wood species that best complements your home's interior. White oak, red oak, cherry and maple are available as custom solutions.



PREFINISHED PINE INTERIOR COLORS

When you select pine, we can prefinish in your choice of seven stains or three paint colors. Unfinished or primed and ready-to-paint are also available.



ALUMINUM-CLAD EXTERIOR COLORS

Our low-maintenance EnduraClad® exterior finish resists fading. Take durability one step further with EnduraClad Plus which also resists chalking and corrosion.* Custom colors are also available.



* EnduraClad Plus protective finish is not available with all colors. See your local Pella sales representative for availability.

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Grilles PELLA® ARCHITECT SERIES® TRADITIONAL

GRILLES

Choose the look of true divided light, removable roomside grilles or make cleaning easier by selecting grilles-between-the-glass.



OGEE INTEGRAL LIGHT TECHNOLOGY[1] 7/8", 1-1/4" OR 2"



ALUMINUM GRILLES-BETWEEN-THE-GLASS 3/4"



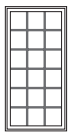
ROOMSIDE REMOVABLE GRILLES[1] 3/4", 1-1/4" OR 2"

GRILLES-BETWEEN-THE-GLASS INTERIOR COLORS:[2]

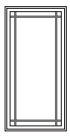
WHITE	IVORY	TAN[3]
PUTTY[3]	BROWN[3]	HARVEST
BRICKSTONE	CORDOVAN	BLACK
MORNING SKY GRAY	SAND DUNE	

GRILLE PATTERNS

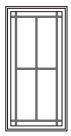
In addition to the patterns shown here, custom grille patterns are available.



TRADITIONAL



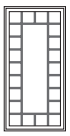
9-LITE PRAIRIE



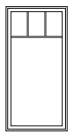
12-LITE PRAIRIE



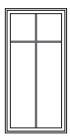
14-LITE PRAIRIE



VICTORIAN



TOP ROW



CROSS



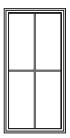
NEW ENGLAND



DIAMOND



SIMULATED FRENCH



CUSTOM

[1] Color-matched to your product's interior and exterior color.
[2] Appearance of exterior grille color may vary depending on the Low-E insulating glass selection.
[3] Only available with matching interior and exterior colors.

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Window Hardware PELLA® ARCHITECT SERIES® TRADITIONAL

CLASSIC COLLECTION

Get a timeless look with authentic styles in classic finishes.



FOLD-AWAY CRANK
Antiek



SPOON-STYLE LOCK

FINISHES:

- CHAMPAGNE
- WHITE
- BROWN
- MATTE BLACK
- ANTIQUE BRASS
- BRIGHT BRASS
- OIL-RUBBED BRONZE
- SATIN NICKEL

RUSTIC COLLECTION

Create a distinct and charming look with distressed finishes.



FOLD-AWAY CRANK
Antiek



SPOON-STYLE LOCK

FINISHES:

- DISTRESSED BRONZE
- DISTRESSED NICKEL

ESSENTIAL COLLECTION

Select from popular designs and finishes to suit every style.



FOLD-AWAY CRANK



CAM-ACTION LOCK

FINISHES:

- CHAMPAGNE
- WHITE
- BROWN
- MATTE BLACK
- BRIGHT BRASS
- OIL-RUBBED BRONZE
- SATIN NICKEL

Added Security

INSYNCTIVE® TECHNOLOGY

Choose optional built-in security sensors powered by Insynctive technology so you know at a glance if your windows are closed and patio doors are closed and locked.

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Patio Door Hardware[1] PELLA® ARCHITECT SERIES® TRADITIONAL

CLASSIC COLLECTION

Choose timeless pieces for a look that will never go out of style.



HINGED PATIO DOOR HANDLES
Locus | Virago



SLIDING PATIO DOOR HANDLE
Ambrose

FINISHES:

- MATTE BLACK
- ANTIQUE BRASS
- BRIGHT BRASS
- OIL-RUBBED BRONZE
- SATIN NICKEL

MODERN COLLECTION

Achieve the ultimate contemporary look with sleek finishes.



HINGED PATIO DOOR HANDLE
Spiere



SLIDING PATIO DOOR HANDLE
Plazo

FINISHES:

- MATTE BLACK
- SATIN NICKEL
- POLISHED CHROME
- POLISHED NICKEL

RUSTIC COLLECTION

Stand out with bold looks and create an utterly unique aesthetic.



HINGED PATIO DOOR HANDLES
Rustiek | Gusto



SLIDING PATIO DOOR HANDLE
Notus

FINISHES:

- DISTRESSED BRONZE
- DISTRESSED NICKEL

ESSENTIAL COLLECTION

Elevate your style and transform your home with elegant selections.



HINGED PATIO DOOR HANDLE



SLIDING PATIO DOOR HANDLE

FINISHES:

- CHAMPAGNE
- WHITE
- BROWN
- MATTE BLACK
- BRIGHT BRASS
- OIL-RUBBED BRONZE
- SATIN NICKEL

[1] Different patio door hardware options available on Pella® Scenescape™ bifold and multi-slide products. See pella.com or contact your local Pella sales representative for availability.

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Glass PELLA® ARCHITECT SERIES® TRADITIONAL

INSULSHIELD® LOW-E GLASS	Advanced Low-E insulating dual- or triple-pane glass with argon or krypton[1,2] AdvancedComfort Low-E insulating dual-pane glass with argon[1] NaturalSun Low-E insulating dual- or triple-pane glass with argon or krypton[1,2] SunDefense™ Low-E insulating dual- or triple-pane glass with argon or krypton[1,2]
ADDITIONAL GLASS OPTIONS	HurricaneShield® products with impact-resistant glass[2,3] Laminated (non-impact-resistant)[3,4], tinted[1,3] or obscure[1,3] glass also available on select products STC (Sound Transmission Class)-improved dual-pane sound glass[2,5]

Screens[6]

ROLSCREEN®	Rolscreen soft-closing retractable screens roll out of sight when not in use. (Available on casement windows and sliding patio doors only.)
FLAT	InView™ screens are clearer than conventional screens. Vivid View® window screens offer the sharpest view.
WOOD-WRAPPED	Optional wood veneer can be added over the metal screen channel on interior screens to provide a more seamless look.

[1] Optional high-altitude InsulShield Low-E glass is available with or without argon on select products.
[2] Available on select products only. See your local Pella sales representative for availability.
[3] Available with Low-E insulating glass with argon on select products.
[4] For best performance, the laminated glass may be in the interior or exterior pane of the insulating glass, depending on the product.
[5] Sound control glass consists of dissimilar glass thickness (3mm/5mm).
[6] Warning: Use caution when children or pets are around open windows and doors. Screens are not designed to retain children or pets.

Want to learn more? Call us at 833-44-PELLA or visit pella.com

Pella LIMITED LIFETIME WARRANTY

The confidence of Pella's warranty.
Pella® Architect Series® products are covered by the best limited lifetime warranty for wood windows and patio doors.[7] See written limited warranty for details, including exceptions and limitations, at pella.com/warranty.

[7] Based on comparing written limited warranties of leading national wood window and wood patio door brands.

ENERGY STAR PARTNER

Connect with Pella:

ROA 408

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32 - PAVERS

AZEK Pavers

Designed to last beautifully.™

TRIM MOULDING DECK PORCH RAIL **PAVERS**

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EnkaDrain 3801

EnkaDrain 3801

Enkadrain 3801 is a new thin drainage composite which is part of the Enkadrain family of environmentally conscious products. It consists of a post-industrial recycled white polypropylene drainage core and a very strong but lightweight Colback filter fabric thermally bonded to each side. The U groove entangled filament configuration is protected from UV degradation for up to 30 days. This product, because it has 40% post-industrial recycled content, can help contribute up to 2 LEED points when used in conjunction with other recycled content products.

When To Use With AZEK Pavers

Installed over a waterproofing membrane and under AZEK Pavers, the new EnkaDrain 3801 has further increased the ease of installation and exceptional performance.

- Lighter weight
- Lays more flat
- 30% thinner
- Resists expansion/contraction buckling or creasing
- Breathable to prevent stagnant water underneath
- More rigid underfoot
- No sharp edges from cutting



EnkaDrain 3801 is available through CPG Building Products and mimics the existing drainage mat program, including pricing and order minimums.

ITEM NUMBER	PRODUCT DESCRIPTION	COLOR	ACTUAL DIMENSIONS	EACHES/ UNIT	APPROX. UNIT WEIGHT (lbs.)
ENKA-3801	EnkaDrain 3801 4′ x 50′ x 0.30″	N/A	4′ x 50′ x 0.30″	6	250

32 - PAVERS

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SOLAR PANELS

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LSX Module System

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The revolutionary frameless solar module system that has bridged the gap between architecture and energy production

FEATURES & BENEFITS

FRAMELESS MODULE

- PID free
- Ultra low profile

NO MODULE GROUNDING

- No module grounding
- No continuous module equipment ground

INTEGRATED MOUNTING SYSTEM

- Built in wireway
- Concealed junction box and conductors

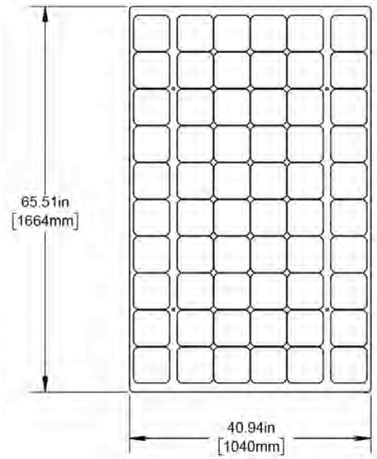
PATENTED THROUGH-BOLT MOUNTING

- Tamper resistant mounting
- Ease of weatherproofing

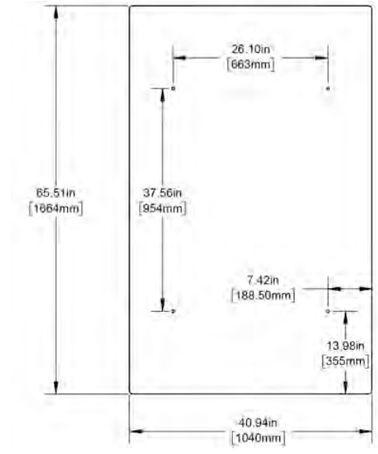
80 Big Springs Drive | Nederland, Colorado 80466 | (303) 449 2394 | www.lumossolar.com

LSX Module System

LUMOS

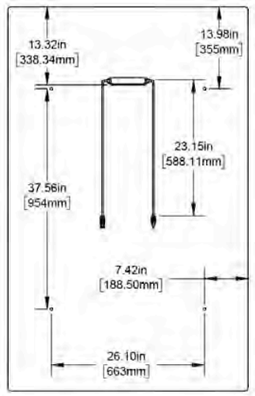


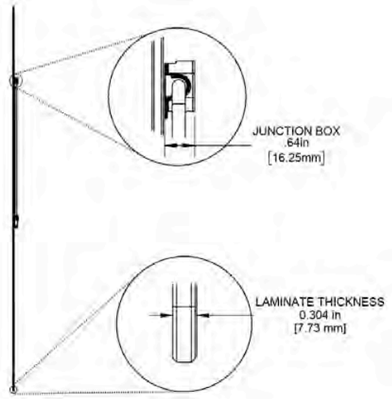
LSX Module



LSX Laminate

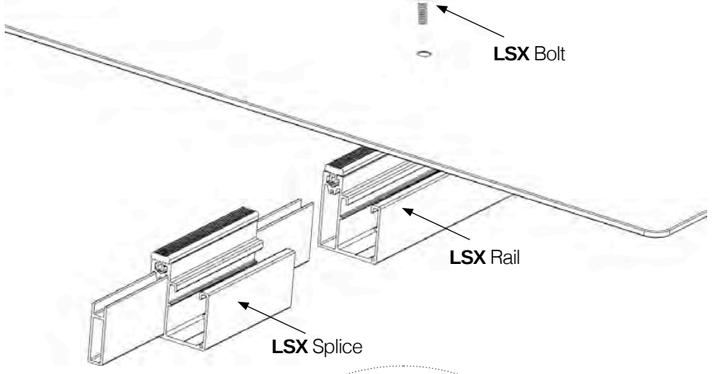
The **LSX** Laminate can be used as in-fill for areas that may be shaded or where solar cells are not necessary





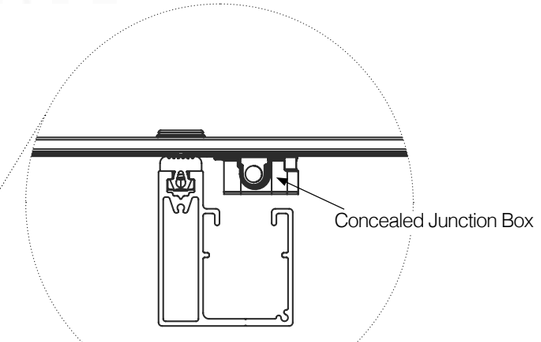


LSX Bolt



LSX Rail

LSX Splice



LSX Module mounted to **LSX** Rail



LSX Module System

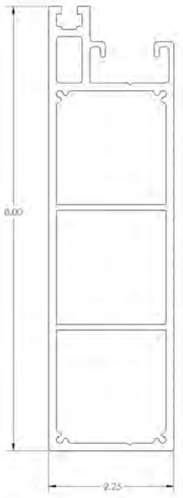
LUMOS



SD



MD



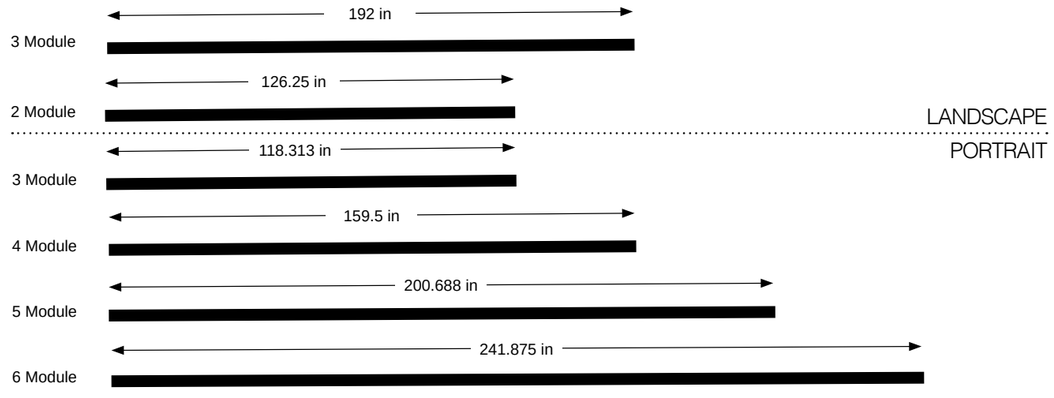
HD

LSX RAIL SPAN OPTIONS*

			SD	MD	HD
	Wind Speed (mph)	Snow Load (psf)	Max Span (ft)	Max Span (ft)	Max Span (ft)
Honolulu	110	0	9’ 3”	20’	29’
Los Angeles	110	0	9’ 3”	20’	28’ 6”
Atlanta	115	5	8’ 9”	18’ 6”	26’ 6”
Denver	110	20	7’ 9”	16’	23’
Miami	180	0	7’ 3”	15’ 3”	22’
Boston	130	40	6’	12’ 6”	18’ 6”

*Assumes multiple span condition. Additional site factors outside the scope of this chart can increase or decrease the allowable span.

LSX RAIL MODULAR LENGTHS



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Lumos Solar © 2020 Specifications are subject to change without notice. Version 2020-1.

LSX Module System

ELECTRICAL SPECIFICATIONS

Model	LSX290	LSX295	LSX300	LSX305	LSX Laminate
Rated Power @ STC	290 W	295 W	300 W	305 W	0
Peak Power Voltage (Vmp)	32 V	32.24 V	32.48 V	32.73 V	0
Maximum Power Current (Imp)	9.06 A	9.15 A	9.24 A	9.32 A	0
Open Circuit Voltage (Voc)	39.77 V	40.11 V	40.45 V	40.79 V	0
Short Circuit Current (Isc)	9.62 A	9.77 A	9.91 A	10.06 A	0
Module Efficiency	16.76%	17.05%	17.34%	17.62%	0
Operating Temperature	-40 °C to 85 °C				0
Maximum System Voltage	1000 V				0
Maximum Series Fuse Rating	15 A				0
Power Tolerance	-0/+3%				0

TEMPERATURE COEFFICIENTS

Nominal Operating Cell Temperature (NOCT)	43.6 °C
Power Temperature Coefficient (Pmpp)	-0.453 % / °C
Voltage Temperature Coefficient (Voc)	-0.337 % / °C
Current Temperature Coefficient (Isc)	0.054 % / °C

MECHANICAL SPECIFICATIONS

Solar Cell	Monocrystalline 6” x 6” (156 mm x 156 mm)		
Number of Cells	60 (6 x 10)		
Module Dimensions	65.5” x 41.0” x 1.1” (1664 mm x 1040 mm x 27 mm)		
Module Area	18.65 ft^2 (1.73 m^2)		
Module Weight	62.6 lb (28.4 kg)		
Module Weight / Area	3.36 lbs/ft^2 (16.42 kg/m^2)		
System Weight / Area	Rail	Portrait	Landscape
	SD	3.72 lbs/ft^2	3.98 lbs/ft^2
	MD	4.12 lbs/ft^2	4.72 lbs/ft^2
	HD	4.8 lbs/ft^2	5.74 lbs/ft^2
Front Glass	0.24” (6 mm) FT Low-Iron PV Glass		
Backsheet	Clear		
Light Transmittance	Portrait = 12% Landscape = 10%		
Output Cables	12 Awg. PV Wire and MC4 Compatible Connectors		
Static Load	Two Rail: -70/+170 PSF Three Rail: -185/+185 PSF		
Hail	Class 4 Hail Rating Max. Diameter 2” (51 mm) at 72 mph (32 m/s)		
Fire Rating	Class A		
Certifications	c UL us LISTED — UL 1703, UL 2703		
Warranty	10 years Workmanship 30 years Linear Power Production		



Made in the USA

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80 Big Springs Drive Nederland, Colorado 80466 | (303) 449 2394 | www.lumossolar.com

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Historic Review Board Meeting Staff Report

From the Department of Community and Economic Development
9 June 2021

1 Summary of Request

812 Port Republic Street/Beaufort Inn Hotel, Change after Certification
Applicant: Courtney Worrell/Beaufort Inn, LLC
In this application, the applicant is proposing changes after certification to the Beaufort Inn Hotel that involve massing, fenestration, and detail changes to the previously approved three stories of hotel space in addition to a new rooftop venue.

This is proposed new construction of a hotel on a currently vacant lot.

Background: The Historic District Review Board (HRB) granted final approval of this project on October 9, 2019. The HRB granted preliminary approval for the current proposed changes after certification on February 10th, 2021. Request for final approval of proposed changes after certification was postponed from the April 14, 2021 HRB meeting at the request of the applicant.

2 Facts

Property Address:	812 Port Republic Street
Parcel ID:	R120 004 000 0984 0000000
Case Number:	21-01 HRB.1
Applicant:	**Courtney Worrell/Beaufort Inn, LLC**
Type of Request:	Final approval of Change after Certification
Zoning:	T5-DC
Current Use:	Vacant
Proposed Use:	Commercial Hotel with Restaurant

District Development Standards for T5-DC:

- **Setback requirements – Primary Structure:**
  - *Front- 0' min./Prevailing setback on block max.*
  - *Rear setback – 0' min.*
  - *Side Corner/Alley – 0'min./15' max.*
  - *Side Interior – 0'min.*
- **Maximum Lot Coverage***:* 100%
- **Frontage Buildout:** 75% Min
- **Permitted Uses:** Hotel and Restaurant Use are permitted in the T5-DC Zoning District



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References:

- The Beaufort Code
- The Beaufort Preservation Manual
- The Beaufort Preservation Manual Supplement

3 STAFF COMMENTS

Staff Acknowledgements:

- Staff is in support of the updated proposed storefront types on the North and East elevations.
- Staff is in support of the revised storefront alignment on the North East elevation, where the signage element now aligns with adjacent transom windows.
- Staff is in support of the revised cornice design where different types of cornices intersect, such as that which is showcased on sheet A3-005.
- Staff is in support of the revised, more simplistic porte-cochere design.
- Staff is in support of the revised brick detailing at the back of house/service area.
- In Section 08 – Windows, the applicant has submitted cut sheets for wood windows, aluminum clad windows, and vinyl windows, however, it doesn't appear that any window types are proposed to be changed from the previously approved submission. All window details on sheet A3-013 show Aluminum windows to match those that were previously approved. Staff is still in support of the aluminum windows that were previously approved.
- In Section 08 – Doors, the applicant has submitted cut sheets for wood doors, vinyl doors, and fiberglass doors, but it appears that only wood doors are proposed in this project. Staff is in support of the Jeld-Wen Wood doors submitted.
- Proposed New Roof Deck:
    - Staff is in support of the proposed lighter exposed wood beams and the respacing of them so that the corner conditions are better resolved.
    - Staff is in support of the revised design of the roof forms at the rooftop terrace. The roof forms no longer intersect in the corner.
    - Board and applicant to note that current proposed sheet A3-010 includes revision clouds around only lighting fixtures and beams to indicate changes from the February submission for this project, while the rest of the submission has revision clouds to represent changes from the final approval granted to this project in 2019. Staff wants to clarify that the entirety of the proposed new roof deck is a change from the original approval granted to this project in 2019, and all parts of it are considered in this staff report, even though only parts of it are clouded on sheets A3-010 – A3-012.

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Staff Conditions:

1. Staff is in support of the submitted aluminum-clad wood storefront. Applicant to ensure that they are simulated divided light with spacer bars.
2. Staff is in support of the proposed MiraTEC Exterior Trim. Applicant to ensure that all synthetic claddings are smooth.
3. Proposed New Roof Deck:
    a. Section 5.8.3 of the Beaufort Code states that "In all districts, lighting shall be directed downward. In addition, upwardly directed lighting shall not be used to illuminate structures, except for low-[voltage] architectural lighting." Proposed lighting fixture L2 directs light outward, and proposed lighting fixture L4 directs light upwards and outwards in the Dusk View provided on sheet A3-011. Applicant to submit light fixtures that are compliant with Section 5.8.3.
    b. Section 4.6.3.A.5 states that "Doors shall be made of wood, metal, glass, or fiberglass." Staff assumes that the Service Doors noted on the Materials Board are metal. Applicant to clarify the materials of these doors.
    c. The applicant has submitted a cut sheet for the roof of the roof deck event space, however no termination details were included in the submission. Applicant to submit drip edge, rake, and any other required termination details for review.
    d. Applicant to clarify how the LSX module system will be installed over the proposed standing seam roof. Applicant to clarify how the support rails will be attached to and connected to the standing seam roof.
    e. On sheet A3-005, Applicant to clarify if the materials called out to be used on the porte-cochere stairs will also be used on the porte-cochere ramps and the ramp on the west elevation. Staff assumes that exterior ramp on west elevation will have railings that match the rest of the project. Applicant to clarify and submit details for these areas for review.

STAFF RECOMMENDATION:

Final Approval with conditions noted.

$ PAID 3/4/2021

DEVELOPMENT REVIEW PROCESS
HISTORIC REVIEW BOARD APPLICATION

Community & Economic Development Department
1911 Boundary Street, Beaufort, South Carolina, 29902
p. (843) 525-7011 / f. (843) 986-5606
www.cityofbeaufort.org

☐ Staff Review
■ Board Review

Application Fee: *see attached schedule*

21-01HRB.2

OFFICE USE ONLY: **Date Filed:** 3/4 **Application #:** 21711 **Zoning District:** T5-DC
BCAGHS Survey: ☐ Yes ☐ No

Schedule: The Historic Review Board (HRB) typically meets the 2nd Wednesday of each month at 2pm. The complete schedule, along with the list of deadlines, may be found here - http://www.cityofbeaufort.org/historic-review-board.aspx

Submittal Requirements: All forms and information shall be submitted digitally. In addition to a complete application form, applicants shall submit the required items according to the checklists on the subsequent page.

Review Request: ☐ Conceptual ☐ Preliminary ■ Final ☐ Bailey Bill Approval* ■ Change After Certification
**Requires a Bailey Bill – Part A Preliminary Review Application Form*

Pursuant to Section 6-29-1145 of the South Carolina Code of Laws, is this tract or parcel restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the activity described in this application? ☐ Yes ■ No

Applicant, Property, and Project Information

Applicant Name: Beaufort Inn, LLC

Applicant Address: 2015 Boundary Street, Suite 300 Beaufort, South Carolina 29902

Applicant E-mail: ctw@303associates.com Applicant Phone Number:

Applicant Title: ☐ Homeowner ☐ Tenant ☐ Architect ☐ Engineer ■ Developer

Owner (if other than the Applicant):

Owner Address:

Project Name: The Beaufort Inn Hotel

Property Address: TBD - Port Republic Street

Property Identification Number *(Tax Map & Parcel Number)*: R121 004 000 0984 0000

Date Submitted: 3/4/21

Certification of Correctness: I/we certify that the information in this application is correct.

Applicant's Signature: Date: 3/4/21

Owner's Signature: Date:

(The owner's signature is required if the applicant is not the owner.)

Required Project Information

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DEVELOPMENT REVIEW PROCESS

HISTORIC REVIEW BOARD APPLICATION

Community & Economic Development Department
1911 Boundary Street, Beaufort, South Carolina, 29902
p. (843) 525-7011 / f. (843) 986-5606
www.cityofbeaufort.org

Project Name: The Beaufort Inn Hotel

Property Size in Acres: .649 Proposed Building Use: commercial / hotel

Nature of Work (check all that apply):

■ New Construction, Primary Structure ☐ New Construction, Primary Structure ☐ Alterations / Additions

☐ Demolition* ☐ Relocation* **Demolition and Relocation requires a public hearing*

Building Square Footage (if multiple buildings, please list each one and their square footage by floor):
57,587 (1st - 15,529; 2nd and 3rd - 18,054 per floor; rooftop - 5,950)

Is this project a redevelopment project: ☑ Y ☐ N

Are there existing buildings on the site? ☐ Y ☑ N if yes, will they remain? ☐ Y ☐ N

Provide a brief Project Narrative (if requesting Bailey Bill Approval, this section may be left blank):

The Beaufort Inn Hotel received its Certificate of Appropriateness on October 9, 2019. The Beaufort Inn submitted a Change After Certification application that made minor programmatic changes to the exterior of the building, provided for the use of solar panels (the final location of which will be reviewed), and added a rooftop bar. The HRB granted Preliminary Approval to the Change After Certification application February 10, 2021. This final submittal reflects changes and refinements Staff suggested and details discussed at length during the February meeting.

CONTACT INFORMATION –

Attention: Julie A. Bachety, Administrative Assistant II
City of Beaufort Department of Planning & Development Services
1911 Boundary Street, Beaufort, South Carolina 29902
E-Mail: jbachety@cityofbeaufort.org: | Phone: (843) 525-7011 | Fax: (843) 986-5606

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AUSTEN GOWDER

Email : andy@austengowder.com
Direct : (843) 727-2229
Mobile : (843) 870-0307
Fax : (843) 800-8533

June 9, 2021

William B. Harvey III
Harvey & Battey, P.A.
Post Office Drawer 1107
Beaufort, S.C. 29901

Re: June 9, 2021, City of Beaufort HDRB Meeting: OBJECTION
Agenda Item No. IV(C) 812 Port Republic Street: Change after Certification ("Hotel")
Agenda Item No. IV(D) 918 Craven Street, New Construction ("Parking Garage")

Dear Bill:

I am writing on behalf of my clients, West Street Farms, LLC and Mix Farms, LLC to state their objection to the applications of:

A) Beaufort Inn to proposed changes after certification (21-01 HRB.2) - Hotel
B) Beaufort Inn for New Construction (21-10 HRB.01) - Parking Garage

Each is pending before The City of Beaufort Historic District Review Board ("HDRB") at its meeting scheduled for today, June 9, 2021, at 2PM. Please transmit this letter of objection to the Chair of the HDRB to be read into the record of the meeting during the public comment period for these agenda items and placed into the minutes of the HDRB meeting as public comments.

1. **Under the Unified Development Ordinance ("UDO"), which was repealed on June 27, 2017, the Parking Garage's preliminary approval has expired. The Hotel never received any approval under the UDO. As a result, neither of these applications has received the requisite legal approvals to proceed.**

As background, The Beaufort Code was adopted on June 27, 2017, and replaced the UDO as of that date. Under the UDO, item 3.1.M.3c specifically outlines expiration dates for City approvals. Item 3.1.M.3c states that conceptual and preliminary approvals expire after 18 months and cannot be renewed beyond 18 months. This means that the preliminary approval for the Parking Garage expired on March 20th, 2019, and cannot be renewed.

PARKING GARAGE TIMELINE

A) On August 17, 2016, the HRB, ostensibly under the UDO, granted **conceptual** approval with conditions for the Parking Garage.

EXHIBIT 2

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B) The Parking Garage then received **preliminary** approval from the City in a letter from Lauren Kelley dated October 9th, 2017. This **preliminary** approval was given after the UDO was repealed and replaced by the Beaufort Code. Ms. Kelley's letter referenced a September 20, 2017, HDRB meeting. Ms. Kelley's letter is on page 195 of today's HDRB meeting agenda documents.

C) Per the UDO, such **preliminary** approval expired on March 20, 2019, i.e., 18 months after the issuing of the **preliminary** approval. Therefore, the Parking Garage's **preliminary** approval under the UDO is invalid. The Parking Garage is therefore not eligible to proceed to **final** approval today - almost 45 months after the issuing of the **preliminary** approval and almost 27 months after the **preliminary** approval's expiration.

D) Furthermore, the Parking Garage has never received a "Certificate of Appropriateness" from the HDRB, a requirement both under the UDO and the Beaufort Code. Therefore, the Parking Garage is not eligible to proceed to **final** approval today. In fact, the approval process must start again as the Parking Garage has **NO** approval.

E) David Prichard, on behalf of the City, in two letters dated June 20, 2019, and July 21, 2020 (pages 196 and 197 respectively of the today's HDRB meeting agenda documents) illegally issued an extension of a non-existent "Certificate of Appropriateness" for the Parking Garage.

F) Also of important note, in his two letters, David Prichard references The Beaufort Code section 9.1.4 as the governing code. Mr. Prichard does not reference the UDO.

G) The bottom line: the Parking Garage has NO approval under the UDO nor the Beaufort Code.

HOTEL TIMELINE

A. Lauren Kelly, representing the City at the time, originally presented the Hotel Project in a July 12, 2017, HDRB

B. This July 12, 2017, HDRB meetings was approximately two weeks after the Beaufort Code was adopted.

C. Furthermore, the approved official July 12, 2017, minutes state Lauren Kelly saying, "this project (the Hotel) is being evaluated under the new Beaufort Code".

D. Therefore, the City itself has confirmed on July 12, 2017 that the Hotel is being considered under the Beaufort Code and not the UDO.

E. During this July 12, 2017, meeting, the Hotel received **preliminary** approval. Per City Code, such **preliminary** approval expired on January 12, 2019, i.e., 18 months after the issuing of such **preliminary** approval.

F. The next approval, however, for the Hotel was almost 27 months later on October 9, 2019, for a "Certificate of Appropriateness". Therefore, the Hotel's **preliminary** approval expired prior to the asserted approval of the Hotel's "Certificate of Appropriateness".

G. As a consequence, the Hotel's "Certificate of Appropriateness" issued on October 9, 2019, is null and void.

H. Please also note that the "Certificate of Appropriateness", dated October 9, 2019, and signed by John Dickerson, the current chairman of the HDRB, specifically

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references the Beaufort Code and its Section 9.4.1 as the governing authority. He does not reference the UDO.

I. The bottom line: the Hotel has NO approval under the UDO nor the Beaufort Code!

Therefore, it is illegal for the HDRB to be considering either of these projects for any approvals today.

Furthermore, my clients object to either of these matters proceeding at all and contend that they must be rejected and dismissed. On their behalf, I am contending in court that each project is a Large Footprint Building under the Beaufort Code and that neither has received a Special Exception as required by Beaufort Code in Sec. 4.5.10 (B)(5). This objection forms one of the bases of my clients' legal action currently pending in the Court of Common Pleas in Beaufort County, *West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC and 303 Associates, LLC,* 2021-CP-07-00663. **The applicants, not having received Special Exceptions from the City of Beaufort Zoning Board of Appeals for either the Hotel nor the Parking Garage, may not proceed to obtain approval for either of these applications from the HDRB, and the HDRB has no jurisdiction to consider these applications. These two particular applications pending before the HDRB must be rejected and dismissed.**

2. There are additional grounds on the merits to deny the applications.

Parking Garage: a) 4 stories tall; b) front façade of over 300 linear feet; c) square footage of over 160,000 square feet; d) volumetric mass approaching 3 million cubic feet; and d) accommodates over 475 vehicles.

Hotel: a) proposed 4th story roof top bar; b) front façade of over 170 linear feet; c) square footage of approximately 50,000; and d) volumetric mass of over 1 million cubic feet.

Each of these structures individually are multiple times larger across all dimensions and metrics than any other building in historic downtown Beaufort. As already stated, these two projects are so large, each individually is classified as a "large footprint building" and are specifically prohibited in downtown historic Beaufort unless a Special Exception is issued by the City of Beaufort Zoning Board of Appeals. **Neither of these projects has a Special Exception.**

By comparison, the Verdier House, which itself is immediately adjacent to the proposed hotel, has square footage of approximately 5,500 square feet and volumetric mass of 50,000 cubic feet. **The Parking Garage is 60 times larger, and the Hotel is 20 times larger in volumetric mass than the Verdier House!**

The Parking Garage and the Hotel are both infill projects. Section 4 of the Beaufort Code specifically addresses infill projects and dictates the following purpose and intent of infill projects:

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4.1 PURPOSE AND INTENT

The purpose of this section is to:

- ***A. Protect and enhance Beaufort's unique aesthetic character***
- ***B. Support high quality streets and public spaces***
- ***C. Encourage architecture that blends harmoniously with the natural surroundings and neighborhood development***
- ***D. Safeguard property values and long-term economic assets***
- ***E. Carefully preserve the character of Beaufort's National Historic Landmark District while permitting appropriate growth.***

The Parking Garage and the Hotel, even in the absence of the Hotel's proposed 4th story rooftop bar, are each individually incongruous with all five of the points of 4.1 Purpose and Intent of Infill Projects given their outsized proportions and are completely out of character in Beaufort's National Historic Landmark District.

Section 4 of the Beaufort Code goes on to address specifically for infill projects:

4.2.3 RELATIONSHIP TO HISTORIC DISTRICT STANDARDS

- ***A. Applicability: In addition to the standards and guidelines in this article, any development located within the Beaufort Historic District is subject to the standards, guidelines, and procedures established in Section 9.10.***
- ***B. Conflicts: In the event of a conflict between the requirements of this article and the requirements and guidance provided by the documents listed in 9.10.2.B, the later shall take precedence.***

In Section 9 of the Beaufort Code, **9.10: CERTIFICATE OF APPROPRIATENESS** outlines, for the HDRB, the specific criteria that infill projects in the Historic District must meet in order to be approved to include: a) Compatibility; b) No Adverse Impact; and c) Consistency with Adopted Plans. Neither the Parking Garage nor the Hotel are compatible in downtown historic Beaufort given their size, scale, and mass; they will each individually have irreparable adverse impact on the character of downtown Beaufort and have already triggered the National Parks Service's intervention; and they are not consistent with adopted plans for the Beaufort historic district.

9.10.2.B.1 then specifically requires that the HDRB utilize the "Beaufort Preservation Manual," August 1979, and the "Beaufort Preservation Manual, Supplement," August 1990 in evaluating infill projects. These manuals dictate that infill buildings must interrelate with surrounding buildings. The manual specifically mandates that new construction have appropriate scale, absolute size, massing, and proportions to the surrounding buildings and townscape. The manual also provides drawings which show very clear examples of prohibited buildings such as those that are significantly taller and/or wider and/or have a significantly larger footprint and/or have a significantly larger mass than surrounding buildings and within the townscape.

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Sections 4, 9, and the Beaufort Preservation Manual all clearly prohibit HDRB approval of the Parking Garage and prohibit a 4th story rooftop bar for the Hotel. It is also, important for the HDRB to note that the UDO, which has been superseded by The Beaufort Code, required that the HDRB evaluate infill buildings and structures in exactly the same manner as the Beaufort Code to ensure their: Compatibility, No Adverse Impact, and Consistency with Adopted Plans. The UDO also required that the HDRB abide by the "Beaufort Preservation Manual".

Please note that NO Certificate of Appropriateness has been validly issued for the Parking Garage nor the Hotel, and if Certificate of Appropriateness were issued under these circumstances, they would be illegal as gross violation of the expressed standards in the City's governing ordinances whether under the UDO or the Beaufort Code!

Because of the threat that each of these structures poses to the Beaufort National Historic Landmark District, the National Parks Service "NPS" will undertake an "Integrity and Condition Study for the Beaufort National Historic Landmark District" and the South Carolina Department of Archives and History, in a letter from the director of its State Historic Preservation Office "SHPO", W. Eric Emerson, Ph.D., discouraged the approval of the Parking Garage. Dr. Emerson states "When we refer to the established design guidelines for the City of Beaufort, (Beaufort Preservation Manual dated 1979, and the 1990 Supplement), we see more inconsistencies with the guidelines than consistencies.". The contents of the NPS notification to the City and the SPHO's letter are both attached as exhibit A and B respectively.

To summarize, neither the Parking Garage nor the Hotel have valid approvals from the City of Beaufort. Furthermore, the entire process has been riddled with errors. Such errors require that the HDRB void any existing approvals and force each of these projects to begin the application process again. Furthermore, the merits of each of these structures fail to meet the requirements of infill projects as clearly defined and articulated in Sections 4 and 9 of The Beaufort Code and the Beaufort Preservation Manual and they should therefore be disapproved if new applications are ever received by the City.

Best regards,

AUSTEN & GOWDER, LLC

/s *W. Andrew Gowder, Jr.*

W. Andrew Gowder, Jr.

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EXHIBIT A
NATIONAL PARKS SERVICE TO CITY OF BEAUFORT MONDAY, MAY 12th, 2021

Dear Mayor Murray and Mr. Prokop:

The National Park Service (NPS) recently learned of concerns within the Beaufort Community about potential threats to the historic character of the Beaufort National Historic Landmark District. As the primary steward of the Beaufort National Historic Landmark District, we wanted to reach out to your office to provide some information on the National Historic Landmarks Program, and to offer our assistance. In the attached letter we provide the above.

The NPS is charged with monitoring National Historic Landmarks to ensure they retain the qualities for which they were designated (36 CFR 65.7). The aim of the National Historic Landmark monitoring program is to identify properties that have lost historic integrity or face threats so that owners, stewards, policy makers, and the public can take action to preserve these important places for future generations. NPS' role is to provide guidance that will help to preserve the historic property and prevent the withdrawal of designation under the procedures outlined in 36 CFR 65.9.

Historic districts like the Beaufort National Historic Landmark District can be challenging to preserve. They are often vibrant commercial and social centers, which must adapt to meet the needs of residents and visitors. Periodically it is important to re-examine historic districts to understand how they have changed and how those changes have affected, for good or bad, the district's historic integrity. NPS staff believe a comprehensive study, which can serve as a guidepost for those involved in future decision making, will be a helpful tool for the district. This comprehensive Integrity and Condition Study would document the district and highlight positive preservation actions as well as items that may require attention. NPS staff believe an Integrity and Condition Study will also serve as an opportunity to build a stronger relationship with members of the Beaufort community and a better understanding of the Beaufort National Historic Landmark District.

NPS staff have had preliminary conversations with City of Beaufort staff about the possibility of NPS funding an Integrity and Condition Study for the Beaufort National Historic Landmark District. We now wanted to start a conversation with your office about the possibility. If NPS were to fund a study, we would hope the City of Beaufort could offer some assistance, such as reviewing study drafts, providing, or, suggesting locations for public meetings, and helping facilitate the contractor's fieldwork and research.

We look forward to re-visiting the Beaufort National Historic Landmark District and hope that we can do so in partnership with the City of Beaufort. Please reach out to Cynthia Walton, at Cynthia_Walton@nps.gov or (404) 354-6072, to ask any questions, or discuss next steps.

Sincerely,
Regional National Historic Landmarks Program

National Park Service, Interior Region 2
National Historic Landmarks Program
100 Alabama St., SW
Atlanta, GA 30303
(404) 507-5791

AUSTEN GOWDER

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EXHIBIT B
SOUTH CAROLINA DEPARTMENT OF ARCHIVES AND HISTORY LETTER

EST. 1905
SOUTH CAROLINA DEPARTMENT OF
ARCHIVES & HISTORY

August 2, 2016

Ms. Lauren Kelly
Project Development Planner
City of Beaufort
1911 Boundary Street
Beaufort, SC 29902

Dear Ms. Kelly,

Thank you for your telephone call on Friday, July 29 and for your request that the South Carolina Department of Archives and History provide comments on a proposed parking structure in the block bounded by Craven, Charles, West, and Port Republic Streets. The comments are based on drawings that staff members from the State Historic Preservation Office accessed on August 1, 2016 at http://www.cityofbeaufort.org/Data/Sites/1/media/Departments/planning/hrb/august-10-2016/2016-07-22_concept-design-proposal.pdf and on the content of our telephone call on July 29. These comments are provided as technical assistance to the City of Beaufort, and are not the result of any consultation under Section 106 of the National Historic Preservation Act or the Coastal Zone Consistency Certification review by SCDHEC-OCRM.

We note that the garage is proposed for a transition block in the Beaufort Historic District, between the densely developed commercial area along Port Republic Street and the less dense residential area to the north. In another city with a more densely developed scale on all four sides, a similar setting may be ideal for such a project. Regrettably, given the low density of the residential area that borders the property on three sides, this particular design is too dense for this particular site. Further, the design relies much too heavily on the flat roof forms, front and side setbacks, and other architectural vocabulary of the commercial buildings, and has no connection to the hipped and gable roof forms, setbacks, and architectural vocabulary of the residential buildings. In this particular context we doubt a building of this height and large mass can be made compatible by applying architectural details/elevations to the facade, use of liner buildings, or through the use of vegetative screening, which could soften but not hide the massing and scale. If this agency were consulted under Section 106 of the National Historic Preservation Act, we would consider this parking garage to have an adverse affect on the Beaufort Historic District.

When we refer to the established preservation design guidelines for the City of Beaufort, (Beaufort Preservation Manual dated 1979, and the 1990 Supplement), we see more inconsistencies with the guidelines than consistencies. In the Section titled "Design Guidelines

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for New Construction" (beginning on page 13 of the Supplement) we note several concepts that appear to be pertinent to this discussion: Scale; Absolute Size; Massing; and High density/large scale construction. We will not repeat the guidance from the Supplement, but do direct the City's attention to the following, found primarily in the High density section: alternative sites; large scale structures set back from every street; upper floors recessed; and avoid demolition of historic buildings. These are the guidelines that seem pertinent based on our current level of information about the project. Clearly all the guidelines must be considered in every review. We trust that the City of Beaufort and its board of architectural review will find clarity in the 1990 Supplement that will allow it to use its standard procedures to make a sound decision based on those guidelines. Please feel to contact us if you have any questions.

Best regards,

W. Eric Emerson

W. Eric Emerson, Ph.D.
Director and SHPO

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**CASE NO.: 2021-CP-07-00663**
WEST STREET FARMS, LLC, and, MIX FARMS, LLC,	)	
Plaintiffs,	)	
v.	)	**ANSWER OF BEAUFORT INN, LLC AND 303 ASSOCIATES, LLC**
CITY OF BEAUFORT, BEAUFORT INN, LLC, and, 303 ASSOCIATES, LLC,	)	
Defendants.	)	

Defendants Beaufort Inn, LLC ("Beaufort Inn") and 303 Associates, LLC ("303 Associates," collectively, "Defendants") hereby answer the Complaint of West Street Farms, LLC, and Mix Farms, LLC (collectively, "Plaintiffs") generally that each and every allegation of the Complaint that is not expressly and specifically admitted herein is denied, and Defendants expressly and specifically respond to the allegations of the Complaint as follows:

HISTORY OF THE PARKING GARAGE PROJECT AND THE HOTEL PROJECT

1. The Plaintiffs in their Complaint incorrectly claim that the version of Beaufort City Zoning Ordinance as adopted on June 27, 2017 and amended on July 10, 2018 ("Current City Code") applies to the Parking Garage Project and the Hotel Project, as defined below. However, both the Hotel Project and the Parking Garage Project by agreements with the City and substantial reliance by Defendants on the actions of the City are vested under the Beaufort zoning ordinance prior to its change on June 27, 2017. (The prior code known as the Beaufort Unified Development Code (the "UDO" or "Prior City Code.")

EXHIBIT 3

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2. Therefore, the Plaintiffs are incorrect in their claim that Defendants were required to obtain a Special Exception for these two projects under the Current City Code. The requirement for a Special Exception for these projects did not exist under the Prior City Code. Since the Parking Garage Project and the Hotel Project are governed by the Prior City Code and not the Current City Code, the Special Exception requirement does not apply.

3. The Current City Code does not apply due to significant financial expenditures and development undertaken by Defendants in reliance on representations and agreements with the City. Because of this, the Defendants' rights in their plans for the Parking Garage Project and the Hotel Project under the Prior City Code became vested.

4. Property owners and developers are entitled to rely on the then current zoning ordinances when they make their development plans and actually undertake that development. Except in certain circumstances not present here, a governmental entity cannot induce a property owner or developer to make financial investments and irreversible development decisions based on one law and then later change the law and take away these property rights that become vested once the property owner or developer takes actions on reliance on the government's actions. Property owners, developers, and indeed all citizens are entitled to rely on the law to apply to them as written when they take actions in reliance on that law. That is precisely the situation that exists here.

5. Defendants for years have worked closely with the City on the Parking Garage Project and the Hotel Project. Defendants have changed many elements of the design and functionality of the projects based upon request from the City, and Defendants, pursuant to permits required by and issued by the City, have torn down two buildings and relocated another in pursuant of these projects to meet the exacting requirements of the City to make sure that the projects

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complement the City's historical, cultural and aesthetic goals which help ensure the City retains its unique charm and character.

The Parking Garage Project

6. Defendants relied on the City of Beaufort's ("City") approvals relating to the development of a parking structure located at 918 Craven Street (the "Parking Garage Project"). More specifically, Defendants have vested rights in the Parking Garage Project under the Prior City Code for the following reasons:

a. Defendants and the City have long worked on parking issues in the City. On **October 9, 2007,** Defendants and the City entered into an Easement Agreement whereby Defendants granted the City a permanent easement for vehicle parking for twenty-seven (27) specifically designated individual parking spaces located on real property owned by Defendants. The Easement Agreement states that Defendants' obligations were reliant upon Defendants submitting an application to the City for extensive development of the parcel subject to the Easement Agreement, including "a parking facility, as well as retail establishments, retail accommodations, etc." Although at the time the Easement Agreement was entered into, the real property subject to the Easement Agreement was not the parcel subject to the development of the Parking Garage Project, this began the negotiations between Defendants and the City regarding a contribution by Defendants to the City to help solve parking problems, which ultimately resulted in the Parking Garage Project. A copy of the Easement Agreement is attached at **Exhibit A**.

b. On **December 28, 2012**, Defendants acquired title to the Parking Garage Project parcel. A copy of the Limited Warranty Deed conveying title is attached at **Exhibit B**.

c. On **August 17, 2016,** the City's Historic Review Board (the "**HRB**") held a meeting where conceptual approval for the Parking Garage Project was provided. The HRB also discussed the possible demolition of 918 Craven and 310 West being required

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for Defendants to pursue development of the Parking Garage Project. The minutes of this meeting are attached at **Exhibit C**.

d. On **September 16, 2016**, based on the input received at the HRB meeting, Defendants submitted applications to the City to demolish two (2) structures required to pursue development of the Parking Garage Project, one located on 918 Craven, and the other located on 310 West. Copies of the applications are attached at **Exhibits D** and **E**.

e. On **November 9, 2016** at a meeting of the HRB, City staff advised the HRB that the 918 Craven demolition was required in order to develop the Parking Garage Project; however, the 918 Craven demolition project was delayed because the HRB expressed a preference that the building at 918 Craven be relocated rather than demolished. Defendants accommodated this preference and later received approval on June 20, 2017 to relocate 918 Craven as opposed to demolishing it. The 310 West Street demolition project was approved at this meeting under the Prior City Code as reflected in the meeting minutes. The minutes of this meeting are attached at **Exhibit F**.

f. On **November 11, 2016**, the HRB provided a Certificate of Appropriateness ("COA") approval for the 310 West demolition project (which was only a project because it was required for Defendants' Garage Parking Project.) The COA states that the HRB reviewed Defendants' application for demolition under the Prior City Code. A copy of the COA is attached at **Exhibit G**.

g. On **February 15, 2017**, the 918 Craven Street building relocation project approval was obtained (which was only a project because relocation or demolition was required for Defendants' Garage Parking Project.) A copy of the approval is attached at **Exhibit H**.

h. The Defendants and the City worked extensively for months to arrange a mutually beneficial arrangement where Defendants could continue their development efforts for the Parking Garage Project and the Hotel Project. The two projects are

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interrelated, as a new hotel required additional parking. To that end, Beaufort Inn and the City entered into a **Memorandum of Understanding** on **March 22, 2017** (the "MOU"). The MOU is attached at **Exhibit I.**

i. In the MOU, the City agreed in part as follows:

   i. "WHEREAS, the above-described property ("Subject Property") is currently utilized as a private vehicle parking lot; and"

   ii. "WHEREAS, Beaufort Inn, LLC, ("Owner") is the owner of record of certain real property located adjacent to the southwest corner of the intersection of Port Republic Street and Scott's Street, City of Beaufort, ….; and"

   iii. "WHEREAS, the City of Beaufort ("City") utilizes 27 parking spaces under the provisions of an Easement Agreement granted by 303 Associates, LLC, predecessor to Beaufort Inn, LLC, ….; and"

   iv. "WHEREAS, Beaufort Inn, LLC, contemplates the construction of a hotel complex on the Subject Property, which project will extend onto its adjoining property …, *and contemplates investing significant funds in designing said hotel complex which, once constructed*, will result in the loss of said parking spaces; and"

   v. "WHEREAS, The City desires to retain said parking spaces and Beaufort Inn, LLC, is agreeable to designating another parcel of property in "downtown" Beaufort to be subject to the terms of the aforesaid Easement Agreement; and"

   vi. "WHEREAS, the City of' Beaufort Master Civic Plan encourages infill and development of the "downtown" area of the City of Beaufort, and the consolidation of surface parking spaces into a consolidated parking facility is a method to facilitate such infill and development; and"

   vii. "WHEREAS, relocating the parking spaces from the current Easement area (i.e., the Subject Property) to the parcel contemplated herein will contribute to and assist with the successful implementation of the City of Beaufort Master Civic Plan; and"

   viii. "WHEREAS, Beaufort Inn, LLC, and the City of Beaufort desire to memorialize by written instrument the terms of their Agreement in regard to the Subject Property, the adjoining property, and the projected alternate property site as to parking spaces and in other particulars, all of which is provided for in the Easement Agreement referenced herein."

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ix. "Projected Use of Subject Property: Beaufort Inn, LLC, plans to eliminate the private parking lot described herein ***and thereafter construct a hotel*** on the Subject Property and its adjoining parcel of property on Port Republic Street…"

x. "The parties agree that ***both the City as well as the City of Beaufort Historic Review Board have the authority to approve any and all construction on the projected project site***, to include specifically the overhanging balconies/porches, supporting columns and other design features fronting on Scott's Street and Port Republic Street referenced herein. ***The City, for itself, and in recognition of the extensive project design and planning expenses / costs that have been and will be incurred by Owner, agrees that it will grant such approvals, without exception, following the approval thereof by the City of Beaufort Historic Review Board.***"

xi. "Easement Agreement (Parking). Beaufort Inn, LLC, agrees hereunder that all rights granted to the City of Beaufort under the Easement Agreement as to the Subject Property *will be transferred to that certain planned parking garage facility* to be constructed on a parcel of property owned by the Owner which is located in Block 70, City of Beaufort. The parties understand that *construction of said parking garage facility is also subject to approval by the City of Beaufort and the City's Historic Review Board*."

xii. "*The parties agree that the 27 parking spaces allocated to the City in the projected parking gar*age to be constructed on Block 70, City of Beaufort, are to be located on the ground floor, in the vicinity of an access point in the parking garage. The City shall be entitled to begin using the allocated parking spaces, and its other rights under the subject Easement Agreement, in the projected garage facility upon completion of construction of said facility…"

xiii. "The parties agree to communicate and cooperate with one another in good faith *to facilitate the planned construction of the hotel on the Subject Property / project site herein, and the relocation of the City's parking spaces to the projected parking garage facility* to be constructed on another parcel of property of Beaufort Inn, LLC, in Block 70, City of Beaufort."

(Italics and bold added.)

j. On **June 20, 2017,** Defendants obtained "Final Approval" for the demolition of the existing structure on 918 Craven Street. A copy of the final approval is attached at **Exhibit J**. However, as noted below, that structure was eventually relocated, not demolished.

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k. At the HRB Meeting on **July 12, 2017**, for the Parking Garage Project, the HRB approved "all height requirements." The meeting minutes state that the removal of two structures on the property was approved by the HRB and also provide that the "garage is being reviewed under the old UDO" (the Prior City Code), (ii) "all setback requirements are met" and (iii) "the removal of two structures on the property has been approved by the HRB." A copy of the meeting minutes is attached at **Exhibit K**.

l. Based on the HRB's expressed preference for relocation as opposed to demolition, on **August 31, 2017**, Defendants entered into a Property Relocation Agreement with BW Bale and Associates ("BW") whereby Defendants agreed to pay $9,000 for the relocation of the building located at 918 Craven Street. Defendants received a $10,000 invoice dated November 10, 2017 for work associated with the 918 Craven relocation. Copies of the Property Relocation Agreement and resulting invoice are attached at **Exhibits L** and **M**.

m. On **November 11, 2017**, the City issued a Relocation Permit to allow Defendants to move 918 Craven to 1012 Newcastle Street. A copy of the Relocation Permit issued by the City to Defendants' contractor, BW, is attached hereto as **Exhibit N**.

n. On **September 20, 2017**, the HRB at its meeting provided preliminary approval for the Parking Garage Project effective that date ("Preliminary COA"). Per the meeting minutes, the HRB provided "preliminary" approval to ensure that the mass, scale and size for the structure would remain unchanged in future HRB discussions, however the preliminary approval identified certain details which had not yet received approval, such as the color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborists plan for the treatment of trees. The meeting minutes also state that "all setbacks in this zone are zero feet." The minutes also state that "the proposal requires the removal of the two structures, 918 Craven Street… and 310 West Street. Both structures have been approved for demolition." A copy of the meeting minutes is attached at **Exhibit O**.

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o. The HRB sent a letter dated **October 9, 2017** stating that drawings for the Parking Garage Project were approved as submitted. A copy of the letter is attached at **Exhibit P**.

p. On **August 7, 2018**, as required by the HRB, Defendants entered into a Construction Agreement for the demolition of the building located at 310 West Street and a portion of 905 Port Republic Street (formerly "BB&T") with JoCo Construction, LLC ("JoCo") and JoCo pulled the building permit for the demolition project. A copy of the demolition permit is attached as **Exhibit Q**.

q. Defendants received a $20,700 pay application from JoCo dated **August 9, 2018** for the 918 Craven Street demolition. This invoice was paid. A copy of the invoice is attached as **Exhibit R**.

r. On **June 19, 2019**, Defendants requested from the HRB an extension of the Preliminary COA issued on September 20, 2017 relating to the Parking Garage Project. Defendants' request letter references "work, including demolition and removal of structures, as well as additional studies, has been ongoing." The HRB provided an extension to the Preliminary COA, extending the approval through September 19, 2021. A copy of the COA Extension is attached at **Exhibit S**.

7. Defendants Incurred Demolition Costs in Reliance on Parking Garage Project Approval. The demolition of 310 West and (ultimately, relocation) of 918 Craven were conducted in furtherance of the development of the parking Garage Project. The HRB's November 2016 HRB meeting minutes capture the City's admission that the demolition of these structures was required to pursue development of the Parking Garage Project. Although Defendants obtained approval for the demolition projects prior to obtaining approval for the Parking Garage Project, had the City not granted the September 2017 approval for the Parking Garage Project, Defendants would not have pursued the demolition of 310 West and ultimately the relocation of 918 Craven. Defendants obtained and paid for permits issued by the City approving these projects.

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8. Defendants Agreed to Move Parking Easements to the Parking Garage Project in Reliance on the MOU. Although the MOU did not bind the City to provide approvals, it bound the City to ensure that *no further approvals beyond those issued by the HRB* would be required by the City. Had the City not made these representations in the MOU, Defendants would not have pursued development of the Parking Garage Project, the City-permitted demolition of 310 West, the City-permitted relocation of 918 Craven, and would not have agreed to move the parking spaces subject to the Easement Agreement. Defendants pursued the development of the Parking Garage Project in reliance of the City's representations made in the MOU.

9. The Parking Garage Project is vested under the Prior City Code. Defendants' rights with respect to the applicability of the Prior City Code to the Parking Garage Project vested prior to the City's adoption of the Current City Code, and the City has continuously recognized that the Prior City Code applies to this project through its use of the Prior City Code for all steps taken during the approvals process for the Parking Garage Project, even after the enactment of the Current City Code. Thus, the Parking Garage Project is vested in the Prior City Code, and so the Current City Code requirements that are the subject of Plaintiffs' complaints are not applicable.

The Hotel Project

10. Although the Hotel Project is referred to in the Complaint and this Answer as a separate project from the Parking Garage Project, it was universally understood by the City and Defendants that the two projects were *mutually dependent upon one another*, as evidenced in part by the March 22, 2017 MOU. That is, Defendants would not have proceeded with the Parking Garage Project had the City not approved the Hotel Project and vice-versa. Therefore, the above recitations regarding the Parking Garage Project in part apply to the Hotel Project.

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11. The Hotel Project. The real property upon which the Hotel is to be located was acquired by Defendant 303 Associates prior to 2012. Defendant 303 Associates subsequently transferred title to that property to Defendant Beaufort Inn in 2012. Defendants relied on the City's approvals relating to the development of a hotel located on that certain parcel of improved real property located at 214 Scott Street and 812 Port Republic Street, in the City of Beaufort, State of South Carolina ("Hotel Project").

12. As demonstrated below, the Hotel Project COA (as defined below) was clearly granted under the Prior City Code and the Defendants' current pursuit of the Change After COA application relating to the construction of a rooftop bar and solar panels do not materially differ from the previously approved Hotel plans.

a. In **September** of **2016** the HRB issued Defendants a conceptual approval for the Hotel construction, but this approval did not include the colonnade amenity. The colonnade amenity was ultimately approved at the HRB's **July 25, 2017** meeting.

b. On **October 27, 2016**, Defendants cautioned the City in an email that "Beaufort Inn is taking this very significant financial risk, needs assurance from the City that the City will provide concurrent tentative approval for the site plan at the [Hotel] which will… necessitate easement as set forth in the draft [MOU]. In other words, Beaufort Inn will commit to this significant financial investment of going through the HRB process – at its risk – but only with a clear understanding memorialized via an [MOU], that the City will not subsequently thwart the plan after HRB approval for this site is granted." A copy of this email is attached at **Exhibit T**.

c. On **March 22, 2017** Beaufort Inn and the City enter into the MOU (**Exhibit I**), as noted above. Pertinent provisions of the MOU (repeated from above) include:

i. "WHEREAS, Beaufort Inn, LLC, contemplates the construction of a hotel complex on the Subject Property, which project will extend onto its adjoining property …, *and contemplates investing significant funds in*

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designing said hotel complex which, once constructed, will result in the loss of said parking spaces; and"

ii. "Projected Use of Subject Property: Beaufort Inn, LLC, plans to eliminate the private parking lot described herein *and thereafter construct a hotel* on the Subject Property and its adjoining parcel of property on Port Republic Street…"

iii. "The parties agree to communicate and cooperate with one another in good faith *to facilitate the planned construction of the hotel on the Subject Property / project site herein, and the relocation of the City's parking spaces to the projected parking garage facility* to be constructed on another parcel of property of Beaufort Inn, LLC, in Block 70, City of Beaufort."

d. On **July 25, 2017**, in accordance with the MOU and the Prior City Code, the HRB provided a COA approval for the Hotel Project design ("Hotel Project COA"). Two (2) separate approvals were issued: (i) one approval for plans including the colonnade amenity, and (ii) plans that do not include the colonnade amenity in the event SCDOT did not allow its design. (The City later took over SCDOT's prior decision-making authority, so the colonnade plans are now the only approved plans.) A copy of the Hotel Project COA Approval is attached at **Exhibit U**.

e. On **May 23, 2018**, Defendants' representative communicated to City staff that delays in approvals for the Parking Garage Project had accordingly delayed progress relating to the construction of the Hotel. A copy of this correspondence is attached at **Exhibit V**.

f. On **October 9, 2019**, the HRB provided a COA for the Hotel Project construction with the exception of changing false doors to windows. A copy of that COA is attached at **Exhibit W**.

g. On **November 13, 2019**, the HRB provided COA approval for the demolition of a structure on 812 Port Republic required to develop the Hotel Project. However, the approval of the demolition was contingent upon Defendants pulling a building permit to commence construction for the Hotel Project. The HRB Meeting Minutes clarify that the HRB agreed that the demolition of 812 Port Republic was required

for Defendants to pursue development of the Hotel Project. Copies of that COA and meeting minutes are attached at **Exhibits X** and **Y**.

h. The City issued a demolition permit for 812 Port Republic to Defendants on December 17, 2020. A copy of that permit is attached at **Exhibit Z**.

i. On **September 11, 2020**, Defendants submitted a letter to the City stating that since the Hotel Project "has achieved the required HRB approvals and we are moving forward with development", Defendants agreed to relocate the City's 27 parking spaces per the MOU. Thus, Defendants were still performing pursuant to the MOU, an agreement reached under the Prior City Code. A copy of this letter is attached at **Exhibit AA**.

j. On **January 25, 2021**, Defendants applied for a Change After COA in order to pursue non-material development changes relating to a rooftop bar and solar panels on the exterior of the Hotel and submitted additional requested information from the City relating to the Change After COA request on this date. (The application was actually made on December 20, 2020 and delayed at City Staff's request.) This Change After COA is consistent with the MOU. A copy of the Change After COA is attached at **Exhibit BB**.

13. Defendants Relied on Approvals Relating to the Parking Garage Project When Pursuing Development for the Hotel Project. The Hotel Project in general is reliant on the Parking Garage Project obtaining approval as it provides the new parking required for the Hotel Project. Although the Hotel Project was granted conceptual approval in 2016, and final approval in 2019, its success hinges on the Parking Garage Project obtaining approval.

14. Likewise, the Parking Garage Project would not be pursued without the Hotel Project. The two projects are linked in the MOU, which preserves the application of the Prior City Code to the Projects.

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15. Defendants Expended Substantial Costs to Demolish 812 Port Republic in Reliance of the Hotel COA. The COAs for the Hotel Project were reviewed and approved under the Prior City Code. As noted in the November 13, 2019 HRB meeting minutes and letter, the HRB agreed that the demolition of 812 Port Republic was mandatory in order to pursue development of the Hotel Project. Defendants expended resources in reliance of the HRB's approval under the Prior City Code. Defendants paid for and obtained a permit issued by the City for the demolition of 812 Port Republic. (See **Exhibit Z**.) Defendants would have not expended such resources or demolished 812 Port Republic had they known that they would be required to comply with *both* the former Prior City Code and the new Current City Code.

16. In addition, the MOU states that while Beaufort Inn would be required to obtain HRB permits in order to pursue development of the Parking Garage Project and the Hotel Project, it provided assurance to Defendants that no other approvals would be required.

17. Finally, the City agreed in the MOU to work in good faith with Defendants for the development of Parking Garage Project and Hotel Project. The City has done so and acted in good faith. The City's good faith is evidenced by its consistent application of the Prior City Code to the projects, as contemplated by the MOU.

18. The Hotel Project is vested under the Prior City Code. Defendant's significant efforts to secure approvals for the Parking Garage Project, including the demolition and relocation of other buildings in reliance on the application of the Prior City Code, and the MOU, the Hotel Project is vested in the Prior City Code, and so the Current City Code requirements that are the subject of Plaintiffs' complaints are not applicable.

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RESPONSE TO THE COMPLAINT

FOR A FIRST DEFENSE
(General Denial)

19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 1 of the Complaint, and so deny the same.

20. Defendants admit the allegations of paragraph 2 of the Complaint.

21. Defendants admit the allegations of the first sentence of paragraph 3 of the Complaint. Defendants deny the allegations of second sentence as stated but admit that Defendant are affiliated entities that work with each other, often for the same development goals, including those outlined above. Defendants admit generally subsections a, b and c of paragraph 3, but with respect to property descriptions in the public record, crave reference to the same.

22. The allegations in paragraph 4 of the Complaint are legal conclusions to which no response is necessary; however, to the extent such allegations require a response, they are denied.

23. Defendants deny the allegations of paragraph 5 of the Complaint.

24. Defendants deny the allegations of paragraph 6 of the Complaint.

25. Defendants deny the allegations of paragraph 7 of the Complaint.

26. Defendants deny the allegations of paragraph 8 of the Complaint.

27. The allegations in paragraph 9 of the Complaint are legal conclusions to which no response is necessary.

28. The allegations in paragraph 10 of the Complaint are legal conclusions to which no response is necessary.

29. Defendants admit so much of the allegations in paragraph 11 of the Complaint that allege the parties and projects at issue are governed by the zoning ordinance of the City of Beaufort. Further, Defendants admit that the "Apartment Project" as identified in the Complaint is governed

by the version of the zoning ordinance of the City of Beaufort adopted on June 27, 2017 and updated on July 10, 2018 ("Current City Code.") However, Defendants deny that the Current City Code for purposes of the matters alleged in the Complaint apply to what the Complaint calls the Hotel Project and the Parking Garage Project. Both the Hotel Project and the Parking Garage Project by agreements with approvals from the City and substantial reliance by Defendants on the actions of the City are vested under the Beaufort zoning ordinance prior to its change on June 27, 2017. (As noted above, the prior code is called herein "Prior City Code.")

30. Defendants admit the allegations in paragraph 12 of the Complaint but deny that the "Beaufort Code" as defined in the Complaint apply to them and crave reference to the allegations of paragraph 11 above.

31. In response to the allegations of paragraph 13 of the Complaint, Defendants crave reference to the Current City Code.

32. In response to the allegations of paragraph 14 of the Complaint, Defendants crave reference to the Current City Code.

33. In response to the allegations of paragraph 15 of the Complaint, Defendants crave reference to the Current City Code.

34. In response to the allegations of paragraph 16 of the Complaint, Defendants crave reference to the Current City Code.

35. Defendants admit the allegations in paragraph 17 of the Complaint as stated, but expressly allege that the Current City Code does not apply to the Hotel Project and the Parking Garage Project.

36. In response to the allegations of paragraph 18 of the Complaint, Defendants crave reference to the Current City Code.

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37. Defendants deny the allegations of paragraph 19 of the Complaint to the extent they are inconsistent with the below allegations regarding the timeline and specifics of the Hotel Project as outlined in paragraph 24.

38. Defendants deny the allegations of paragraph 20 of the Complaint to the extent they are inconsistent with the below allegations regarding the timeline and specifics of the Hotel Project as outlined in paragraph 24.

39. Defendants deny the allegations of paragraph 21 of the Complaint to the extent they are inconsistent with the below allegations regarding the timeline and specifics of the Hotel Project as outlined in paragraph 24.

40. Defendants deny the allegations of paragraph 22 of the Complaint to the extent they are inconsistent with the below allegations regarding the timeline and specifics of the Hotel Project as outlined in paragraph 24.

41. Defendants deny the allegations of paragraph 23 of the Complaint to the extent they are inconsistent with the below allegations regarding the timeline and specifics of the Hotel Project as outlined in paragraph 24.

42. Defendants deny the allegations of paragraph 24 of the Complaint to the extent they are inconsistent with the below allegations regarding the timeline and specifics of the Hotel Project as outlined above.

43. Defendants admit the allegations in paragraph 25 of the Complaint subject to the allegations regarding the timeline and specifics of the Parking Garage Project as outlined in paragraph 30.

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44. Defendants admit the allegations in paragraph 26 of the Complaint subject to the allegations regarding the timeline and specifics of the Parking Garage Project as outlined in paragraph 30.

45. Defendants admit the allegations in paragraph 27 of the Complaint subject to the allegations regarding the timeline and specifics of the Parking Garage Project as outlined in paragraph 30.

46. Defendants admit the allegations in paragraph 28 of the Complaint subject to the allegations regarding the timeline and specifics of the Parking Garage Project as outlined in paragraph 30.

47. Defendants deny the allegations in paragraph 29 of the Complaint to the extent inconsistent with allegations regarding the timeline and specifics of the Parking Garage Project as outlined in paragraph 30.

48. Defendants deny the allegations in paragraph 30 of the Complaint. The timeline and specifics of the Parking Garage Project are as outlined in the allegations above.

49. Defendants admit the allegations in paragraph 31 of the Complaint.

50. Defendants admit the allegations in paragraph 32 of the Complaint.

51. Defendants admit the allegations in paragraph 33 of the Complaint.

52. Defendants deny the allegations in paragraph 34 of the Complaint.

53. Defendants deny the allegations in paragraph 35 of the Complaint.

54. In response to the allegations of paragraph 36 of the Complaint, Defendants reallege the paragraphs above.

55. Defendants admit the allegations of paragraph 37 of the Complaint.

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56. The allegations in paragraph 38 of the Complaint are legal conclusions to which no response is necessary.

57. Defendants deny the allegations in paragraph 39 of the Complaint.

58. The allegations in paragraph 40 of the Complaint are legal conclusions to which no response is necessary.

59. Defendants deny the allegations in paragraph 41 of the Complaint.

60. In response to the allegations of paragraph 42 of the Complaint, Defendants reallege the paragraphs above.

61. Defendants deny the allegations in paragraph 43 of the Complaint.

62. Defendants deny the allegations in paragraph 44 of the Complaint.

63. Defendants deny the allegations in paragraph 45 of the Complaint.

64. Defendants deny the allegations in paragraph 46 of the Complaint.

65. In response to the allegations of paragraph 47 of the Complaint, Defendants reallege the paragraphs above.

66. Defendants deny the allegations in paragraph 48 of the Complaint.

67. Defendants deny the allegations in paragraph 49 of the Complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

68. The Complaint or parts of it, fail to state a claim upon which relief may be granted and must be dismissed pursuant to Rule 12(b)(6), SCRCP.

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FOR A THIRD DEFENSE
(Failure to Exhaust Administrative Remedies/Ripeness)

69. The allegations of the Complaint that relate to the zoning of the Apartment Project as identified in the Complaint are not ripe for review as the City has not completed the administrative process for that project.

FOR A FOURTH DEFENSE
(Lack of Standing)

70. The Plaintiffs lack standing to seek the claims in the Complaint.

FOR A FIFTH DEFENSE
(Equitable Estoppel)

71. The Plaintiffs have known for years of the development plans of the Defendants, and had multiple discussions with the Defendants regarding the development plans. The Defendants relied upon Plaintiffs' (apparently false) communications in favor of the development plans. Defendants now having moved forward with such plans in partial reliance on the cooperation of the Plaintiffs, Plaintiffs are equitably estopped from claiming Defendants plans may not go forward.

FOR A SIXTH DEFENSE
(Laches)

72. The Plaintiffs are barred by the doctrine of laches from asserting these claims as they waited until Defendants had substantially and detrimentally relied on the City as stated herein to develop the Parking Garage Project and the Hotel Project as stated herein.

FOR A SEVENTH DEFENSE
(Vested Rights)

73. As alleged above, Defendants became vested in their rights to develop and construct the Hotel Project and the Parking Garage Project under the Prior City Code by virtue of the many

actions alleged that it undertook in reliance on and with the cooperation of the City under the Prior City Code.

74. Alternatively, the City is estopped from asserting that the Current City Code applies to the Hotel Project and the Parking Garage Project given the substantial reliance of Defendants on the many assertions of the City, the issuance of City demolition permits, the demolition of structures by the Defendant in reliance on the City, and the binding agreements between the City and the Defendants regarding the Hotel Project and the Parking Garage Project.

WHEREFORE, HAVING FULLY RESPONDED to the allegations of Plaintiffs' Complaint, Defendants pray the Court for the following relief:

A. Dismissing all claims asserted against Defendants in Plaintiffs' Complaint;

B. Awarding Defendants their attorneys' fees and costs in defending against the claims in the Complaint; and

C. For such other and further relief as the Court deems just and proper.

ELECTRONICALLY FILED - 2021 May 10 2:36 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700663

Respectfully submitted,

Dated: May 13, 2021

BURR & FORMAN LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
SC Bar # 10137
nnicholson@burr.com
G. Wade Leach, III
SC Bar # 104841
wleach@burr.com
1221 Main St., Suite 1800 (29201)
P.O. Box 11390 (29211)
Columbia, South Carolina
Tel. (803) 799-9800
Fax. (803) 753-3278

Attorneys for Defendants
Beaufort Inn, LLC and
303 Associates, LLC

ELECTRONICALLY FILED - 2021 May 13 4:04 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700663

EXHIBIT A

ELECTRONICALLY FILED - 2021 Sep 16 4:44 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700663

ELECTRONICALLY FILED - 2021 May 10 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700668

This instrument was prepared by the law firm of
Tupper, Grimsley & Dean, P.A.
611 Bay Street
Beaufort, SC 29902
843/524-1116

TG&D File #11078-RE

**********AREA ABOVE THIS LINE RESERVED FOR RECORDING**********

STATE OF SOUTH CAROLINA)
) EASEMENT AGREEMENT
COUNTY OF BEAUFORT)

WHEREAS, 303 Associates, LLC, is the owner of record of certain real property located in Block No. 59 of the City of Beaufort, which property is currently utilized as a private parking lot and is more completely described hereinbelow; and

WHEREAS, 303 Associates, LLC, ("303"), in exchange for certain real property owned by the City of Beaufort, has agreed to grant an easement to the City of Beaufort ("City") as is set forth by and through this instrument.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, 303 Associates, LLC, hereby grants to the City of Beaufort a permanent easement upon the subject property for vehicle parking, subject to the terms and conditions set forth herein.

1. Property.

ALL those certain pieces, parcels or tracts of land, with all improvements thereon, situate, lying and being in the City of Beaufort, County of Beaufort, State of South Carolina, being Lots A, B and C, Block 60, of the City of Beaufort. The property is further identified as Parcel "B" containing 0.492 acres, as shown on a plat prepared by David S. Youmans, R.L.S., dated May 21, 1999, revised May 8, 2000, and recorded in Plat Book 74 at Page 200, Office of the Register of Deeds for Beaufort County, South Carolina.

This being the same property acquired by 303 Associates, LLC, by deed of Port Royal Sound Company, LLC, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Records Book 1304 at Page 630.

Tax Ref: R121 004 000 0926 0000

2. Purpose.

The purpose of this easement as to the property hereinabove described is to grant to the City of Beaufort a permanent easement for vehicle parking for twenty-seven (27) specifically designated individual parking spaces on its property, said spaces

ELECTRONICALLY FILED - 2021 May 10 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700668

to be assigned and/or utilized by the City at its discretion.

3. Conditions.

303 intends to make application to the City of Beaufort for extensive development of the property which is the subject of the easement described herein, such development may include, among other things, a parking facility as well as retail establishments, residential accommodations, etc., on the subject property and adjoining properties. All costs and expenses of such development are the responsibility of 303 Associates, LLC.

In the event that the development plans submitted by 303 are approved, City understands and accepts that the resulting construction activity will cause parking to be substantially restricted and perhaps completely unavailable for use on the subject property for approximately twelve (12) months. Upon completion of construction of the contemplated facilities by 303, all parking rights, to-wit: 27 specifically designated individual parking spaces granted under this Easement Agreement will become of full force and effect.

4. Liability / Indemnification.

City shall hold 303 harmless and indemnify 303 from any liability resulting from City's utilization of the property described herein, for the purposes described herein.

5. Maintenance and Repairs.

303 shall be responsible for the construction of the improvements contemplated and all subsequent repairs and maintenance to the improvements.

This Easement Agreement executed this 9 day of October, 2007.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

303 Associates, LLC

By: _____

Its: Member

City of Beaufort

By: _____

Its: City Manager

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

Personally appeared before me the undersigned witness who made oath that s/he saw the within named 303 Associates, LLC, by Richard H. Stewart, its Member, sign, seal and as its act and deed deliver the within written Easement Agreement, and that s/he with the other witness above named witnessed the execution thereof.

SWORN TO BEFORE ME, this 19 day of October, 2007.

Stephanie J. Datz
Notary Public for South Carolina
My Commission Expires: 3/14/15

Witness

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

Personally appeared before me the undersigned witness who made oath that s/he saw the within named City of Beaufort by Scott Dadson its City Manager, sign, seal and as its act and deed deliver the within written Easement Agreement, and that s/he with the other witness above named witnessed the execution thereof.

SWORN TO BEFORE ME, this 9th day of October, 2007.

Bruce W. Fay
Notary Public for South Carolina
My Commission Expires: 8/16/11

Witness

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EXHIBIT B

ELECTRONICALLY FILED - 2021 May 10 4:04 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700263

RECORDED
2014 Jan -06 08:24 AM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

4 pgs
10 cc
Tupper

BK 03292 PGS 2750-2753
FILE NUM 2013071971
12/17/2013 11:59:41 AM
REC'D BY D EVANS RCPT# 72027
RECORDING FEES 10.00
County Tax 2,970.00
State Tax 7,020.00

ADD DMP Record 1/3/2014 11:55:14 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R121	004	000	0850	0000	00

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LIMITED WARRANTY DEED

WHEREAS, the Acknowledgment, Ratification and Power of Attorney recorded on this date at the Register of Deeds for Beaufort County, South Carolina, in Record Book ___ at Page ___ acknowledges, authorizes and confirms the within conveyance; 3292 2745

KNOW ALL MEN BY THESE PRESENTS, that **Port Republic Square, LP** in the state aforesaid for and in consideration of the sum of **TWO MILLION SEVEN HUNDRED THOUSAND DOLLARS and 00/100 ($2,700,000.00),** to it in hand paid at and before the sealing of these presents by **Beaufort Inn, LLC,** 2015 Boundary Street, Beaufort, SC 29902, in the state aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth below, unto **Beaufort Inn, LLC,** its successors and assigns forever, the following described property, in fee simple, to-wit:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION.

BEAUFORT COUNTY TAX MAP REFERENCE: R121-4-0850; 858; 859

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the said **Beaufort Inn, LLC** its successors and assigns, forever.

AND, it the said **Port Republic Square, LP,** does hereby bind itself and its successors and assigns to warrant and forever defend, all and singular, the said premises unto the said **Beaufort Inn, LLC,** its successors and assigns, against it and its successors and assigns.

ADD DMP Record 1/3/2014 11:56:39 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R121	004	000	0858	0000	00

ADD DMP Record 1/3/2014 11:56:53 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R121	004	000	0859	0000	00

ELECTRONICALLY FILED - 2021 May 10 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700668

ELECTRONICALLY FILED - 2021 May 10 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700668

WITNESS ITS HAND(S) AND SEAL(S) this 16th day of December, 2013.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness signature

Notary signature

PORT REPUBLIC SQUARE, LP

By: PR Square, Inc.
Its General Partner

By: _____
John M. Trask, Jr.
Its Authorized Officer

By: _____
Frederick G. Trask
Its Authorized Officer

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that John M. Trask, Jr. and Frederick G. Trask as Authorized Officers of PR Square, Inc, General Partner of Port Republic Square, LP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me
this 16 day of December, 2013.

Notary Public

My Commission Expires: 8.21.16

ELECTRONICALLY FILED - 2021 May 10 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700668

WITNESS ITS HAND(S) AND SEAL(S) this 13 day of December, 2013.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Erica Robinson
Witness signature

Ashley Killian
Notary signature

PORT REPUBLIC SQUARE, LP

By: Estate of Martha D. Tucker
Its General Partner

By: George L. Tucker, Jr.
George L. Tucker, Jr.
Personal Representative

STATE OF North Carolina)
)
COUNTY OF Clay)

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that George L. Tucker, Jr. as Personal Representative of the Estate of Martha D. Tucker, Managing Partner of Port Republic Square, LP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me
this 13 day of December, 2013.

Ashley Killian
Notary Public

My Commission Expires: 4-13-2016

(affix seal)

ASHLEY KILLIAN NOTARY PUBLIC CLAY COUNTY, N.C. MY COMMISSION EXPIRES 04/13/2016

ELECTRONICALLY FILED - 2021 May 10 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700663

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with improvements thereon, situated in the City of Beaufort, County of Beaufort, and being a portion of Block 70 consisting of 1.887 acres, more or less, and being more fully shown on a plat prepared by David S. Youmans, RLS, entitled "Closing Plat Prepared for Beaufort Inn, LLC, Portion of Block 70, City of Beaufort, Beaufort County, South Carolina," dated September 5, 2013, a copy of which is recorded in Plat Book 137 at Page 193 at the office of the Register of Deeds for Beaufort County, South Carolina. SAVE AND EXCEPTING all that certain piece of property described on the referenced plat as "Old 30' Alley" and shown on the Beaufort County Tax Maps as R120 004 000 0996 0000.

This is the same real property or portions of the same real property acquired by the Grantor herein by deeds recorded in Book 533 at Page 2491; Book 542 at Page 1998; and Book 542 at Page 2005 at the office of the Register of Deeds for Beaufort County, South Carolina.

This deed was prepared by Thomas C. Davis, Esquire, of the law firm of Harvey & Battey, P.A., 1001 Craven Street, Beaufort, South Carolina 29902.

EXHIBIT C

ELECTRONICALLY FILED - 2021 Sep 16 4:44 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700263

ELECTRONICALLY FILED - 2021 May 10 2:04 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700663

A meeting of the Historic District Review Board was held on **August 17, 2016 at 2:00 p.m.** in the City Hall Planning Conference Room, 1911 Boundary Street. In attendance were Chairman Joel Newman and board members Barbara Laurie, Quinn Peitz, John Dickerson, Chuck Symes, and Lauren Kelly, planning staff.

In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80(d) as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.

CALL TO ORDER

Chairman Newman called the meeting to order at 10:02 a.m.

MINUTES

Mr. Peitz made a motion, seconded by Mr. Dickerson, to approve the minutes of the July 13, 2016 Historic District Review Board meeting. Mr. Symes said to add that there were no public comments made. **The motion to approve the minutes as amended passed unanimously.**

REVIEW OF FULL BOARD PROJECTS

1511 King Street, Identified as R120, Tax Map 4, Parcel 595

Alterations and additions

Applicant: Allen Brooker (HR16-26) / (BB16-03)

The applicant is requesting approval for alterations to the structure, along with Bailey Bill approval for this project.

Ms. Kelly said this structure is contributing and appears on the 1905 Sanborn maps. The footprint has been modified; the wing with the existing bathroom, dining room and kitchen was added after 1958. The applicant is proposing interior renovations, restoration/repair of the front porch, and the addition of a window to the rear. The applicable guidelines are listed in the staff report, she said.

The footprint in the Bailey Bill application is confusing, Ms. Kelly said: Will the whole concrete porch be removed? If so, staff recommends that the applicant use period construction (i.e., a pier foundation porch) for replacement.

There is a window in the King Street-side bedroom that has been discussed with the applicant, Ms. Kelly said. Is there a way to use plantation or other shutters so the boards can be removed? The history of the windows is that a modification occurred at the time of the addition, and it doesn't match the original windows, so the rear window should be made to match the historic windows.

Staff recommends approval with consideration of staff and board comments, Ms. Kelly said.

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Mike Sutton said the porch is "a typical 1950s-era porch replacement" of CMU block with a concrete cap and piers made of "brick of that era." It will be repaired, not replaced. He described what had happened to it, and said the house had begun to rot away at the front as a result. The intention is to pull the staircase off, remove the tree root from in front of the house and the concrete cap, repair the front of the house, recast the concrete cap, and add a wooden staircase. If they pull off the cap, and because of "the amount of work required to repair the house," or if "crumbling effects happen on the CMU, and it gets to the point of no return," Mr. Sutton said, they will take it down and put on a wooden porch, as staff suggests, but they don't anticipate that happening.

Chairman Newman asked, when the slab is off, if there will be enough height to build a wooden porch. Mr. Sutton said there's a chance of that, and they "could frame it with conventional framing and do a wooden porch deck," which he thinks the owners would like. He expects to find pier and framing damage when he pulls off the cap, and they will spend time "fixing those initial piers." The columns are original, he said, and they intend to keep those and the piers, but the bottoms of the original columns will be gone "once we touch them."

The plantation shutters are "an interior issue," Mr. Sutton said, and they're "a non-issue" for the homeowners. He considers them "a furniture issue, in the interior" of the house, so he feels shutters should not concern him or the HRB.

Maxine Lutz, Historic Beaufort Foundation (HBF), asked if the plan was to keep the brick encasement, and Mr. Sutton said yes. HBF's Preservation Committee would prefer a wooden deck, Ms. Lutz said, but they understand the process. Mr. Sutton said they would offer the homeowners a cost analysis/comparison on a wooden deck.

Mr. Symes asked about the back deck. Mr. Sutton said there are two non-functional chimneys to be removed. There was probably a window that was converted to a closet, and that's the location for the new window. They need an egress window there per code, so they will have to have a larger window, in any case.

Mr. Dickerson thanked the homeowners for taking on the project. **Mr. Peitz made a motion to approve the project based on staff recommendations; if the porch cannot be repaired, the board asks that the applicants build a wooden porch, per staff's comments. Mr. Dickerson seconded the motion. The motion passed unanimously.**

802 Bay Street, Identified as R120, Tax Map 4, Parcel 938
Alterations and additions
Applicant: Beaufort Build Design, LLC, for 303 Associates, LLC (HR16-29)
The applicant is requesting approval for alterations to this structure, specifically modifications to the shopfront windows and doors along Bay Street and additions of window openings along Scott Street.

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Ms. Kelly said this property is the Saltus House building, circa 1796. It was a house, and it has gone through many evolutions over time "as shopfronts." The applicant wants to modify the fenestration in the shopfront along the front and side of the original historic structure, and add fenestration on the side of the rear addition as well as some functional outdoor space.

Applicable guidelines are listed in the staff report. Staff feels this is a great project, Ms. Kelly said. The Preservation Manual focuses on restoring the original façade, but that does not seem appropriate in this context, since it is a commercial building. Ms. Kelly said the restoration of a wood shopfront with additional glazing, and "glazing and activation" further down the Scott Street façade, is "a welcome modification." The patio component encroaches into city right-of-way; HRB approval would not release the applicant from the need to obtain leases or an encroachment permit from the city. Staff recommends final approval of this request as submitted, Ms. Kelly said.

Ms. Lutz said HBF thinks it's a great project. They have asked **Adam Biery** to let them know "if there is any original tabby exposed" when he goes into the original building. Ms. Laurie asked what the purpose of the building would be, and Mr. Biery said it would be a restaurant downstairs, with the upstairs use unchanged.

Mr. Symes asked about a plan involving the store to the right of this building, and Mr. Biery said, "We're still working through that." There was general approval for the plan and design from the members of the board. Chairman Newman said it's a great improvement to animate the Scott Street side. **Mr. Dickerson made a motion for final approval of the project, second by Mr. Peitz. The motion passed unanimously.**

707 Church Street, Identified as District R120, Tax Map 4, Parcel 902
New construction, alterations, additions
Applicant: Tom Michaels (HR16-30)
The applicant is requesting approval for modifications to an existing structure, as well as approval for a new residence.

Ms. Kelly said this project involves the HRB and the Zoning Board of Appeals (ZBOA), because part of the application is to subdivide the existing lot, which requires a variance, and the ZBOA has stated that it prefers to have the HRB's recommendation first.

The lot, on the corner of Duke and Church Streets, has an existing structure on the rear of the lot, Ms. Kelly said. It is an old structure that is on the 1912 Sanborn map, but it has gone through multiple iterations and was "not surveyed in the 1997 survey"; therefore, it is "considered a noncontributing structure."

In July, the HRB gave conceptual approval for the new construction with a

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recommendation for the ZBOA to approve the variance for subdivision of the lot, Ms. Kelly said. When the project went to the ZBOA in July, it was tabled for 90 days, and the board requested that the project come back to the HRB, for the board to look at how the existing structure would be renovated and how parking would be handled. The ZBOA also wanted the HRB to review the site plan for the new house, including a tree survey.

The city arborist went to look at the trees, Ms. Kelly said. Near the corner of the existing structure, there is a very large live oak to be preserved. Two laurel oaks in the footprint of the proposed structure are to be removed. A sycamore close to Duke Street should be retained, if possible, while a pecan tree in the building footprint should be removed.

Ms. Kelly said the applicant has provided the HRB with the information that was requested by the ZBOA: "a design for how a new porch would be relocated on the original existing structure," which has an altered porch, which she said is "more of a stoop." The proposal is "to move that to Church Street," she said, so if the subdivision is permitted, and the new house is built, that porch "wouldn't be looking into the rear of the (new) house and into a parking space." With this change, the existing house, which has a Church Street address, would "actually be fronting Church Street," Ms. Kelly said. Also, the applicant is bringing the proposal for the new construction to the HRB.

The existing structure is likely located where it is because there used to be a pond in the area, Ms. Kelly said, which caused the buildings at this corner to be set back; she indicated this at 706 Charles Street, which is a contributing historic structure. "The two northern quadrants of this corner" are Beaufort Housing Authority buildings built in the 1907s or 1980s that "are not consistent with the building pattern in the Northwest Quadrant area."

Staff supports this project, Ms. Kelly said, and feels it "sets a good precedent for this corner, if and when these noncontributing structures redevelop. It creates an infill opportunity and allows "the restoration of a building that is in significant need of repair," she said.

Mr. Peitz asked if the ZBOA is likely to approve this project if the HRB approves it. **Libby Anderson** told him that the HRB's approval would be a factor in the six criteria that the ZBOA considers in its decision about granting a variance. "But they do want your input," she said.

Tom Michaels said the ZBOA "did not request us to come back to you for the project. They wanted to *see* the project to make the determination, so you have no input on their decision." He feels the HRB "(has) more to say on this project" than the ZBOA does because "they wanted to see . . . all this stuff (that) is your purview."

Chairman Newman said he had a small project before the ZBOA at its last meeting, so he

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"saw the pros and cons" presented and the deliberations of the ZBOA.

Ms. Lutz said HBF had expressed at the previous HRB meeting that they are not in favor of subdivision of this lot. "This is false to call" what is planned for the "existing historic house" a restoration, she said, "when it will be altered significantly." Also, "flipping" the house's orientation means it will not be as it was originally, nor as it is now, Ms. Lutz said. Therefore, HBF would not like to see that done.

About the new construction, Ms. Lutz said the proposed "house is too big for that subdivided lot." There will be two lots of less than 2,500 square feet, and the minimum lot size is 4,000 square feet, which is a significant decrease. "There will be nothing left but setback," she said. Mr. Peitz asked Ms. Lutz if she had opposed this project at the ZBOA meeting. Ms. Lutz said yes.

Ms. Laurie said she doesn't understand why this application is back at the HRB "if it's a ZBOA issue." She noted that staff "hasn't addressed parking" yet, and she knows there is little parking on Duke Street for its residents now, so it will "get to a point where it's a tremendous problem." Plans to continue renovating "the other side of Bladen, going to Ribaut Road" will add to the problem of people endangered when drivers "zoom through there," Ms. Laurie feels. This project represents a problem with the "overall goal to infill the Northwest Quadrant," she said, and its effects on "the people who are there now." There is already "no parking on Church Street . . . at all." She has no opposition to owning property and wanting to develop it, Ms. Laurie said, but she has "concerns about how (development) would play out" when it's done.

Ms. Kelly said the site plan had not been developed fully, so it was difficult to see where the on-site parking would be; since then, Mr. Michaels has "detailed" the site plan to show the parking for two cars at each house. Mr. Symes asked the width of parking spaces. Chairman Newman said most parking spaces are 10', but "you could get away with 9'."

The live oak is 4.5' to 5' in diameter, Mr. Symes said, so if the two lots are split, measuring from the proposed lot line, it's only 6.5' to the exposed roots of the tree. To the trunk of the live oak is 10' from that proposed property line. He feels putting in two parking spaces with space between them is "unrealistic." Another concern, Mr. Symes said, is if the porch is moved, there will need to be footings to support the deck, which would be in the tree's root pattern. It's 2' to 3' from the first footing to the trunk of the tree. He asked if the applicant knew if that would have an impact on the health of the live oak, which is supposed to be preserved.

Mr. Peitz asked "the lot coverage of the building versus the lot." Ms. Kelly said she thinks it's less than 50%. The footprint of the proposed cottage is about 980 square feet, and the parking, "if it's not paved," is considered pervious "and would not count toward that number." She thinks "it's around 40%."

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Mr. Peitz asked if there were other small houses in this neighborhood. Ms. Kelly said they had done a comparison, and there are "a number of lots of similar size (that) have houses on them." Mr. Symes asked if those houses are single-story or 1.5-story. Ms. Kelly said they are, but one house is a 2-story. Ms. Laurie said the lots that Ms. Kelly had cited are larger than this subdivided lot is proposed to be. Ms. Kelly said they're similar in terms of square footage. There are larger lots, and some on which both buildings face the side streets on a subdivided lot. "That's a building pattern that's been established," she said. "It's just a question of whether or not it should continue." There was a discussion of which of the houses on these lots under discussion were older and which were newer.

Chairman Newman said there are a lot of examples of very small lots in the Historic District, and in the original review, the board had discussed this. He feels the problem is with what is proposed for the existing house, which he said, "is not a restoration." It's a redevelopment of the existing house. **Jay Weidner** had given a clear outline of what this house might have been in the past, Chairman Newman said, "but it's been compromised again and again," so there's little fabric there to restore. He doesn't have a problem with the subdivision of the lot, he said, but he does have a problem with the ZBOA's concerns and agrees with the board's comments. The applicant is "putting an awful lot of pressure" on the trees that are supposed to be saved, he said, and he feels that the new construction is "too big."

Chairman Newman said the HRB's comments at the last meeting had centered on making the new house smaller, but so far, the applicant has not done that successfully. The small lots in the area have houses on them that are "pretty small." The proposed footprint is too large, he said, and the scale is wrong for the house that is next to it. The board had also commented about "turning the gable the other direction," and making the dormers come out in the north and south; the overall roof profile is "quite a high plate."

Mr. Peitz asked what happens if the HRB doesn't approve the new structure, or if they ask Mr. Michaels to come back with something else. Chairman Newman said the ZBOA asked the HRB to determine if the new house is appropriate. He thinks the subdivision is okay, but not the new house. Mr. Symes agreed and said he had said in July that if the subdivision were approved, he felt the house should be a single story. He's also concerned about the parking, moving the deck, and damage to the live oak.

Chairman Newman said he doesn't feel the driveway is a big problem, but requiring a single-story house forces Mr. Michaels to "spread it out." It doesn't solve the issue of the "tightness of the site for parking" and for "the tree cover on it." Chairman Newman said he's more concerned about the size of the overall footprint than about the height of the house. A small, 2-story house "would be a lot more user-friendly in terms of utilizing the subdivided site" and protecting the trees' viability.

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The property owner, **Labi Kryeziu**, read a letter stating that the goal of this project is "to bring value to the community." He commended the City of Beaufort for the Duke Street streetscape. The subdivision request, restoration of the existing house, and building a new house are intended to further that beautification for years to come.

They measured the driveway, Mr. Kryeziu said, and with the subdivision, it would 11', not 9', from the existing porch to the property line. Mr. Symes asked about the distance from the property line to the tree trunk, and Mr. Kryeziu said that's 9'.

Mr. Michaels said parking "is provided by Duke Street," so they are not required to have on-site parking for the new house. Chairman Newman said though the parking is available on Duke Street now, the burden on the parking is going up, as Ms. Laurie had said.

When asked if he plans to live in either property, Mr. Kryeziu said he might eventually live in the existing house.

Mr. Dickerson said the Civic Master Plan's intent was to have infill "across the entire downtown area." Many lots in this area "are actually smaller" than what is being proposed with this subdivision, so he doesn't oppose it. He understands the concern about the relative mass and scale of the new house to the existing house. This is a significant investment in the community, Mr. Dickerson said, "and that is important . . . to grow the community," so he'd like to give the property owner the opportunity to infill this lot and "make it an addition to this community."

Mr. Symes said the HRB approved the subdivision at the last meeting, and they are now considering whether the proposed structure is acceptable or needs to be redesigned, and whether moving the deck on the existing structure is okay. He's hearing now that "it's not acceptable, and needs to go back for some modifications."

Chairman Newman said the ZBOA had sent this project back to the HRB for the board to say if what the applicants propose is a suitable architectural solution for this property; if the HRB believes it is, the ZBOA will consider the HRB's recommendation for subdividing this property. There were "missing pieces" when the project was before the HRB in July that were also missing when the applicant went to the ZBOA. The application to the ZBOA was tabled because of the tree issues and public comments, Chairman Newman said, and they felt as if they didn't have enough information. Now the HRB has seen the arborist's report and is "looking at essentially the same house," and they "can see more directly the impact on the trees."

Mr. Michaels reiterated that the ZBOA "did not request (that we) come back to you to review this further," but wanted the HRB "to present the information to them so they could make a decision," which Mr. Michaels felt was "inappropriate because your board

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has the purview for approval."

Mr. Peitz said he could make a motion to table the application, rather than the board denying it, which would allow the applicants to "think about our comments," because the HRB seems to have a sense that the subdivision might work, and "possibly rework" the plans and "come back to us." **Mr. Peitz made a motion to postpone the application for up to 90 days. Mr. Dickerson seconded the motion for discussion**. Chairman Newman said subdivision is possible, but the architectural solution may not be "the best possible solution right now." Chairman Newman thinks the subdivision could be better at 55-45, rather than 50-50. This would provide a better solution for the existing house and allow for a smaller footprint for the new house with the trees that are to be preserved. Mr. Symes added that on the existing house, a "specialist" should be engaged to assess "putting the footings in and . . . the driveway," to avoid impact on the live oak and save it. If the specialist determines these are not concerns, then Mr. Symes said he's "fine with it," but the board needs that information.

Ms. Laurie said she thinks the HRB should "appreciate the process" of the ZBOA in making its determination, and with the motion to table, the applicants can come back to the HRB after the ZBOA "say(s) what they need to say," now that Mr. Michaels has the information from the arborist, for example. Mr. Michaels said he's concerned because "the ZBOA wanted to see what the building (will look) like, so if they approve the structure, that takes (the HRB) out of" the process.

Mr. Peitz said the HRB's sense is that the new structure "is too big" for the potential subdivision. If the elevations change, the HRB would be open to that, and the applicant could then take the project to the ZBOA. Mr. Michaels said that's what he and Mr. Kryeziu would like to do, because they feel that the HRB is "the appropriate board to proceed with first." **The motion passed unanimously.**

Mr. Michaels asked if the applicant could submit for demolition of the existing structure, since it is non-contributing. Ms. Kelly said anyone could apply for demolition of any building.

Ms. Lutz said it should be defined when public comment is appropriate and/or allowed during HRB meetings. Chairman Newman said it is his understanding that a public hearing is usually held at the beginning of the review process. In this case, this was not an application for a demolition, and there was not a public hearing scheduled. Ms. Lutz said other people at the meeting might have wanted to speak about this project, but Chairman Newman saying this was not a public hearing "may have signaled to them that they could not."

Chairman Newman asked Ms. Kelly what the "official requirement" is concerning public comment. Ms. Kelly said technically, if there is an official public hearing, letting the public speak is required. The procedure for HRB and Design Review Board meetings has

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been to give people who are interested in projects "an opportunity to speak," and although that may not be "a requirement," it is "a policy that has been adopted." She said it's up to the chairman. Mr. Symes asked if the public could comment the next time this project comes to the HRB. Chairman Newman said he has "no objection" to that. Ms. Kelly said it "seems that would be appropriate."

<u>918 Craven Street, Identified as R120, Tax Map 4, Parcel 850</u>
New construction
Applicant: Structured Parking Solutions for Beaufort Inn, LLC (HR16-27)
The applicant is requesting approval to construct a 496-space, 186,000 square-foot (40,000 square feet/floor) parking garage.

Chairman Newman said the procedure for this would be for Ms. Kelly to make her presentation, then "allow for some public comment," followed by the board's comments.

Ms. Kelly said this is an "interesting" project relative to 707 Charles Street, because it's "a much bigger project on a much bigger lot, all within the Historic District," which speaks to the district's "diversity." It's a "challenging" project for the HRB to review because it's "the biggest project that's ever come (to) the Historic District," in terms of height, mass, and scale, she said, so it may "take a little while to come to the best possible solution."

It's also significant because "it has a defined use associated with it," which is unusual in the Historic District, Ms. Kelly said; use is not typically "take(n) into consideration" when evaluating design for structures there. It's use – structured parking – "has long been identified as a need of the city and of this core commercial district," she said. A big challenge to the HRB will be "to evaluate how much integration" the design and use of the building "should have in evaluating how it fits into the context of the Historic District."

Ms. Kelly said there has been a lengthy review of "previous plans and studies," and she described "how we evaluate *all* projects" in the Historic District: First, planning staff looks at the site/the existing context. On this site, there is a historically significant structure on the property that is listed as "contributing" on the 1997 Beaufort County Historic Sites Survey. The other site that this project would have an impact on is a noncontributing structure. Both would require a public hearing for demolition.

Staff evaluates the site, Ms. Kelly said, to see how it has been used historically, by looking at the Sanborn maps and photos. This site has been used and "documented since 1889." This site's uses have ranged from commercial, "and even industrial" – as the location of a ginnery and a livery – "into the residential fabric of the city," she said. Staff "also evaluated the surrounding context" of the buildings surrounding this site and their historical significance. Those that are historically significant date from the early-

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1800s.

Ms. Kelly said staff looked at all of the plans, studies, and applicable guidelines for this area, mainly the Preservation Manual and the Preservation Manual Supplement, also known as the Milner guidelines. They also looked at planning studies for the core commercial area of downtown, beginning in the 1970s. In doing so, she said, it became clear that parking has been seen as a problem since then, or was seen as a problem that would occur as further commercial development happened.

After the staff report was prepared and published, Ms. Kelly said, a respected professional told her that "it's pretty irresponsible to look at this building irrespective of the use, since parking has been such an issue" over time.

Ms. Kelly said these studies indicated that discussion began in the mid-1990s about a parking structure there, and appropriate sizes and locations were considered; this was one site among three or four others in this general area that was evaluated for its potential as a parking structure, she said. Also, some of the parking studies commissioned by the city, Main Street Beaufort, and others looked at mitigation techniques (e.g., liner buildings) for buildings like parking structures. A liner building is not a requirement of the city's ordinance in this area, Ms. Kelly said, though in other zoning districts, a parking deck is required to have retail on the ground floor. Liner buildings have been mentioned "so many times in all these plans and studies" because of "a real desire to try to bridge the gap between what a parking structure is . . . and how it relates and fits into the context of a National Historic Landmark District" (NHLD). Because parking structures are formulaic and "based on modules," she said, there's little room for variations that could make parking structures "compatible with (the) building footprints that you see on the north side of this map," for example. Ms. Kelly said the Preservation Manual and Supplement mentions "other mitigation techniques," for buildings of this mass and scale.

The HRB's task is to protect the "important resource" of the Historic District, Ms. Kelly said, and "to make sure that new buildings that are approved are consistent with the predominant characteristics of the neighborhood." If this building is evaluated "just as a building, irrespective of use," with this footprint, it's difficult to consider it "consistent with the prevailing fabric of the neighborhood," she said. "So the real question is, how much can the use impact the design of the building in order to have exemptions" from a hotel building, or a different type of mixed-use building, for example, which might have "a lot more flexibility in how its articulated." Ms. Kelly said it's up to the HRB "to determine the threshold and the marriage between the use and the structure and how it fits into the context."

Ms. Kelly said city staff is prepared to support the HRB in making its decision about "the best possible solution," as it considers "the need, and everything, comprehensively."

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Mr. Peitz said an important question for the board seems to be, "When does the larger community need outweigh the adverse impacts on a specific site?" Mr. Symes said it should be noted that the City of Beaufort is not building this parking garage, and while "it may solve some of the city's (parking) problem, it is a private garage" being used to solve Dick Stewart's "problem."

Ms. Kelly said staff had asked statewide and national preservation organizations for their input on "just the building." The State Historic Preservation Office (SHPO) had responded that, "it's difficult for a building (of) this size to fit into the context of the neighborhood," she said. "Context is a series of buildings; it's the existing fabric. Context is also the functionality of a place, and how it works, and what the needs of that community are," she said, so meshing these together is "the challenge of this project."

Chairman Newman responded to Mr. Symes' statement by saying that while "a single entity," rather than the City of Beaufort, is proposing this project, Mr. Stewart did not "create the need" for parking, nor did he "identify it out of thin air: it's a community problem, issue, need." He feels *who* is developing the parking structure should have no bearing on "what we're evaluating here," because it's a proposed solution to "an identifiable issue."

Greg Darden, Structured Parking Solutions (SPS), said his company has been in Beaufort for three years and has hosted many meetings about parking. This parking structure project is "the culmination" of the information they have collected and the "due diligence" they have done. His company has a lot of experience working with "cities that have a historic thread and need parking," Mr. Darden said. They are "cognizant and respectful of all comments" and will "try to address them."

When his company comes to a town, they "try to identify certain drivers," one of which is "proximity of parking to the need," Mr. Darden said, because if it's "too far from the intended use," it will be empty. Parking costs "are incredibly expensive," and the cost of "every parking space is subsidized," even when there's no charge to the parkers.

Another thing SPS does when evaluating "the most successful place for parking" is, in historic districts, to "strive for a site that mitigates the risk of the parking facility itself. In other words, is it meaningful to tear down two or three historic structures for the sake of parking?" Mr. Darden said. "This particular site lends itself to that effect. It's mitigating the removal of historic structures by providing an infrastructure item."

Next, Mr. Darden said, "We try to educate and explain parking concepts." Given the "small, historic nature" of downtown Beaufort, "you want to try to address as much parking as you can one time." This is especially true here, he said, because "the next option for meaningful parking for downtown is going to mean you're tearing down structures" because "parking's very geometric," as Ms. Kelly had pointed out.

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For these reasons, Mr. Darden said, "we were instantly drawn to this site." This structure's footprint is driven "by very specific drivers," he said, such as "national codes that drive the slope and pitch of the ramp," the size of each parking space, the dimensions of the drive aisles, etc. Unlike an occupied-use dwelling, parking is "incredibly geometric," he said, and "has some very difficult handcuffs on it."

Mr. Darden said he would not be discussing liner buildings. There are "very unique things . . . about this site. (It) lends itself very well to parking, but not . . . to other uses, inclusive of parking."

SPS is working on a parking structure in Charleston's historic district, Mr. Darden said, which he suggested as a "case study . . . you might want to look at." Charleston's Board of Architectural Review decided, "at the end of the day . . . that the good was greater than the necessary concerns," and approved the project. He said this situation "is not unique" to Beaufort.

Mr. Darden added that the developer is "permitted by use" to make the garage even larger than they are planning to make it.

Mike Richards, SPS, said "structured parking is expensive," so they try to design the garage "as efficiently as possible," which means minimizing "the square footage per parking space" in it. Parking on a ramp is the most economical design for a garage, he said, and they propose a 216' ramp at around a 5% slope. "The next driver is . . . in-bay parking," not "just a drive aisle," as "there's no parking off of that," Mr. Richards said.

This site is "only 326' wide," Mr. Richards said; he described the allowable setbacks, and said because of a new survey done after their plans were submitted, there is now a consistent 8' setback on Craven Street "all the way down. There's no slope to that." They have intentionally "moved (the) ramp to the inside," so "all of our fronts that face the street are level platforms."

Mr. Richards said they are proposing use of a precast structural wall system "for our bearing on the perimeter walls." The wall panels are offset "8 inches back and forth to create some movement in that wall plane, all the way down on all the streetfronts." They have also "tried to do panelization, where you have an exposed building front that's kind of in the same scale" as "buildings up and down the street," he said, with "a green wall in between those to break that up." Mr. Richards said, "The two entrances that are our primary vertical circulation towers are backed in from Craven (Street)," which "brings that height back in to the middle of the blocks." Mr. Richards said they'd "changed the character of the entrances a little bit" to draw attention to them as the place for cars to enter.

Chairman Newman said the fact that the parking garage is level on the perimeter floors "would be helpful" for the experience of the structure's users and for "somebody

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passing by," so "there's not (a) diagonal series of cars passing by windows."

Mr. Stewart said, "We understand (the) issues" addressed in the staff report, from which he said "a couple pieces . . . were missing." One was that the city's most recent parking task force identified three places downtown "that might provide parking." He owns two of those places: one is the site on which they are proposing this parking structure, and the other he offered to sell the city "and they have not pursued that." The third is at 500 Carteret Street, which the city purchased.

"The 500 spaces is an eventual need," Mr. Stewart said, quoting the staff report; "the eventuality is determined upon people being willing to invest in the city as well as to address the shortfalls that may currently be there."

Mr. Stewart said his company has "a long history of working with this." He read a letter from March 2008 to **Scott Dadson**, who was the city manager at the time, to "explain some of the history." [*A copy of this letter is attached to these minutes.*] Mr. Stewart said he never received any response to this letter, but "we did learn . . . that the general perception in the community" was that "there was no need for the city to do anything" because Mr. Stewart "was supposed to build the public parking." This parking garage is a private development, he said, but he currently owns "parking that we make available to the public when we can."

Mr. Stewart said he has "invest(ed) in downtown for 18 years." When he saw in the *Beaufort-Gazette* that there was "a proposal for a hotel to go on this property," he called the property owners, told them it "looked like the best place for (a) parking structure in town," and then purchased the property. Mr. Stewart's company redeveloped a vacant building into Tabby Place, an event center that he said "has been well received." He said groups around the state "tell us" they have met elsewhere in the state and "want to come to Beaufort," specifically to its downtown area, and "we now have that place for them, but we don't have sufficient hotel rooms" for these visitors or parking. "We've been waiting for someone else to solve (the) parking problem for close to two decades," Mr. Stewart said. They have "reached out to" **Bill Prokop**, the current city manager, "about partnering on this" parking structure, and Mr. Prokop has been responsive. SPS is meeting with him the following week, and whether something is determined in that meeting about the city's involvement or not, "we're moving forward with a plan," Mr. Stewart said.

The retail study done as part of the Civic Master Plan "said the buildings on Bay Street are not generating sufficient income to maintain those historic buildings," Mr. Stewart said. He owns "a couple of those," and said "it's very difficult to justify the cost of maintaining" them rather than "investing in any number of other opportunities." He redeveloped second floor space into condos on Bay Street, but couldn't sell them until he provided parking for the residents. "These are all issues that are" interrelated, he said.

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Mr. Stewart told the HRB it should review this project "like a building," and "tell us how to moderate mass and scale, but also tell us where in Beaufort (you are) going to put parking if you don't do it here" on this site.

Mr. Peitz said the Civic Master Plan says, "This site can accommodate 280 vehicles," so he asked why Mr. Stewart was proposing 496 spaces. Mr. Stewart said the Civic Master Plan is "wrong." It's "obvious it can accommodate 500; you see the plans," he said.

Chairman Newman said he was invited to meet "a few months ago . . . with these folks" about a parking garage at this location. Since he was in the ninth grade, he said, the city has been studying parking, and he's now 59. He's aware of "the passion about preservation" in Beaufort, but he feels "preservation is not just about (a) collection of buildings" here. It is "us, today, living here in this community." People who live and work downtown are "part of the history of this place," and addressing its problems is important, too, "not simply preserving the older buildings," he said.

Chairman Newman said, strategically, this site is not "covered with historic structures." Mr. Stewart is willing to take on this project, and while a parking garage will benefit Mr. Stewart, "it will benefit all of us," too. For example, Chairman Newman said, he works downtown, and his employees have to park "five blocks away, out in the neighborhood somewhere," in spaces that "will probably be metered eventually."

Downtown Beaufort is bounded by the edge of the river, Waterfront Park, and Bay Street, Chairman Newman said, and this is the Lowcountry, so "going up" is the only option for parking. The existing site "is just an open sea of surface parking," which has "nothing inherently attractive about" it, so this site and other parking opportunities in the downtown area are "pretty limited" and "not enhancing the historical character of downtown," he said.

The HRB has reviewed many downtown projects "that were essentially given a pass on parking because they're downtown," Chairman Newman said, which has zoning that says, "You don't have to provide any parking." A great residential infill project that Mr. Biery had presented, for example, will not be viable until parking is available for the residents of that building.

Chairman Newman said parking is a "critical problem." Charleston and Savannah have 20 and 11 parking garages, respectively. They are historical cities that "got over this a long time ago," he said. Those cities are at a different scale than Beaufort, he said, but also have water boundaries and a limited area in which they can build, so they, too, have to "go up."

Chairman Newman said he supports this project. The studies he's seen over the years "were done without any ownership, with free rein to remove more buildings and build

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buildings with liners around them and that sort of thing. That's not the context that we have before us, right now, today," which is what Chairman Newman said the board's evaluation of this project should be made on. For him, "this problem has boiled down to an architectural problem," he said, not a "problem specifically of preservation," so it needs "the most pleasing and successful architectural solution."

Mr. Peitz asked for specific examples of Chairman Newman's opinion on this project, as the HRB's architect. Chairman Newman said he had commented at a meeting about this parking structure that it is "critical to articulate the scale of this, to modulate the building so that it was not a continuum of a single expression. I felt it was important to create a sense of . . . window-opening scale," given where the building is located. He had also suggested looking for opportunities to "green" the surface of the building with "lattice panels or wire frame systems to . . . grow 'green' on the face of buildings."

Chairman Newman and others in his office did a site walk, he said, and looked at where the applicants would have to prune trees and where there were open exposures. He feels the rendering the applicants provided "does a good job of showing how they want to treat the building," Chairman Newman said, "but it's not a good rendering of . . . how this building would actually be experienced."

Chairman Newman feels the idea in the staff report of building a model is "outdated," because everything can now be drawn in 3-D and buildings put "in a real context." Bits and pieces of this building will be seen from any given point of view, he said, and he recommended that for future reviews of the project, the applicant bring in "perspectives" of the building "from a real place." Chairman Newman said this building "looks particularly big" when it's "evaluated as if we were flying over it," when actually, they will be experiencing it from the streets around it, "from different approaches."

Mr. Peitz said the HRB might give conceptual approval to this parking structure, but it would have to go through "many, many refinements" before final approval. As an urban planner who has worked in Charleston, he knows there's a clear need for parking in Beaufort. He is thinking about the letter from the SHPO officer who said this structure "is too big," as does the staff report, Mr. Peitz said, which is based on "all of the prevailing documents of the city," such as the Civic Master Plan, the Comprehensive Plan, and the Historic Preservation Manual. Though he said Mr. Stewart had "pointed out (that) these may be dated (or) may not be relevant to what you're trying to do today," they are the documents the HRB uses to consider all projects, including all of those on that day's agenda.

Mr. Peitz said he's aware after 2½ years on the HRB that the infill buildings have exacerbated the problem of parking downtown. One approval left a net deficit of 45 parking spaces. They add to the parking deficit with everything they do in the core commercial area, he said, but he wonders if the impact of this structure will be superseded by that need for parking downtown. The properties adjacent to this one are

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one or two stories, and some of them are residential, Mr. Peitz said. Those properties on Charles, Craven, and West Streets "would have to tolerate the adverse impact against them in order for the community to move forward in a larger community perspective, he said.

Chairman Newman said he had read the staff report, and there have been a lot of different ideas for parking, such as "shuttling people in" and "building multiple parking garages." But "at the end of the day . . . solutions are contextual," he said. This building "is within their zoning rights," so "they do not have to ask for a variance to do anything that they're asking to do here."

When he reads a letter about this project that is written from someone outside of Beaufort, Chairman Newman feels "their perspective is purely based on these reports and . . . historic situations." Savannah and Charleston have "already faced all that," he said. He has looked at other towns with similar population sizes that have built parking garages, so while "it's nice for people outside (of Beaufort) to write an opinion...they're not here, on the ground, experiencing those problems."

Mr. Peitz said the HRB members can "look at things beyond just the written documents." The letter from the SHPO is "just one piece of many" that they can consider.

Ms. Laurie asked that the HRB decide how the citizens who had something to share would do so. Mr. Dickerson said county council has a 3-minute limit on comments, and because of the number of people present who want to speak, he suggested the board could limit comments "to a finite time." Mr. Peitz said he "would like to bend the rules in that direction, too."

Ms. Kelly said the only types of projects that come before the HRB "that require public hearings are demolitions." There are two buildings on this site, so if the project moves forward, that public hearing requirement would be triggered. Ms. Lutz said she feels "that city policy needs to be changed."

Peggy Simmer, 915 Port Republic Street, lives "next to Tabby Place, basically." She said Mr. Richards had said the prefab parts of the parking structure would only be on the street side, so she asked what she would be looking at from her home. Mr. Stewart said, "We will be covering that in the landscape plan," when it's submitted. Mr. Richards said, "Only a small portion of the garage is facing toward your house": the stair tower, and columns and spandrels, which they could look at to "dress that up." The rest of it – beyond Ms. Simmer's house, next to Tabby Place – "becomes a solid wall . . . because of the fire rating requirements," he said.

Mr. Darden said that the architectural components of the parking structure are not set in stone; they are "making diligent notes," and "may not have the answer" for her at

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this time. Mr. Peitz asked if she's supportive of the parking garage, and Ms. Simmer said, "Mostly, yes."

Mr. Sutton said he lives on Craven Street, about a block from the proposed parking garage. As a citizen, he understands the need for it. The documents that staff and the HRB use (e.g., the Preservation Manual and Supplement) "do not even address a parking garage." He has looked for a National Landmark District "that was jeopardized by a parking garage being built" there, and he was unable to find one. Mr. Sutton feels the SHPO would be unlikely to ever approve of a parking garage, so the HRB should not use that office's opinion to determine whether one is built of not. He implored the board "to look at this architecturally." It's unknown whether the City of Beaufort will get funding from a penny sales tax for a parking garage, he said, so they should take advantage of this opportunity with a private developer whose businesses' guests and employees will park there. Though this will be a private parking garage, Mr. Sutton said, not a public one, he supports it.

Fred Washington, Jr. said he believes there's a need for a parking garage, but one of his concerns is that "there doesn't seem to be the connection between the private sector and the city." He doesn't see "a holistic approach being taken to this." If the penny sales tax passes, "you're talking public input . . . and public support," he said. "A more holistic approach would be" to use these spaces: across the street from his church, at the former Western Auto lot, and something "elevated" adjacent to the library, Mr. Washington said. For a long-term solution, they need to look at the growth that will take place, and the approach shouldn't be piecemeal. "It's private, but it is public," he said, "and I'm a part of the public." Beaufort attracts people because of its past, so its past, present, *and* future should all be taken into account for this project. He understands business, infill, and the tax base, he said, but he also understands those who live here, those who visit, and what people are attracted to. "We are unique," Mr. Washington said, "and one of the unique things about us is our willingness to work together to come up with a solution."

Rev. Kenneth Hodges, pastor at the Tabernacle Baptist Church, said he has "concerns about this approach." While he supports "approaching the parking needs in Beaufort," he agrees with Mr. Washington that the solution is not being looked at holistically. Rev. Hodges said he was "taken aback" by Chairman Newman stating his support for the project before any public input had been heard. Beaufort is different than Charleston and Savannah because of the size of its NHLD, he said, which covers "almost the entire City of Beaufort." The HRB members were appointed "to make certain that we maintain that status." The NHLD status has been threatened numerous times, he said, and if it happens, it will have an impact on the City of Beaufort. Rev. Hodges said the shift in perspective in the historic district has resulted in a feeling that "our status is secure," but they don't want to do anything that will jeopardize that.

Rev. Hodges described the Tabernacle Baptist Church's "four contributing resources" in

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the NHLD, including the church's sanctuary, which has been there 153 years. This parking garage is "huge" from the perspective of his church, and a model he built "buckled . . . and fell down." The only monument in the country to honor Robert Smalls, Rev. Hodges said, and the places where Mr. Smalls and his family are buried is "right there on that block," so people from around the world come there "daily to view it." A renowned sculptor is proposing a monument to Harriet Tubman, too, and he's concerned that they will do something to "jeopardize our historic status in this area." The city also runs the risk of "destroying the goose that lays the golden egg," because people come to Beaufort because of "its historic significance."

Rev. Hodges said he would "work with anyone" to see that a structure that goes on that block is one that will benefit the community, as well as Mr. Stewart. He said he understands that there will be an upcoming meeting with the city "to determine if this is a public-private partnership or just a private venture," and to move on this project before that meeting does the public "an injustice."

Andy Roberts said he is "vehemently opposed to this" parking structure "going in there." He asked what Beaufort is trying to become, and while he commended Mr. Stewart and SPS, he said the building "is too big," at approximately the same height as the telephone poles.

Kim Poovey said she's sure Mr. Stewart will "do amazing things with this" parking structure. She asked him if it would provide parking "for city employees, as well." Mr. Stewart said the properties he owns "have always made excess spaces available to the public . . . on a monthly basis." While he would "continue to do that" in this parking structure, "we don't want anybody to think that this removes the pressure from the city to address the need for public infrastructure" for parking.

Ms. Poovey said the Milner report in the early 1970s predicted this problem with parking due to infill, as well as the need to maintain historic assets. She agrees with Mr. Washington and Rev. Hodges that this project needs to be done as a community. She's concerned that the SHPO is opposed to this building, and she stressed the need to compromise. This building is "massive," Ms. Poovey said, joking that there will be nowhere in the city or Lady's Island that it won't be visible. The historic nature and fabric of Beaufort "is more important than anything else in the state," she feels, and the fact that Robert Smalls is buried across the street from this structure is very important to her personally.

Ms. Poovey asked if the structure could be designed to look like Mr. Stewart's buildings that are behind the Hilton Hotel, so as not to "dwarf one of the most significant treasures in Beaufort." If Mr. Stewart is allowed to build this large of a parking structure, she feels, others will want to, too. Ms. Poovey asked if they could "find a way to bring" Mr. Stewart's "ability and foresight" together with "what's in the guidelines" that will "preserve our historic nature" and is acceptable to the community.

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Douglas Storrs, who lives on New Street, agreed with Chairman Newman that this is an architectural issue, not a use issue. He knows parking "is a huge issue in Beaufort," but he feels they need to be "careful to not have the demand for (this) use dictate or override the responsibility the HRB has about design." From an architectural standpoint, he said, "the massing is out of scale," and on the street level, there is much that could be done to "improve it in the public realm." Mr. Storrs said this is critical, because "when the car wins out over the pedestrian," they miss out on the benefits of "the continued economic expansion of the downtown." He feels this proposed design looks like "an attempt to make" the parking structure "look like townhouses," which he called "false architecture" that has "failed miserably." At this stage, Mr. Storrs said he feels the applicants have "not done a good job solving" the design problems, but he believes they can all be corrected.

Esther Harnett owns the lot directly across from this proposed structure on Charles Street. She is "totally in favor of this being built," so the city "can be economically viable."

Liz Namerow asked Mr. Stewart if this parking garage would "service the Beaufort Inn guests and employees. Mr. Stewart replied that "it will serve our investments downtown as well as the customers who shop there. But we're not here to replace the civic obligation to provide infrastructure," which is not "our responsibility or yours." Ms. Namerow said this structure "weighs in at about a third" of the size of the "long-term parking lot" at the Savannah airport, which seems unnecessarily large for Beaufort. Aesthetically, a lot could be done to the building (e.g., plantation shutters, pillars, etc.), Ms. Namerow said, so it doesn't look like a parking garage that could be "anywhere."

Grant Williams, who lives on The Point, said he disagrees with Chairman Newman's comment that parking "is not this developer's problem." As Mr. Stewart's "private company is developing (and) expanding, they are creating their own parking problem for their own employees, guests, and everybody else. This is their problem, not ours."

Erica Dickerson said she and Mr. Dickerson have always been in favor of a parking structure downtown. They "invest heavily in downtown," and until recently, they "owned a house across the street" from where this structure would be. "We pay a lot of taxes downtown, and we don't want to see this city crippled by being frozen in a time warp," she said.

Mary Lou Brewton said she has lived in Beaufort since 1949. She loves the concept of downtown parking, and said she has never had any trouble parking there. She also feels this structure is "too large."

Cooter Ramsey, Allison Ramsey Architects, thinks "the site is fantastic," and the mass, scale, and height are "fine." However, he said, "We've got to do something to address"

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the street level, because the building addresses three streets, but there are "no activities wrapping around there."

Ms. Lutz said HBF's position has been communicated to Structured Parking Solutions and Mr. Stewart. The organization is not opposed to a garage downtown, and "this seems like a wonderful way to develop this parcel," she said. However, interaction with pedestrian walkways is important, and this design doesn't appear to be conducive to that. HBF is primary interested in the height, mass, and scale of a parking garage, Ms. Lutz said, and they would like to see the mass of this building reduced. The whole city is affected by a building of this size, she said, but it's "most important to respect the property owners across the street at Tabernacle Baptist Church." It's "an important historic block," Ms. Lutz said, and "they have been stewards of the historic buildings on that block," so "their opinions and involvement in this discussion need to be heeded."

Jill Hartell, Scott Street, wondered if "we're going to have to continue to build parking structures and more rooms downtown," because people like "the historic feel" of Beaufort, and such a parking structure downtown affects that. She suggested a parking structure on Boundary Street with shuttles to take people into downtown. The city's narrow streets and a structure this large will "affect traffic," backing it up onto Carteret Street, Ms. Hartell said. The community should be kept walkable and bike-able, she feels, so they need to think about "a plan for the future."

Bob Semmler thanked Mr. Stewart for bringing forth a solution to "something that's been discussed since 1972." He also thanked Chairman Newman for saying he's in favor of this parking structure, even without his having heard public comment, and Rev. Hodges for what he had said. He concluded that he is in favor of the parking garage.

Zadie Reeves said one of the members of her church, **Kenneth Brown**, had written a letter because he was unable to attend the HRB meeting, and she read it. Mr. Brown wrote that he is a native of Beaufort and has lived here more than 57 years. He has travelled widely and moved back here because of the city's beauty, its historic buildings – especially the churches – the trees, and the antebellum homes. The historic character of the city would be destroyed by this the parking garage, Mr. Brown fears, and that's what separates Beaufort from other communities. He suggested that the shuttle parking that supports large downtown events works well. A parking garage a block from the waterfront "will bring massive traffic congestion in such a small downtown area." While it has been stated that most people will not walk a long way from a parking garage, Mr. Brown wrote, "Beaufort does a great job transporting people to and from" events. The Liberty Street parking garage in Savannah is a distance from River Street, but "most people prefer it to" the garage "closest to River Street." The proposed parking garage will also have a huge impact on the historic Tabernacle Baptist Church, Mr. Brown said, so he asked that another location be considered for it.

Kate Schaefer, Coastal Conservation League, said, "Protected rural places are great

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complements to thriving urban areas." She said liner buildings as a mitigation technique for the mass and scale of this building "would break up the monolithic structure," which, though it might change the number of parking spaces in this building, would also allow the "structure to reflect the neighboring districts, and certainly what's across the street at the Tabernacle fourplex" and in other renovated historic structures downtown. Liner buildings "contribute to downtown infill," which enhances walkability and the Historic District's vibrancy, and they could be mixed-use, live-work buildings, Ms. Schaefer said. The 2008 Historic Preservation Plan and the 2009 Comp Plan state as goals increasing "livability and walkability downtown." A blank façade does not afford the same walkability and "eyes on the street" as could be had with the foot traffic that would come with offices in live-work units.

Ms. Schaefer said "496 spaces in one location," rather than "spread throughout the extended Historic District," could congest downtown and reduce the walkability of the historic area. She agreed with Mr. Stewart that parking is subsidized infrastructure, and while it's not free, pedestrians often are the ones subsidizing it. Large-scale parking lots "push everything further apart," Ms. Schaefer said, and can increase the likelihood of people driving, which detracts from the walkability of downtown. Not only developers and public entities can be subsidized parking; the Historic District and walkability can subsidize it, too, she said, and "we can't afford to lose" them.

Jon Verity said for 43 years it has been assumed that a parking garage would be built and owned by the city, not by a private citizen. The City of Beaufort has had numerous committees look at parking, and the most recent parking task force recommended this site as "probably the most likely" for a parking garage, he said. Of the old Western Auto site, this site, and 500 Carteret Street, this site was considered the only viable one, Mr. Verity said, as the Western Auto lot is considered too small, and 500 Carteret is "too far away" from Bay Street. The city only owns the 500 Carteret Street site, while Mr. Stewart owns the other two.

Mr. Verity said he wanted the public in attendance to know that "the city (has) been working on" its parking issues "forever" and is "focused on the concerns that many of you have expressed." While "there is room for more collaboration . . . and more discussion on design," he said, "the city hasn't been sitting and waiting . . . on a private developer to come along and build this."

Mr. Darden said he thought all of the comments "were excellent," though he took "a little bit exception" to the notion that this has been a "haphazard or . . . piecemeal process." He said SPS has invested "hundreds of thousands of dollars" in this project and has been in Beaufort for three years doing due diligence, with "no guarantee (that) anything happens."

A member of the public had defined preservation as "aiding, preserving, and protecting the district," Mr. Darden said; at HBF's annual meeting last year, a speaker had

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addressed preservation from the perspective of it being "the community's responsibility to protect that district holistically," including ensuring that "the economic integrity around" the city's "structures allows them to be maintained." A study has shown that if infrastructure, including parking, is not addressed, historic structures "could fall apart at some point in time," he said. "We've done some very elaborate studies here" about "parking counts," Mr. Darden said, and Beaufort "essentially has 400 parking spaces that it physically controls," though it may lease some spaces from private owners.

A study utilizing the city's "muni code" in order to show how many parking spaces each building "and its use" has to have determined that the city needs 650 parking spaces downtown to support the businesses that are there now, Mr. Darden said. So the city currently "is under-parked" by 200 spaces, he said, and the future use of the Marina parking lot – as either a municipal park or as a place to add parking spaces – has been discussed. Another SPS study showed that private citizens downtown have more than 800 parking spaces that they are "providing indirectly" to the city, so their property, which could be "put to higher and better use" earning its owners' money, is being "squander(ed) . . . for your own parking needs," Mr. Darden said.

Mr. Darden considers himself "a historic preservationist," and he lives in a small historic town in Alabama, but he feels that as a community, "there's a greater good to preservation, other than just . . . toiling over" the building of "a structure that's actually there to help protect your own historic areas."

Mr. Darden said, "Only a municipality can experience a subsidy." Cities "do subsidize parking systems" in "a perfect world," he said, because only cities "can realize the taxes . . . that are driven by people being able to get there and park and shop." This parking garage will cost $160 per space, per month, not counting the cost of the land the structure is on, he said. Liner buildings and "occupied uses on the ground floor" will drive the cost of the garage up, Mr. Darden said, because "if you do anything inside a garage, other than park cars, the cost . . . goes up" because of the need for additional fireproofing and additional sprinkler and mechanical systems, so "that $160 per space goes north," and the occupied use "also gets more expensive because it's being built inside a different kind of construction product."

SPS develops parking garages with occupied uses around the country, Mr. Darden said, and went on to detail the costs involved in them: per square foot, and relative to what he guessed the price range was for commercial space in downtown Beaufort. While "it's real easy to armchair quarterback and say, 'It's got to have occupied use on the ground floor,'" he said, "Who's going to pay for it?" and, "more importantly, who's going to be responsible for that space across from the church being empty for gosh knows how long?" Mr. Darden said it was not "his place to say" what the answers were to these questions, but he was "giving you the math" and "the information, so as a group of citizens, you can make these determinations."

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Though the Civic Master Plan shows a master plan for a parking garage with liner buildings, Mr. Darden called the master plan "impossible," because "it was drawn by people who do not know parking. It physically does not fit." If they were to add liner buildings to the *outside* of the parking garage, it has to have a firewall of solid concrete, which "means no architecture." Mr. Darden asked, "Are you as a community willing to build a concrete tomb . . . and wait on the retail market, or on someone to build beautiful townhomes 10 years in the future?"

Mr. Darden called the public comment about traffic and using shuttles to alleviate parking problems, a "great comment," then asked, "Who's paying for it? Is the community willing for your taxes to go up to pay for a shuttle?" He asked rhetorically if the members of the public present would park three to five blocks away from downtown, even if it were free, and take a shuttle "to eat and shop." The answer is "No," Mr. Darden said, because "in the parking world, people are cheap first, lazy second." He explained the expression and said the community needs "to think before you start spending money on shuttles. It's not going to work."

Of traffic concerns, Mr. Darden said, "this particular site is perfect." Because it is at Charles Street, "it can bifurcate the traffic coming in from Carteret" Street. It will not create more traffic, he believes, because "the traffic is" on Bay Street, where "people are driving up and down . . . waiting on that cheap parking to open up at the front door" of the business they want to go to. "If there's reasonably priced parking" close, those people will go there.

Mr. Darden said, "We're asking for a conceptual series of evaluations of this project." They are very interested in the comments, "especially the architectural ones." It's "very easy to throw architecture at a garage," he said. Rather than requiring liner buildings or retail on the parking garage's ground floor "to create architectural styles, it's more efficient to throw architecture at it than . . . to throw a use at it."

Concerning mass and scale, Mr. Darden said the proposed "building collectively is a fraction of the size of your collective buildings on Bay Street. The only difference . . . is that those are individual storefronts." He said architecture can be adjusted. Their renderings were "purposely" shot at a long angle "because we didn't want to hide anything." This is the "overall look of this structure," not what will be seen when walking by the building "and looking up," which he said "will be the exact same thing you see when you walk down Bay Street": a view at "close proximity of a large building."

Chairman Newman thanked the public for its comments. He said he had made a statement at the beginning of this part of the HRB meeting saying he was supportive of the project, while he understands others' perspectives. He is also a citizen of this community, he said, and "stating my own opinion, I think, is an acceptable endeavor." The idea of community planning that Mr. Washington mentioned, Chairman Newman said, "is absolutely true," and "there are books full of community planning" that has

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already been done, but that doesn't matter "until someone is willing to execute it."

Chairman Newman feels multiple different, smaller parking structures are not likely to occur in Beaufort because those are not cost-effective, according to past studies. They're addressing this parking structure because "it's a real proposal in a good location," he said, and whatever is built here will "have some drawbacks and . . . some impact," he said. This parking structure plan will have the biggest effect on the Tabernacle Baptist Church, Chairman Newman feels.

A developer who had looked at a project in the Marina parking lot "that probably would have involved parking there" or "parking at a place like this" parking structure, saw the project "shut down" by people who objected to development there and "said, "'We're going to expand the park downtown'," which Chairman Newman called "a lovely idea," but doing so while wiping out parking at the marina would be an indefensible, "complete nonstarter," he said.

Mr. Peitz asked Mr. Stewart or Ms. Kelly to elaborate on ongoing discussions with the city manager. The City of Beaufort has previously not done him "the courtesy of a return phone call," Mr. Stewart said, after his 2008 letter to Mr. Dadson, but Mr. Prokop has done so, and will be meeting with them. Mr. Stewart said as a business person in this community, he has "been open to working with civic engagement for well over a decade now," and Mr. Prokop is "someone working in City Hall who is willing to work with us."

Mr. Peitz asked if the garage would be open to the public and how "the logistics of that" would work. Mr. Stewart asked Mr. Peitz how that would "affect the architecture, if you don't mind." Mr. Peitz said it didn't, but among the "many topics" that had been discussed at the meeting was "the community need versus the adverse impact" of the parking garage.

Mr. Stewart said he is "frustrated" because "parking downtown has been a mess." He "had to buy this property so that my businesses could be assured" they would be able to "serve my customers," including his "small business tenants" and their customers. Because no one has done anything about parking until now, Mr. Stewart said people say to him, "'I'm delighted you're solving the parking problem for the city, Dick,'" but, he stated emphatically, "I'm not!" just as he's not doing other work that the city "is supposed to do."

The city "has accepted that it will need 500 spaces downtown," Mr. Stewart said. If he were to "build liner buildings" on a parking structure with just "a few spaces," he believes, "I could get *that* project approved, but then where are the people going to park?" He said people become pedestrians after "they park their cars and get out of them," when they "have a place to go." This is "what is needed if downtown is going to be healthy," he said.

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Mr. Stewart recalled a visiting architect with the Milner group saying, "When Beaufort was built, there weren't cars, so we didn't plan for cars," but, he said, now "most of the people who come into Beaufort come by car."

Mr. Stewart said he had put a sidewalk in front of Beaufort Town Center, which he owns, when he built it, because "the planning department told" him "that would be the future sidewalk," but nine years later, "it's not connected," and there are no plans to connect it, so he feels the façade is "wasted," and "we have done something that makes no sense."

Mr. Stewart feels "we have to provide parking and do what Milner said we should do . . . You have to find a way to accommodate people in cars" and "find a way to compromise" so people come here, "get out of their cars . . . and experience what" brought them to Beaufort.

Mr. Peitz asked Mr. Stewart's timetable for construction, and Mr. Stewart said he's not prepared to say, but it would not be more than a year after approval.

Mr. Symes said he doesn't believe the city, the community, or the Historic District "can survive without more parking." Though "we need parking garages," he said, the purview of the HRB is to look at what the building looks like that has "cars inside of it." The difficulty with that lies in blending "the past with the present and the future," Mr. Symes said, and making "this building fit into the Historic District," which he believes can be done.

Mr. Symes said he understands that "it's all about money," and that the cost and effort to build a garage are "a big deal." It's important to build this parking structure, he feels, but it's "a little bit too massive" as planned. Mr. Symes said he "could work with" three stories. Also, he thinks the façade is "too symmetrical" right now. "Greening" it would be good. He doesn't "know what the outside" of the structure should look like, but he feels the building "needs character" in order to look as if it fits in the Historic District. Mr. Symes believes the "facades over the entrances now are not appropriate," because they're "a little bit too much," and need "to blend with the rest of it."

Mr. Symes said at an HBF meeting, **Rob Montgomery** had said one way "to help the line of (this) huge building" is to take out six parking spaces and "bring it back in a little bit," so there is "some character and movement to the wall." More depth "will help it look less like one huge building," Mr. Symes said, and will "add some character to it." The south side of the building has no façade on it now, though there may be plans to do something, he said. It should have a facade, he feels, "though that will add expense." While Mr. Symes understands the public's concerns "about a massive building in the Historic District," he believes "it's vital to have a building like this to get people to come here, spend their money, and make this town survive."

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Mr. Peitz said Mr. Symes is the HBF representative on the HRB, so he feels Mr. Symes' support for this project "is significant." Mr. Peitz has authored many plans that have never been implemented. This is the first step to getting this board's approval, he said, and if it moves forward, he would like to see the applicant and the city work with the adjacent property owners and the public to get "greater approval" from them. Something needs to be done "to kickstart something that has been talked about for so long," he said.

Ms. Laurie feels the HRB needs to look at how this project "will affect other people." It's not that parking isn't needed, Ms. Laurie said, but she is concerned about the number of people who have shown up to this meeting with concerns. "As a citizen," she feels "there's something broken in the process." While the HRB is "charged with doing the architectural piece of it," Ms. Laurie feels something "needs to be fixed" about "the way things are being done in the city" when there is the level of "outpouring of concerns" they have seen at this meeting, with "no way for it to be channeled." She said, "Something is broken," and the City of Beaufort needs to "do something different" to meld those who, in Gullah, have "binyah" (been here) and those who "comeyah" (come here).

Mr. Dickerson said he and Ms. Dickerson had moved to Beaufort from Frederick, Maryland, which was a town smaller than Beaufort that had "a very rich history that was falling down around its shoulders." The city decided to put up a parking structure. They didn't have the economic wealth, the population density, etc., to justify putting it up, he said, but when they built it, it had an "immediate and strong" effect on the community. Businesses grew, "the community had a bigger tax base" as those businesses grew, and "more people moved downtown" and invested in the community, Mr. Dickerson said. Today – 15 years later – while the town's size hasn't changed dramatically, its economy has changed so much: from "struggling to stay alive" to being "a very, very vibrant community with all kinds of things going on," a strong tax base, and a strong economy. It's important to consider facts when looking at any investments in the community, Mr. Dickerson feels. This is not the first large parking garage built in a small city, and around the country, everywhere parking garages go in, they "improve the community."

Mr. Dickerson said, "Investment in a community comes in multiple ways" (e.g., sales tax or property tax). Private investment dollars "create jobs" and grow the tax base and the economy. He said Mr. Stewart is making "a massive investment in Beaufort," and that investment will make it a better place to live, plus he wants a return on that investment, because "that's the American way," Mr. Dickerson said. He feels Mr. Stewart's investment in this garage is more than "a money grab," and the extent of it indicates the level of Mr. Stewart's "interest in making Beaufort (have) a stronger economy" and be better place to live.

"Structured parking is, in fact, infrastructure," Mr. Dickerson said, and it is part of a larger picture of what's needed in Beaufort. He said 1% to 2% growth in Beaufort in the

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last decade is well-documented, while growth is over 1000% in Bluffton, year-over-year. He would like to see the economy grow faster than inflation in Beaufort. He thinks the public comments "are great," as is the interest in a parking garage that "looks appropriate for our community," but the public must "embrace an opportunity to move this . . . forward," as it's "been in front of us for decades," rather than holding it back because "it's not 'this' or 'that,'" he said.

Ms. Laurie asked Ms. Kelly what staff's recommendation is. Ms. Kelly said staff "did not provide a recommendation for this project." Ms. Kelly asked what the applicant's expectations were for this meeting. Mr. Stewart gave examples of what he can't and won't do from some of the public's suggestions of what could be done in lieu of this proposed parking structure. He and the SPS representatives would like "some input" from the HRB, Mr. Stewart said, "so we don't keep guessing." He said it was a "mistake" to "assume that this process is going to go on forever," and that he can "keep coming back" to the HRB, "and spending money and applying." He described a poor experience in the past with the HRB. "Any direction you might give us that would not waste your time with us guessing what might be suitable would be appropriate," Mr. Stewart said. He gave examples of the type of advice he would find "helpful."

Mr. Stewart said it's expensive to pull buildings back to provide a green space, but "those are issues we can work with." He'd like "to keep trees," put in benches and fountains, and "share the history" of the area with "a series of plaques" to commemorate the Robert Smalls grave, the Tabernacle Baptist Church, and the other historic buildings there. People walk on both sides of that street, Mr. Stewart said, and "they will be engaged" and able to see the signs comfortably, not looking up at the parapet of the parking garage through the trees. These "are trade-offs we've made already," he said. He considers his "having to guess what is acceptable" to be a "winnowing-down" process that ends "up with something designed by a committee," so any guidance from the HRB would be helpful, but if that guidance "gets to be expensive enough, we reserve the right to withdraw from our proposal." Mr. Stewart said he prefers the board's guidance in the form of votes so he won't "forget what we agreed to at the time we did it."

Chairman Newman said he feels this project needs to be supported. He explained what he'd meant by saying that this needs to be addressed as an architectural problem: what could make this proposal for a full parking garage – "not a building with liner buildings added to it," which "creates more need and eliminates some of the supply" – work? When he and those in his office were identifying the parking structure's architectural issues, Chairman Newman said, they had wondered collectively if the building were "too regular" and symmetrical, and asked themselves how the parking structure would be constructed. He asked if there were "any opportunity to vary the panel system" to make it "less A-B-A-B-A-B." He's not sure of a solution, he said, but he wonders if there's flexibility in the exterior panel system.

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Chairman Newman said he doesn't "know the internal workings directly behind these facades," so he asked if the top of the green wall could be crenelated (Lauren: Is this what he meant?) "more by pulling those areas down." There is some notching in this elevation, but "you could pull that down and use something like a cable rail . . . as the continuance of a railing system, or even a wrought iron railing," which he had seen an example of in a parking garage, and which would "allow . . . more articulation of this line, where it wasn't continuously at that height," he said.

Chairman Newman said he wonders if awnings or "some kinds of projections" would give the face of the building more articulation and soften it. There is a lot of opportunity for green space, he said, and it wouldn't be "crammed in." The big live oaks are outside of the sidewalk, he said, so they won't "be mangled," which is "a green space that can stay intact." Then there's the sidewalk, then the "internal green space," Chairman Newman said. So it seems like a good opportunity for landscaping, and "a landscape plan would be pretty critical."

Most people in Chairman Newman's office felt like the "brick parts" of the building in this plan "felt more like the buildings in town," and so were "more successful" than the "white elements," he said. Chairman Newman said when the window strips on the brick elevations "are shown with the white portions between the windows . . . there might be some variability there," with brick between them, not the vertical strips, which "seem to emphasize the vertical height."

The elevation that faces the Scheper House is "critical," Chairman Newman said. This structure will have even more impact on Ms. Simmer than it will have on the Tabernacle Baptist Church, he feels. The landscape infill between the house and this structure is essential, and the Simmers should "participate in that as well."

The area that drew the most attention among those in Chairman Newman's office was the two entry elevations, which look "divorced" from the Craven Street "treatment," he said; they need to ensure that the design lets people know, "This is where cars go in." "This expression" runs too far from "your general idea of . . . housing this in a cloak of local scale (and) local material," he said, so these entries are not currently successfully "softening."

Chairman Newman said, "it's impossible" for the applicant "to do a project like this" and say honestly that the parking structure is "not big," "doesn't take up a lot of space," and "won't have any impact on anybody," but it would be "equally dishonest to put the problem off as if there (are) three or four places to solve this problem that are *realistically* viable." The structure "*will* have an impact on people," he said. Mr. Dickerson had stated the point well that "it doesn't matter" if it's built and owned by a public or private entity, he said, but it is "a big gesture for a private entity to take this up, and it will have a multiplying effect in terms of its benefits." Chairman Newman said, Mr. Stewart's hotel and "some of the businesses" he's "created will benefit, but we've

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reviewed a lot of projects . . . that all would be viable, and probably would happen, if there was the opportunity."

Having a livable, walkable community works if the areas that should be dense can be made dense, Chairman Newman said. "The downtown commercial core is supposed to be dense," so "you can walk to restaurants," for example. Still, he said he wouldn't walk downtown to a new pizza restaurant because he lives a mile away; he would drive. "These parking spaces" in this structure will "open up some of the spaces that already exist," he said. "They are a public-private partnership already."

Chairman Newman said he finds this to be "the right project in the right place," and he feels it supports the historic fabric, "to continue" it. "The architecture and landscaping" are what "will make this as successful as it can be," he concluded.

Mr. Dickerson said on the Craven Street side of the parking garage, the Tabernacle Baptist Church has "an entire campus that they've built and maintain, so anything that goes in should reflect well on that." The plan for the first floor has "more than the typical setback," which "almost creates a linear park." The Tabernacle Baptist Church, Historic Beaufort Foundation, and the community could collaborate to "add historical content to that walkway (and) create a broader campus of information about the community," Mr. Dickerson said. He sees this as an opportunity to expand on the design and to have various groups and individuals "bring in" history to create a streetscape that "embrace(s) the community (and) creates a vital resource for downtown."

Mr. Symes said his biggest issue is breaking up the outside of the building "significantly," so it doesn't look "like one large building." If this could be done, he'd be "more agreeable to letting it go to the full height you want," he told Mr. Stewart. Mr. Symes feels it appears too massive now.

Mr. Peitz suggested staggering the setbacks, so it's less linear and appears more like "an assemblage of buildings," rather than one massive building. Mr. Stewart said they would need a bigger drive lane if they were to stagger it. If they can do that *outside* the envelope of the building, "with landscaping or awnings," for example, they "won't eat up all the open space . . . on both sides."

Mr. Stewart described what would have been "in my best interest" to do with the space around the building, given what he had paid for this property, but he said, "we chose to put it back, because we are . . . the single biggest neighbor in terms of investment and ongoing activities." He said, "We would like (the) experience coming down Craven Street to be . . . pedestrian-oriented."

Mr. Richards said that in order to "stagger," as Mr. Peitz had suggested, they would have to "push out," not in. He said they could vary the appearance of "each panel" by varying materials and colors, using different panel assemblies, etc.

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Mr. Darden said they had had a conversation with HBF about changing the texture between the panels and changing the brick on the panels, for example, to create a more desirable look. Mr. Stewart said the technique of construction is important, because the site will be "messy" while it's being built. So people can get in and out more easily, this technique "can shorten" the time that the area is in disarray "by quite a bit," he said.

Chairman Newman asked how the parking garage is assembled, which Mr. Richards and Mr. Darden explained. Concerning the question of whether another floor could be added later, Mr. Darden said the envelope is erected "very quickly," (i.e., in 60 days) to minimize "the invasiveness to the community," and the components weigh "upwards of 60 tons." To add to the building vertically, he said, the crane that can pick up these heavy elements would have "to work outside the perimeter of the building then." They can't work around the built structures, he said. They have to be far enough away that the crane and its jib can be outside the footprint of other buildings. It can only be built "one time, the way you want it," Mr. Darden said.

Ms. Kelly asked if the applicant could keep the plan they have, but bring the building in at certain places. They would "definitely lose six or seven spaces per floor," she said, but they wouldn't "intrude into that setback." Mr. Richards said they could do that, but he told Ms. Kelly to "realize the economics of what you're suggesting." If the hard cost of each of the 496 parking spaces is $15,000 each, he said, and those spaces were taken out of each floor and additional panels were created "to make that movement happen, all the sudden" the structure is "down to 432 spaces," and there are more wall panels, Mr. Richards said, so "you have not lowered the cost of construction . . . you've added $1,500 per space," which "drives up . . . the rental rate" per month. Mr. Stewart said, "We won't be bringing that back to you. If it's a requirement, we'd like to know, so we can spend our time" on other things "and not waste yours. That's not a financial option."

Mr. Dickerson said if they left the Craven Street side the way it is as opposed to a pushing the panels in or out – they could "turn that into a visual park." That would eliminate the "issue of architecture," doesn't have a negative effect on the building's cost, and improves the streetscape because it's "educational (and) interesting." Mr. Dickerson suggested that the space is "allocated," so "just use it differently." If pedestrians can look at "historical markers and points of interest, they're never going to look up."

Mr. Symes said what Mr. Dickerson is suggesting is important, but he disagreed that people will not look up, which is why the applicants should follow Chairman Newman's advice about "varying that top . . . and (varying) how that brick goes on there," as Mr. Darden had mentioned. This will "go a long way toward alleviating this issue," he feels.

Mr. Peitz said a member of the public had made a comment that "a stamped pattern"

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doesn't have to be "repeated." Mr. Darden said the "vertical striations are very monolithic (and) very flat." It's "relatively efficient" for them to "apply other horizontal members at different floor levels to create additional relief," and awnings, shutters, "or other elements" will also help with the monolithic quality of the walls. Mr. Darden asked the board to "let us work on this."

Mr. Richards said where there are "punched openings" in the panels, "we've extended the height to be up in between the T's stem," to avoid the panels being "squatty." Mr. Stewart said the panels can't be widened, but they "can be made taller."

At the top of this parking structure, Chairman Newman asked if they could lower the parapet without structural issues and "use a railing on the intermittent sections." Mr. Richards said there is a resistance standpoint "30 inches or below to the deck." Cable rails don't do a "good job with car impact." They use them "internally as pedestrian rails." Mr. Darden said car headlights are a more important reason not to do this than aesthetics are. Cable rails would mean headlights shine out into the neighborhood, and they want to avoid light trespass, so they "sort of need that solid wall," though they could vary the panel heights on it.

Chairman Newman said the prefers "the simpler architecture of the punched openings" to the "bays that have windows that have shutters on them." A garage in Charleston at the main visitors' center uses "shutter elements" principally. He suggested this as "a texture," rather than "trying to imitate a window with shutters." Mr. Peitz said the garage Chairman Newman is referring to is "in a residential neighborhood," and had used Bahama shutters; the design earned a national award. They didn't want that parking garage "to look like an apartment building," Mr. Peitz said, and it is "functional because it ventilates."

Chairman Newman said it's always difficult to synthesize the "textures, details, and elements that make a place the way it is," and "use that as a paintbrush for how you articulate a building like this, because it's not going to look like a series of houses" or businesses. He feels "we can be honest about that," and said he loves the idea of articulating "some kind of historic walk" along the streetscape. The landscape is another critical element of this project, Chairman Newman said, and he thinks "this is a pretty good take" that the applicants have submitted.

Mr. Darden said this package they had submitted "has a disconnect": The rendering shows "an outward projected corner with vegetation," which was their original concept, but Mr. Stewart had suggested narrowing the length of the mass. Mr. Darden showed the "inverted corners," which he said is the direction in which they're moving now. The "cost is a little different," Mr. Stewart said. "You spend more on walls here, but you lose the internal floor space" and "storage (space) in the corners." He thought this was "a good thing to do" so pedestrians could "see around" to the green areas coming up, but he could project those back out, and use the corners for storage. Chairman Newman

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said he thinks Mr. Stewart's change "is absolutely a step in a positive direction," in "the way it addresses the corner" and because "it reduces the overall length."

Mr. Stewart said, "A lot of people (will be) coming up Charles" Street, and directional signs there and for the entryways are something they will be "spending time and attention" on.

Mr. Dickerson suggested the HRB determine "the things we agree upon" to give the applicants guidance: They agree that Beaufort needs a parking garage, but they *don't* agree that "we need to have it be well-balanced between aesthetics and economics," he said. Mr. Symes said he agrees with building the parking garage, but the HRB's charge is to look at the exterior of the building.

Mr. Dickerson said they agree that the setback on Craven Street should be maintained; they agree with preserving trees and vegetation there. The panel set-up needs "to be different," he said, "and they can discuss those more." They agree that they do not want blank walls. They agree that the path the developer is going down is "workable," Mr. Dickerson said. Mr. Peitz said there needs to be more detailing to create the appearance of an assemblage of buildings. They can do this "by varying things," or by introducing other elements.

Mr. Peitz said Chairman Newman's comments after the public comments "serve as a motion" for him, as do some of Mr. Symes' comments. Those comments and the minutes of the meeting would "give the applicant certainty."

Mr. Darden said they would like to get an understanding that the height, scale, and mass are "generally acceptable." Chairman Newman said it is his understanding that this structure is within the city's zoning and height regulations, and there are no ordinances that "this does not abide by, based on its . . . building configuration. Its site planning and size are within its zoning-allowable requirements."

Chairman Newman said a motion should address whether the HRB accepts "the configuration" of this building: the plan for *this* building on *this* location, and the board could make comments about "successful things" the applicants could do to move "from the study to a future step." The board's opinions of what they'd seen today would give the applicants guidance, he said. Holistically, Mr. Darden said, the board's comments "have been relatively consistent."

Mr. Stewart said he agreed. He'd appreciate a motion of the type Chairman Newman was proposing because "we will have to engage a landscape architect to look at what is happening on Craven Street, to know what we're working with there." Mr. Richards and his team can handle other matters, like changing brick colors and windows, Mr. Stewart said, but for things where they will need to bring professionals in, "any information that" the HRB "can give us about site location" would be helpful.

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Mr. Symes asked if the board could give "conceptual approval based on the comments of the board." Mr. Darden said the board's comments and overall approach had been consistent.

In response to a question from Ms. Laurie, Chairman Newman said the staff report doesn't specifically address the project's conformity with the ordinances of the City of Beaufort because it focused on the studies of parking that have been done, and "that's not our charge . . . A conceptual review of what is in front of us is what we would be giving conceptual approval to," he said.

Mr. Symes made a motion to give conceptual approval to the parking structure project, with the project moving forward based on the comments of the HRB. Mr. Peitz seconded the motion. The motion passed unanimously.

There being no further business to come before the board, **Chairman Newman made a motion, second by Mr. Peitz, to adjourn. The motion passed unanimously**, and the meeting adjourned at 2:22 p.m.