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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Former Circuit Court Judge

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Case No. 2021-CP-1005255
Appellate Case No. 2022-000973

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

v.

City of Charleston, City of Charleston
Board of Zoning Appeals, George Wallace,
Erika Wallace, Erika R. Hayes, Trustee of the
Erika R. Hayes Revokable Trust u/a/d 8-42016…… Respondents,

RECORD ON APPEAL

NAME AND CONTACT INFORMATION

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Board of Zoning Appeals – Zoning
- Results -

City of Charleston

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

62 CHURCH ST. (CHARLESTOWNE) (458-13-01-097)
Request special exception under Sec. 54-110 to allow a horizontal expansion (garden room) and vertical extension (hall/closet/exercise/laundry) that extends a non-conforming 6.2-ft. south side setback (9-ft. required).
Request variance from Section 54-301 to allow a 2-story addition having a 43% lot occupancy (35% limitation; existing lot occupancy 37%)
Zoned SR-4

Order on Special Exception Request

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

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

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

Date issued: 9/7/21 Chairman Michael C Robinson

Order on Variance Request

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

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

☑ APPROVED. The Board concludes that:

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

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

Date issued: 9/7/21 Chairman Michael C Robinson

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

1/09

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For office use only

Property address: 62 Church Street (Charlestowne)

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

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

Board of Zoning Appeals-Zoning
Order on Appeal

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

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

2 The Board concludes the following:

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

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

Department of Planning, Preservation & Sustainability 2 George Street Charleston, South Carolina 29401
(843) 724-3781 FAX (843) 724-3772 www.charleston-sc.gov

6-15

Date 10/19/21 Chairman Michael Robinson

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

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

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

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

STANDARD OF REVIEW

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

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

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

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LAW AND ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

IT IS SO ORDERED.

R. Markley Dennis, Jr.
Circuit Court Judge

Charleston, South Carolina
_____, 2022

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Charleston Common Pleas

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

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

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

This matter is before the Court on Appellants Teresa Melhado's and Dane Neller's motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure asking this Court to alter or amend its Order entered on May 18, 2022, affirming the decisions of the City of Charleston Board of Zoning – Zoning and dismissing this appeal (the "Order").

Motions for reconsideration are only granted under highly unusual circumstances. U.S. ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2001).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) where there is an intervening change in controlled law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993); see also Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003).

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

The Court denies Appellants' motion because Appellant has failed to demonstrate any of these circumstances. The Order is supported by the record evidence and is not controlled by any error of law, the Appellants offer no new evidence that was not available at the time of the decisions of the Board of Zoning Appeals - Zoning, and the issues raised by the Appellants were addressed and ruled upon by this Court. A party's mere disagreement with the court's ruling does not warrant a Rule 59(e) motion. Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

IT IS, THEREFORE, ORDERED that the Appellants' Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

R. Markley Dennis, Jr.
Circuit Court Judge

Charleston, South Carolina
_____, 2022

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Charleston Common Pleas

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

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

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

City of Charleston

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

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: _____

Property Address 62 Church St TMS # C 458 13 01097

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

Applicant George Wallace Daytime Phone 804-301-6120

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

E-mail Address skip@tslandarchitects.com

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

Zoning of property SR4

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant _____ Date 5/27/21

For office use only
Date application received _____ **12** Time application received _____
Staffperson _____ Fee: $ _____ Receipt # _____

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

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

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

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

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

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

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

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

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

City of Charleston

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

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: **October 19, 2021**

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

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

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

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

E-mail Address **bh@hellmanyates.com**

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

Zoning of property **SR-4**

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant B A Hellman Date **September 13, 2021**

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

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

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

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

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

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

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

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

City of Charleston

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

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

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

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

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

Signature of Applicant [signature], Hellman & Yates, PA Date 9/13/21

For office use only

Date application received _____ Time application received _____ Staffperson _____

For office use only

Property address: _____

TMS # _____ Zoning _____

_____

_____

_____

_____

_____

_____

_____

Board of Zoning Appeals-Zoning
Order on Appeal

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

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

2. The Board concludes the following:

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

a. In the case of an appeal for **reconsideration of a decision of the zoning administrator**, the Board orders that the decision of the zoning administrator is _____affirmed _____reversed _____modified as follows:_____

_____

_____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

WALKER GRESSETTE FREEMAN & GRESSETTE, LLC

/s/ G. Trenholm Walker

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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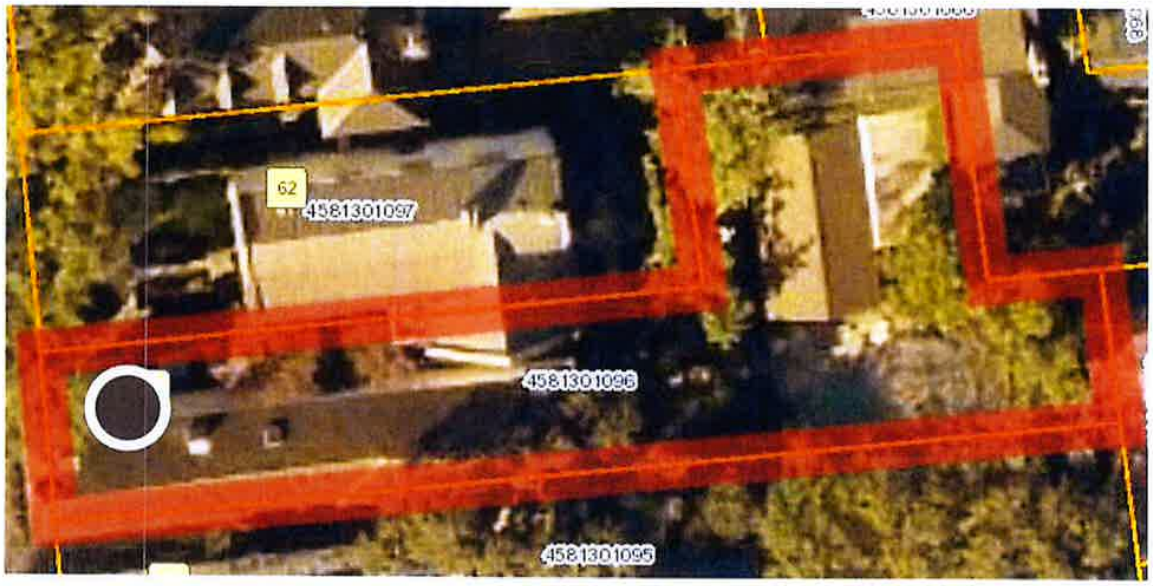
Exhibit A

Melhado Property



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Teresa Melhado and Dane Neller,	)	Case No. _____
	)	
Appellants,	)	
	)	**NOTICE OF APPEAL TO CIRCUIT COURT OF A DECISION OF THE BOARD OF ZONING APPEALS UNDER S.C. CODE ANN. § 6-29-820**
v.	)	
	)	
City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016,	)	
	)	
Respondents.	)	

PLEASE TAKE NOTICE THAT, under S.C. Code Ann. § 6-29-820, Appellants, owners and residents of 60 Church Street, Charleston, South Carolina, hereby appeal to this Circuit Court the decision (and the denial to reconsider the decision) of the City of Charleston Board of Zoning Appeals, with which Appellants have a substantial interest, granting an application for one variance and one special exception to the owners and residents of the neighboring property, 62 Church Street, Charleston, South Carolina, which decision was mailed on October 20, 2021. The parties known to Appellants to have an interest in this appeal are named as Respondents. A petition setting forth plainly, fully, and distinctly why the decision is contrary to law is being filed herewith.

/s/ Brian A. Hellman
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Attorneys for Appellants

Charleston, South Carolina
November 18, 2021

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Teresa Melhado and Dane Neller,	)	Case No. _____
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Appellants,	)	
	)	**PETITION IN SUPPORT OF APPEAL TO CIRCUIT COURT OF A DECISION OF THE BOARD OF ZONING APPEALS UNDER S.C. CODE ANN. § 6-29-820**
v.	)	
	)	
City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016,	)	
	)	
Respondents.	)	
	)	

INTRODUCTION

This is an appeal of a decision of the City of Charleston Board of Zoning Appeals granting an application for a variance and a special exception from the City's zoning ordinances. The Board did not fulfill its statutory duties in this case. It made no findings of fact. It did not enable Appellant-Opposers to testify at the public hearing. And it disregarded the applicable legal standards, which were not met. Respondent-Applicants contributed to the Board's failures and errors. Respondent-Applicants admitted the long-time and current utilization of the property, which should have defeated their application from the start. But they nonetheless succeeded in confusing the Board about who owned the property to their rear, whether that property owner supported the application, and how that property owner would be impacted. And Respondent-Applicants also told the Board that their use of the property, for both residential and business purposes, is lawful, when it is not, and does not matter, when it does. The Board then determined that the issue of use was outside of its purview, contrary to the express language of the controlling statute and ordinances. For these reasons, as will be detailed below, the Board's decision is

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arbitrary and capricious, incorrect as a matter of law, and should be reversed.

BACKGROUND

This case involves an application by Respondent-Applicants, Mr. and Mrs. Wallace, the owners of the residence (through the Erika R. Hayes Revocable Trust u/a/d 8-4-2016) located at 62 Church Street, to the City of Charleston Board of Zoning Appeals.

The application requested one variance and one special exception to allow a proposed two-story addition to the current house, together with new structures housing a gas-powered generator and multiple HVAC compressors. The requested variance is to exceed the lot-occupancy percentage (the overall footprint) restricted by the City's Ordinance § 54-301. The requested special exception is to extend a non-conforming side setback under the City's Ordinance § 54-110 (f).

The application did not request a variance or special exception to encroach the rear setback under City's Ordinance § 54-301, which would have also been needed for the proposal to be properly allowed. Specifically, the proposal includes a new structure, elevating a gas-powered generator six feet off of the ground, along the rear property line that abuts Appellant-Opposers' home.

The house that sits on 62 Church Street is currently 2,554 square feet, already exceeding the maximum lot coverage and encroaching into the side setback. The house has been used as a residence for more than 200 years and Respondent-Applicants have been living there for the past 9 years.

Respondent-Applicants also use the house, unlawfully, for multiple businesses, namely, for the Charleston location of Mr. Wallace's multi-state architecture firm, "Island Architects Charleston," and Mrs. Wallace's interior design business, "Stone Ridge Interiors." As exhibits in the record show, both businesses publicly advertise and use 62 Church Street as their actual

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location (not just as a registered agent mailing address). Respondent-Applicants contend this does not matter, but it does.

In front of the house, there is a garden, designed in 1974, that Respondent-Applicants will no doubt discuss at great length in their responsive brief. That garden, however, has nothing to do with answering the questions of whether the proposed addition is a necessity to be able to utilize the property – clearly not – and whether the proposed addition will substantially impact the neighbors – clearly so.

The proposed addition, which violates the City's zoning ordinances without the aforementioned variances and special exceptions, would be virtually pressed up against and looming over the center of their neighbors' surrounding L-shaped property. Those neighbors are the Appellant-Opposers in this appeal, Ms. Melhado and Mr. Neller, the owners and residents of the residence located at 60 Church Street, who have a substantial interest in the decision of the Board. The substantial impact on them, from their bedroom on the side to their back yard in the rear, is uncontroverted, as will be discussed herein.

The application was filed on May 27, 2021.

The Board held a public hearing on September 7, 2021, virtually via Zoom Webinar. The recorded video of the hearing may be viewed on YouTube.[1]

Respondent-Applicants were given the opportunity to testify at the hearing, but Appellant-Opposers were not, for reasons that will be explained below.

At the close of the public hearing, the Board passed a motion to approve the application.

The Board also issued a written order, dated September 7, 2021.

The minutes of the Board for the September 7, 2021 meeting were later approved on

[1] https://www.youtube.com/watch?v=GzTu4Tp6pEE&list=PLGUA48ej2R6tg9CLDa9inEqODFIcrqJEy&index=6

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September 21, 2021.

There are no case-specific findings of fact or explained conclusions of law supporting the Board's decision reflected in the written order or the minutes.

The transcript (which the Board will be required to prepare and file with the Court)[2] will reflect that the Board discussed only four issues.

First, the Board discussed whether it should consider Respondent-Applicants' unlawful use of the residential property as the location for multiple businesses. That discussion lasted just a few seconds before the Board determined the issue of use to be outside of its purview, disregarding the legal elements the Board is charged with considering, as will be explained below.

Second, the Board expressed its confusion about who owns the property to the rear and whether they supported the application, misunderstanding that Appellant-Opposers own that property and strongly oppose the application because of its substantial impact on them.

Third, the Board considered the impact to Appellant-Opposers, but only from the vantage point of their second story porch to the side, again, misunderstanding that Appellant-Opposers also own the property to the rear, and neglecting to consider the impact from their back yard.

Fourth, the Board discussed whether its approval of the application should include a condition, which it answered in the affirmative, that Respondent-Applicants attempt to baffle the noise that will emanate from their HVAC compressors, to be located just outside Appellant-Opposers' upstairs bedroom window. That discussion, recognizing the creation of an obvious

---

[2] Appellant-Opposers reserve the right to file a supplemental appeal brief after the Board prepares and files a certified copy of the proceedings with this Court, as required by S.C. Code Ann. § 6-29-830 ("Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.").

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nuisance to the closest neighbors, was likewise unguided by the applicable legal elements.

The Board's discussion of these issues, which apparently persuaded the members of the Board to approve the application, only demonstrates the Board's confusion, and was not a substitute for considering the actual legal standards for a variance, and for a special exception, and skipping over controlling elements that were not met, and in part, explicitly ignored.

Appellant-Opposers requested the Board to reconsider its decision on September 13, 2021.

The Board held a separate public hearing on that request for reconsideration and swiftly denied it on October 19, 2021.

The Board mailed its final decision approving the application on October 20, 2021.

This appeal is being timely filed within 30 days thereafter, on this day, November 18, 2021.

SCOPE OF REVIEW

This appeal is governed by the South Carolina Local Government Planning Enabling Act of 1994, S.C. Code Ann. §§ 6-29-310, *et seq*. (the "Act").

The Act enables: the City of Charleston to adopt zoning ordinances, S.C. Code Ann. § 6-29-710; the City's Board of Zoning Appeals to grant variances and special exceptions, S.C. Code Ann. §§ 6-29-800 (A)(2) & (3); and this Circuit Court to hear appeals therefrom, S.C. Code Ann. § 6-29-820.

The legal elements that must be established for a variance are prescribed by the Act itself, S.C. Code Ann. § 6-29-800 (A)(2), whereas the Act provides that the terms and conditions for a special exception should be forth in the zoning ordinances, S.C. Code Ann. § 6-29-800 (A)(3).

For each application for a variance or special exception, the Act requires the Board of Zoning Appeals to hold a public hearing for opposition to be heard, S.C. Code Ann. § 6-29-800 (D), and to then make a final decision, separately stating its findings of fact and providing an explanation of its conclusions of law, in writing, S.C. Code Ann. §§ 6-29-800 (2)(A) & (F).

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On appeal, the Act authorizes this Circuit Court to consider the record, viewing the Board of Zoning Appeal's findings of fact as if made by a jury, and to reverse the decision of the Board if it is incorrect as a matter of law, S.C. Code Ann. § 6-29-840 (A).

"In other words," as our Court of Appeals recently explained:

> In other words, the decision of a zoning board of appeals must not be disturbed if there is supporting evidence in the record. *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 215, 516 S.E.2d 442, 446 (1999); *Boehm*, 423 S.C. at 182, 813 S.E.2d at 880. Further, a court must not substitute its judgment for that of the board, "even if it disagrees with the decision." *Rest. Row Assocs.*, 335 S.C. at 216, 516 S.E.2d at 446.
>
> Nonetheless, a reviewing court "may rely on uncontroverted facts [that] 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). Moreover, a board's decision "will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs.*, 335 S.C. at 216, 516 S.E.2d at 446. "An abuse of discretion occurs when a [tribunal's] decision is unsupported by the evidence or controlled by an error of law." *Boehm*, 423 S.C. at 182, 813 S.E.2d at 880 (quoting *Newton v. Zoning Bd. of Appeals for Beaufort Cty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011)).

Venture Eng'g v. Horry Cnty. Zoning Bd. of Appeals, 858 S.E.2d 638, 642 (Ct. App. 2021).

QUESTIONS PRESENTED

1. Did the Board of Zoning Appeals follow the enabling Act in making its decision?
2. Were Appellant-Opposers afforded due process at the public hearing?
3. Are the elements for a variance, and for a special exception, established by the uncontroverted evidence in the record, as a matter of law?
4. Did the application fail to request an additional variance or special exception, required for allowance of the development?

DISCUSSION

1. The Board of Zoning Appeals did not follow the enabling Act in making its decision.

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The above-described provisions of the enabling Act were not followed in this case. The Board did not state its findings of fact or provide an explanation of its conclusions of law, separately, in writing. The Board issued its separate, written order on a fill-in-the-blank form that merely recited some (not all) of the elements for a variance, and for a special exception. That separate, written order contains no case-specific findings of fact or legal explanation, whatsoever. The Board's minutes likewise contain nothing of the sort; nor does the transcript, which will reflect that after hearing testimony, the Board undertook an abbreviated and unguided discussion of the issues mentioned above, before a motion was quickly made and passed, approving the application.

The Board's decision, on its face, therefore, violates the Act and is arbitrary and capricious. Notwithstanding the Act, however, rightly or wrongly, our Court of Appeals has taken a lenient view of the Board's express, statutory obligation to articulate its findings and reasoning, separately, in writing – holding that the transcript may nonetheless reveal how the Board was "likely persuaded." *Venture*, 858 S.E.2d at 646.

Even under this lenient view, at best, the transcript will reveal that the Board was likely persuaded by the only issues it discussed, mentioned above, which it got wrong, as a matter of law. The Board otherwise made no findings of fact for this Court to defer to as if made by a jury. When this Court reviews the record, it will find that the facts, uncontroverted and unruled upon, as applied to the elements for a variance, and for a special exception, establish that the Board's decision is indeed arbitrary and capricious and incorrect as a matter of law, as will be explained below.

2. Appellant-Opposers were not afforded due process at the public hearing.

Before addressing the merits of why the Board's decision should be reversed, however, there is another point of procedure that renders the Board's decision unaffirmable, despite being reversible. At the public hearing required by the Act, the Board did not provide a meaningful

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opportunity for Appellant-Opposers to be heard, thereby depriving them of due process, according to the highest courts in our state and our country. *See Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"); *Stono River Environmental Protection Ass'n v. South Carolina Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342, 305 S.C. 90 (1990) ("[T]he parties were entitled to notice and the opportunity to be heard.").

Specifically, the Board, whether accidentally or otherwise, disenabled Appellant-Opposers' Zoom Webinar video-conferencing connection, preventing them from providing factual testimony that the Board would have been required to consider. The details of how this occurred are as follows. Both Appellant-Opposers, namely Ms. Melhado and Mr. Neller, as well as their lawyer, Mr. Hellman, signed-up in advance to speak at the public hearing, in compliance with the Board's "Zoom Meeting Protocol," which states: "People who sign up to speak prior to the 12 noon deadline will be called on when it is your turn to speak and your microphone will be enabled. You may only speak once on each item." Ms. Melhado and Mr. Neller attended the hearing via a Zoom Webinar video-conferencing connection from Mr. Hellman's office. The video of the hearing shows that, using Zoom Webinar technology, the Board first enabled Mr. Hellman to be seen and heard around the 36-minute mark, at which time Mr. Hellman informed the Board that his clients, who would also be speaking in opposition, were with him, as reflected in the following exchange:

Mr. Hellman:	"Can you hear me?"
Mr. Batchelder:	"Let me swear you in Brian. Or is there anyone else who will be speaking in opposition too."
Mr. Hellman:	"I'm here along with my client. How do I turn the video on here?"
Mr. Batchelder:	"It's on. You're only an attendee that is

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> enabled to speak. We don't necessarily promote you to be a panelist. If that makes sense."

At around the 48-minute mark, after Mr. Hellman spoke to some of his clients' concerns,[3] but before Ms. Melhado and Mr. Neller had a chance to step in front of the computer's camera and offer testimony themselves, the Board disenabled Mr. Hellman and his clients from being seen or heard by the Board. From that point forward during the rest of the hearing, Appellant-Opposers had no way of being seen or heard by the Board, and no way to even communicate to the Board that Ms. Melhado and Mr. Neller had been deprived of the opportunity to testify.

3. The elements for a variance, and for a special exception, are not met in this case.

Setting aside the due process issue for purposes of completing the arguments as to why the Board's decision should be reversed, on the merits, the question now before this Court is as follows: As a matter of law, based on the facts in the record, uncontroverted and unruled upon, should Respondent-Applicants be granted a variance and a special exception so as to allow for a proposed two-story addition, together with new structures housing a gas-powered generator and multiple HVAC compressors, to be built virtually pressed up against and looming over the center of their neighbors' surrounding L-shaped property, the Appellant-Opposers in this appeal?

a. Variance

For a variance, the elements prescribed by the Act, S.C. Code Ann. § 6-29-800 (A)(2), are as follows:

> (A) The board of appeals has the following powers:

---

[3] Mr. Hellman spoke for approximately 10 minutes. In comparison, Respondent-Applicants, themselves, followed by their lawyer, spoke for approximately 15 minutes at the outset, and then were afforded additional time in rebuttal, as well as further time answering questions from the Board after the hearing was purportedly closed. These details are provided here in anticipation that Respondent-Applicants may argue that Mr. Hellman used up Ms. Melhado's and Mr. Neller's time to speak, which would not be a fair point, given this imbalance.

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> . . . (2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
>
> (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
>
> (b) these conditions do not generally apply to other property in the vicinity;
>
> (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
>
> (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
>
> (i) . . . The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance . . .

Applying the uncontroverted facts to these elements, Respondent-Applicants admitted that the house they seek to expand is already a sizeable 2,554 square feet, that they have lived there for 9 years, that it is a lovely house, that others have lived there for more than 200 years, and that they have also been able to utilize the house as the location for multiple businesses, albeit unlawfully. These admitted facts establish that there is no "unnecessary hardship," per S.C. Code Ann. § 6-29-800 (A)(2), and that there are no conditions that "effectively prohibit or unreasonably restrict the utilization" of the property, per S.C. Code Ann. § 6-29-800 (A)(2)(c). No guesswork is needed as to the whether the property might be reasonably utilized. It has been and currently is, verifiably, according to Respondent-Applicants' own testimony. To illustrate the point further by contrast, the property at issue here is not akin to some plot of undeveloped land that might be rendered useless by an incidental zoning ordinance that effectively prevents its development. The notion that the already existing, sizeable, livable, and lovely house might be improved by an addition,

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which is the true thrust of Respondent-Applicants' argument, in other words, "utilized more profitably," per S.C. Code Ann. § 6-29-800 (A)(2)(d)(i), both as a residence and an unlawful business location, cannot be considered grounds for a variance.

As mentioned above, Respondent-Applicants' unlawful use of the residential property as the location for multiple businesses was one of the only issues discussed by the Board. The Board incorrectly determined that fact was outside of its purview, when it clearly has relevance to these elements for a variance.

Next, the evidence in the record shows that the lot, house size, and lot-coverage percentage are all relatively similar to others in the vicinity, as opposed to being "extraordinary and exceptional," per S.C. Code Ann. §§ 6-29-800 (A)(2)(a) and (b).

Most importantly, as far as Appellant-Opposers are concerned, the variance will "be of substantial detriment to adjacent property," per S.C. Code Ann. § 6-29-800 (A)(2)(d), particularly Appellant-Opposers' property, an L-shaped property surrounding the location of the proposed addition, both to the rear and to the side. Appellant-Opposers' attorney (before having his Zoom Webinar connection disenabled) started to explain that the addition would inhibit adequate light, air, and open space, interfere with their view, and negatively affect the environs, from both Appellant-Opposers' house to the side and from their yard to the rear. *See* S.C. Code § 6-29-710(A)(1) (first among many purposes of zoning ordinances is "to provide for adequate light, air, and open space").

Respondent-Applicants' reaction to these concerns only confirmed their legitimacy, instead of controverting them. Respondent-Applicants suggested that Appellant-Opposers could cut limbs off of (and essentially destroy) their own living trees to make up for the loss of light and air resulting from the addition next door. Respondent-Applicants also suggested that Appellant-Opposers could position themselves to avoid feeling the brunt of the impact, by sitting on their

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second story porch, with no regard for Appellant-Opposers' right to continue enjoying their back yard to the rear. And Respondent-Applicants suggested that they could try to baffle the noise that will emanate from the HVAC compressors that they plan to locate just outside Appellant-Opposers' upstairs bedroom window. As already explained, Appellant-Opposers did not get the opportunity to speak to each of these suggestions, but their prejudicial nature is apparent anyhow. A variance should not be granted benefiting one property owner that depends on the neighboring property owner having to make such sacrifices and take such affirmative remedial measures, destroy parts of their own property, restrict their own movements, and tolerate such nuisances, which are manifestly of substantial detriment, and of the kind the zoning ordinances were adopted to protect against.

Another approach Respondent-Applicants took to attempt to side-step Appellant-Opposers' concerns was to repeatedly refer to Appellant-Opposers' property as only sharing a single property line, on the side, neglecting to acknowledge that it also wraps around to the rear, surrounding the proposed addition. This tactic worked and confused the Board, with one member making a comment after the public hearing was closed (and Appellant-Opposers' Zoom Webinar connection was disenabled), indicating that she did not understand that the property owners to the rear opposed the application, and that those property owners were Appellant-Opposers. In the same vein, Respondent-Applicants touted support from friends who shared no property lines with them, which did nothing to controvert the direct and substantial detrimental impact on Appellant-Opposers.

Respondent-Applicants also focused their presentation on the fact that their property has a garden in the front of the house, with some historic significance. This fact has no bearing on the test for a variance. Having a lovely garden in their front yard is not a hardship (rather, it is surely one of the reasons they purchased the property to begin with, 9 years ago), it does not render their

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house unable to be utilized, and it does not necessitate the proposed addition.

b. Special Exception

The Act provides that the terms and conditions for a special exception should be forth in the zoning ordinances, S.C. Code Ann. § 6-29-800 (A)(3), as follows:

> (A) The board of appeals has the following powers:
>
> . . . (3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance . . .

Turning accordingly to the City's Ordinance § 54-110, its subsection (f) provides the following terms and conditions for the special exception at issue here, as follows:

> f. *The non-conforming use of a building or structure cannot be physically extended to provide more area for the non-conforming use*, and the number of bedrooms in a non-conforming two-family dwelling or muli-family dwelling use cannot be increased, *unless* the Board of Zoning Appeals—Zoning, after a duly advertised public hearing, finds that the extension or increase of the non-conforming use is: *(1) limited to extending or increasing the non-conforming use then in existence; and (2) would not result in an unreasonable intensification of the non-conforming use*. In considering the reasonableness of the intensification of the extension or increase, the Board shall consider the effect of the extension or increase on properties in the vicinity to include *traffic impacts; vehicular and pedestrian safety; parking impacts; potential impacts of noise, lighting, fumes or obstruction of air flow or light on adjoining property; impacts on the aesthetic character of the environs, to include the possible need for screening.* (emphasis added).

The meaning of "non-conforming use," as used in the ordinance above, is set forth in S.C. Code Ann. § 6-29-730, which provides as follows:

> The regulations may provide that land, buildings, and structures and the uses of them which are lawful at the time of the enactment or amendment of zoning regulations may be continued although not in conformity with the regulations or amendments, which is called a nonconformity. The governing authority of a municipality or county may provide in the zoning ordinance or resolution for the continuance, restoration, reconstruction, extension, or substitution of nonconformities. The governing authority also may provide for

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> the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance, or by providing a formula where the compulsory termination of nonconformities may be so fixed as to allow for the recovery or amortization of the investment in the nonconformity.

Respondent-Applicants' unlawful use of their residence as a location for multiple businesses disqualifies them from satisfying both of the above elements for a special exception. That business use, by Respondent-Applicants, starting within in the last 9 years, was not "then in existence," per the City's Ordinance § 54-110 (f)(1), "at the time of the enactment or amendment of zoning regulations," per S.C. Code Ann. § 6-29-730, a time period in which the property was used as a residence, as admitted by Respondent-Applicants, before they purchased the property and over the prior two centuries. Nor would that business use have been "lawful" and thus allowed to be continued as a "nonconformity," per S.C. Code Ann. § 6-29-730. That business use, therefore, is expressly prohibited from being extended under the terms and conditions of this special exception, restated here in pertinent part: "The non-conforming use of a building or structure cannot be physically extended to provide more area for the non-conforming use . . . unless . . . [it was] . . . then in existence," per the City's Ordinance § 54-110 (f). Furthermore, it is of course "unreasonable" to "intensif[y]" what is prohibited, per the City's Ordinance § 54-110 (f). Notably too, that business use obviously affects "traffic" and "parking," which also must be considered under this test, per the City's Ordinance § 54-110 (f)(2).

Once more, it must be emphasized that the Board was incorrect as a matter of law in deciding to disregard the business uses of the property. Specifically, the Board determined:

> [T]he contention that the uses that are occurring in the building really are not properly before us. We don't deal with those sorts of things. We're dealing with the request for a physical change to the property. So it's my feeling that we don't have to deal with any uses that may or may not be occurring in there other than residential.

Compare this determination with the language the ordinance, set forth above, which

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requires the Board to consider the uses occurring in the property, contrary to the Board's determination otherwise.

The substantial impact on Appellant-Opposers, already fully discussed above with respect to the variance, also establishes that the proposed addition will be an "unreasonable intensification," per the City's Ordinance § 54-110 (f)(2). Appellant-Opposers' concerns go straight to the heart of how the ordinance defines an "unreasonable intensification," in the context of the impact on residential neighbors, namely, "potential impacts of noise, lighting, fumes or obstruction of air flow or light on adjoining property; impacts on the aesthetic character of the environs, to include the possible need for screening," per the City's Ordinance § 54-110 (f)(2).

4. The application failed to request an additional variance or special exception, required for allowance of the development.

Respondent-Applicants' proposal that was approved by the Board includes a new structure, elevating a gas-powered generator 6 feet off of the ground, along the rear property line that abuts Appellant-Opposers' property at the center of its L-shape. This new structure, as well as the generator itself, violate the rear setback minimum of 3 feet required by the City's Ordinance § 54-301, where a "setback" is defined as an "open unoccupied space, other than a court, between the building and any lot line," by the City's Ordinance § 54-120. The structure and the generator also violate the side setback under the same sections of the City's Ordinance. With respect to these rear and side setback violations, Respondent-Applicants did not request variances, as they should have, or special exceptions (if they were to take the position that the generator was a nonconformity existing at the time the ordinance was adopted, which they did not, and there is no evidence of, and surely was not the case). Because the application failed in this respect, the Board, in turn, did not consider, nor grant, such variances or special exceptions. The Board's approval of the application and its proposal was incorrect as a matter of law for this additional reason, as well.

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CONCLUSION

For the above reasons, this Court should reverse the Board's decision. The decision is arbitrary and capricious because it contains no findings of fact and no explanation of the legal conclusions, as the enabling Act requires. The transcript reveals, moreover, that the Board was likely persuaded by the only issues it discussed, which it misconstrued, without addressing the controlling uncontroverted facts and applicable law. Further, the Board did not provide a meaningful opportunity for Appellant-Opposers to be heard at the public hearing because it disenabled their Zoom Webinar connection just as they were about to testify. Notwithstanding, it is clear from the record that Respondent-Applicants did not meet the elements for a variance, or for a special exception. Their proposed addition, which would merely make a reasonably sized house larger, while having a substantial impact on their neighbors, both to the side and to the rear, should not be allowed. And their use of the property for multiple businesses is prohibited and should not be extended. The statutory procedures of the enabling Act and the protections of the zoning ordinance should not be disregarded in this case.

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Charleston, South Carolina
November 18, 2021

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Teresa Melhado and Dane Neller, Appellants, v. City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2021-CP-10-05255 **OWNER-RESPONDENTS' MEMORANDUM IN OPPOSITION TO APPEAL OF THE DECISION OF BOARD OF ZONING APPEALS**

Owner-Respondents, George "Skip" Wallace and Erika Wallace as Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016 (the "Wallaces"), hereby submit this Memorandum in opposition to Appellants Teresa Melhado's and Dane Neller's appeal of the final decision of the City of Charleston Board of Zoning Appeals – Zoning (the "BZA") to grant the Wallaces' request for a variance and special exception from two of City's Zoning Ordinances, subject to certain conditions. The variance and special exception were necessary for the construction of a small addition to the rear of the Wallaces' house at 60 Church Street in downtown Charleston. The Appellants recently purchased the house next door at 62 Church Street where the former owner build a large addition to the rear of their house a few years ago that the Wallaces supported.

The applicable ordinance for the Wallaces' property at 62 Church Street provides that the maximum lot coverage ratio is 35%. The existing lot coverage of the Wallaces' property is 37.14%. The variance sought to increase the permissible lot coverage ratio to 42.96%.

The special exception involved the required side setback on the south lot line. The applicable ordinance for the Wallaces' property at 62 Church Street imposes a setback of nine (9)

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feet from the side lot lines. The Wallaces' existing historic house already encroaches 3 feet and 10 3/8 inches into the side setback on the south side of the house. **(R. p. 10; p. 13; p. 17)**. The proposed addition requires a modest easterly extension of this existing encroachment and would encroach 2 feet and 9 5/8 inches into the specified setback for the south lot line.

The full board of the BZA's rendered a unanimous decision in favor of the Wallaces, not once, but two times. As the record shows, the BZA applied the proper legal standards, conducted an exhaustive analysis of the relevant facts, and gave interested parties, including the Appellants, an opportunity to be heard both of the two meetings and in Appellants' written submissions to the BZA. The BZA's decision is correct as a matter of law and fully supported by the record. The BZA did not act arbitrarily or capriciously, nor did it abuse of its discretion.

For these reasons, as more particularly set forth herein, the BZA's decision should be affirmed, and this appeal dismissed.

FACTUAL BACKGROUND

On May 27, 2021, after four years of planning and design, the Wallaces applied to the BZA for a special exception and variance from the City's Zoning Ordinances needed to construct a small addition to the rear of their historic home at 62 Church Street to enable them to add standard amenities, such as a laundry room and walk-in closet. **(R. p. 12-13; p. 18; p. 44, lines 4-21).** The proposed addition will extend from the rear of the current home into a courtyard that is currently enclosed by a brick border wall that is 8 feet tall in most places. **(R. p. 16; pp. 27-31).** Within the courtyard is a small sitting area, overgrown landscaping, a generator, HVAC unit, equipment platform, and a tool shed as shown in the below photograph:

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(R. p. 29).

This view is facing South. **(R. p. 29).** The Appellants' neighboring property is situated behind the tool shed (a partial view of their main residence structure can be seen to the right of the tool shed) and wraps around in an "L" shape to the East (i.e., the left side of this picture, behind the brick wall). **(R. p. 11; p. 50, lines 15-19).** The Appellants' single-story pool house is on the other side of the brick wall. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, p. 13, lines 14-17).**

The Wallaces have long planned to improve this portion of their property. **(R. p. 44, lines 4-21).** Skip Wallace, an architect registered in the State of South Carolina for 37 years, refined plans for this small addition over a period of four years, with input from the Historic Charleston Foundation, neighbors, and special consideration of the unique and historic features of the property. **(R. p. 44, line 4; p. 45, line 7-12; pp. 32-35).** The plans call for a first-floor garden room

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and above it, a hallway, closed, laundry room, and walk-in closet/exercise area. **(R. pp. 17-18).** The remaining courtyard will also be renovated. **(R. pp. 17-18).**

PROCEDURAL HISTORY

The Wallaces submitted their detailed architectural drawings with their application to BZA for a special exception and variance on May 27, 2021. **(R. p. 13; pp. 14-24).**

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

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

The Wallaces' application was first scheduled for consideration by the BZA at its meeting on August 3, 2021. At the request of Appellants, who had just purchased the neighboring property at 60 Church, the Wallaces deferred the application to the next BZA meeting. **(R. p. 50; p. 55, lines 15-17).**

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The BZA considered the Wallaces' application at its meeting on September 7, 2021. **(R. p. 2; p. 7).** The BZA staff recommended approval. **(R. p. 41, line 13).** The Wallaces' application was also supported by the Historic Charleston Foundation that holds a conservation easement on the property and expressed it was in favor of the request. **(R. p. 32).** The Wallaces also submitted letters of support from various neighbors. **(R. pp. 33-35; p. 49, lines 8-13).** The Appellants were the only persons in opposition to Wallaces' application. **(R. p. 49, lines 14-16).**

All seven BZA members were present at the meeting. **(R. p. 36)**[1]**.** The BZA first heard from Lee Batchelder, the City's Zoning Administrator/Division Director. **(R. pp. 37-42).**Mr. Batchelder presented the Wallaces' application and submissions to the BZA which included a lot coverage and angle view studies prepared by Skip Wallace. **(R. p. 38, line 5 – p. 42, line 3).** Mr. Batchelder recommended approval of the Wallaces' application and explained why to the BZA in detailed fashion. **(R. p. 38, line 5 – p. 42, line 3).** The BZA then heard from the Wallaces, then the opposition, allowed the Wallaces a short rebuttal, and then opened the discussion to BZA members for approval, denial, or approval with conditions. **(R. p. 36, line 6-15).**

After an exhaustive review of more than one hour on this one application, the BZA unanimously approved the lot coverage variance and unanimously approved the special exception for the side setback subject to certain conditions. **(R. p. 37, line 21 [Start of audio 00:05:40]; p. 64, line 7 [End of audio 1:08:03]).** The BZA's 7-0 decision is reflected in the transcript of the September 7, 2021, meeting as well as the minutes from the meeting which were approved on September 21, 2021. **(R. p. 63, line 9 – p. 64, line 7).**

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

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

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

With respect to the variance request, the order provides the BZA held a public hearing and made the following findings of fact and conclusions after consideration of the evidence and arguments presented:

> 1. There are extraordinary and exceptional conditions pertaining to the particular piece of property.
> 2. These conditions do not generally apply to other property in the vicinity.
> 3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
> 4. Authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character will not be harmed by granting the variance.
>
> THE BOARD, THEREFORE, finds that the applicant has an unnecessary hardship and orders that the variance be granted, subject to the following conditions, if any: [none].

On September 13, 2021, Appellants filed an appeal for reconsideration with the BZA. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 8-9).** The parties submitted briefs to the BZA on their respective positions. **(Addt'l materials filed by the City on Mar. 28, 2022, at 4:04 PM, pp. 2-15).** In their request that the BZA reconsider its decision, Appellants raised basically the same arguments they are now making to this Court, contending that: (1) Appellants were deprived of their procedural and substantive due process rights; (2) the

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BZA failed to consider the Wallaces' business use of 62 Church Street in the context of the special exception test; (3) the BZA failed to consider the impact to the rear or East property line of 62 Church Street; (4) the BZA did not properly draft conditions tied to the grant of the special exception; (5) the BZA misapplied the variance test; and (6) the BZA misapplied the special exception test. **(Addt'l materials filed by the City on Mar. 28, 2022, at 4:04 PM, pp. 10-15).**

The BZA heard the Appellants' request for reconsideration at its meeting on October 19, 2021. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 2-3).** Appellants attorney, Brian Hellman, appeared on their behalf, and was given a 10-minute opportunity to speak initially, as well as an opportunity for a rebuttal. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 11-15, 19-20).** The BZA discussed the request for reconsideration in detail. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 11-15).** The board members addressed each of grounds one by one and provided the reasons for rejecting Appellants' assertions. **(Id.).** After full consideration and discussion of the alleged grounds for reconsideration, the entire seven-member board unanimously denied Appellants' appeal for reconsideration. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 23-24).** The BZA issued on order denying the appeal for reconsideration on October 19, 2021.

Appellants initiated this appeal on November 18, 2021, by filing their Notice of Appeal and Petition in Support. The City has filed the record before the BZA, which constitutes the record for consideration of the appeal before this Court.

STANDARD OF REVIEW

Section 6-29-840 of the South Carolina Code of Laws charges a circuit court presented with an appeal of a zoning board's decision to "determine only whether the decision of the board is correct as a matter of law."

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

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

ARGUMENT

The questions before this Court are: Did the BZA consider the Wallaces' requests for a special exception and variance under the correct legal standard and, if so, is there evidence in the record to support the BZA's decision approving the requests? The answer to these two questions is clearly yes. The BZA applied the proper standards, followed normal procedure, and the record is replete with evidence supporting the BZA's decision.

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Given the deference that is to be afforded to a zoning board's decision, this Court must not substitute its or Appellants' judgment for the BZA's and shall uphold the BZA's decisions to grant these requests.

1. The BZA applied the proper variance test, and the record evidence supports the BZA's decision to grant the Wallaces a variance from lot coverage limitations.

The BZA has the power under S.C. Code Ann. § 6-29-800(A)(2) to grant variances from the requirements of zoning ordinances, including City Zoning Ordinance § 54-301 that limits lot occupancy to 35%, when the strict application of the ordinance would result in "unnecessary hardship" and the following elements are met:

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

The BZA considered the Wallaces' request according to this standard and explicitly found, in writing, as is evident in the order issued on September 7, 2021, that each of these elements was satisfied.

As to the first and second elements of the test, the BZA was presented with documentary and testimonial evidence[2] setting out the extraordinary and exceptional conditions pertaining to 62 Church Street that do not generally apply to neighboring properties. One of the extraordinary and

[2] Mr. Batchelder, the City's Zoning Director, presented a Power Point presentation to the BZA that included various maps and images of 62 Church Street, its features and size, and the size and lot occupancy ratio of surrounding properties. **(R. pp. 8-35).** Skip Wallace was sworn in and also testified, as did the Jennifer Ivey, one of the Wallaces' attorneys. **(R. p. 42, line 10 – p. 49, line 3).**

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exceptional conditions pertaining to 62 Church Street is that most of the open space of the lot is in the front garden. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 6-7).** While most homes abut the sidewalk and Church Street and have the majority of the open space behind the houses, the Wallaces' house is the opposite. **(Id.).** Between the Wallaces' house and Church Street is a large Loutrel Briggs' garden. **(Id.).** The City's Zoning Director, Mr. Batchelder, detailed this to the BZA in his presentation:

> So, this is a residential property on the east side of Church Street, south of Trad Street. And this shows, this map shows the location of the property from the middle of that block. And, as you can see, there are a variety of lot shapes and sizes in, in this immediate area. . . .
>
> Here's an aerial view. This does a good job of illustrating that most of the homes are set all the way up to or very close to Church Street. This house has been set well back form Church Street as you can see. Here is a view from the street. Again, showing the house situated well back from Church Street. There is a neighboring property to the south, its right on Church Street and the property to the north, the home to the north is closer, much closer to Church Street than 62. The zoning map illustrating the zoning to the property is SR-4 in that area. And again, this does a good job of showing how this home, for whatever reason, I don't know the history of the home, but **it sets well back from Church Street unlike the vast majority of homes on Church Street**.

(R. p. 38, lines 5-20) (emphasis added).

This 213-year-old home has not been remodeled in a half a century (the last revision to the home was completed between 1973-1974). **(R. p. 44, lines 6-21).** The home lacks a laundry room, storage areas, and closets. **(R. p. 45, lines 4-7).** Skip Wallace testified to the hardship he and his wife experience from not having use of functional utilities and storage space in their home. **(R. p. 45, lines 4-8)** ("On the second floor, which is almost the more important part for us, we have to get a laundry room and closets. And that's the, the things that are lacking in this house that make it so difficult for us and we've, we've committed to stay here for the rest of our lives."). This testimony also goes to the third element of the test. Precluding the expansion of the home based

upon lot coverage requirements that this property already does not comply with would effectively prohibit or unreasonably restrict the modern utilization of the property. S.C. Code Ann. § 6-29-800(A)(2)(c).

As to the last and final element, the record also established that authorizing the variance will not be of *substantial* detriment to adjacent property or the public good, and that the character will not be harmed by granting the variance. S.C. Code Ann. § 6-29-800(A)(2)(d). The detailed plans and photographs that were submitted to the BZA demonstrate the portion of the Wallaces' property that is to be improved is not particularly sightly. **(R. p. 29).** The plans call for the current elements such as the brick wall, generator, and HVAC platform to be improved and made more uniform and for tasteful finishing of the outdoor and indoor areas. **(R. pp. 15-24).**

As to the public good and the character of the neighborhood, the record reflects that no other neighbors opposed the Wallaces' requests, in fact many submitted letters of support. **(R. pp. 33-64).** The Historic Charleston Foundation that holds a conservation easement on the Property supported the Wallaces' application and plans. **(R. p. 32; p. 49, lines 8-13).**

The BZA also considered whether increasing the non-conformity of the lot occupancy ratio would harm the character of the neighborhood. **(R. p. 39, lines 2-11; p. 47, lines 16-22).** The Wallaces prepared and submitted to the BZA a lot coverage study. **(R. pp. 38-39).**The study is a map of neighboring properties that set out the size of each lot, the square footage of the structure, and the resulting lot coverage ratio. **(R. p. 39, lines 2-7).** Mr. Batchelder presented the study to the BZA and expressed "there are very large lot occupancies in this area," using the property to the north of 62 Church Street with a 65.5% lot occupancy as an example, all in an area where the required lot occupancy is 35%. **(R. p. 39, lines 1-11).** It is keeping with the character of the historic neighborhood to have large lot occupancies. **(R. p. 39, lines 5-6).**

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Rear additions like this small one are also in keeping with the character of the neighborhood. **(R. p. 47, line 16 – p. 48, line 7)** ("[T]he other neighboring homes are much larger and have been more recently modernized. The Wallaces have provided a listing of properties just walking around the four-block area of homes that have all had similar 2-story additions…"). In fact, the property that the Appellants just acquired includes an addition to the rear of the main house constructed a few years ago that includes a rear second-floor porch with views into the Wallaces' rear courtyard. **(R. p. 48, lines 1-7).**[3] Making Appellants' opposition to the Wallaces' request even more ironic is the fact that Appellants are in the midst of another significant renovation of 60 Church Street.

The "substantial detriment" that Appellants claim is that the addition would inhibit adequate light, air, and open space, interfere with their view (from the porch added to their property), and negatively affect the environs. **(App. Pet. in Support p. 12).** Appellants presented no empirical evidence, testimony, or data into the record to substantiate these claims. **(R. p. 56, line 17-20).** To the contrary, the Wallaces submitted to the BZA a view angle analysis that showed the light impact off the sitting room and porch at 60 Church Street. **(R. p.48, lines 17-23).** Skip Wallace also testified that the Appellants will only have a view of the addition from their rear porch (part of their recent addition) and that the Appellants' view to the north "will almost be miniscule because of the existing parapet wall." **(R. p. 60, lines 1-12).** Mr. Wallace also reminded the BZA that because Appellants are to the South, there is no sunlight that will be blocked. **(R. p. 60, lines 10-12)** ("there is no sunlight being blocked, because the sun is to our south and all shadows are case to the north").

[3] The Wallaces, like good neighbors, did not object when the former owners of 60 Church Street requested approval to complete that work. **(R. p. 48, line 3-4).**

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But what is more important is that the Appellants' stated concerns were recognized, evaluated, and rejected by the BZA:

> The potential impacts of . . . obstruction of airflow or light on the adjoining property, that would I believe apply in the case. And the impacts on the aesthetic character of the environs to include possible need for screening. Again that's, that's possibly one that would apply as well. . . [T]his is to the north, the property at 60 Church Street, and that is the adjoining property that I believe is not in favor of this request. So the light impact on that property is very minimal to the extent there would be an impact and an air impact I could be minimal as well.

(R. p. 41, lines 2-16).

The BZA considered the Wallaces' request for a variance under S.C. Code Ann. § 6-29-800(A)(2) and did not err as a matter of law in finding the elements for a variance were satisfied. Appellants have not alleged, much less proven, the BZA acted arbitrarily or capriciously, or abused its discretion in any way in granting the Wallaces a variance from lot occupancy requirements. The BZA's decision to grant the Wallaces a variance to modestly increase their lot occupancy should be upheld.

2. The BZA properly applied the special exception test, and the record evidence supports the BZA's decision to grant the Wallaces' request for a special exception, subject to certain conditions.

The BZA also properly evaluated the Wallaces' request for a special exception, and its decision is supported by the record. The BZA applied the special exception test codified in City Zoning Ordinance § 54-110(f) that has two parts **(R. p. 40, lines 13-17)**: (1) determining the extension or increase of the non-conforming use is limited to extending or increasing the non-conforming use then in existence; and (2) would not result in an unreasonable intensification of the non-conforming use. City Zoning Ord. § 54-110(f). The Ordinance further provides:

> In considering the reasonableness of the intensification of the extension or increase, the Board shall consider the effect of the extension or increase on properties in the vicinity to include traffic impacts; vehicular and pedestrian safety; parking impacts; potential impacts of noise, lighting, fumes or obstruction of air flow on adjoining

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> property; impacts on the aesthetic character of the environs, to include the possible need for screening.

City Zoning Ord. § 54-110(f).

The Wallaces' historic house currently encroaches into the required setback from the South side property line. **(R. p. 13).** Appellants argue that the extension of the encroachment into the setback area to allow this proposed addition (an outdoor space and garden room on the first-floor level and walk-in closet, exercise space, linen closet, and laundry on the second floor) will result in an unreasonable intensification of a non-conforming commercial use. **(App. Pet. in Support pp. 14-15).** This argument is groundless. There was plenty of evidence in the record to support the BZA's rejection of this spurious contention both times.

The Wallaces' property is physically non-conforming because it extends into the side setback that was created by an ordinance adopted long after the historic house was constructed. The Wallaces are not seeking to use this portion of their property for any business use, nor is the Wallaces' request for a special exception from City Zoning Ordinance § 54-211, governing home occupations. The plans submitted by the Wallaces clearly show that no commercial space, storefront, parking lot, or even a home office is contemplated in this addition. **(R. pp. 17-18).**

Appellants falsely claim that the small addition will expand a commercial use that is in fact non-existent: "That business use, therefore, is expressly prohibited from being extended under the terms and conditions of this special exception . . . Furthermore, it is of course 'unreasonable' to 'intensif[y]' what is prohibited, per the City's Ordinance § 54-110(f). Notably too, that business use obviously affects 'traffic' and 'parking,' which also must be considered under this test, per the City's Ordinance § 54-110(f)." **(App. Pet. in Support pp. 14).** This whole point is completely undermined simply by referring to the details of the plans. **(R. pp. 17-18).** No portion of the addition is adding business or office space.

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Moreover, this issue was exhaustively considered by the BZA. Appellants' lawyer spent much of his time at the initial meeting and on reconsideration trying to convince the BZA that "there are two businesses that are being illegally operated" out of 62 Church Street. **(R. p. 51, line 11 – p. 52, line 9; p. 54, lines 19-21).** Appellants' claims with respect to the commercial use of 62 Church Street were entirely refuted in these proceedings. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, p. 17, lines 11-19).** The Wallaces' use of 62 Church Street is and has always been residential. **(Id.).** Ms. Wallace has a small desk where she completes paperwork in a 78-square-foot area of unconditioned attic space. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, p. 17, lines 13-15).** She receives her mail at her home address but meets her clients and does her work as an interior designer, naturally, in her clients' spaces. **(Id.).** Given the unfounded assertions made by Appellants, Ms. Wallace applied for and obtained a home occupation business license even though she does not meet with clients there. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, p. 17, lines 17-19).** Mr. Wallace testified before the BZA that he is an architect and has a studio at the Confederate House on Broad Street that he occupies daily in addition to the headquarters of his firm whether the firm's nine employees and his partner work in Richmond, Virginia. **(Id. at lines 11-13; R. p. 44, lines 1-3).** He conducts no business at home.

There was also no evidence the Wallaces' past and current use of 62 Church Street affects parking or traffic along Church Street. The only evidence in the record is that the proposed addition will provide additional residential features. The Appellants' claims rest on misapplied legal principles and their "feel[ing] that part of this application is really to intensity the effect of two unlawful nonconforming uses." **(R. p. 52, lines 8-9).** The BZA's denial of this ground for opposition is supported by evidence in the record.

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The analysis with respect to the Wallaces' request for a special exception to extend the non-conforming side setback is properly focused on whether the expansion to this property will cause an intensification or increase of traffic impacts, vehicular and pedestrian safety, parking impacts, potential impacts of light and noise, lighting, fumes or obstruction of air flow or light on adjoining property; impacts on the aesthetic character of the environs, to include the possible need for screening. City Zoning Ord. § 54-110(f). As set out in the preceding section, Mr. Batchelder's analysis as to the *minimal* light, view, and air obstruction the proposed addition may have on 60 Church Street, standing alone, fully supports the BZA's decision. **(R. p. 41, lines 2-16).**

The BZA addressed the only possible intrusion that was of concern to it by imposing a condition on the special exception. At the close of public comment, BZA members expressed concern with the noise that may emanate from the compressors and generators that were going to be elevated per the plans.[4] **(R. p. 57, linc 16 – p. 64, line 7).** This discussion led Skip Wallace to offer to incorporate into the design sound baffles to help mitigate that concern. **(R. p. 61, lines 12-17).** The BZA incorporated this suggestion as a condition, as it is authorized and often does, into its order granting the Wallaces' request for a variance to extending the non-conforming side setback.

3. The Appellants were not deprived of due process.

Appellants claim the BZA further erred as a matter of law by depriving them of a meaningful opportunity to be heard. **(App. Pet. in Support pp. 7-9).** The verifiable record of proceedings before the BZA shows that this is not true.

[4] The existing HVAC and generator platform is to be raised six feet to account for the change in the flood zone in the same area of the current HVAC platform per the plans. **(R. p. 18; pp. 30-31).** The Wallaces are not seeking to obtain more area within the side or rear setback to accomplish this take (see City Zoning Ordinance § 540119(f) "to provide for more area"), but rather just elevating it higher to account for the change in flood zoning.

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At the outset of the meeting on September 7, 2021, that was conducted remotely through Zoom®, BZA Chairman Michael Robinson announced that speakers opposing matters on the BZA agenda would "have 10 minutes in their opposition presentation." **(R. p. 37, lines 16-17).** After this matter was introduced by Chairman Robinson and after Mr. Batchelder's and the Wallaces' presentation, the BZA recognized Appellants and shifted the screen to them. **(R. p. 49, line 14 – p. 50, line 10).** Appellants' lawyer, Brian Hellman, introduced the Appellants (Teresa Melhado and Dane Neller) and indicated Jonathan Yates was there with them at their office at 105 Broad Street. **(R. p. 50, lines 11-13)** ("Thank you Mr. Chairman. I'm Brian Hellman, I'm here with Johnathan Yates. We're at 105 Broad Street. Also with me tonight are my clients, Theresa (sic.) Melhado and Dane Neller.") After Mr. Hellman was sworn in and he worked out his camera and audio connections, Mr. Hellman began the opposition's presentation at 37:15 and ended his presentation at 48:04.[5] Mr. Hellman had 10.817 minutes to speak and was not cut-off at the 10-minute mark.[6] There was no restriction on this ability to share the mic or screen with his clients, Ms. Melhado and Mr. Neller, who were sitting right there with him.

Mr. Hellman represents to this Court that the BZA cut him off. **(App. Pet. in Support pp. 11)** ("Appellant-Opposers' attorney (before having his Zoom Webinar connection disenabled) started to explain the addition would inhibit adequate light, air, and open space, interfere with their view, and negatively affect the environs, from both the Appellant-Opposers' house to the side and from their yard to the rear."). This is simply wrong. The transcript shows that the BZA did not cut-off Mr. Hellman at the 10-minute mark and that he concluded his speech in normal fashion:

[5] See: https://www.youtube.com/watch?v=GzTu4Tp6pEE.

[6] In comparison, the Wallaces (Skip Wallace and Jennifer Ivey, together), spoke for 11.5 minutes in the period the applicant was provided for its presentation.

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> We hope that the board would find that there are not, the application is not, the elements of the special application and the special exception test and the variance requests are not being met by the applicant and that it would deny this application.

(R. p. 55, lines 1-5).

The BZA verified Appellants were afforded 10-miuntes to make their opposition presentation at the hearing on Appellants' request for reconsideration. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, p. 20, lines 10-23).**

The representation that Appellants were not given the opportunity to be sworn in is also equally unsupported by the record:

> Mr. Batchelder: Let me swear you in Brian. Or is there anyone else that would be speaking in opposition too?
>
> . . .
>
> Mr. Hellman: Very good, very good. I'm here. I'm ready to be sworn in Mr. Batchelder. Thank you.

(R. p. 49, lines 21-22; p. 50, lines 5-6).

Mr. Hellman's microphone and video were on and functional when he was sworn in. **(R. p. 50, lines 7-12).** Mr. Hellman did not ask for his clients to be sworn in at this point or in any other point during his 10-minute presentation that began after he was sworn in. **(R. p. 50, line 11 – p. 55, line 5).** The BZA was clear that each side would have 10 minutes to make their presentation, however they wished to allocate such time, and there was no restriction on who could be sworn in or speak.

The procedures employed by the BZA in its meetings on this agenda item satisfied due process requirements. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. *Kurschner v. City of Camden Planning Com'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008); S.C. Const. art. 1, § 22. "Due process does not require a trial-type hearing in every conceivable case of government impairment of a private

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interest." *Kurschner v. City of Camden Planning Com'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "Rather, due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 172, 350. "[I]n determining the process which is due, a court will consider the private interest affected by the proceeding, the risk of error created by the chosen procedure, and the countervailing government interest supporting challenged procedure." *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Our Supreme Court has recognized procedural safeguards due in exercise of discretionary authority, as opposed to adjudicatory power, are more flexible and less exacting. *Id.*

The only due process question here is whether the time given to Appellants on September 7, 2021 (10+ minutes) and on October 19, 2021 (another 10+ minutes) presented an opportunity for Appellants to be heard in a meaningful way about their opposition to the Wallaces' requests.[7]

The BZA's limitation of presentations to 10 minutes per side did not deprive Appellants of the opportunity to be heard in a meaningful way. Chairman Robinson was direct at the outset of the September 7th meeting that applicants and opposition would be limited to 10-minute presentations, with the applicant having a 5-minute rebuttal. **(R. p. 37, lines 16-17).** The BZA applied the same rules when it heard Appellants' appeal for reconsideration, giving Appellants the 5-minute rebuttal period. **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 10-24).** The Appellants fully took advantage of both of these opportunities to speak and also submitted written material that was submitted to the BZA.

The applicable statute and ordinances do not require the BZA to allow unlimited speaking time. Imposing time limits on public comments is customary at BZA meetings, board of

[7] The Appellants do not raise a notice or lack of judicial review argument and, clearly, neither are warranted here.

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architectural review meetings, and meetings of other boards and commissions across this State.[8] *See, e.g., Croft as Trustee of James A. Croft Trust v. Town of Summerville*, 428 S.C. 576, 837 S.E.2d 219 (Ct. App. 2020), vacated as moot by *Croft as Trustee of James A. Croft Trust v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021) (finding the Town of Summerville BAR limited public comments on a mixed-use commercial development in the heart of downtown Summerville to 3 minutes did not unreasonably restrict the public's right to comment). In the 10 minutes Appellants were allotted, Mr. Hellman went through every element of the special exception and variance tests and had time for introductory and conclusory comments. *See* **(R. p. 51, line 1 – p. 51, line 22)** (addressing the elements of the special exception test); **(R. p. 53, line 1 – p. 55, line 23)** (addressing the four elements of the variance test); **(R. p. 50, lines 11-23)** (introductory comments); **(R. p. 55, lines 1-5)** (closing argument).

On October 19, 2021, Mr. Hellman had time to get through his six arguments as to how he claims the BZA misapprehended and misconceived the questions involved (i.e., the same arguments made here). **(Addt'l materials filed by the City on Mar. 28, 2022, at 10:47 AM, pp. 11-15).** The time limitations imposed by the BZA did not prevent the Appellants from fully outlining their position in opposition to each of these requests.

The record is clear that the BZA gave the Appellants-Opposers an opportunity to be heard in a meaningful way at both meetings the BZA held on this application. The Appellants' assertions that they were denied due process are unfounded and unsupported by the record or the law.

[8] It is also worth note that there is no requirement that every person who wishes to speak against a project or request for a variance or special exception be given the same amount of time as the applicant to outline their position.

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CONCLUSION

The BZA applied the proper legal standards for consideration of requests for variances and special exceptions from City Zoning Ordinances. The record is replete with evidence supporting the BZA's decision. The Appellants' dissatisfaction with the outcome is not a basis to disturb the BZA's decisions. For the foregoing reasons, the Wallaces respectfully request this Court uphold the well-founded decision of the City of Charleston Board of Zoning Appeals.

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Teresa Melhado and Dane Neller,	)	Case No. 2021-CP-1005255
	)	
Appellants,	)	
	)	**SUPPLEMENT TO APPEAL PETITION**
v.	)	
	)	
City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016,	)	
	)	
Respondents.	)	

Appellants Teresa Melhado and Dane Neller hereby submit this Supplement to their Appeal Petition, attached hereto. The City of Charleston has now submitted the certified record of the proceedings before the Board of Zoning Appeals, as required by S.C. Code Ann. § 6-29-830 (A).[1] The record supports the legal arguments set forth in the Appeal Petition, requiring reversal as a matter of law; but the record is otherwise insufficient to support an affirmance based on any evidence, requiring a remand and rehearing, pursuant to S.C. Code Ann. § 6-29-840 (A).[2]

As a fundamental and potentially novel and consequential matter now before this Court,

[1] S.C. Code Ann. § 6-29-830 (A) ("Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.").

[2] S.C. Code Ann. § 6-29-840 (A) ("At the next term of the circuit court or in chambers, upon ten days' notice to the parties, the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. *In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.* In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.") (emphasis added).

the record shows that the Board misused a new technological feature of a new video conferencing platform known as "Zoom Webinar" to technologically prevent Appellants from being seen or heard during the public hearing and restrict the participation of their counsel. As a result, Appellants were deprived of due process and the record does not reflect objections they would have made to the evidence offered by the applicants and counter evidence that they would have offered. *See Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"); *Stono River Environmental Protection Ass'n v. South Carolina Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342, 305 S.C. 90 (1990) ("[T]he parties were entitled to notice and the opportunity to be heard.").

Moreover, this violated the City's ordinance, requiring the Board's hearings to be open to the public, so that the public may have any objections to evidence ruled upon and noted in the record. Ordinance, Section 54-921 ("All meetings of the Board shall be open to the public."); Ordinance, Appendix C, Article IV, Section 3 ("The chairman will *rule on all evidentiary matters*. Evidence may be placed in the record with an *objection noted*.") (emphasis added).

In further detail, the record shows that the Board, using the new video conferencing platform known as "Zoom Webinar," technologically designated Appellants and their counsel as digital "attendees," who could only be seen and heard when "enabled" by the Board and who were otherwise "disabled" – as opposed to technologically designating them as digital "panelists," like the applicants were, who could be seen and heard throughout the public hearing. (R. pp. 3, 43, 49). The public hearing on the instant application lasted approximately 1 hour. (R. pp. 36 – 64). Appellants' counsel was "enabled" for approximately 10 minutes in the middle of the public hearing and then abruptly "disabled." (R. pp. 49 – 55). Appellants and their counsel were not "enabled" to have their objections heard, while the applicants, as digital "panelists," were offering

testimonial evidence at the beginning of the public hearing and later answering questions from the Board near the end of the public hearing; and Appellants themselves were not "enabled" to offer their own testimonial counter evidence, whatsoever, nor were they "enabled" to answer questions from the Board about how Appellants, themselves, would be impacted, which the applicants self-servingly and incorrectly answered in their stead, and Appellants had no opportunity to object and correct the record. (R. pp. 36 – 49 and 55 – 64). The record is therefore insufficient to support an affirmance based on any evidence offered by the applicants. S.C. Code Ann. § 6-29-840 (A) ("In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing.").

The COVID-19 pandemic has ushered in a new age of virtual hearings using new technology, in this state, and around the country, by all sorts of judicial and quasi-judicial, governmental bodies. This technological advance of course has many benefits and should not be stopped, but the use of this new technology must be put to the test, scrutinized, and perfected, so as to preserve the due process rights that people have had in real-life public hearings for hundreds of years, where people could voice their objections and be heard. The Board's new practice here of technologically gagging people at public hearings should not be sanctioned by this Court as an acceptable protocol.

Wherefore, for the reasons set forth in the Appeal Petition, the Board's decision should be reversed as a matter of law, and otherwise this matter should be remanded for a rehearing, so that Appellants' objections and testimonial counter evidence may be heard by the Board.

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April 17, 2022
Charleston, South Carolina

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
)	
Teresa Melhado and Dane Neller,)	Case No. 2021-CP-1005255
)	
Appellants,)	**APPELANTS' REPLY BRIEF**
)	
v.)	
)	
City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016,)	
)	
Respondents.)	

The Wallaces' response brief relies on the testimonial evidence that they offered while Appellants were technologically gagged and unable to object and correct the record – hence the need for a remand and rehearing. S.C. Code Ann. § 6-29-840 (A) ("In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing.").

The Wallaces oppose a rehearing simply because they prevailed. If the shoe was on the other foot, and the Wallaces had been technologically gagged and lost, they would be making the argument for a rehearing themselves. The only ostensible counterargument they make is that Appellants' counsel was given the opportunity to speak for 10 minutes in the middle of the hearing. The fundamental point, however, which the Wallaces sidestep, is that Appellants and their counsel were technologically gagged for the other 50 minutes of the 1 hour hearing, whereas the Wallaces and their counsel were not. Appellants did not get to testify, themselves. And when Mr. Wallace offered incorrect and misleading responses to the Board's questions about Appellants' property and how the project will affect them (R. pp. 59 – 63, attached hereto as Exhibit A, with Mr.

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Wallace's testimony highlighted),[1] all that Appellants and their counsel could do was helplessly direct their protests toward the disabled computer in front of them, as if they were watching television. No one could hear them. And then the hearing ended.

Lastly, the Wallaces assert in their response brief that the Board "rendered a unanimous decision in favor of the Wallaces, not once, but two times." To clarify, the Board only heard the matter once. The Board subsequently declined to grant an appeal for reconsideration seeking a rehearing.[2] A rehearing, providing an opportunity for Appellants to actually be heard and correct the record, is what is now needed and what the statute empowers this Court to order. S.C. Code Ann. § 6-29-840 (A).

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April 19, 2022
Charleston, South Carolina

[1] The details on why and how Mr. Wallace's answers to the Board's questions were incorrect and misleading are set forth in the Appeal Petition filed by Appellants. Appellants' land and house, including their bedroom, windows, porches, and the parapet wall, are not situated and configured as Mr. Wallace describes, and he omits that Appellants' residence includes a house in the rear, with five windows facing the proposed project, in addition to the house on the side that he inaccurately describes. The impact to Appellants' view, light, and air would be tremendous, not "miniscule," as Mr. Wallace concludes. Mr. Wallace also understates the amount of noise that would emanate from the generator in the rear and multiple HVAC compressors to be located just outside Appellants' bedroom window. And when asked by a confused Board member whether the property owner to the rear supported the project, Mr. Wallace did not forthrightly answer – no, the property to the rear is Appellants' and they are strongly opposing this application – as he should have done. Appellants, meanwhile, were silenced in front of their disabled computer, desperate to dispel all of this confusion and correct the record.

[2] City of Charleston Ordinance, Appendix C, Section 3 ("An appeal for reconsideration of a decision of the Board must be filed within five (5) business days from the date of the Board's decision, order, requirement or determination by delivery of the approved appeal form and fee to the Zoning Division office. To grant the appeal for reconsideration, the Board must find that it misapprehended or misconceived the question or questions involved, or that it erred in its finding or disposition of the appeal, application or matter. *If such appeal is granted by the Board, the decision shall be withdrawn and the matter heard and considered de novo, as if no hearing, consideration or determination had been previously made or heard.*") (emphasis added).

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Teresa Melhado and Dane Neller,	)	Case No. 2021-CP-1005255
	)	
Appellants,	)	
	)	**APPELANTS' NOTICE OF MOTION AND MOTION FOR RECONSIDERATION**
v.	)	
	)	
City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016,	)	
	)	
Respondents.	)	

PLEASE TAKE NOTICE THAT Appellants Teresa Melhado and Dane Neller hereby move and request a hearing before the Honorable R. Markley Dennis, Jr., or other presiding judge in this Court, under Rule 59(e), SCRCP, to reconsider, alter, and amend the Order of this Court, entered on May 18, 2022, affirming the decision of the City of Charleston Board of Zoning Appeals and denying and dismissing this appeal, and denying Appellants' motion for supersedeas and stay of matters affected by the appeal (the "Order"). The grounds for this motion are as follows:

1. The Order (prepared by the Wallace Respondents) dodges the real issue with the defective Zoom hearing. More particularly, the Order contrives and knocks down strawman arguments (not made by Appellants) about the general use of Zoom, trial-type cross examination, and reasonable time restrictions. (Order, pp. 5-9). The real issue, unaddressed and avoided in the Order, is that the Board deprived Appellants of a specific and fundamental right, provided for in the City's ordinance itself and duly protected as a constitutional matter, to object to new, unsubstantiated, improper, false, and misleading testimony and evidence offered by the Wallaces during their reply, and later in a question and answer session with the Board, while Appellants

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were technologically disabled and gagged from lobbing their objections and correcting the confusion that manifested among the members of the Board.

To wit, the Order leaves out any mention of the ordinance section that is central to Appellants' argument: Ordinance, Appendix C, Article IV, Section 3 ("The chairman will *rule on all evidentiary matters*. Evidence may be placed in the record with an *objection noted*.") (emphasis added).[1] Further, the Order discusses the ordinance section that immediately follows, Section 4, skipping over Section 3, and treating Section 4 as if it contains the entirety of the applicable procedural rules to be followed, when it verifiably does not.

Unless the Order is duly reconsidered, upon further appeal, the real issue will be before the Court of Appeals, untouched by this Court, and the Court of Appeals will have to take it on as a matter of first impression, or otherwise remand back to this Court to make a discernable ruling on it that can then be reviewed, inefficiently protracting this litigation. Appellants' grievance is a novel and important one, of being technologically gagged via the misuse of a particular Zoom functionality, which is a new issue of statewide consequence, in this post-COVID age, where virtual hearings are becoming commonplace and promise to be the future. As has happened many times throughout history, new technology ushers in new challenges and new case law. This new issue deserves attention from this Court, before this matter heads to the Court of Appeals.

2. The Order likewise dodges the issue of whether there should be a stay, by deeming that issue moot. (Order, p. 1, n. 1). But it is not moot because this appeal is still currently pending

[1] The Board is statutorily bound to adopt procedures in compliance with this ordinance allowing for objections to be raised and ruled upon during the hearing and noted in the record. *See* S.C. Code Ann. § 6-29-790 ("The board shall adopt rules of procedure in accordance with the provisions of an ordinance adopted pursuant to this chapter."). The Board's so-called Zoom Meeting Protocol, whereby it disabled and technologically gagged Appellants, is therefore not only noncompliant with the ordinance, but also with the statute, as well as constitutional principles of due process.

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before and under the jurisdiction of this Court, which is being asked to reconsider its Order, per Rule 59(e), SCRCP, and a further appeal may be taken as a matter of right to the Court of Appeals, per S.C. Code Ann. § 6-29-850. To the contrary, a stay is required here to "prevent a contested issue from becoming moot." Rule 241 (c)(2), SCACR. "[T]he purpose ... of a supersedeas ... is to ... stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal ..., and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." *Graham v. Graham*, 390 S.E.2d 469, 301 S.C. 128 (Ct. App. 1990) (quoting 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)); *see also Melton v. Walker*, 209 S.C. 330, 40 S.E.2d 161 (1946) ("The general rule is that the effect of a supersedeas or stay is to suspend proceedings and preserve the status quo pending the determination of the appeal or proceeding in error."); *Schwartz v. Schwartz*, 428 S.E.2d 748, 311 S.C. 303 (Ct. App. 1993) ("The South Carolina Supreme Court issued a writ of supersedeas to maintain the status quo pending appeal.").

As set forth in Appellants' motion for supersedeas, supported by the *unopposed* Affidavit of Teresa Melhado,[2] the Wallaces are suddenly attempting to change the status quo at 62 Church Street that has existed for more than two centuries and moot the contested issue on appeal by rushing forward with the construction of the project, a large two-story addition to be pressed up against and loom over the center of Appellants' surrounding L-shaped property, at 60 Church Street. The project is not permitted under the City's zoning ordinance, and neither a variance nor a special exception should have been granted because of the substantial impact of the project on Appellants, among other reasons. The fruits of this ongoing appeal to Appellants would be lost if the Wallaces are allowed to continue and complete the construction of the project in the interim.

3. The Order places undue reliance on things said at the hearing by a member of the

[2] Respondents did not file an opposing affidavit. By rule, they would have been required to do so two days before the hearing. Rule 6(d), SCRCP.

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City's staff, Mr. Lee Batchelder, who was not sworn in to testify, either as fact or expert witness, but rather merely offered unsworn remarks and recommendations, favoring the project and opining and speculating that the impact on Appellants will be minimal. (Order, p. 5). This is not evidentiary support for the Board's decision, whatsoever. *See Wyndham Enterprises, LLC v. The City of North Augusta*, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct. App. 2012) (holding that a board's decision must be "supported by competent, substantial, and material evidence" and cannot be based on "opinion and speculation"). Yet the Order goes so far as to state that Mr. Batchelder's commentary, "standing alone," supports the Board's decision that the impact on Appellants will be minimal. (Order, p. 5). And the Order cites to no other evidence to support the same. (Order, p. 5).

4. The Order inaccurately describes the actual testimony and documentary evidence in the record to prop up arbitrary and capricious findings and conclusions that are wrong as a matter of law (Order, pp. 4-5), more particularly, as follows:

a. The Order states that the record establishes that 62 Church Street cannot be reasonably utilized without the proposed addition (Order, p. 4), but Mr. Wallace himself admitted that the existing house is 2,554 square feet, that it has been lived in for more than two centuries, and that he and Mrs. Wallace have lived there happily for the past 9 years. There is no question that the property has been and can continue to be reasonably utilized without a variance or special exception from the zoning ordinance.

b. The Order states that the proposed addition is small (Order, p. 4), but the record shows that it is large, consisting of two-stories, nearly doubling the size of the already sizeable existing house, together with new structures housing a gas-powered generator and multiple HVAC compressors.

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c. The Order states that the project will not impact Appellants' neighboring property at 60 Church Street (Order p. 4), but the record shows that it will, substantially. The Order completely ignores the testimony and documentary evidence offered on behalf of the Appellants that the proposed addition would inhibit adequate light, air, and open space, interfere with their view, and negatively affect the environs. And the Order fails to recognize that Appellants were not afforded the opportunity to object to Mr. Wallace's false and misleading testimony about Appellants' property in his reply, and in the subsequent question and answer session with the Board.

d. The Order states that there is no evidence that the Wallaces use their house for business purposes (Order p. 4), but documents in the record show that the Wallace do use the house, unlawfully, for multiple businesses, namely, for the Charleston location of Mr. Wallace's multi-state architecture firm, "Island Architects Charleston," and Mrs. Wallace's interior design business, "Stone Ridge Interiors." Both businesses publicly advertise and use 62 Church Street as their actual location (not just as a registered agent mailing address).

e. The Order states that the adverse noise impact that will result from the HVAC compressors being located just outside of Appellants' upstairs bedroom window can be minimized (Order p. 5), but the record contains no competent testimony about minimizing noise, which is an issue that would require expert testimony. While Appellants were gagged, Mr. Wallace himself, who is not a noise expert, self-servingly testified that he could minimize noise with baffling. His objectionable testimony cannot negate

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what is obviously a substantial adverse impact on Appellants.

5. The Order improperly equates the Board's denial of Appellants' request for a rehearing with a second opportunity to be heard by the Board that cured the Board's failure to adhere to the City's ordinance and due process when it considered and approved the project. (Order, p. 7). The flaw in this reasoning is that there was no rehearing because the request for a rehearing was denied. Despite Appellants' plea, the Board chose not to cure its missteps in the defective Zoom hearing, among other errors. If the request for a rehearing had been granted, per Ordinance, Appendix C, Section 3, "the decision shall be withdrawn and the matter heard and considered *de novo*, as if no hearing, consideration or determination had been previously made or heard." Both the Wallaces and Appellants would have been given a full and fair opportunity to be heard and the members of the Board would have considered the question of whether to approve the project anew, untainted by the prejudicial testimony and documentary evidence that could not be objected to and that confused members of the Board during the defective Zoom hearing. But this did not happen. The Board simply declined to revisit the project. Further, the notion, stated in the Order, that Appellants were required to submit an affidavit in support of their request for a rehearing, is wholly invented and nowhere to be found in the City's ordinance. Appellants did not lose their right to appeal to this Court, and beyond, just because they asked for, and the Board declined, a new hearing.

6. The Order states that this Court has fully considered and ruled upon all arguments presented by Appellants, including those not directly addressed in the Order. (Order, p. 9). Respectfully, however, the Order misconstrues and otherwise disregards Appellants' arguments, and as a result, the Order is replete with errors and gaps in its findings and analysis. Appellants thus ask this Court to reconsider all of Appellants' arguments and the entirety of its Order, so as to give this Court the opportunity to correct its rulings and preserve all issues for further appellate

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review. *See I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments . . . If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.") (internal citations omitted).

Appellants hereby incorporate by reference all of their prior briefs and arguments presented to this Court, as if restated verbatim herein, including:

Appeal Petition, filed November 18, 2021;

Supplemental to Appeal Petition, filed April 17, 2022;

Reply Brief, filed April 19, 2022;

Motion for Supersedeas, filed March 16, 2022;

Affidavit of Teresa Melhado, filed March 16, 2022; and

Oral Arguments, April 20, 2022.

WHEREFORE, on reconsideration, this Court should alter and amend its Order as set forth above by: (i) issuing a stay to prevent the contested issue from becoming moot; (ii) remanding this matter to the Board of Zoning Appeals to conduct a new hearing in accord with its own ordinance and due process; or (iii) reversing the decision of the Board of Zoning Appeals as a matter of law.

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May 27, 2022
Charleston, South Carolina

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
)	
Teresa Melhado and Dane Neller,)	Case No.: 2021-CP-10-05255
)	
Appellants,)	
)	**OWNER-RESPONDENTS' MEMORANDUM IN OPPOSITION TO APPELLANTS' MOTION FOR RECONSIDERATION**
v.)	
)	
City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016,)	
)	
Respondents.)	
)	

Owner-Respondents, George "Skip" Wallace and Erika Wallace as Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016 (the "Wallaces"), hereby submit this Memorandum in opposition to Appellants Teresa Melhado's and Dane Neller's motion under Rule 59(e), SCRCP, to reconsider, alter, or amend this Court's Order Affirming the Decisions of the Board of Zoning Appeals and Dismissing the Appeal entered on May 18, 2022 (hereinafter, the "Order").

The Appellants' motion rehashes the same issues the Appellants have raised, first at the BZA level, and again, before this Court. These issues have been extensively briefed and argued at both levels. There is no reason for this Court to reconsider its prior Order, as the Appellants offer no new facts that would impact the issues decided. See Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 723 S.E.2d 835 (Ct. App. 2012). The Appellants' motion should be denied because the Order is supported by the record evidence, is not controlled by any error of law, and the issues raised by the Appellants were addressed and ruled upon by this Court. Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003).

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The Wallaces respond to the five issues Appellants raise in their motion and in doing so fully incorporate their Memorandum in Opposition to the Appeal to the Decisions of the Board of Zoning Appeals submitted on April 17, 2022, and their submission to the BZA in opposition to the Appellants' Motion for Reconsideration dated October 18, 2021. Each of the Appellants' arguments are addressed in turn:

1. **The Court properly dismissed the Appellants' appeal because the BZA did not "technologically gag" the Appellants or otherwise deprive them of their due process rights.**

- The BZA's hearing procedures on September 7, 2021, adhered to the City's Zoning Ordinances and the BZA's Rules and Regulations governing hearing procedures.

- Appellants had 10 minutes to present their opposition position. Appellants chose to have their attorney use the entire 10 minutes instead of dividing the time between the attorney and the Appellants. The 10 minutes the BZA gave the Appellants is more than 3 times longer than our Court of Appeals has recognized as reasonable in the context of public comments on local planning matters. See Croft as Trustee of James A. Croft Trust v. Town of Summerville, 428 S.C. 576, 837 S.E.2d 219 (Ct. App. 2020), vacated as moot by Croft as Trustee of James A. Croft Trust v. Town of Summerville, 433 S.C. 473, 860 S.E.2d 352 (2021).

- At both BZA hearings, Appellants' attorneys noted his clients presence but never stated hisclients had any intention of speaking.

- The alleged disabling of the Appellants' microphone ***after*** their 10+ minute presentation on September 7, 2021 did not result in a deviation from normal hearing procedure, but rather was entirely consistent with the normal order in which BZA hearings are conducted.

- The South Carolina Supreme Court has expressly rejected Appellants' argument that administrative bodies exercising their discretionary authority in the area of local planning and zoning have to conduct trial-type hearings including Appellant' misguided notion that speakers are entitled to object to other speakers or cross-examine other speakers. Kurschner v. City of Camden Planning Com'n, 376 S.C. 165, 656 S.E.2d 346 (2008).

- The BZA's Rules and Regulations governing the treatment of "Evidence" (§ 3 of Art. IV) do not alter the rules governing the "Conduct of Hearings" (§ 4, Art. IV, as set out above) and do not change the fundamental due process standard. All that was required was that the Appellants had a meaningful opportunity to partake, which they did.

- This use of remote technology to conduct BZA hearings does not interfere with the BZA's Rules and Regulations. If anything, Zoom®'s functionalities ensured the hearing was

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conducted in an orderly manner, as it sounds that Appellants had every intention of disturbing the normal conduct and order in which the BZA conducts its meetings.

- The Wallaces did not submit any false, improper, unsubstantiated, or misleading testimony or evidence to the BZA during their rebuttal or in responding to the Board's questions. The Appellants outrageously allege that the Wallaces offered unsubstantiated, improper, false, and misleading testimony during their rebuttal and later in a question-and-answer session with the Board without citing to any portion of the transcript and corresponding portion of the record that proves the statement is demonstrably false. Regardless of these spurious accusations, it was up to the board to determine what "evidence" it would consider.

2. **The Appellants' Motion for Supersedeas was mooted by the Court's prior consideration and dismissal of the Appellants' Petition for Appeal to the Circuit Court.**

- The Appellants' Motion for a Supersedeas pursuant to S.C. Code § 6-29-830(B) only relates to a stay while the matter is pending before the circuit court. The Appellants moved for a supersedeas pursuant to S.C. Code § 6-29-830(B)[1] while the circuit court considered the Appellants' appeal. The statute provides for a discretionary stay when and while an appeal is taken to the circuit court. Id. The circuit court properly denied the Appellants' motion as moot because it affirmed the decisions of the BZA and dismissed the Appellants' appeal. See Wachesaw Plantation East Cmty. Svcs. Ass'n v. Alexander, 414 S.C. 355, 359, 778 S.E.2d 898, 900 (2015).

3. **The BZA properly considered the presentation of the City's Zoning Administrator Lee Batchelder as well as the evidence he discussed.**

- There is no rule of procedure of the BZA or reported legal precedent that prevents a board from relying on the comments and observations of staff. Mr. Batchelder has been the city's zoning official for more than 30 years. The BZA was fully entitled to consider Mr. Batchelder's remarks.

- The rules governing the procedures before the BZA in fact prescribe an opening presentation by the City Zoning Administrator or other member of staff. Section 4 of Article IV to Appendix C of the City's Zoning Ordinances provides hearings normally commence with presentation by the secretary or designated member of City staff of the matter to be heard with a recommendation of the zoning administrator or his/her designated staff member.

4. **The Order correctly described the testimony and documentary evidence in the record and this Court did not act arbitrarily and capriciously in denying the Appellants' Petition for Appeal because:**

[1] S.C. Code § 6-29-830(B) relates to appeals to from the BZA to the circuit court pursuant to S.C. Code § 6-29-820. S.C. Code § 6-29-850 provides: "A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules." Rules 241(c)(2) and (3), S.C.A.C.R. govern stays pending appeals before South Carolina Courts of Appeal.

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- There was proof that 62 Church Street cannot be reasonably utilized without the proposed addition. This factual determination and conclusion were the prerogative of the BZA even though Appellants may disagree with it. This is a factual determination that was not tinged by an error of law.

- The proposed addition does not double the size of the existing house nor add new structures. The plans increase the square footage of 62 Church Street by 19.5%, far from "nearly doubling" the size of the house, which is, notably, significantly smaller than all of the surrounding homes on a similar footprint.

- The existing structure even with the addition is considerably smaller than Appellants' house at 60 Church Street and most of the surrounding properties. After the addition, 60 Church Street will still be 150% larger than 62 Church Street.

- The Appellants presented no evidence that the Wallaces' addition would unreasonably inhibit adequate light, air, and open space, interfere with their view, and negatively affect the environs.

- The Wallaces do not use their home unlawfully for business purposes. The record evidence is:
    - Skip Wallace's architectural firm has its main office in Virginia and Mr. Wallace maintains a Charleston office in the Confederate Home. Mr. Wallace cannot receive mail at the Confederate Home, therefore, he receives business mail at his home at 62 Church Street.
    - Erika Wallace is a licensed interior designer who primarily services her clients at their home or place of business. She does paperwork on occasion at home but does not operate a business open to the public out of her home. Her home "office" consists of a small desk in a 78-square foot area of unconditioned space.
    - Interior design is specifically noted as an allowable home-based occupation in City of Charleston Zoning Ordinance § 54-211.
    - Neither of the Wallaces is using 62 Church Street as a business location open to the public or customers. No portion of this addition is adding business or office space.
    - The Historic Charleston Foundation ("HCF") holds an easement on 62 Church Street. HCF supports the Wallaces' application, as does the Charleston Preservation Society.

- The BZA imposed a condition on the approval of the special exception that requires the Wallaces to take reasonable measures to deal with noise from the HVAC compressors.

5. **The Appellants had a second chance to argue their position at the October 19, 2021, meeting of the BZA on their Motion for Reconsideration, yet the BZA still did not find their objections to be convincing.**

- The Appellants argue that they did not get a chance for the BZA to consider their objections to the testimony and evidence submitted by the Wallaces at the initial September 7, 2021

hearing. That is not true. They were afforded 10 minutes to present their objections. Moreover, they had a second bite at the apple on October 19, 2021, when they argued their Motion for Reconsideration before the BZA. They had this opportunity to elaborate on what Ms. Melhado and Mr. Neller would have said. The BZA members discussed the specifics of each of Appellants' arguments raised in their Motion for Reconsideration but did not find any of them persuasive. Appellants had due process times two.

- There is nothing new here. The BZA heard the Appellants' objections not once, but twice. This Court has duly considered them. Appellants have not met their burden for reversing the inherently discretionary decision of the BZA which is entitled to deference.

The Order addresses each and fully incorporates the briefs, filings, and submissions of each party. The Appellants' Rule 59(e) motion should be denied for the grounds stated herein.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2021-CP-1005255

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

v.

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

---

NOTICE OF APPEAL

Appellants Teresa Melhado and Dane Neller appeal the order of the Honorable R. Markley Dennis dated May 18, 2022 and the order denying reconsideration dated June 15, 2022. Appellants received written notice of entry of the order denying reconsideration on June 15, 2022. Copies of the orders on appeal are enclosed herewith.

July 14, 2022

/s/ Brian A. Hellman

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

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

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

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

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

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

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

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

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

[00:04:54 – 00:05:40]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Ashby: First? Okay.

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

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

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

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

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

Chair Robinson: And then the attorney.

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

Chair Robinson: Mr. Wallace, are you present?

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

Scott: I believe I have.

Chair Robinson: Mr. Wallace, are you present?

Skip Wallace: Yes, can you hear me?

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

Skip Wallace: Okay.

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

Skip Wallace: I do.

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

Skip Wallace: Okay.

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

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

Mr. Batchelder: Yes, we can.

Skip Wallace: Can you see me?

Mr. Batchelder: No, cannot see you.

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

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

[Pause] [00:21:54 – 00:22:21]

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

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

Mr. Batchelder: Yes.

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

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

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

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

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

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

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

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

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

Erica: 80.

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

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

Jennifer Ivey: Yes sir.

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

Jennifer: Great.

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

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

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

John: I do.

Jennifer: I do.

Mr. Batchelder: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

Brian Hellman: Can you hear me?

Mr. Batchelder: Yes.

Brian Hellman: Thank you.

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

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

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

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

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

Brian Hellman: I do.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Batchelder: Yeah.

Ms. Ashby: Yes, it was.

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

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

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

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

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

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

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

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

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

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

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

Mr. Batchelder: I agree with you on that.

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

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

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

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

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

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

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

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

Howell: Why do they have to be raised?

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

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

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

Howell: Yeah.

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

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Chair Robinson: Is the applicant still present?

Skip Wallace: Yes.

Chair Robinson: Could you comment on the questions please?

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

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

Skip Wallace: Yes sir.

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

Skip Wallace: That's right.

Howell: So, an emergency generator.

Skip Wallace: Absolutely.

Howell: Okay.

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

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

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

Ms. Vargas-Vargas: Yes sir.

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

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

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

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

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

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

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

Ms. Allie Grass: Thank you.

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

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

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

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

Ms. Allie Grass: I'll second it.

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

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

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

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

Ms. Allie Grass: If needed.

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

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

Skip Wallace: Are you asking me?

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

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

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

Skip Wallace: Yeah.

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

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

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

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

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

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

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

Chair Robinson: Is there a second to that?

Ms. Allie Grass: I second it.

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

Mr. Morrison: Aye.

Chair Robinson: Mr. Judan.

Mr. Judan: Aye.

Chair Robinson: Ms. Grass.

Ms. Grass: Aye.

Chair Robinson: Ms. Richards.

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Ms. Richards: Aye.

Chair Robinson: Ms. Vargas-Vargas.

Ms. Vargas-Vargas: Aye.

Chair Robinson: Mr. Bennett.

Mr. Bennett: Aye.

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

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[00:08:33]

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

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

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Chairman Robinson: Is the applicant present?

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

Pennye Ashby: The applicant, yes, Brian Hellman.

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

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

Lee Batchelder: Okay, so we should promote him.

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

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

Brian Hellman: Yes.

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

Brian Hellman: I do.

Chairman Robinson: Please proceed.

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

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

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

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

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

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

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

Brian Hellman: That is, yes.

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

Pennye Ashby: Yes.

Lee Batchelder: No.

Pennye Ashby: It has elapsed.

Lee Batchelder: Oh, oh it has okay.

Pennye Ashby: Yes.

Lee Batchelder: As of right now, huh?

Pennye Ashby: As of right now.

Lee Batchelder: Yeah, okay.

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

Lee Batchelder: Yes.

Pennye Ashby: Yes.

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

Pennye Ashby: Yes, he has.

Chairman Robinson: Is Mr. Walker present?

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

Turnim Walker: Thank you, can you hear me?

Lee Batchelder: Yes.

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

Turnim Walker: Yes.

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

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

Chairman Robinson: Please proceed.

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

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

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

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

Lee Batchelder: I show six minutes.

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

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

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Turnim Walker: It does, Mr. Robinson.

Pennye Ashby: Okay.

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

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

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

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

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

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

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

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

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

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

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

Lee Batchelder: That's correct.

Howell Morrison: Okay.

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

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

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

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

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

Robben Richards: Right.

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

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

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

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

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

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

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

John Bennett: Thank you.

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

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

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

Allie Grass: I agree with that too.

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

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

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

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

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

Chairman Robinson: That was Ms. Vargas-Vargas?

Geiza Vargas-Vargas: Yes sir.

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

John Bennett: I will second that motion.

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

Howell Morrison: Aye.

Chairman Robinson: Ms. Grass?

Allie Grass: Aye.

Chairman Robinson: Ms. Richards?

Robben Richards: Aye.

Chairman Robinson: Ms. Vargas-Vargas?

Geiza Vargas-Vargas: Aye.

Chairman Robinson: Mr. Bennett?

John Bennett: Aye.

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

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

Chairman Robinson: The motion was approved.

Pennye Ashby: . . . for denial.

Chairman Robinson: For denial, correct.

Pennye Ashby: Okay, all right thank you.

[43:53]

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State of South Carolina	)	Court of Common Pleas
	)	Ninth Judicial Circuit
County of Charleston	)	Case No. 2021-CP-10-05255
	)	
	)	
Teresa Melhado, et. al.,	)	
	)	
Appellants,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
City of Charleston, et. al.,	)	
	)	
Respondents.	)	
	)	

April 20, 2022
Via WebEx

B E F O R E:

The Honorable R. Markley Dennis, Judge

A P P E A R A N C E S:

Brian Hellman, Esquire
Attorney for the Appellants

George Trenholm Walker, Esquire
Jennifer Sue Ivey, Esquire
Attorneys for the Respondents

Steven Price, Esquire

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Appeal	4
Ruling	13
Court Reporter Certification	15

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
	(No Exhibits Presented)		

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption or change in thought
ellipses	. . .	trailing off
[*ph*]		phonetically written
[*sic*]		written as said

THE COURT: All right. Let me state this case for the record. This is a case of -- is it Melhado? Melhado?

MR. HELLMAN: Melhado, Your Honor, Teresa Melhado.

THE COURT: Teresa Melhado versus the City of Charleston, et al. The case number is -- it's 2021-CP-10-5255, and the matter has been submitted here to hear an appeal and a supersedeas, and those are -- those are the two -- two motions -- two things -- matters that have been filed, I think.

They've been fully briefed. The Court is incorporating fully all briefs and all submissions made for the Court's consideration verbatim, and you may rely on all -- all the positions as stated for purposes of appeal should that become necessary.

But I'll be happy to hear from you now concerning the appeal, and I'll be happy to -- I -- you filed the appeal I think, Brian.

MR. HELLMAN: Yes, Your Honor, and may it please the Court.

Your Honor, we represent Teresa Melhado and Dane Neller, who live at 60 Church Street. There are a number of -- of reasons that they've filed this appeal, and we recognize, Your Honor, that appeals from boards of zoning appeals have a very high standard of -- of any -- any evidence and errors of law.

In this particular instance, Your Honor, the hearing was

held on -- on Zoom. And very much like this WebEx hearing, myself -- we were only recognized for a brief period of time as -- as participants and then could only view the hearing, just like I could review -- could view the prior hearing. We could not log any objection, myself nor my clients.

And subsequent to our little short period of time to speak, there was a significant amount of evidence that was placed on the record during the reply, as well as a question and answer period with the Board in which a number of -- of questions were posed by the Board, in fact submitted by the applicant, Mr. Walker, and his client, specifically related to our property.

And the City of Charleston's ordinance, like -- like it should, provides that the chairman will rule on all evidentiary matters. Evidence may be placed on the record with an objection noted.

So yes, we have our time to speak, but there's also an opportunity, just like we would have if this were not a Zoom hearing and we were there in person, to stand up and say, but, Board, we object to -- to this characterization of our property, whether the evidence is incorrect or misleading or wrong or what have you, and we were not afforded the right that is provided in the City's ordinance and you would think under due process would be allowed.

Effectively, Your Honor, there was -- there was one side

presented to a jury with no opportunity to log any objection, and so that's not included in the record. As a result, we believe that the record is incomplete, and it would be appropriate for a matter like this to be reversed or remanded for a -- for another -- a new hearing that would incorporate the actual rules of procedure or would follow the rules of procedure that the City set forth. I mean it's as if there was one side presented to a jury and the right to object as -- as Appendix C, Article 4, Section 3 of the ordinance provides, was -- was not given to us.

Frankly, Your Honor, this -- if we look at these -- these cases, the -- the -- any evidence or no evidence standard assumes that the underlying procedures are all followed and in this particular instance, they weren't. And what we're saying here is, is this really is a case that's -- that's more important than just 60 Church Street and 62 Church Street. It's really a case of statewide importance because what comes out of this case is -- is one that says if -- if you're going to have hearings via Zoom or hybrid hearings where people are in person or on a Zoom in a Zoom situation, that everybody should be afforded the same rights and privileges that they would have in person and/or that the rules allow.

And that didn't happen here. We think it taints the evidence that's before the Court. And, Your Honor, we think it would be appropriate since the -- the record is incomplete

and doesn't include those objections to -- to -- to remand or reverse this. There are a number of other reasons, Your Honor, that we -- we cite in our brief, seven others, where we feel that there is an abuse of discretion or an error of law.

Frankly, the -- the due process one is -- is one that we think really controls here because it taints the entire case. I'm happy to go through those other elements with you, Your Honor. They're fully briefed.

THE COURT: They're part of the record. The Court has reviewed that already.

All right. Mr. Walker, I'd be happy to hear from you and -- and anyone else. Thank you, sir.

MR. WALKER: Thank you very much, Your Honor. Trenholm Walker here on behalf of Eric and Skip Wallace. As you know from reviewing the filings in this case, the Wallaces reside at 62 Church Street, which is their primary residence.

Ms. Melhado and Mr. Neller bought the house next door shortly before this matter came before the Board of Zoning Appeals. The requested variance and the special exception both relate to a small addition being put on the rear of the property. So you've got that.

And since Mr. Hellman is focused on the due process argument, I'm going to focus on it. The first thing I would say, Your Honor, is that in these types of hearings, adjudicatory protections, such as objections and motions and

that type of thing, do not apply.

Here, the Board of Zoning Appeals followed completely their rules of procedure. At the outset of the hearing, the chairman, Mike Robinson, stated that each side would have ten minutes. Actually, he went through the whole sequence exactly as stated in the hearing procedure section of the city codes, and I'm referring to the Rules of Procedure of the Board of Zoning Appeals, Article 4, Section 4, Conduct of Hearing.

And that specifically provides that the order is that the staff presents, which Lee Batchelder did, then a presentation by applicant or appellant or others in support of the application, ten-minute limit. It says presentation by opponents, ten-minute limit. Rebuttal by applicant, three-minute limit. That is the way that the rules are set forth. That is exactly what happened.

There seems to be a larger objection that they could have stood up if the hearing had been conducted in person. Our courts or our municipality has allowed remote hearings. And I can tell you, having participated in a number of them, there were times when I wished to speak that I couldn't speak, and I was in their position.

But what's good for the goose is good for the gander and I -- there are plenty of things I would like to say, but the question is not whether they had a chance to object or say more. The rules were followed and there was a meaningful

opportunity.

I brought up this *Kurschner* case that was decided by the Supreme Court in 2008 at 656 S.E.2d 346, because in that Judge Toal talked about the difference between these types of hearings. That was a planning commission hearing and a trial, and she said there's a big difference between an adjudicatory hearing and a meeting like this where a discretionary administrative body makes a discretionary decision. And she said that all the facets of due process that one attributes or assigns to a trial really have no application here.

What's -- what's pertinent is did they have a meaningful opportunity? Yes. The opponents had ten minutes. It was up to them to decide how they divided it up. Mr. Hellman, on behalf of his client, spoke for the entire ten minutes, and that was confirmed at the time of the hearing and later in their motion to reconsider.

So we would submit there is no violation of due process and would further submit that nothing's been shown that was excluded that would have changed the result. The only thing that's been alluded to is in some of the filings the objectors have said, well, the -- the two individual objectors would have talked about shade on their pool house in the back and that there was some confusion about that.

Well, that was fully discussed at the hearing on their motion to reconsider in which the objectors had another 10

minutes. And in addition, in the hearing on their motion for rehearing, they had a reply of five minutes, which they fully used. No affidavits were submitted. Nothing was submitted to say that here's the excluded testimony, here's the prejudicial error. There's no showing that anything that was pertinent would change the result. So we think the case law is clear there is no due process violation.

Turning to the substantive merits, this is one of the strictest standards of review. In fact, it's the strictest, which is, is there any evidence. And not only is the standard of review strict, but the courts have been lenient because these are nonprofessional volunteer boards and they say you can look at the transcript, you can consider all these things, and all of them constitute the findings.

And here Mike Robinson as chair signed an order that found the requirements for a variance on the lot coverage, taking it from 37 to 43 and allowing the relatively minor continuation of the side setback issue because these houses were constructed closer than nine feet to each other several hundred -- 200 years ago. So it's kind of difficult to move a house over. And if you add an addition, you have to continue that, and that's -- that's what they were doing.

So I would be happy to go through the specifics, but clearly there was evidence to support their finding. And on rehearing, the commissioners not only discussed different

things, but they responded and said in response to the objectors are against, no, we didn't get confused about that, and they refuted the specific allegations that are made before you.

So, Your Honor, unless there are questions, I'm going to shut it down here. I hope I didn't take ten minutes because I think it's a fairly simple case for you, Your Honor.

THE COURT: Thank you, Mr. Walker. I appreciate it. And again, I incorporate all your filings as well as part of that verbatim.

Mr. -- Mr. Price, do you wish to add anything, sir? I can't hear you, Steven.

MR. PRICE: I don't, Your Honor, but thank you.

THE COURT: All right. Any reply, Brian?

MR. HELLMAN: Yes, Your Honor. As -- as Mr. Walker pointed out, this is one of the strictest standards for review. And because it's the strictest standard, one of the strictest standards for review, that's why it's important of the utmost level to be -- to follow the very rules that Mr. Walker spoke about.

And again, that rule talks of two different things. We all have our time to speak, but we also have a right under Appendix C, Article 4, Section 3, right next to the one that Mr. Walker was referencing, that the chairman will rule on evidentiary matters and evidence may be placed on the record

or in the record with an objection noted.

And when all of this additional evidence is placed during reply and during question and answer where the applicant -- where the applicant, Mr. Walker's client, is speaking about our property, the effect on our property, where our property is located and how -- how his -- how we're only to the south and he's to the north when we're to the -- to the east as well, all of these matters are relevant and important.

Effectively, you have a factual record which is a one-sided factual record. And I can tell you, as Mr. Walker said, there have been many times in person where the board has recognized parties when they're in that question-and-answer period. As Mr. Walker said, there are times that he wanted to be recognized.

That's exactly what this issue is about and why this is an important issue beyond just 60 and 62 Church Street. It's an issue that applies to every single applicant that goes before one of these boards that has a hearing like our hearing today or -- or a hearing in which it's a hybrid where people are in person and not in person via Zoom or what have you.

So that's what I'd like to clarify, Your Honor.

THE COURT: Thank you, sir.

All right. Anything else from anybody on behalf of either party or any of the parties?

MR. WALKER: All right. This is really tangential, but

Justice Toal in the *Kurschner* case said that even hearsay applies, that the rules of evidence don't apply.

THE COURT: I appreciate it. This case -- and I think I've -- in my career I've had -- I visited this area several times and have been reversed I think a couple of times as well, but the bottom line is this.

Oh, I appreciate your argument. And if the Court wants to change this, you'll have a chance, but I'm going to deny your appeal. If you'll prepare the appropriate order, setting forth all the bases that you've raised, why that should be denied, and then I'll be happy to sign it. Thank you very much.

MR. WALKER: Thank you, Your Honor.

THE COURT: Okay. Have a good day.

MR. WALKER: Thank you.

MR. HELLMAN: Thank you, Your Honor. Your Honor?

THE COURT: Yes, sir, Mr. Hellman? Sir, I can't hear you.

MR. HELLMAN: We -- we lost connection here for a moment, Your Honor. I'm sorry. I couldn't hear anything that you had said. I don't --

THE COURT: I'll restate it. I asked Mr. Walker to prepare the order denying the appeal, and you'll have a chance to take that up to the -- to Columbia, and maybe you can expand it. Thank you.

MR. HELLMAN: I don't know what's happened, Your Honor. We've completely lost connection.

THE COURT: Brian, call Trenholm. Can you hear me?

MS. IVEY: Yes, Your Honor. Trenholm is here with me. He can hear you.

THE COURT: No, no, Brian. You're buffering. That's your problem. Why don't you cut off -- cut off your -- do away with your video, and I think it'll -- that's what's happening. You don't have enough power there. If you'll delete your -- can you hear me now?

MR. HELLMAN: Your Honor, I can hear you now.

THE COURT: All right.

MR. HELLMAN: Thank you, Your Honor. I apologize.

THE COURT: I ruled in favor -- I denied the appeal and they're going to prepare an order, and then you can take it up and if you can get it expanded, good luck. Thank you, sir.

MR. HELLMAN: Thank you, Your Honor.

THE COURT: All right. Thank you.

(WHEREUPON, the proceedings ended.)

--- END REQUESTED TRANSCRIPT ---

State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Circuit Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 14, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 20th day of April, 2022, to the best of my ability based upon the WebEx recording provided.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Krystal J. Smith

Court Reporter

Florence, South Carolina

December 4, 2022

BK L 360PG009

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

DEED OF CONSERVATION EASEMENT
(RESIDENTIAL FACADE)

THIS indenture deed of easement (hereinafter referred to as the "Easement"), made this 7th day of December, 2000, between HENRY B. GREGORIE, JR. AND JANE W. GREGORIE (together with his, her, its or their heirs, successors, administrators and assigns collectively referred to as "Grantor") and Historic Charleston Foundation, a non-profit corporation organized under the laws of the State of South Carolina (hereinafter referred to as "Grantee").

WITNESSETH

WHEREAS, Grantor is the Owner of certain real property, hereinafter described on Exhibit A, which is attached hereto and incorporated herein by reference, located in the City of Charleston, County of Charleston, State of South Carolina (hereinafter referred to as the "Property"); and

WHEREAS, the Property is located in and has been certified as being of historic significance to the officially designated Historic Charleston District of Charleston, South Carolina, which district is a registered historic district as defined by the Internal Revenue Code (1985, as amended); or is recognized by the United States Department of Interior through inclusion, or eligibility for listing, in the National Register of Historic Places; or is a part of a historically important land area whose preservation is necessary to maintain the historic integrity of the Historic Charleston District, which district contributes significantly to the cultural heritage and visual beauty of Charleston, South Caroline and should be preserved; and

WHEREAS, Grantee is authorized to accept real Property and interests therein in furtherance of its purpose of preserving and protecting the historical and architectural heritage of Charleston and its environs; and

WHEREAS, Grantor desires to grant and Grantee desires to accept, a façade conservation easement with respect to the Property; and

WHEREAS, Grantor intends to make a charitable gift of a qualified conservation contribution in the form of this Easement, as hereinafter contained, with respect to the Property, in order to further the preservation and conservation of the Property and the goals of Grantee; and

ISLAND ARCHITECTS

HOMES & PROPERTIES PROCESS & VALUES

CONTACT US

We welcome the opportunity to speak with you no matter where yo
your dream home, and we are readily available by phone or email.
we are happy to meet with you in your home or at the site

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Board: Architect

ISLAND ARCHITECTS LLC
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CHARLESTON, SC 29401-2558

License number: ARF.100553
Expiration: 08/31/2023
Phone: (804) 301-6120
Type: Firms

Board Public Action History:

File a Complaint against this licensee

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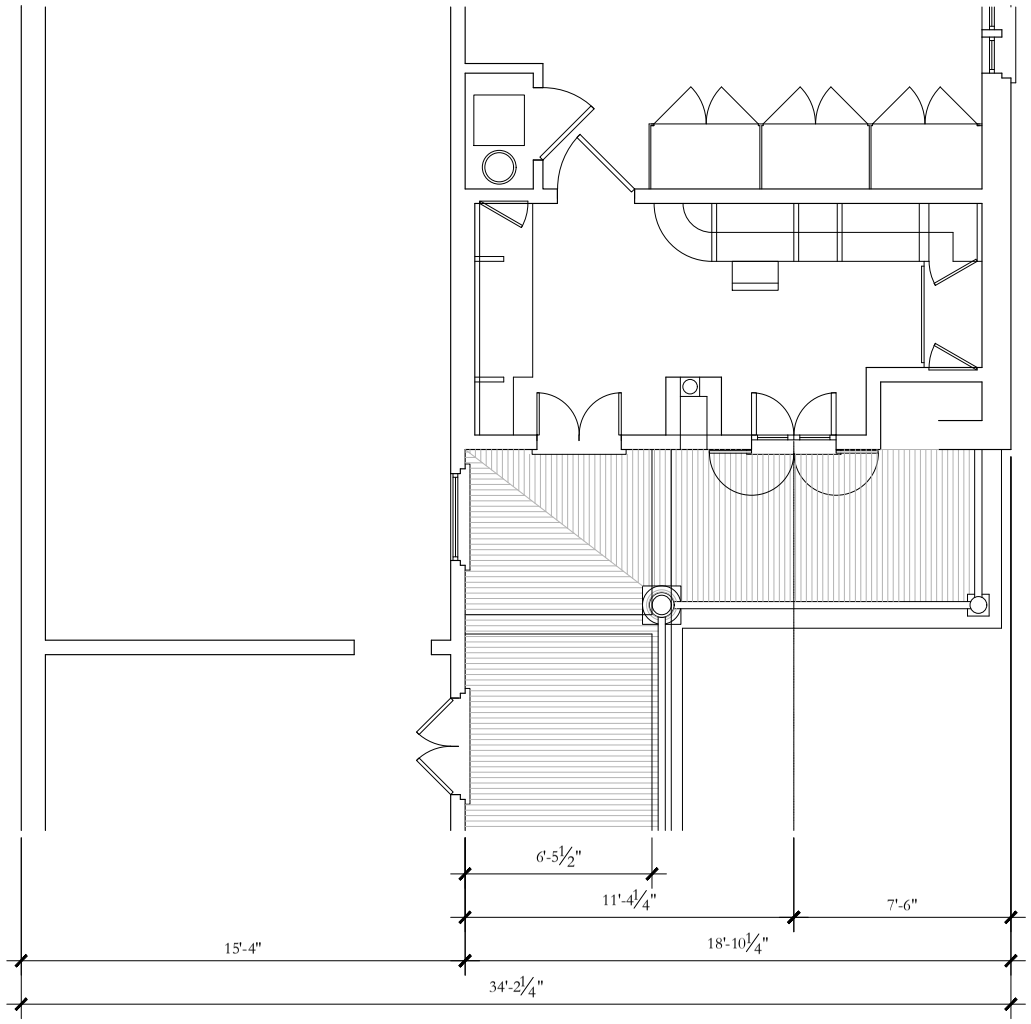
Board: Architect

GEORGE M WALLACE JR
62 CHURCH ST
CHARLESTON, SC 29401-2558

License number: AR .3039
Expiration: 06/30/2023
Initial Registration Date: 10/17/1984
Company Name: G M WALLACE JR ARCHITECT
Company Phone: (804) 301-6120
Type: Architect

Board Public Action History:

File a Complaint against this licensee



ADDITION & GARDEN
TERRACE AT
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SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-4
UPPER FLOOR
OFFICE &
PORCH PLAN

always had very friendly, respectful and cooperative relationships with the previous owners of 60 Church ov[illegible]nd we would like nothing better than to enjoy the same with Teresa and [illegible].

Erika

Erika Wallace
Stone Ridge Interiors
Island Architects
62 Church Street
Charleston, SC 29401

c: (843) 412-7753
erikarwallace11@gmail.com

PLEASE NOTE NEW EMAIL ADDRESS

From: [illegible]ison Malpass <[illegible]@hmmbuilders.com>
Sent: Monday, August 23, 2021 9:54 AM
To: skip@islandarchitects.com; erikarwallace11@gmail.com
Subject: Access to 62 Church for roof and siding repairs

Skip and Erika,

Again, I want to apologize for the actions of my crew on Friday.

I have my council and the council of the Melhado's ready to contact Trenholm asap to resolve the access issue, but I wanted to make sure there wasn't something we could work out instead of going down that route.

The Melhado's are very concerned about getting the roof on in a timely manner, prior to the height of Hurricane season, and because of the shape the roof is in currently it will be very damaging to the interior of the house if we don't act quickly.

I was informed this morning that we could be scheduled to start on the 6th of September, which means we would need to install scaffolding several days prior.

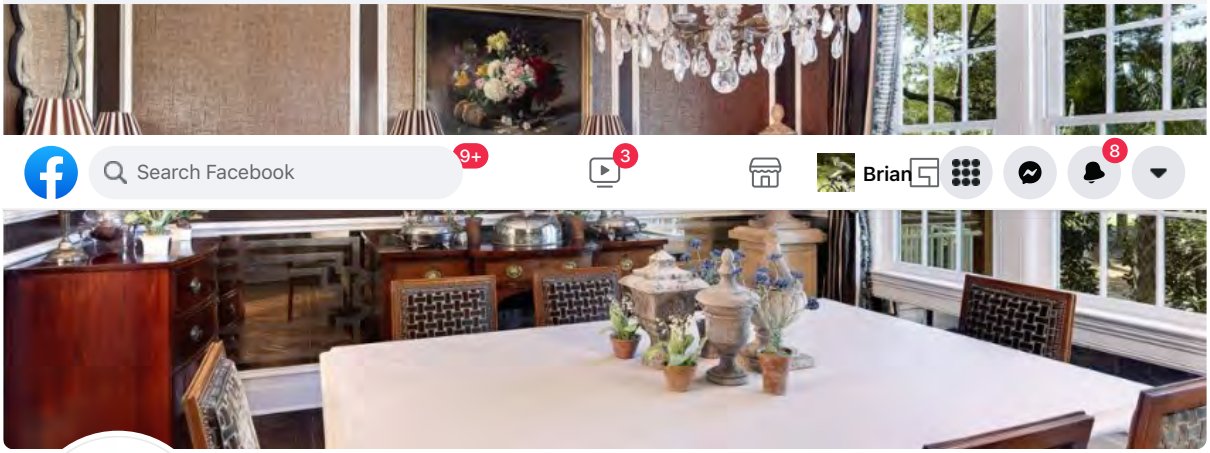
I know there is another hearing for zoning on the 7th, I am in no way involved in their decisions, but I think it would go a long way with them to not fight the access issue.

I am free to speak at your convenience, if you would like to just go through the council I get it, just please let me know. The current condition of the roof is a real concern at this point.

--

Thanks,

Harrison Malpass
Owner



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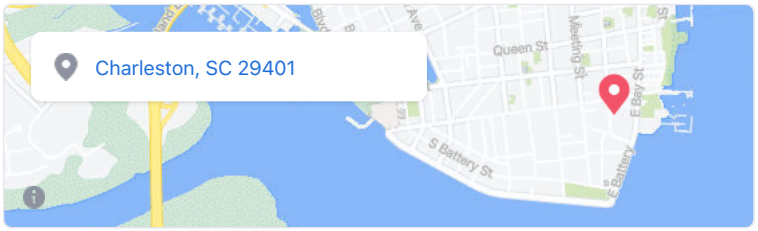

GENERAL

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Interior Design Studio

HOURS

Open Now
9:00 AM - 5:00 PM

BUSINESS DETAILS

Price Range · $$

ADDITIONAL CONTACT INFO

http://stoneridgeinteriorssc.com/

(843) 412-7753

From: **Charleston Citizen Support Center** charlestonsc@mycusthelp.com
Subject: [FOIA Records Center] FOIA Request :: F000931-081321
Date: August 27, 2021 at 3:13 PM
To: bh@hellmanyates.com

--- Please respond above this line ---

CHARLESTON SC

RE: FOIA REQUEST of August 13, 2021, Reference # F000931-081321

Dear Brian Hellman,

The City of Charleston received a FOIA request from you on August 13, 2021 for the following records:

"1. Copies of all Home Occupation Applications for Home Occupations (as defined by Section 54-211 of the Zoning Ordinance) at 62 Church Street, Charleston.
2. Copies of all business licenses for businesses operating from 62 Church Street, Charleston.
3. Copy of the City of Charleston business license for Island Architects, LLC.
4. Copy of the City of Charleston business license for Stone Ridge Interiors, LLC."

The City of Charleston has reviewed its files and has determined there are no responsive documents to your request.

This completes the City's response to your FOIA request and this matter is now considered closed.

You may reply to this email if you have any questions.

Sincerely,
City of Charleston

To monitor the progress or update this request please log into the FOIA Records Request Center.

ELECTRONICALLY FILED - 2021 Dec 24 1:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP10

City of Charleston

BOARD OF ZONING APPEALS-ZONING

September 7, 2021
5:15 PM

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

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

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

Zoom Meeting Protocol

Order on Each Application:

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

Providing Comment:

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

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

ELECTRONICALLY FILED - 2021 Dec 24 1:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP10

Board of Zoning Appeals-Zoning

Your Board of Zoning Appeals-Zoning Members are:

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

Your City of Charleston Staff are:

Lee Batchelder, *Zoning Administrator*
Scott Valentine, *TRC Coordinator*
Pennye Ashby, *Senior Planner*
Vanessa Ellington, *Clerk*

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

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

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

ELECTRONICALLY FILED - 2021 Dec 24 1:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP10

Board of Zoning Appeals-Zoning

Requirements for Granting a Variance

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

a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;

b. these conditions do not generally apply to other property in the vicinity;

c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

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

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Agenda Item #A-1

Approval of August 17, 2021 BZA-Z Minutes

(click on link below)

https://www.charleston-sc.gov/AgendaCenter/ViewFile/Agenda/_08172021-6789

6

Agenda Item #A-2

62 CHURCH STREET

(CHARLESTOWNE)

TMS # 458-13-01-097

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

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

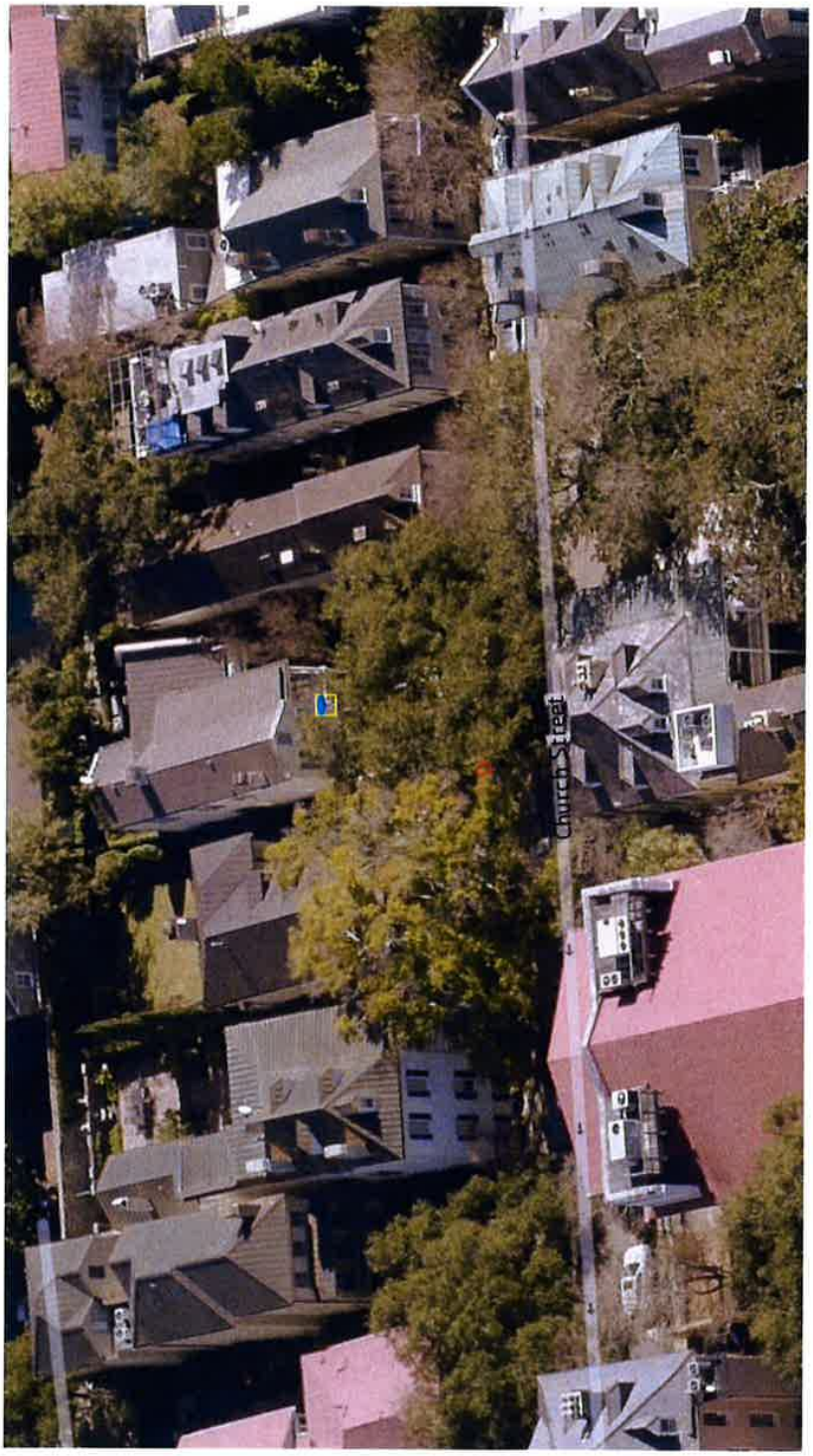
Zoned SR-4

171

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

E Bay St
DR-1F
SR-3
SR-5
SR-3
SR-5
SR-4
SR-5
SR-4
Church St
SR-5
SR-4
SR-5
SR-4
SR-3
SR-3

8



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SR-1
SR-1
CHURCH ST
South of Broad
4581301060
4581301059
4581301066
4581301096
4581301095
4581301097
4581301098
4581301099
4581301100
4581301101
4581301140
4581301141
4581301017
4581301019
81301018
21
23
3
62
64
66
68
70
60
58
59
61

10

CHURCH ST
TRADD ST
LONGITUDE LN
STOLLS ALY
CHURCH ST
SR-5
SR-4
SR-3
14UT

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

City of Charleston

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

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: _____

Property Address: 62 Church St TMS #: C 458 13 01097

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

Applicant: George Wallace Daytime Phone: 804-301-6120

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

E-mail Address: skip@islandarchitects.com

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

Zoning of property: SR-1

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant: _____ Date: 5/27/21

For office use only
Date application received: 12 Time application received:
Staff person: Fee: $ Receipt #:

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

BZA-Z Application (continued) **Page 2 of 2**

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

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

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

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

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

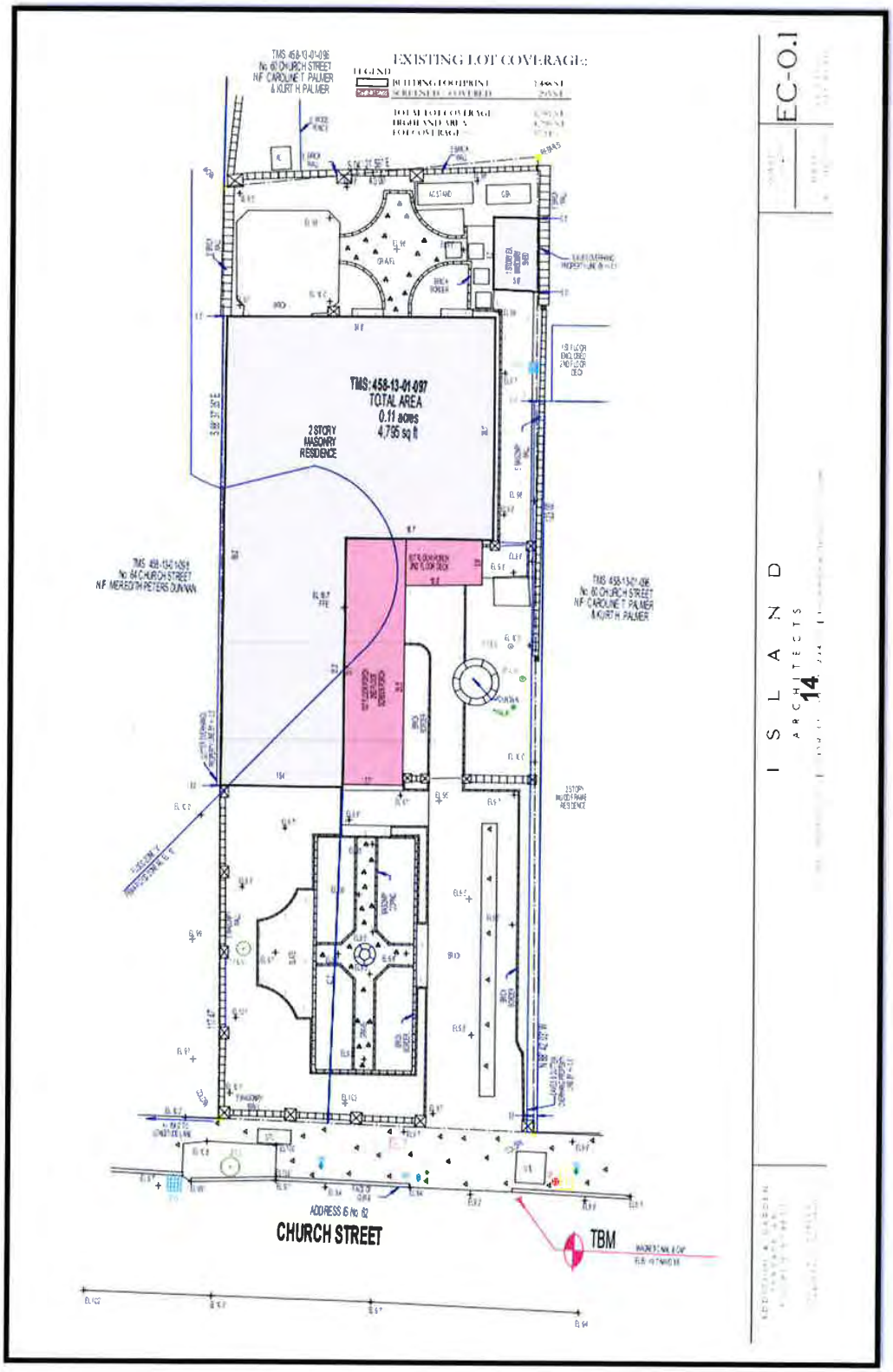
For **Special Exception** requests, applicants should list the specific approval(s) being requested and include documentation to demonstrate compliance with the relevant special exception requirements of the Zoning Ordinance, such as § 54-110, § 54-206, or sections in Article 5 (add as an attachment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

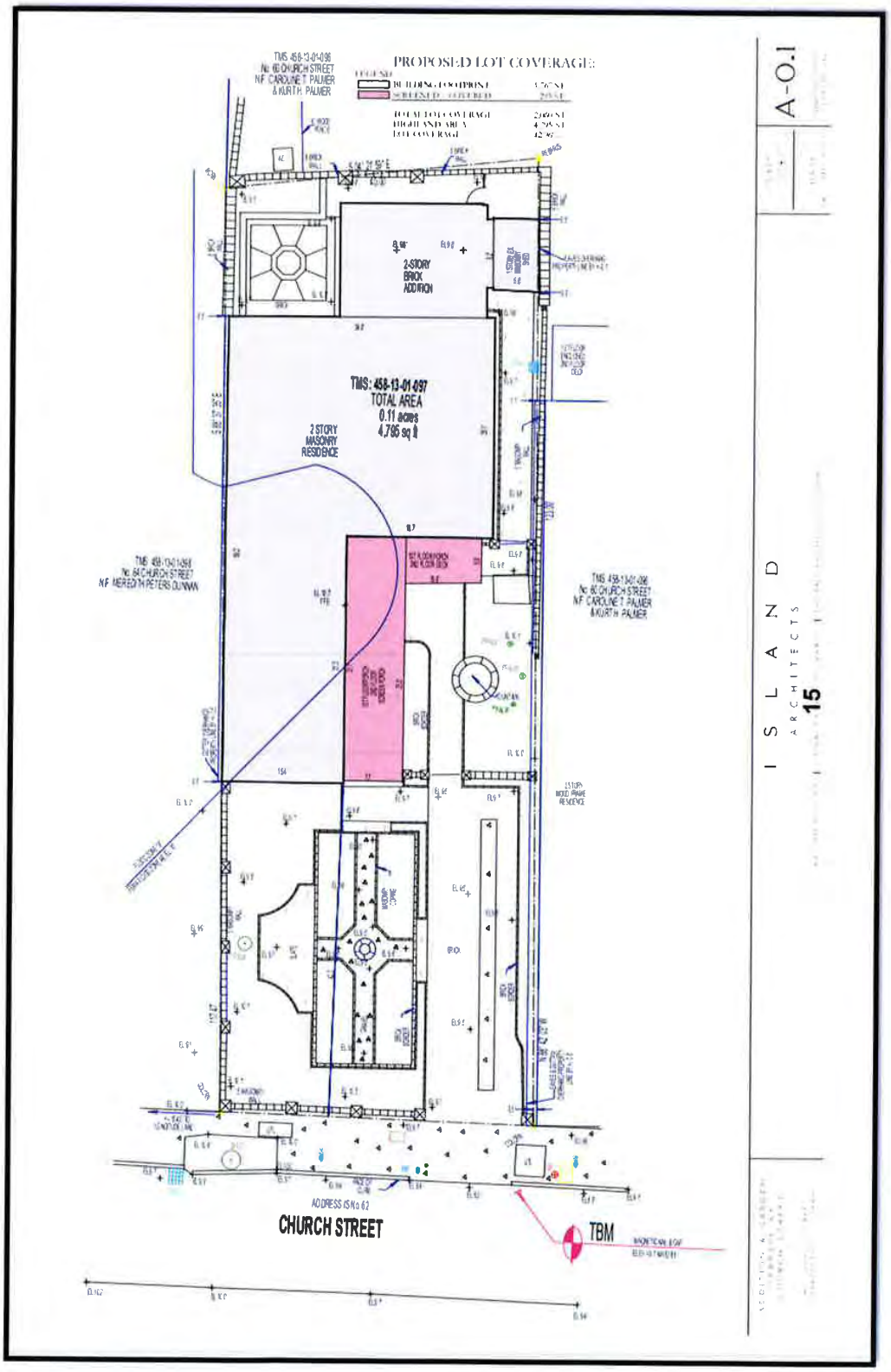
We are requesting a zoning special exception to extend the non-conforming South side setback (Sec. 54-110.I). The current house sits 5'-1 5/8" from the South property line (a pre-existing encroachment of 3'-10 3/8" into the 9' setback from the South property line), and our proposed room sits 6'-2 3/8"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

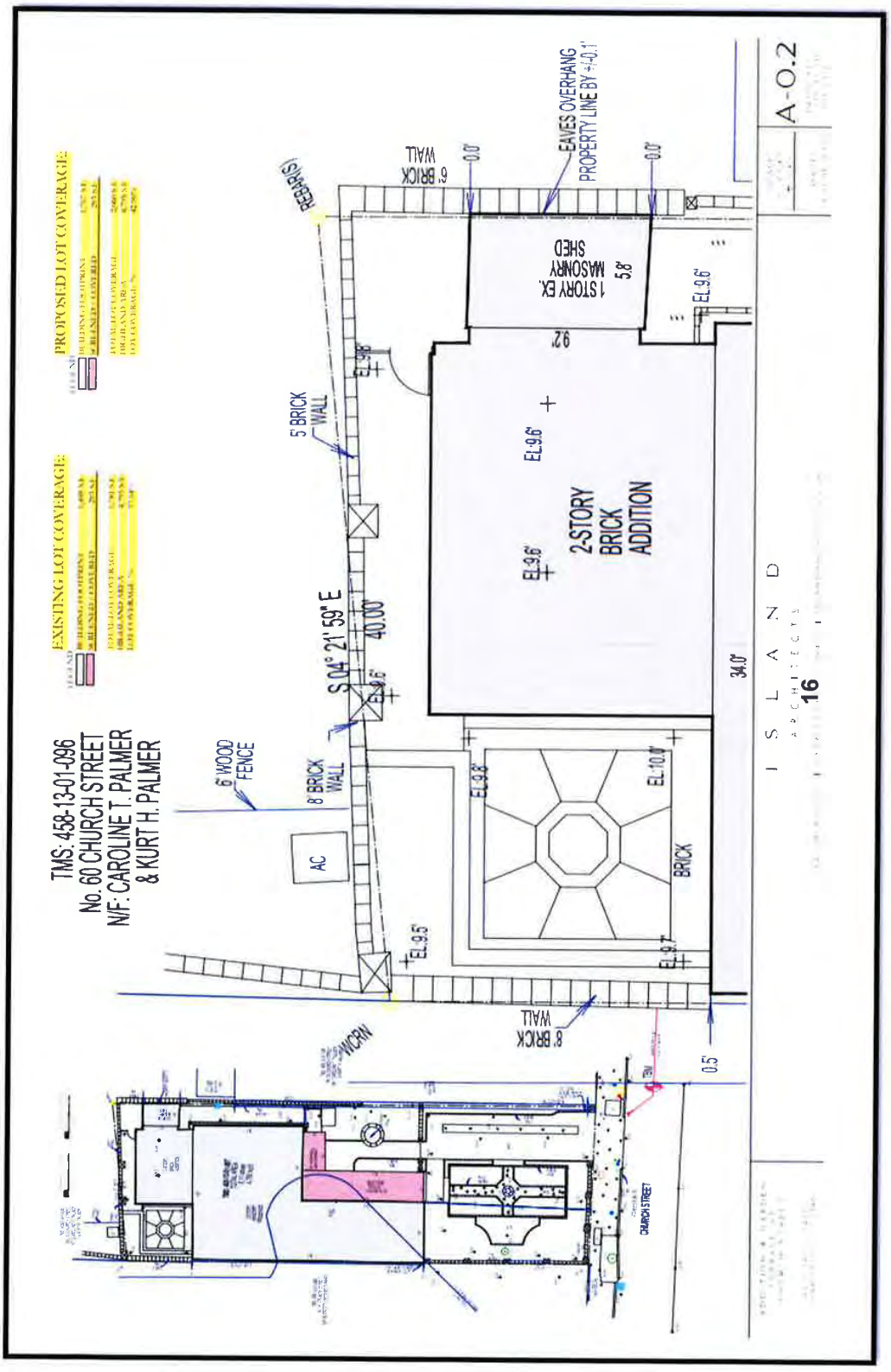
All approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Article 9, Part 5 of the zoning ordinance. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has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

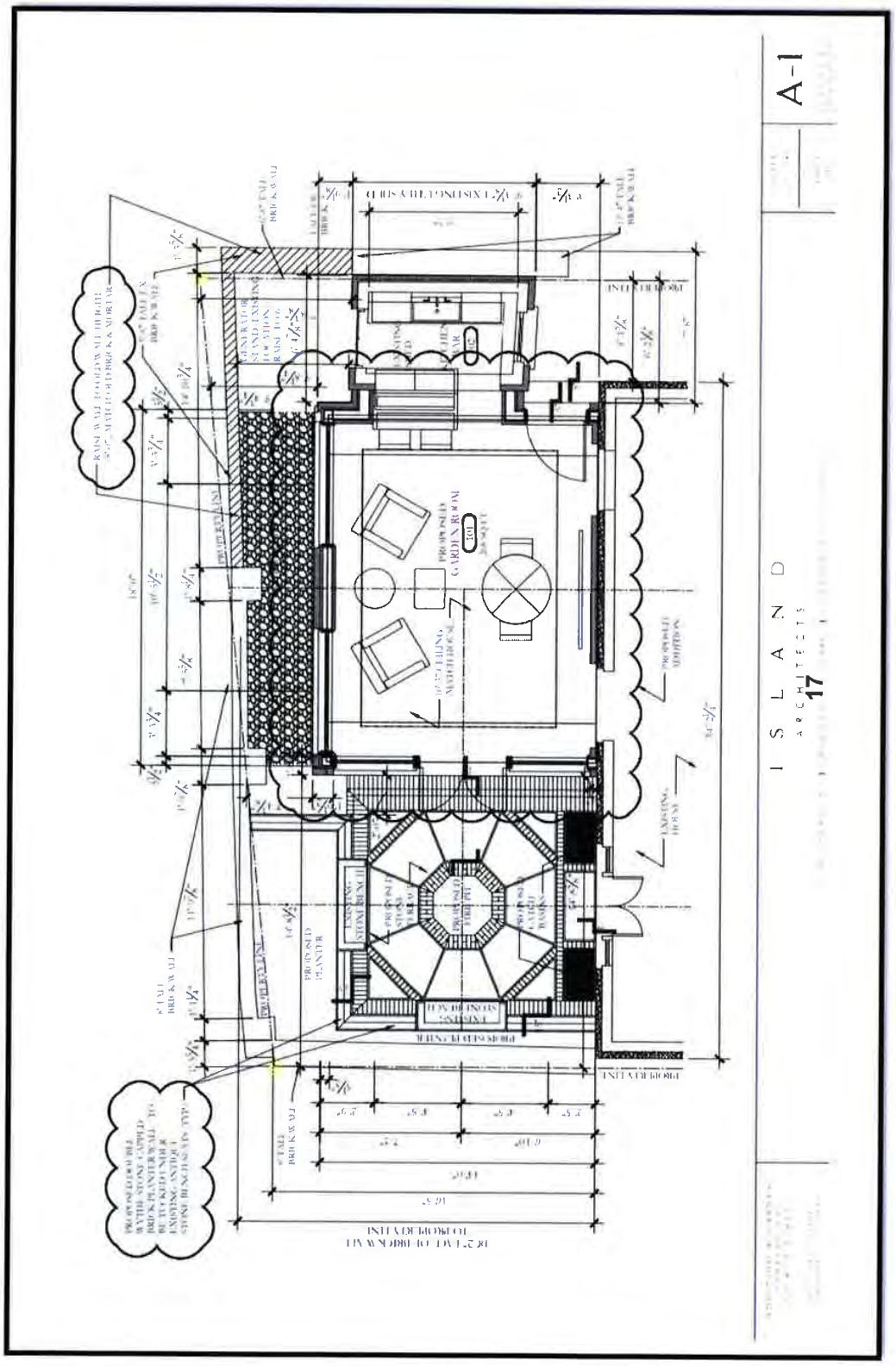
Department of Planning, Preservation & Sustainability 2 George Street Charleston, South Carolina 29401
(843) 724-3781 www.charleston-sc.gov/zoning

5/19


EXISTING LOT COVERAGE:
LEGEND
BUILDING FOOTPRINT
TMS: 458-13-01-097
TOTAL AREA
0.11 acres
4,795 sq ft
2 STORY
MASONRY
RESIDENCE
TMS 458-13-01-096
No. 60 CHURCH STREET
N/F CAROLINE T. PALMER
& KURT H. PALMER
TMS 458-13-01-098
No. 64 CHURCH STREET
N/F MEREDITH PETERS DUNNAN
ADDRESS IS No. 62
CHURCH STREET
TBM
EC-0.1
ISLAND
ARCHITECTS
14


PROPOSED LOT COVERAGE
2-STORY BRICK ADDITION
TMS: 458-13-01-097
TOTAL AREA
0.11 acres
4,795 sq ft
2 STORY MASONRY RESIDENCE
CHURCH STREET
TBM
A-0.1
ISLAND
ARCHITECTS
15


A-0.2
PROPOSED LOT COVERAGE
EXISTING LOT COVERAGE
TMS: 458-13-01-096
No. 60 CHURCH STREET
N/F: CAROLINE T. PALMER
& KURT H. PALMER
REBAR(S)
6' BRICK WALL
EAVES OVERHANG
PROPERTY LINE BY +/-0.1'
1 STORY EX. MASONRY SHED
5.8'
9.2'
EL:9.6'
EL:9.8'
5' BRICK WALL
S 04° 21' 59" E
40.00'
2-STORY BRICK ADDITION
34.0'
I S L A N D
16
6' WOOD FENCE
8' BRICK WALL
AC
EL:9.5'
EL:10.0'
BRICK
EL:9.7'
8' BRICK WALL
0.5'
CHURCH STREET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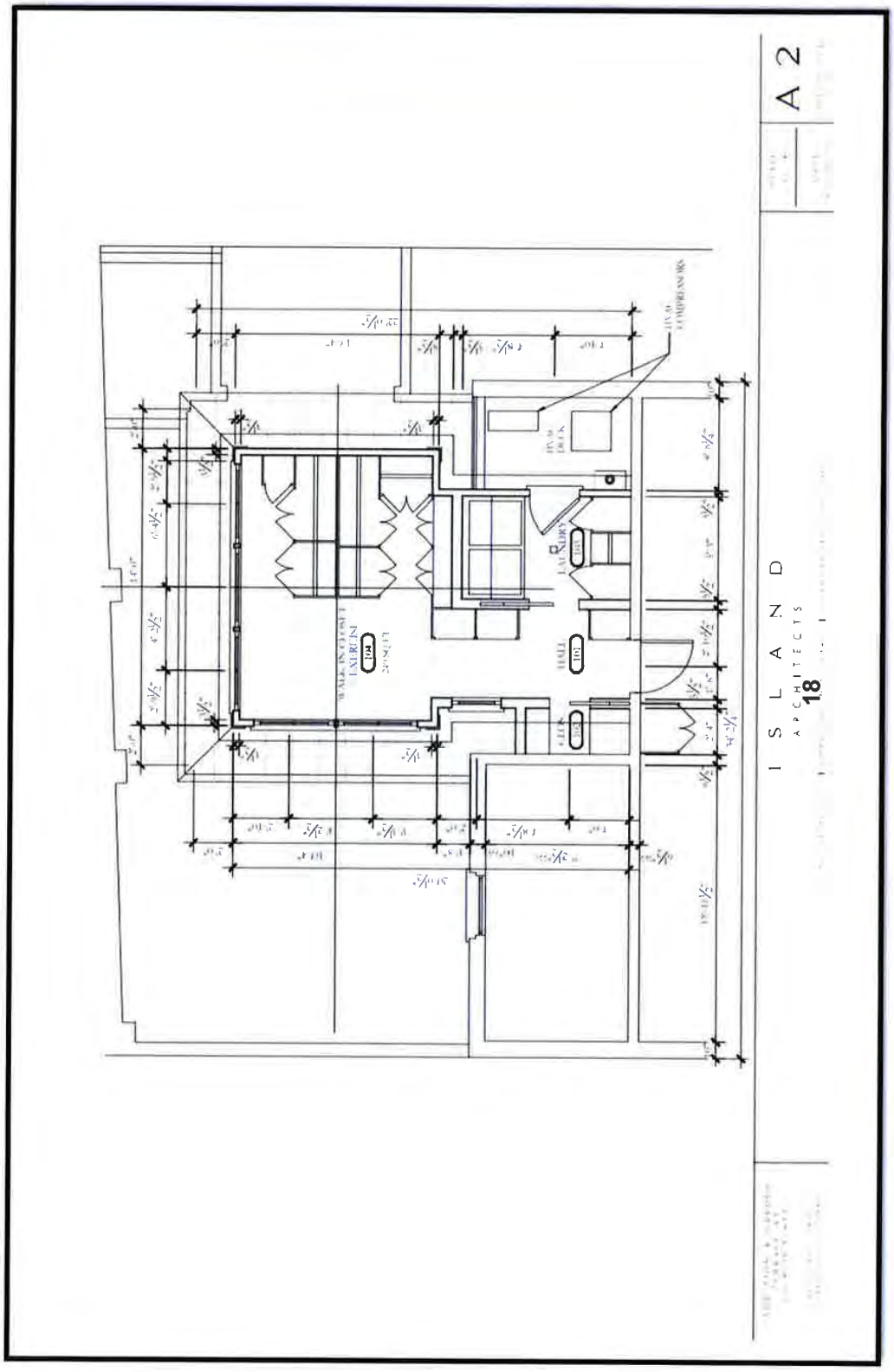
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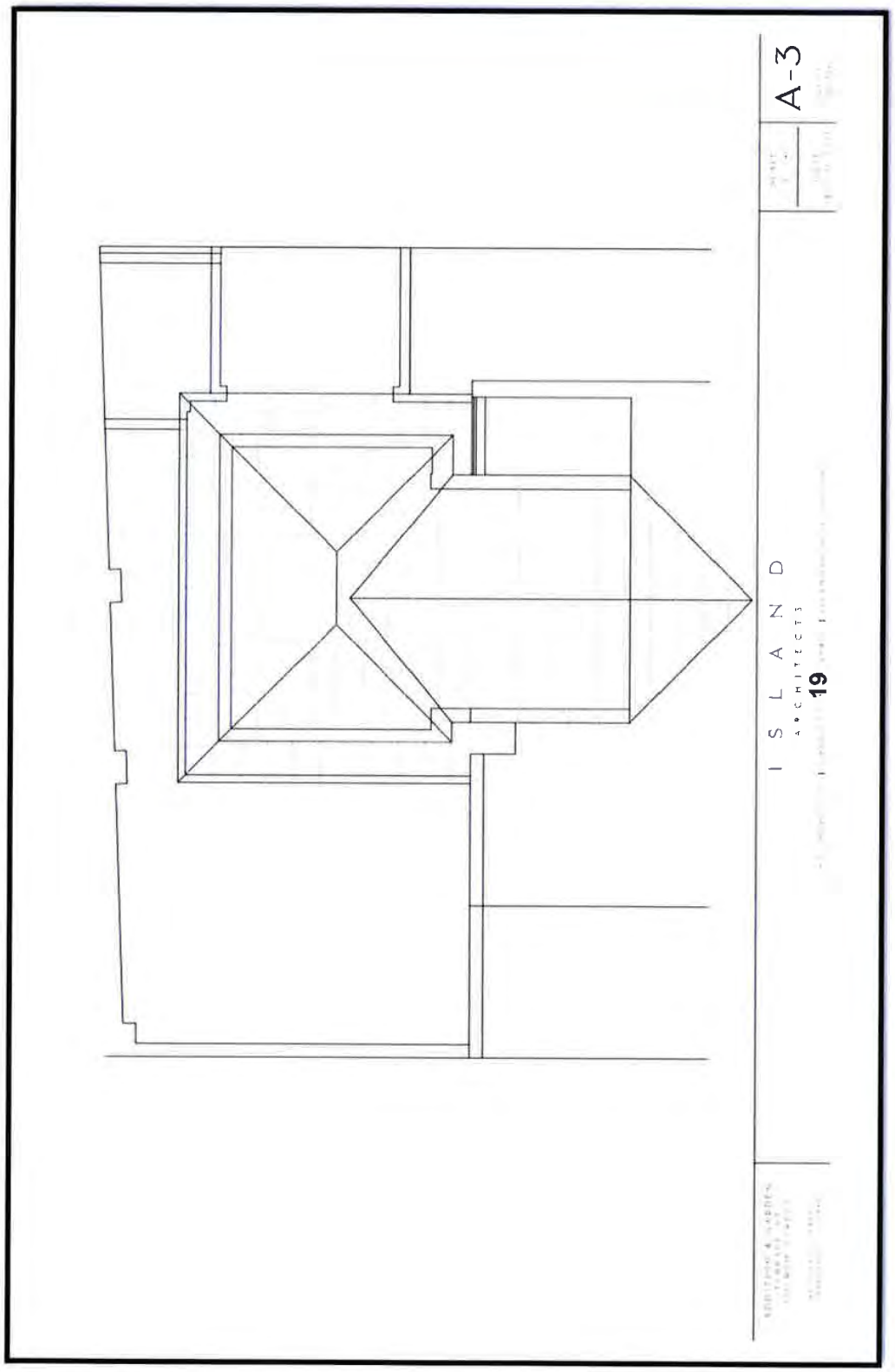
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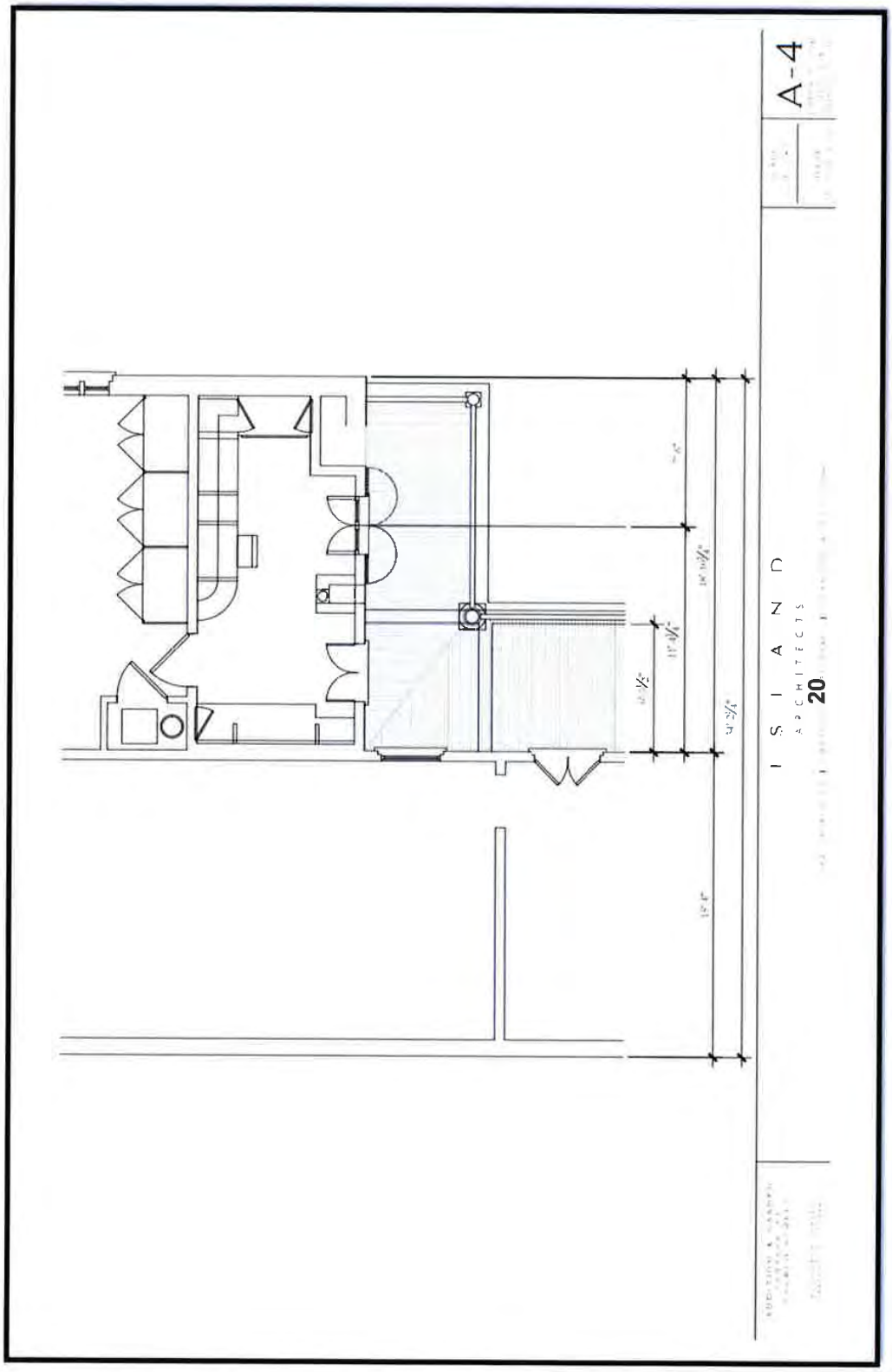
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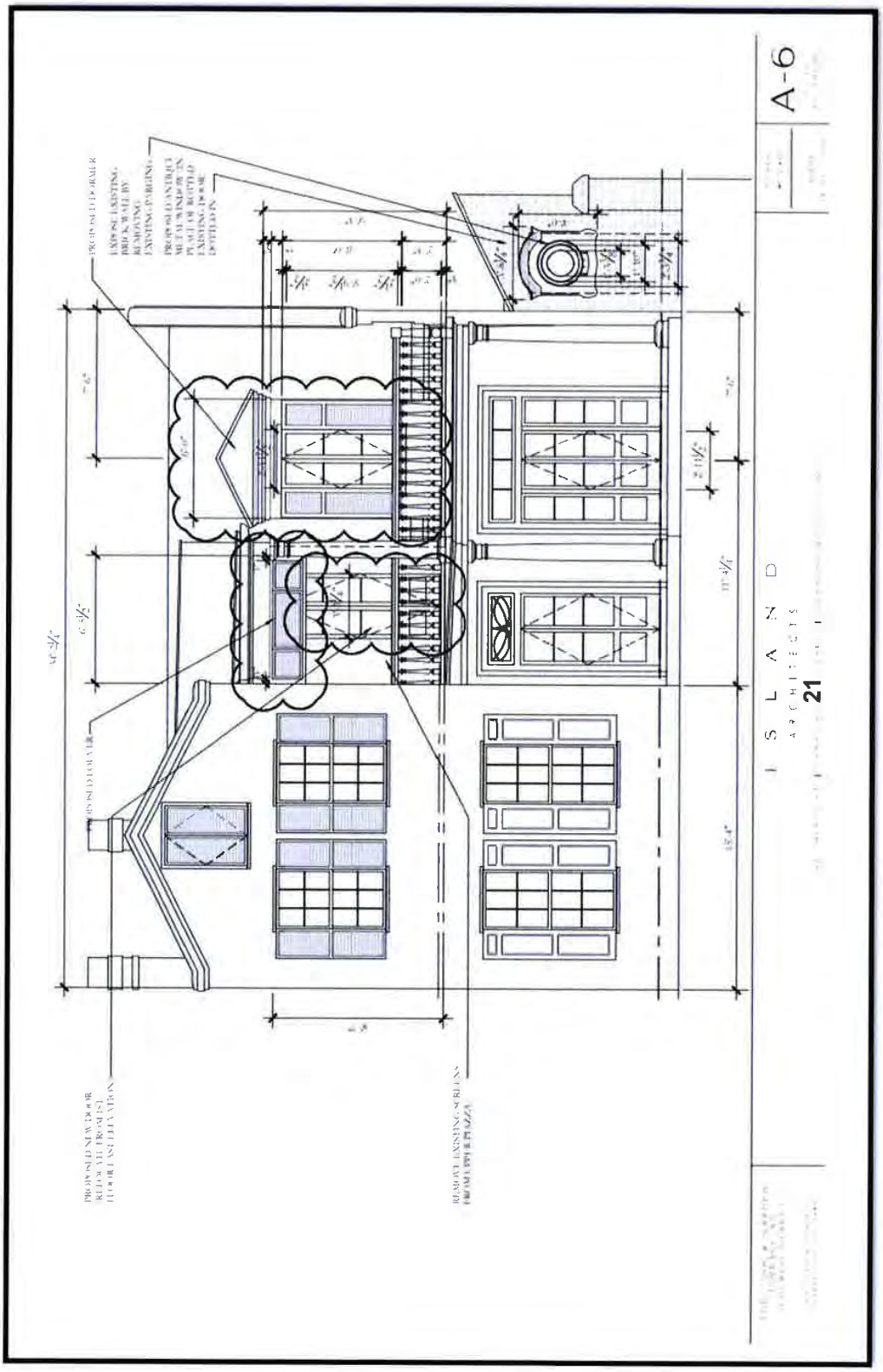
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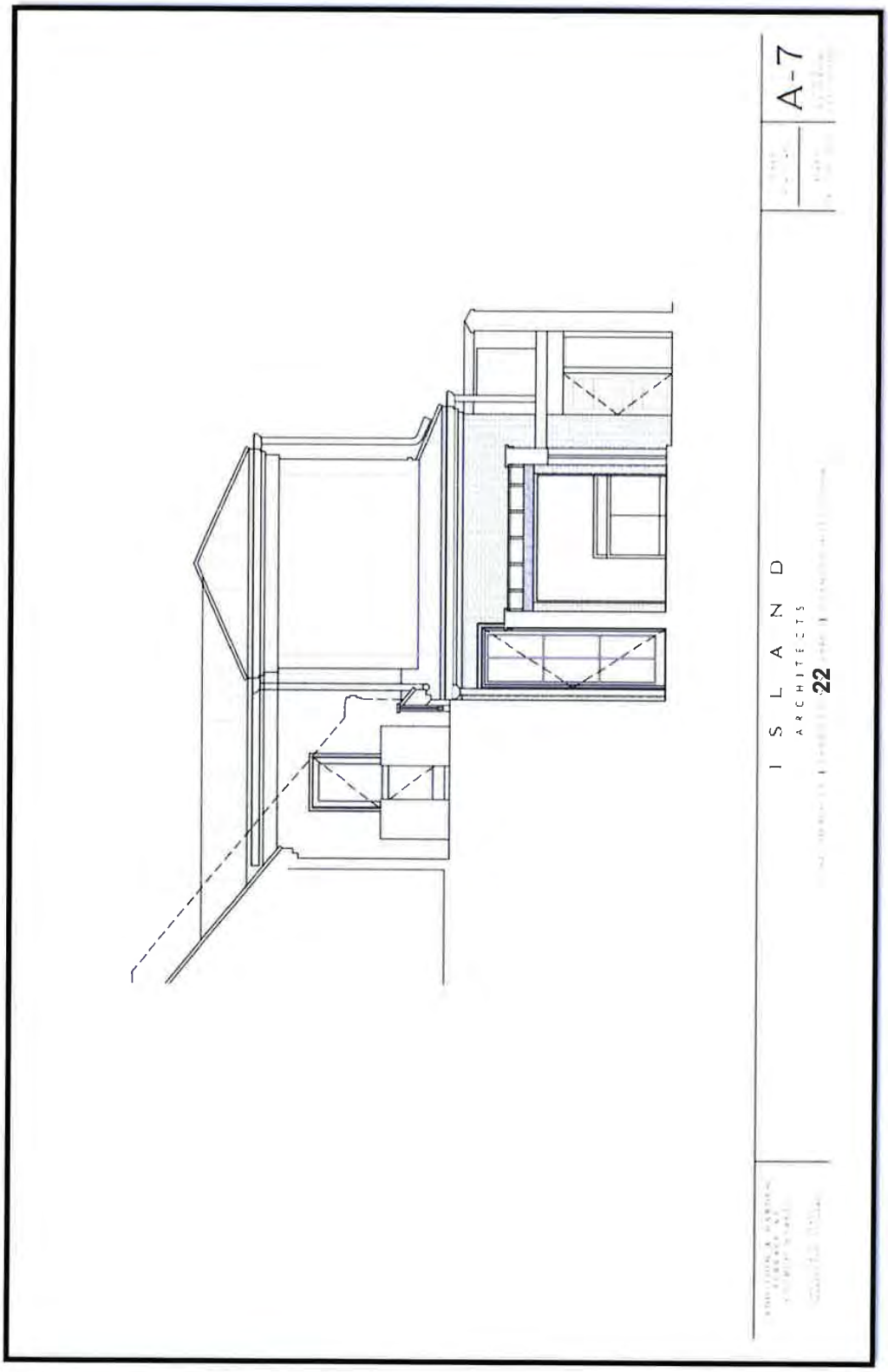
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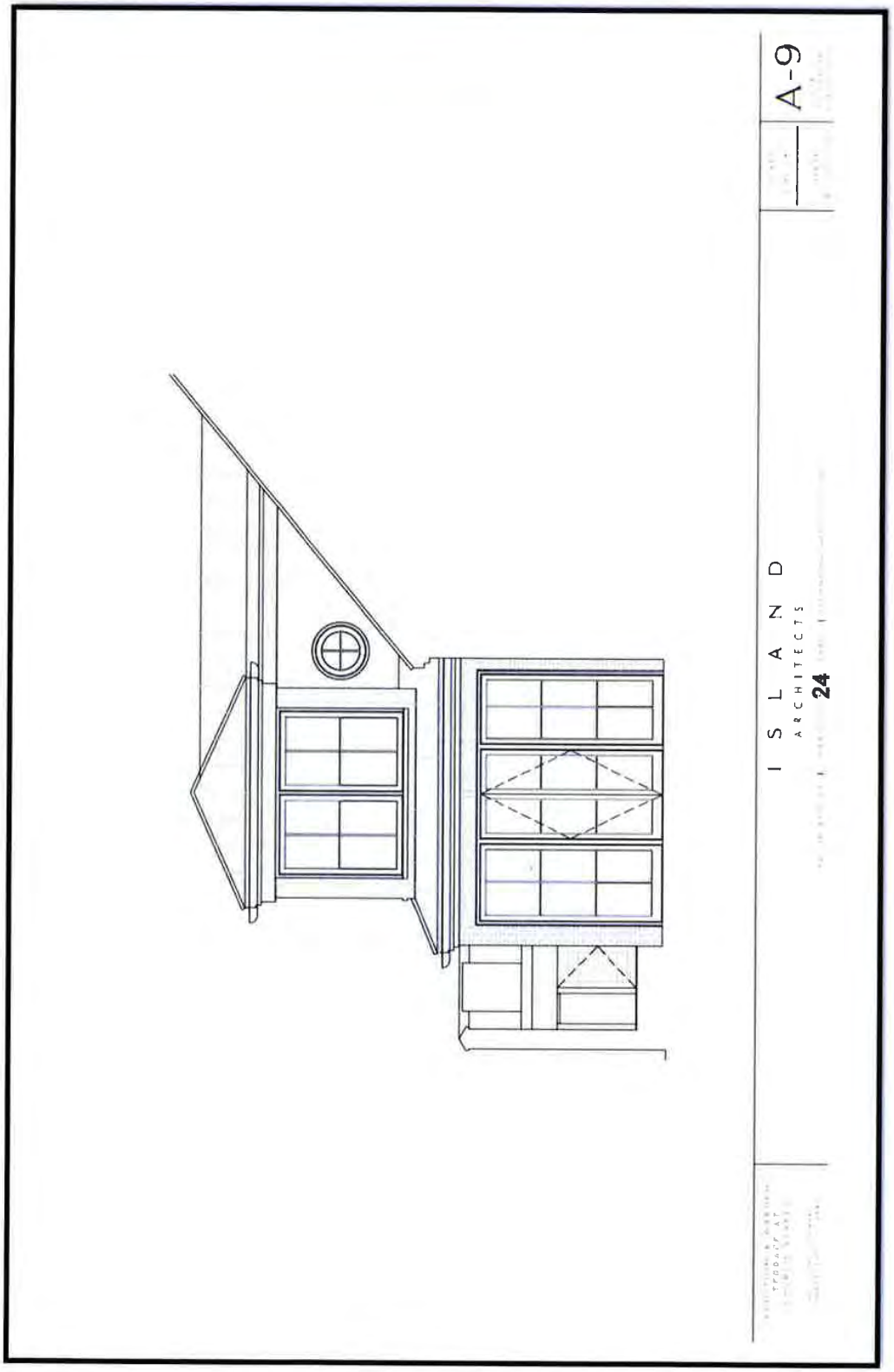
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I S L A N D
ARCHITECTS
24

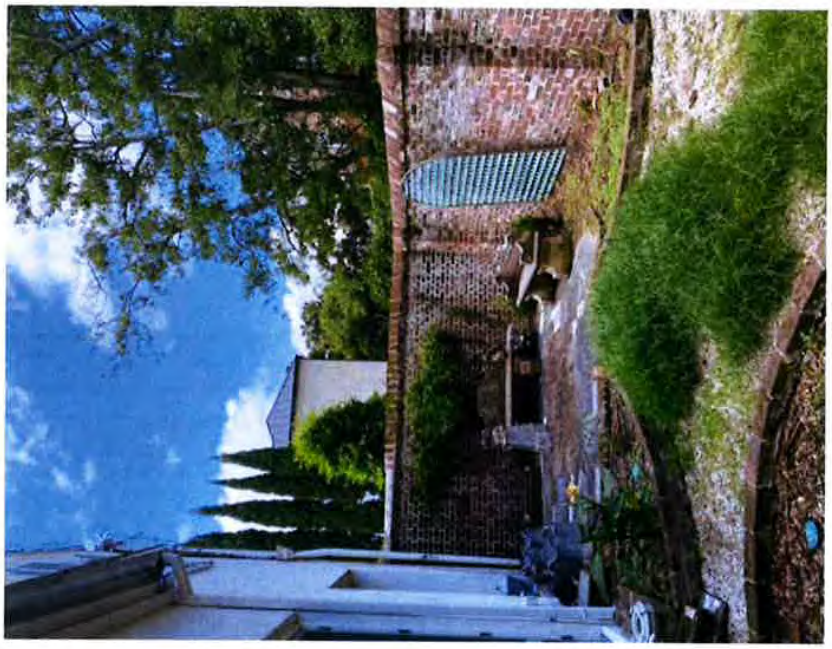
62 CHURCH STREET

Looking East down side alley to Tool Shed

25

Tool Shed (door rotted)

26



Looking North at rear yard
27

Looking East at rear wall

Looking SE at Tool Shed and HVAC platform

28

Looking South at Tool Shed

Looking West at rear of Existing House

29

HVAC Platform (existing) 30

Generator Platform behind Tool Shed (existing)

31

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

HISTORIC CHARLESTON
FOUNDATION

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

From: April Wood, Manager of Easements and Technical Outreach

Date: August 3, 2021

Re: 62 Church Street

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

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

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

City of Charleston
Board of Zoning Appeals

June 16, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom it may Concern,

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

Yours truly,

Meredith Dunnan

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

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

City of Charleston
Board of Zoning Appeals

August 18, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom it may Concern,

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

Yours truly,

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

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

City of Charleston
Board of Zoning Appeals

August 18, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom it may Concern,

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

Yours truly,

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

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

STAPLES
DVD-R
120
minutes
4.7
GB
www.product-support.s
BZA 09/07/21
Hearing

ELECTRONICALLY FILED - 2022 Mar 28 10:47 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1

City of Charleston

BOARD OF ZONING APPEALS-ZONING

October 19, 2021
5:15 PM

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

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

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

Agenda Item #B-2

62 CHURCH STREET

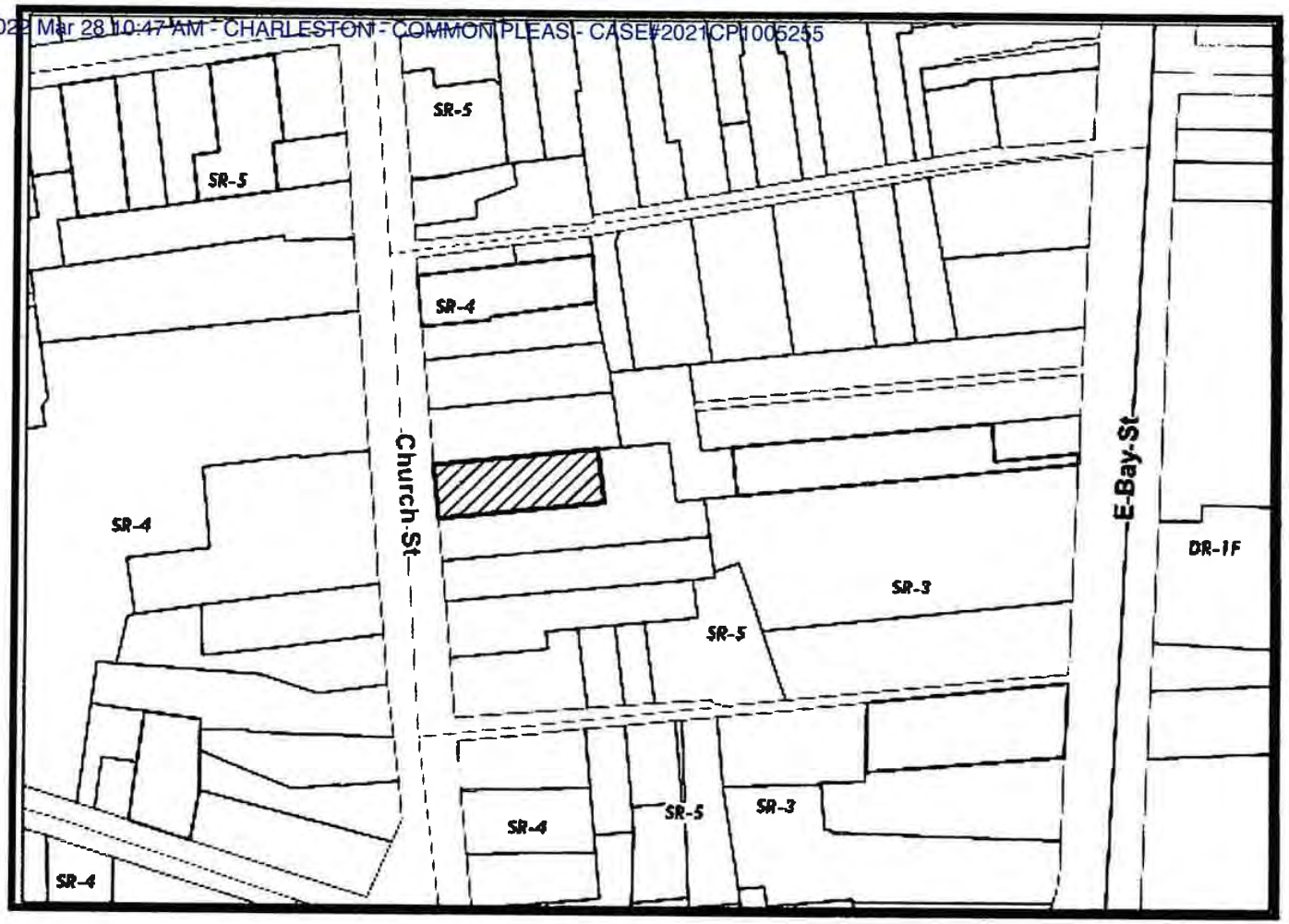
(CHARLESTOWNE)

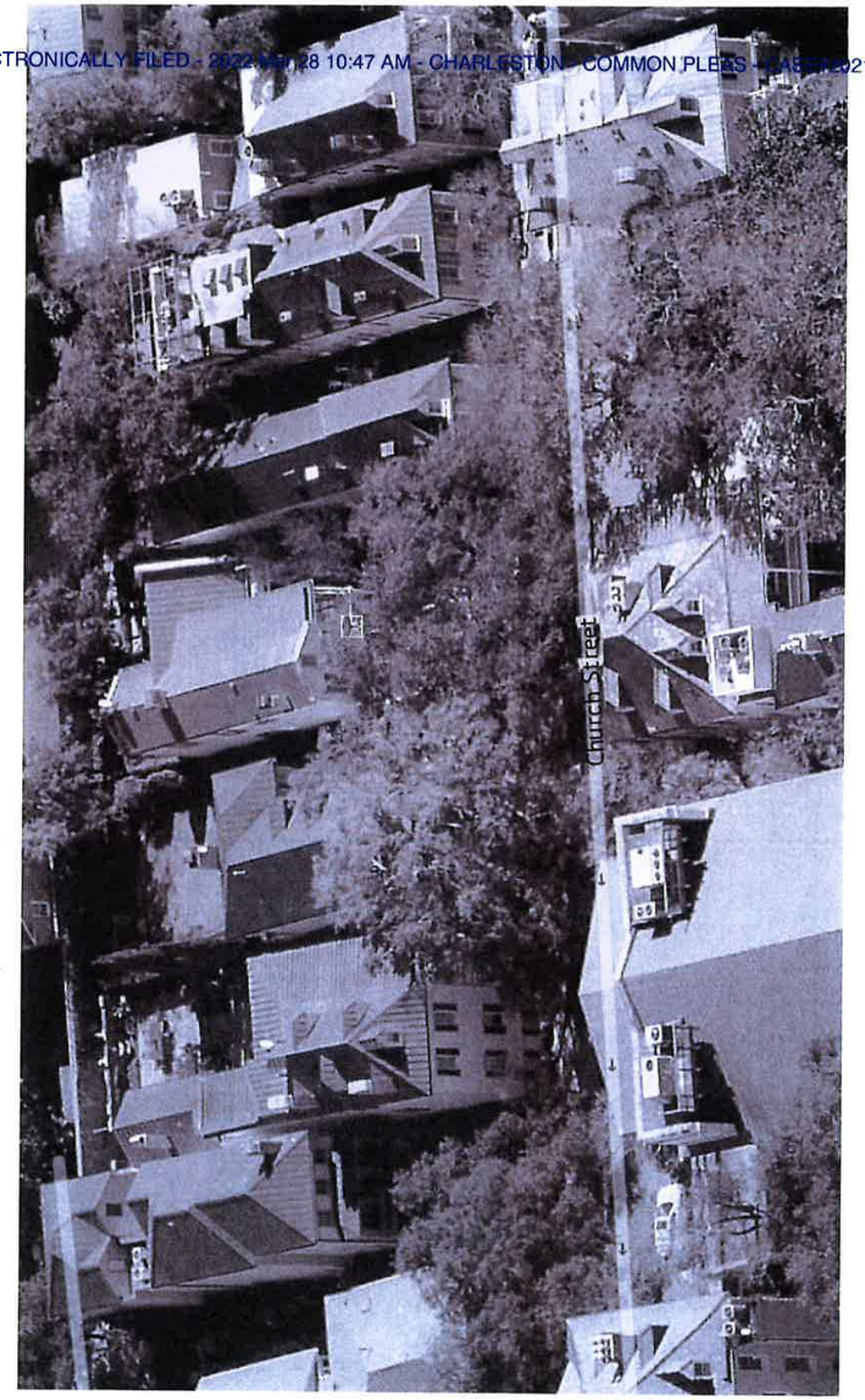
TMS # 458-13-01-097

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

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

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




Church Street

Church St
Google
Street View - Jul 2019
Image capture: Jul 2019 © 2021 Google
Google

SR-4
4581301069
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4581301139
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CHURCH ST
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SR-4
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4581301019

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

City of Charleston

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

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: October 19, 2021

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

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

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

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

E-mail Address bh@hellmanyates.com

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

Zoning of property SR-4

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant Brian A. Hellman Date September 13, 2021

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

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

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

City of Charleston

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

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

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

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

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

Signature of Applicant: Smith, Hillman & Yates, PA Date: 9/13/21

For office use only
Date application received: 9.13.21 Time application received: 4:25 Staffperson: RH

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

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

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Teresa Melhado and Dane Neller, Appellants, vs. City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, Respondents.	COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-05255 **MATERIALS FROM CITY OF CHARLESTON RELATIVE TO APPEAL**

Hearing transcript and Board Materials.

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin
Bar No.: 65264
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: tdomin@clawsonandstaubes.com
Attorney for City of Charleston Board of Architectural Review, appearing pursuant to S.C. Code §38-77-150

Charleston, South Carolina
December 24, 2021

City of Charleston

BOARD OF ZONING APPEALS-ZONING

September 7, 2021
5:15 PM

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

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

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

ELECTRONICALLY FILED - 2021 Dec 24 1:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005215

Zoom Meeting Protocol

Order on Each Application:

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

Providing Comment:

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

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

ELECTRONICALLY FILED - 2021 Dec 24 1:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005215

Board of Zoning Appeals-Zoning

Your Board of Zoning Appeals-Zoning Members are:

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

Your City of Charleston Staff are:

Lee Batchelder, *Zoning Administrator*
Scott Valentine, *TRC Coordinator*
Pennye Ashby, *Senior Planner*
Vanessa Ellington, *Clerk*

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

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

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Board of Zoning Appeals-Zoning

Requirements for Granting a Variance

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

a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;

b. these conditions do not generally apply to other property in the vicinity;

c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

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

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Agenda Item #A-1

Approval of August 17, 2021 BZA-Z Minutes

(click on link below)

https://www.charleston-sc.gov/AgendaCenter/ViewFile/Agenda/_08172021-6789

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Agenda Item #A-2

62 CHURCH STREET

(CHARLESTOWNE)

TMS # 458-13-01-097

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

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

Zoned SR-4

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

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

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

Page 1 of 2

City of Charleston

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

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: _____

Property Address 62 Church St TMS # C 458 13 01097

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

Applicant George Wallace Daytime Phone 804-301-6120

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

E-mail Address skip@islandarchitects.com

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

Zoning of property SB4

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant _____ Date 5/27/21

For office use only
Date application received _____ Fee: $ 12 Time application received _____
Staffperson _____ Receipt # _____

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

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

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

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

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

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

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

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

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

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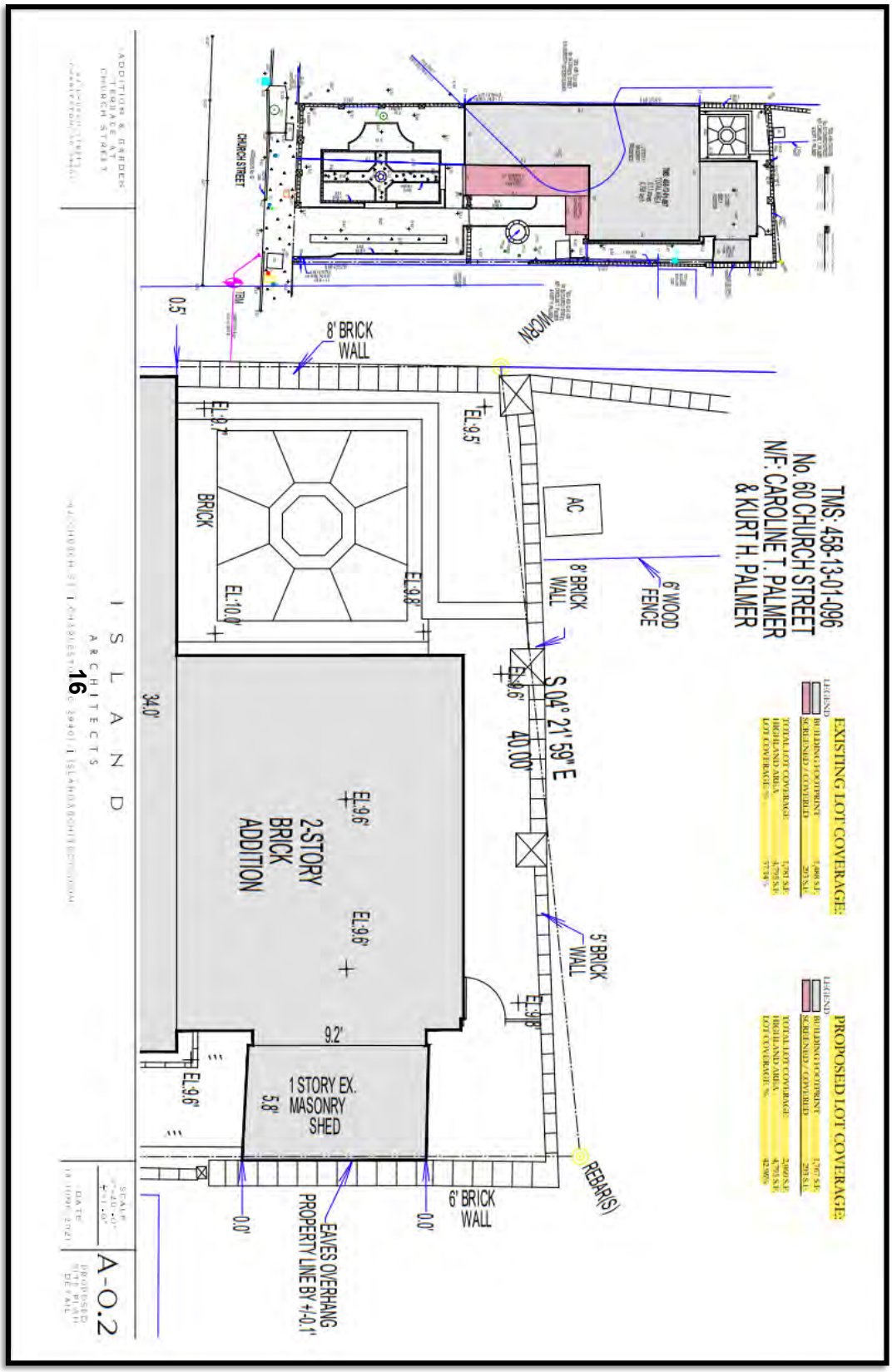

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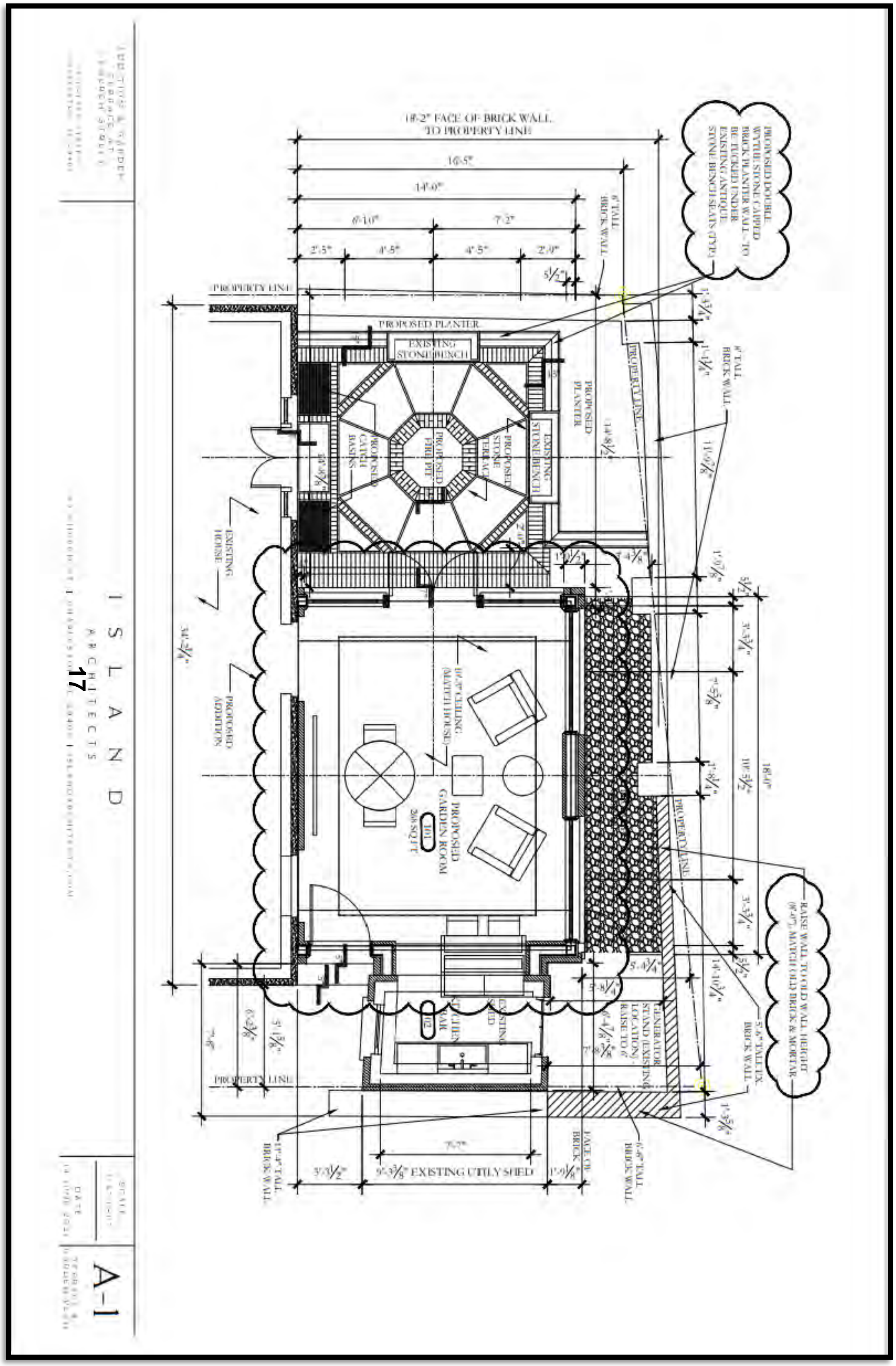

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62 CHURCH STREET

Looking East down side alley to Tool Shed

25

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Tool Shed (door rotted)

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Looking North at rear yard

27

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Looking East at rear wall

Looking SE at Tool Shed and HVAC platform

28

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Looking West at rear of Existing House

29

Looking South at Tool Shed

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30 HVAC Platform (existing)

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Generator Platform behind Tool Shed (existing)

31

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HISTORIC CHARLESTON FOUNDATION

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

From: April Wood, Manager of Easements and Technical Outreach

Date: August 3, 2021

Re: 62 Church Street

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

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

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

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

City of Charleston
Board of Zoning Appeals

June 16, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom it may Concern,

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

Yours truly,

Meredith Dunnan

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

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

City of Charleston
Board of Zoning Appeals

August 18, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom it may Concern,

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

Yours truly,

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

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

City of Charleston
Board of Zoning Appeals

August 18, 2021

Re: 62 Church St Zoning Variance & BAR Application

To Whom it may Concern,

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

Yours truly,

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

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

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

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

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

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

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

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

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

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

[00:04:54 – 00:05:40]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Ashby: First? Okay.

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

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

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

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

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

Chair Robinson: And then the attorney.

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

Chair Robinson: Mr. Wallace, are you present?

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

Scott: I believe I have.

Chair Robinson: Mr. Wallace, are you present?

Skip Wallace: Yes, can you hear me?

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

Skip Wallace: Okay.

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

Skip Wallace: I do.

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

Skip Wallace: Okay.

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

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

Mr. Batchelder: Yes, we can.

Skip Wallace: Can you see me?

Mr. Batchelder: No, cannot see you.

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

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

[Pause] [00:21:54 – 00:22:21]

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

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

Mr. Batchelder: Yes.

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

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

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

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

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

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

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

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

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

Erica: 80.

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

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

Jennifer Ivey: Yes sir.

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

Jennifer: Great.

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

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

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

John: I do.

Jennifer: I do.

Mr. Batchelder: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

Brian Hellman: Can you hear me?

Mr. Batchelder: Yes.

Brian Hellman: Thank you.

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

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

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

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

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

Brian Hellman: I do.

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

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

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

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Teresa Melhado and Dane Neller, Appellants, vs. City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-05255 **ADDITIONAL MATERIALS FROM CITY OF CHARLESTON RELATIVE TO APPEAL**

Hearing transcript and Board Materials (10.19.2021 planning meeting)

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Charleston, South Carolina
March 28, 2022

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City of Charleston

BOARD OF ZONING APPEALS-ZONING

October 19, 2021

5:15 PM

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY

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Agenda Item #B-2

62 CHURCH STREET

(CHARLESTOWNE)

TMS # 458-13-01-097

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

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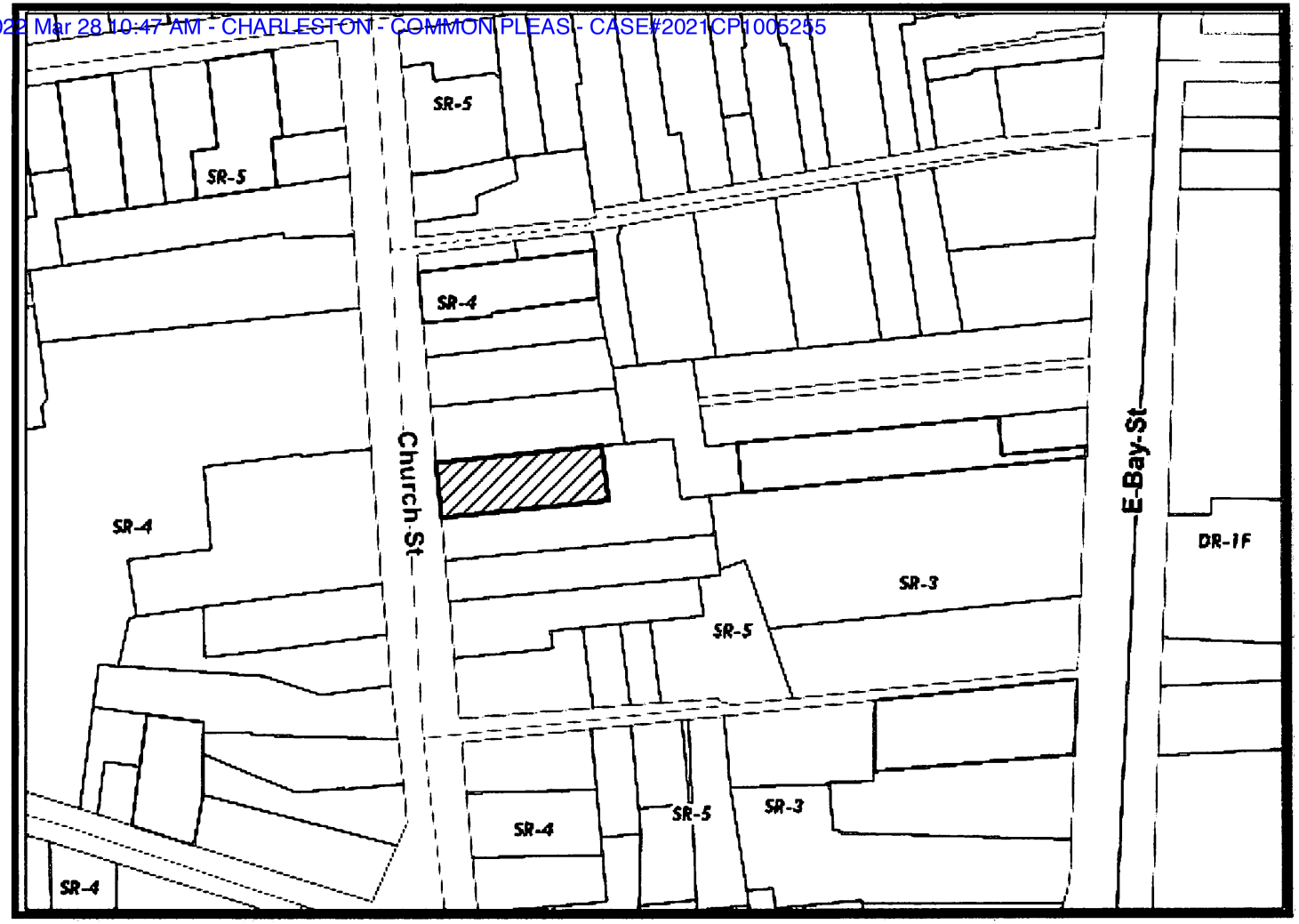

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Application for Variance, Special Exception, Reconsideration, or Extension to the **Board of Zoning Appeals – Zoning (BZA-Z)** **Page 1 of 2**

City of Charleston

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

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: October 19, 2021

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

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

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

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

E-mail Address bh@hellmanyates.com

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

Zoning of property SR-4

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant Brian A. Hellman Date September 13, 2021

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

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

City of Charleston

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

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

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

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

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

Signature of Applicant: [signature], Hellmen + Yates, PA Date 9/13/21

For office use only
Date application received 9.13.21 Time application received 4:25 Staffperson RA

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[00:08:33]

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

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

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Chairman Robinson: Is the applicant present?

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

Pennye Ashby: The applicant, yes, Brian Hellman.

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

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

Lee Batchelder: Okay, so we should promote him.

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

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

Brian Hellman: Yes.

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

Brian Hellman: I do.

Chairman Robinson: Please proceed.

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

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

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

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

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

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

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

Brian Hellman: That is, yes.

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

Pennye Ashby: Yes.

Lee Batchelder: No.

Pennye Ashby: It has elapsed.

Lee Batchelder: Oh, oh it has okay.

Pennye Ashby: Yes.

Lee Batchelder: As of right now, huh?

Pennye Ashby: As of right now.

Lee Batchelder: Yeah, okay.

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

Lee Batchelder: Yes.

Pennye Ashby: Yes.

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

Pennye Ashby: Yes, he has.

Chairman Robinson: Is Mr. Walker present?

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

Turnim Walker: Thank you, can you hear me?

Lee Batchelder: Yes.

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

Turnim Walker: Yes.

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

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

Chairman Robinson: Please proceed.

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

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

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

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

Lee Batchelder: I show six minutes.

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

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

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Turnim Walker: It does, Mr. Robinson.

Pennye Ashby: Okay.

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

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

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

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

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

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

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

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

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

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

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

Lee Batchelder: That's correct.

Howell Morrison: Okay.

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

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

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

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

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

Robben Richards: Right.

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

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

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

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

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

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

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

John Bennett: Thank you.

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

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

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

Allie Grass: I agree with that too.

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

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

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

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

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

Chairman Robinson: That was Ms. Vargas-Vargas?

Geiza Vargas-Vargas: Yes sir.

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

John Bennett: I will second that motion.

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

Howell Morrison: Aye.

Chairman Robinson: Ms. Grass?

Allie Grass: Aye.

Chairman Robinson: Ms. Richards?

Robben Richards: Aye.

Chairman Robinson: Ms. Vargas-Vargas?

Geiza Vargas-Vargas: Aye.

Chairman Robinson: Mr. Bennett?

John Bennett: Aye.

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

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

Chairman Robinson: The motion was approved.

Pennye Ashby: . . . for denial.

Chairman Robinson: For denial, correct.

Pennye Ashby: Okay, all right thank you.

[43:53]

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

ELECTRONICALLY FILED - 2022 Mar 28 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

WALKER GRESSETTE FREEMAN & GRESSETTE, LLC

/s/ G. Trenholm Walker

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Teresa Melhado and Dane Neller, Appellants, vs. City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-05255 **ADDITIONAL MATERIALS FROM CITY OF CHARLESTON RELATIVE TO APPEAL**

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

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

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s/Timothy A. Domin

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Charleston, South Carolina
March 28, 2022

ELECTRONICALLY FILED - 2022 Mar 28 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005255

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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Exhibit A

Melhado Property

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

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Teresa Melhado and Dane Neller, Appellants, vs. City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-05255 **THIRD ADDITIONAL MATERIALS FROM CITY OF CHARLESTON RELATIVE TO APPEAL**

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

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

CLAWSON and STAUBES, LLC

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Charleston, South Carolina
April 18, 2022

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

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

62 CHURCH ST. (CHARLESTOWNE) (458-13-01-097)
Request special exception under Sec. 54-110 to allow a horizontal expansion (garden room) and vertical extension (hall/closet/exercise/laundry) that extends a non-conforming 6.2-ft. south side setback (9-ft. required).
Request variance from Section 54-301 to allow a 2-story addition having a 43% lot occupancy (35% limitation; existing lot occupancy 37%)
Zoned SR-4

Order on Special Exception Request

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

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

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

Date issued: 9/7/21 Chairman Michael C Robinson

Order on Variance Request

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

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

☑ **APPROVED**. The Board concludes that:

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

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

Date issued: 9/7/21 Chairman Michael C Robinson

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

1/09

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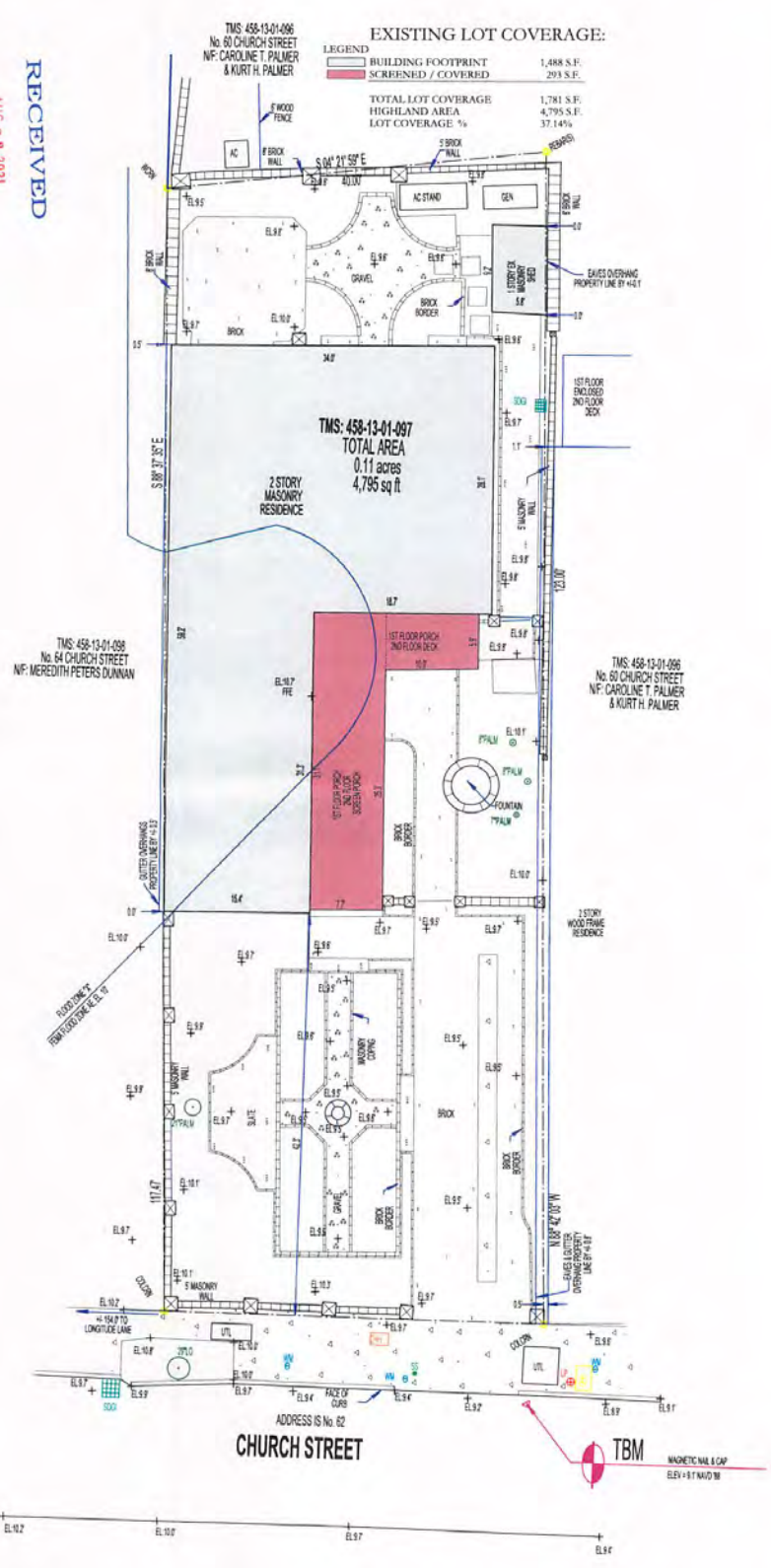

EC-0.1

SCALE
1"=10'-0"

DATE
14 JUNE 2021

ISLAND
ARCHITECTS
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

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

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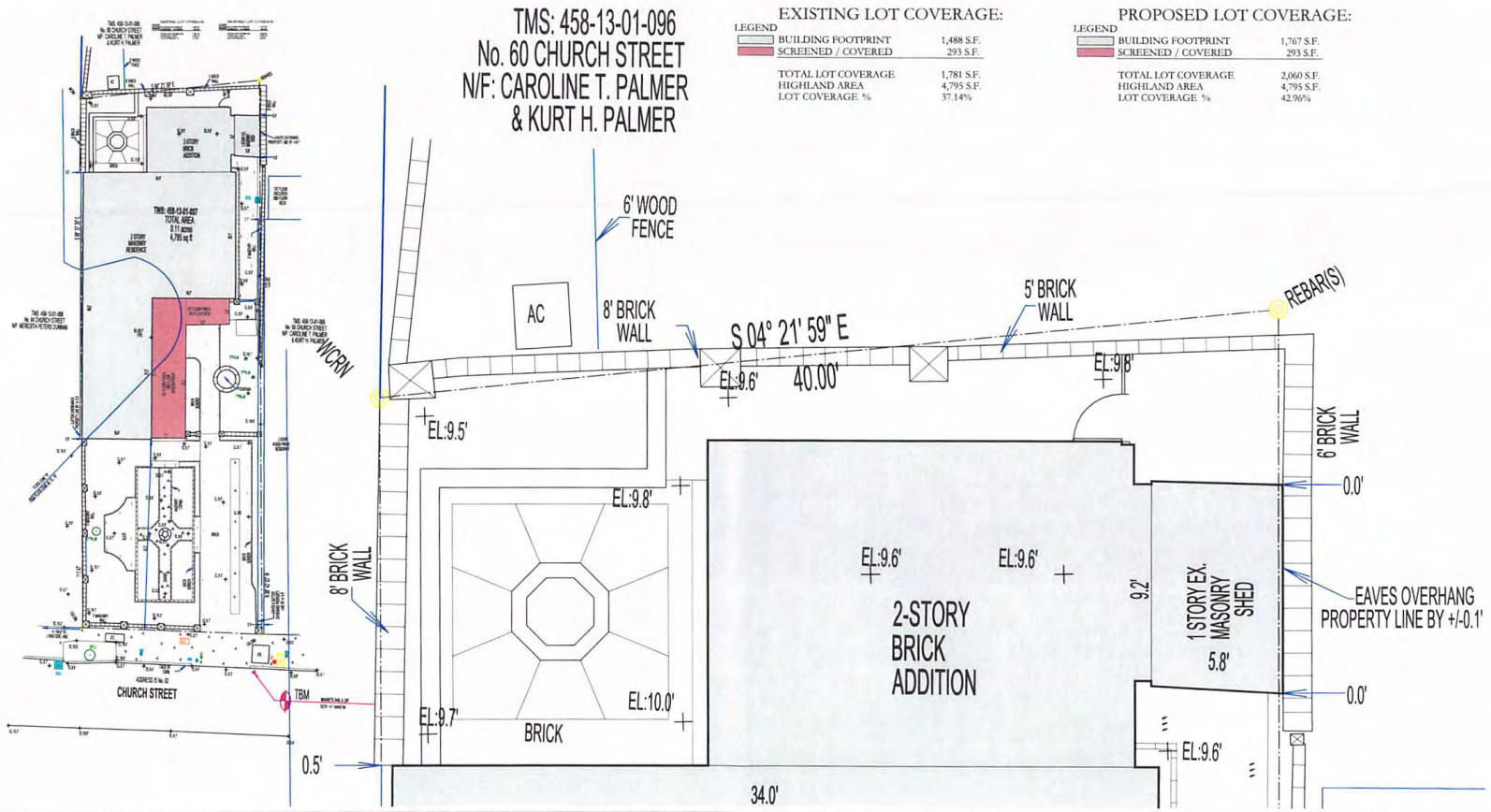


ADDITION & GARDEN TERRACE AT CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

ISLAND ARCHITECTS

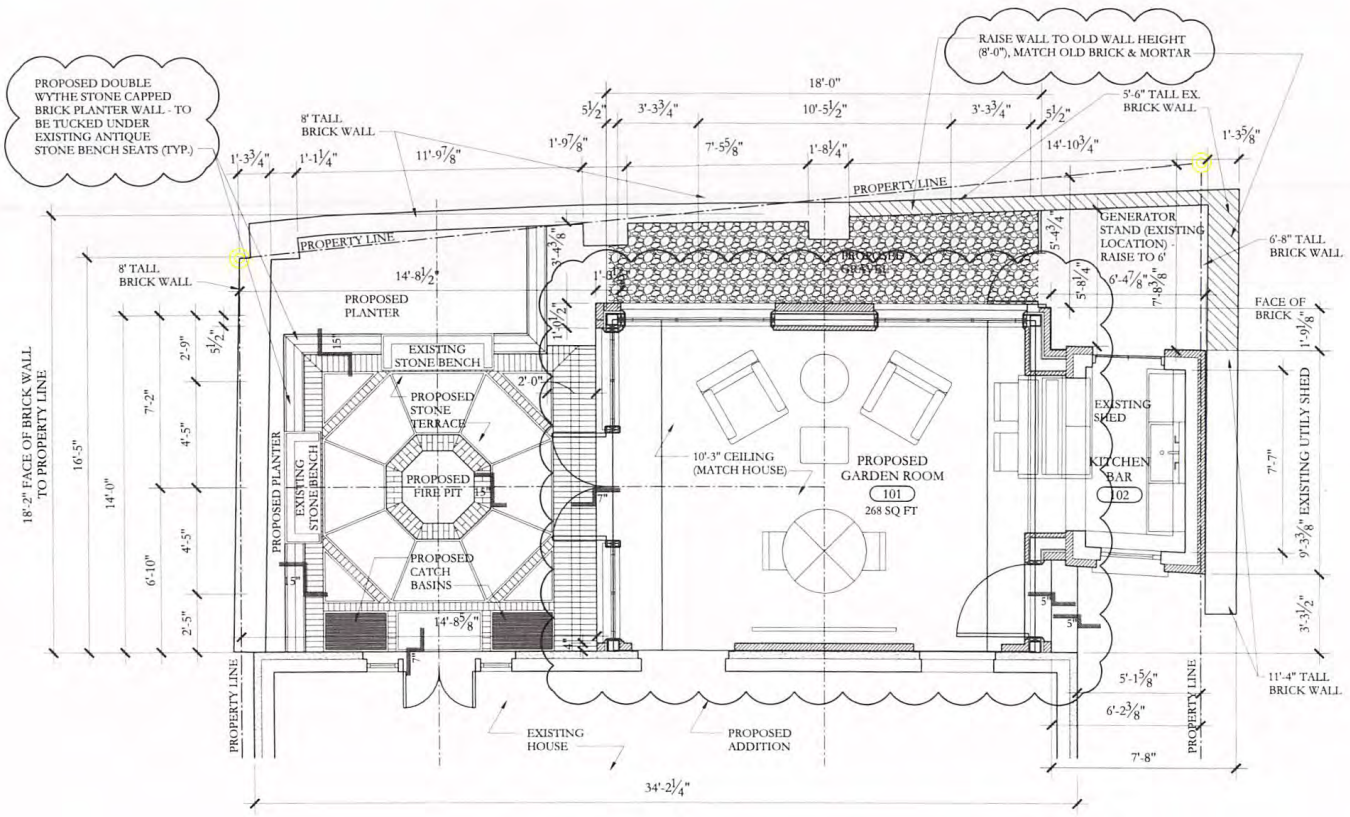
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE 1" = 20' 0"

DATE 14 JUNE 2021

A-0.2

PROPOSED SITE PLAN DETAIL



ADDITION & GARDEN TERRACE AT CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

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ARCHITECTS
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE 1/4"=1'-0"

DATE 14 JUNE 2021

A-1
TERRACE & GARDEN PLAN

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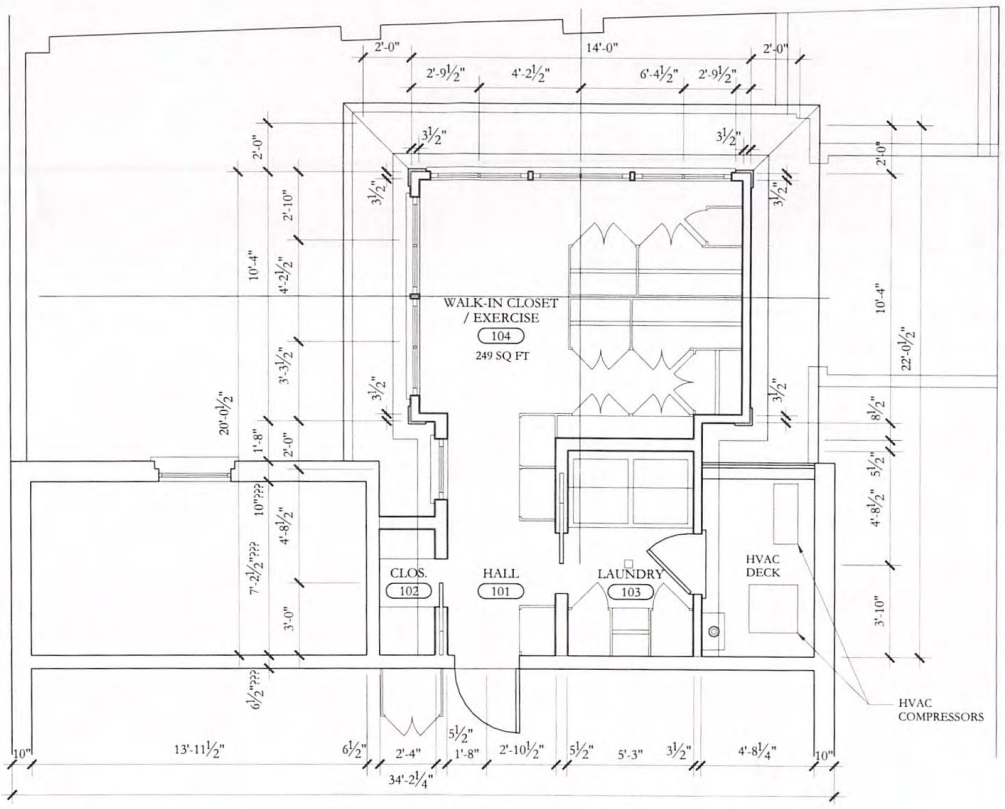

ADDITION & GARDEN TERRACE AT CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

ISLAND
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-2
UPPER FLOOR PLAN

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ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-3
ROOF PLAN

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ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4" : 1' 0"

DATE
14 JUNE 2021

A-4
UPPER FLOOR
OFFICE &
PORCH PLAN

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

ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

ISLAND
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-5
BUILDING SECTION

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ADDITION & GARDEN TERRACE AT CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
¼"-1'-0"

DATE
24 AUG 2021

A-6
SOUTH EXTERIOR ELEVATION

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ADDITION & GARDEN TERRACE AT CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

ISLAND ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-7

SOUTH EXTERIOR ELEVATION

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

ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-8
EAST
EXTERIOR
ELEVATION

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

ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"-1'-0"

DATE
14 JUNE 2021

A-9
NORTH
EXTERIOR
ELEVATION

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

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS
62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"-1'-0"
DATE
14 JUNE 2021

A-10
DEN
INTERIOR
ELEVATIONS

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ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-11
WALK IN CLOSET INT. ELEVATIONS

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ADDITION & GARDEN
TERRACE AT
CHURCH STREET

62 CHURCH STREET
CHARLESTON, SC 29401

RECEIVED
AUG 23 2021

I S L A N D
ARCHITECTS

62 CHURCH ST | CHARLESTON SC 29401 | ISLANDARCHITECTS.COM

SCALE
1/4"=1'-0"

DATE
14 JUNE 2021

A-12
LAUNDRY
INTERIOR
ELEVATIONS

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

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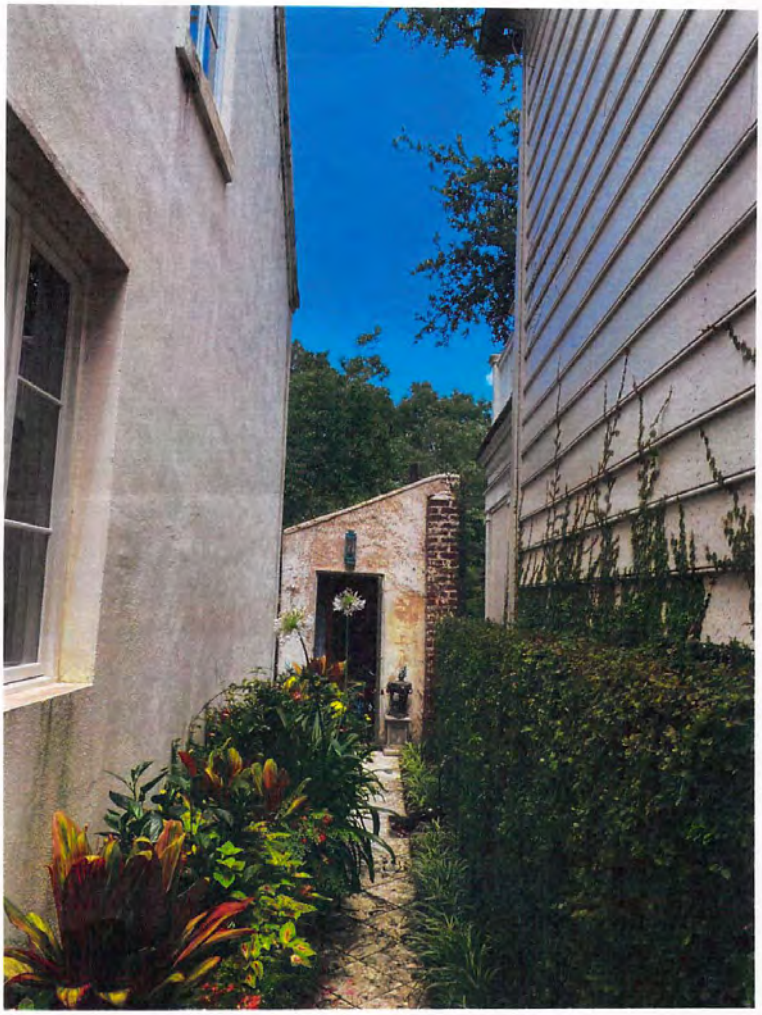
62 CHURCH STREET



Looking East down side alley to Tool Shed

RECEIVED
AUG 23 2021

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

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Teresa Melhado and Dane Neller, Appellants, vs. City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-05255 **FOURTH ADDITIONAL MATERIALS FROM CITY OF CHARLESTON RELATIVE TO APPEAL**

BZA Meeting Results 9-7-21;

BZAZ Decision 10-19-21;

View Angle Study for 60-62 Church St; and

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

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin
Bar No.: 65264
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: tdomin@clawsonandstaubes.com
Attorney for Respondents City of Charleston and City of Charleston Board of Zoning Appeals

Charleston, South Carolina
April 18, 2022

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

MINUTES

AGENDA
BOARD OF ZONING APPEALS-ZONING
SEPTEMBER 7, 2021 5:15 P.M. "virtually via Zoom Webinar"
8:56 P.M.

MEMBERS PRESENT: MICHAEL ROBINSON, HOWELL MORRISON, ALLISON GRASS, WALTER JAUDON, ROBBEN RICHARDS, JOHN BENNETT, GEIZA VARGAS-VARGAS
STAFF PRESENT: LEE BATCHELDER, PENNYE ASHBY, SCOTT VALENTINE

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

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

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

---

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

Request special exception under Sec. 54-110 to allow a horizontal expansion (garden room) and vertical extension (hall/closet/exercise/laundry) that extends a non-conforming 6.2-ft. south side setback (9-ft. required).
Request variance from Section 54-301 to allow a 2-story addition having a 43% lot occupancy (35% limitation; existing lot occupancy 37%)
Zoned SR-4

Owner: Erika and George Wallace
Applicant: George Wallace

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

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

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

---

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

Request variance from Sec. 54-301 to allow construction of a single-family residence with a 7.4-ft. south side setback, a 10.3-ft. total side setback, having a 44% lot occupancy (9-ft., 15-ft. required, 35% limitation)
Zoned DR-1

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

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

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B. New applications.

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

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

Owner: Heidi and Travis Kuyper
Applicant: Heidi Kuyper

APPROVED 0 WITHDRAWN 0

DISAPPROVED 0 DEFERRED XX

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

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

---

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

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

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

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

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

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

---

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

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

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

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

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

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

Owner: Brendan Kirkpatrick
Applicant: Robbie Marty

APPROVED 0 WITHDRAWN XX

DISAPPROVED 0 DEFERRED 0

MOTION: Withdrawn.

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

---

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

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

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

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

---

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

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

Owner: Mulberry Street Development
Applicant: Chamberlain Chesnut

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

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

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

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

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

---

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

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

Owner: ELP Properties LLC
Applicant: David Richards, Architect

APPROVED 0 WITHDRAWN 0

DISAPPROVED 0 DEFERRED XX

MOTION: Deferred by applicant.

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

---

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

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

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

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

---

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

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

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

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APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

---

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

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

Owner: Mr. John Streicker
Applicant: EE Fava Architects

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

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

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

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For office use only

Property address: 62 Church Street (Charlestowne)

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

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

Board of Zoning Appeals-Zoning
Order on Appeal

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

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

2. The Board concludes the following:

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

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

Date 10/19/21 Chairman Michael Robinson

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

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Teresa Melhado and Dane Neller, Appellants, vs. City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016, Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-05255 **FIFTH ADDITIONAL MATERIALS FROM CITY OF CHARLESTON RELATIVE TO APPEAL**

View Angle Study for 60-62 Church St

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin
Bar No.: 65264
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
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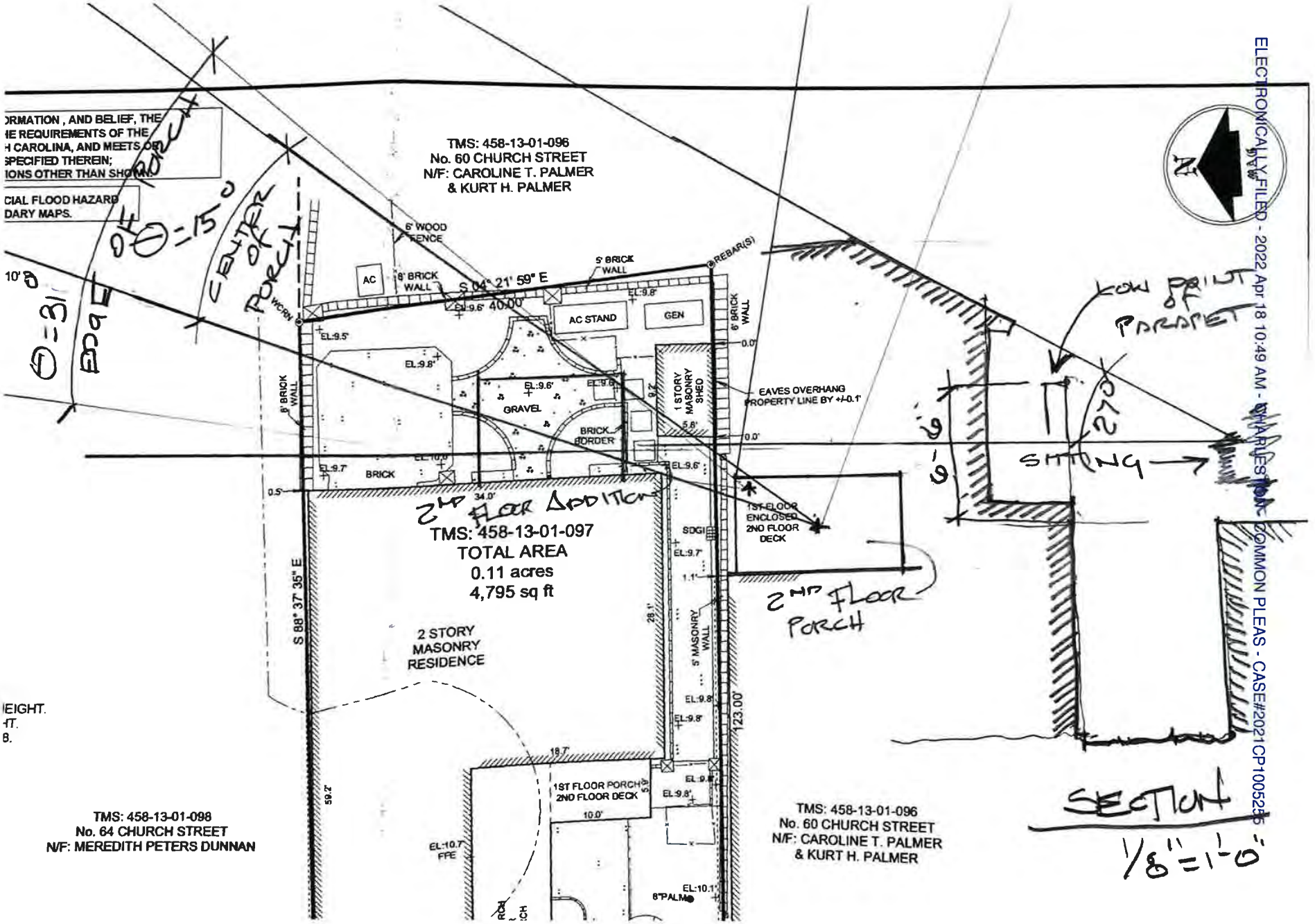
Attorney for Respondents City of Charleston and City of Charleston Board of Zoning Appeals

Charleston, South Carolina
April 18, 2022

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



CERTIFICATE

Pursuant to Rule 211, SCACR, undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: May 30, 2023

Respectfully submitted,

/s/ Jason S. Smith

Brian A. Hellman (72399)
Jonathan L. Yates (15161)
Jason S. Smith (80700)
HELLMAN & YATES, PA
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Charleston, South Carolina 29401
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Counsel for Appellants

RECEIVED
Jun 20 2023
SC Court of Appeals

PROOF OF SERVICE

I, Jason S. Smith, certify that the foregoing Record on Appeal was served on the following counsel of record by e-mail on this day, May 30, 2023:

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Jennifer S. Ivey, Esq.
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Jun 20 2023
SC Court of Appeals

Attorneys for Respondents George Wallace, Erika Wallace, and Erika R. Hayes, Trustee of the Erika R. Hayes Revocable Trust u/a/d 8-4-2016

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

/s/ Jason S. Smith