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Oct 23 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Mikell R. Scarborough, Master-in-Equity

Case No. 2021-CP-10-05211

CKC Properties, LLC,

Respondent (Appellant Below)

v.

The Town of Mount Pleasant, South Carolina;
The Town of Mount Pleasant Board of Zoning Appeals;
Michael Robertson, in his official capacity as Zoning Administrator;
Justin O'Toole Lucey; 415 Mill St., Inc; and 69 Scott Street, LLC,

Respondents Below.

Of which The Town of Mount Pleasant, South Carolina, and
The Town of Mount Pleasant Board of Zoning Appeals are the

Appellants

**RESPONDENT'S RETURN TO APPELLANTS' MOTION TO CONFIRM
AUTOMATIC STAY**

s/Ross A. Appel
Ross A. Appel, Esq. (SC Bar #79149)
McCULLOUGH ▪ KHAN ▪ APPEL
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Attorneys for Respondent CKC Properties, LLC

NOW COME, Respondent CKC Properties, LLC (“CKC”), by and through its undersigned counsel, respectfully submits this Return to the Motion to Confirm Automatic Stay pursuant to Rule 241(a), SCACR filed by Appellants, The Town of Mount Pleasant, South Carolina (the “Town”) and The Town of Mount Pleasant Board of Zoning Appeals (“BOZA”) (collectively, “Appellants”). For the reasons below, CKC respectfully requests the Court of Appeals deny the Town’s motion and issue an order confirming no automatic stay is in effect pursuant to Rule 241(b), SCACR.

BACKGROUND

This case involves CKC’s twenty-seven (27) room boutique hotel project known as the Shem Creek Boutique Hotel (the “Project”). The Zoning Administrator determined the Project satisfied all applicable provisions of the Town’s zoning ordinance. The Town’s Director of Planning Michelle Reed confirmed, in an e-mail to the Mayor and Town Council, that the Project “is a permitted use by right” that had “gone through DRT.” These approvals enabled the Project to proceed to the Town’s Commercial Design Review Board (“DRB”) for approval. The DRB review is limited to site, landscape, and architectural concerns. After DRB approval, the Project can proceed through final permitting. *See, Affidavit of Colin Colbert* attached as **Exhibit A**.

On August 12, 2021, neighbor and attorney Justin O’Toole Lucey, individually and through his entities 415 Mill St., Inc; and 69 Scott Street, LLC, (collectively “Lucey”) appealed the Town’s Zoning Administrator’s approval of the site-specific development plan for the Project (the “Lucey Appeal”). The Lucey Appeal claimed the Zoning Administrator failed to properly interpret the zoning ordinance’s regulations concerning off-street parking (specifically, the interpretation of the phrase “Guest Room”), use, height, and curb-cut/visibility.

On September 27, 2021, the BOZA heard the Lucey Appeal. At the hearing, the Zoning Administrator defended the Town’s approval of the site-specific development plan for the Project and provided two separate memoranda for the record. After the close of public comment, the BOZA immediately moved to go into executive session for general “legal advice.” The BOZA was behind closed doors for approximately thirty minutes. Upon returning, a BOZA member – reading from a prepared script – moved to affirm the Zoning Administrator in all respects other than off-street parking. The substance of the motion was that the Zoning Administrator misinterpreted the phrase “Guest Room” to mean an individually-keyed lodging unit. The correct interpretation, according to the BOZA, was a sleeping room within an individually-keyed lodging unit. The motion to reverse the Zoning Administrator was seconded and passed unanimously. *There was no public discussion by the BOZA prior to or after the executive session.*

An order memorializing the BOZA’s decision was signed on October 25, 2021 and mailed to the parties in interest on October 26, 2021. On November 16, 2021, CKC filed a Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition pursuant to S.C. Code Ann. §§ 6-29-820, -825(A) (the “BOZA Appeal”). Following an unsuccessful mediation, CKC filed its Appeal Petition in the BOZA Appeal on June 28, 2022. The Appeal Petition was referred by consent to the Master-in-Equity for Charleston County on October 19, 2021.

On May 26, 2023, a hearing was held on the BOZA Appeal before the Master-in-Equity. On July 14, 2023, the Master-in-Equity issued a twenty-one (21) page order affirming in part and reversing in part the BOZA Appeal (the “MIE Order”).¹ The MIE Order found Lucey had standing to appeal and his appeal was timely, but it reversed the BOZA Order’s interpretation of “Guest Room,” thus reinstating the Zoning Administrator’s interpretation and ordering “the Project **shall**

¹ CKC incorporates by reference Exhibit 1 attached to the Town’s Motion.

proceed through the development review process under the ordinances and regulations which existed at the time CKC submitted its applications... .” (Emphasis added) (BOZA Order, p. 21). On September 21, 2023, the Master-in-Equity issued an order denying the Town’s and Lucey’s motions to reconsider.²

CKC subsequently reached out to the Town to confirm it was ready, willing, and able to proceed to the DRB – as directed by the MIE Order. CKC’s has made all the necessary submissions and filings. On October 6, 2023, CKC’s architect formally resubmitted to appear before the DRB per the MIE Order. However, the Town refused to place the Project on a DRB agenda, presumably because it intended to appeal the MIE Order.

The Project, which was approved by the Zoning Administrator and is a by-right development, has been delayed for over two years. This has cost and continues to cost CKC significantly. Among other things, interest rates and construction costs have soared since 2021. *See, Colbert Affidavit.*

On October 6, 2023, CKC filed a motion to clarify the Town’s forthcoming appeal does not trigger an automatic stay, and if it does, to lift the stay.³ **This motion, as well as CKC’s motion for statutory attorney’s fees and costs, is scheduled for a hearing before the Master-in-Equity on November 8, 2023 at 11:30 a.m.**

On October 13, 2023, the Town filed a Notice of Appeal with the Court of Appeals. The Town appeals both the MIE Order and the order denying its motion to reconsider. On October 19, 2023, Lucey filed a Notice of Appeal with the Court of Appeals.

The Town contemporaneously filed with the Court of Appeals a Motion to Confirm Automatic Stay pursuant to Rule 241(a), SCACR. The Town argues the Court of Appeals – not

² CKC incorporates by reference Exhibit 3 attached to the Town’s Motion.

³ CKC incorporates by reference Exhibit 5 attached to the Town’s Motion.

the Master-in-Equity – must determine whether the Town’s appeal triggers an automatic stay or whether one of the Rule 241(b), SCACR exceptions apply. For the reasons below, CKC maintains the MIE Order is not automatically stayed.

ARGUMENT

I. The Town’s appeal does not automatically stay the MIE Order and the relief contained therein.

Generally, the service of a notice of appeal triggers an automatic stay. Rule 241(a), SCACR. However, “exceptions to the general rule are found in statutes, court rules, and case law.” Rule 241(b), SCACR. Subsection (b) contains a list of *non-exhaustive* exceptions. *Id.* (providing “[a] list of some, but not all, of the exceptions to the general rule”).

A statutory exception to the automatic stay rule applies in zoning appeals. S.C. Code Ann. § 6-29-830(B) (“The filing of an appeal in the circuit court from any decision of the board [of zoning appeals] does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.”).

The Town interprets this exception narrowly, arguing it is limited to the appeal from the BOZA to the circuit court. However, this narrow reading is inconsistent with the General Assembly’s intent, fails to harmonize sections 6-29-830(B) and 6-29-850 with the SCACR, and produces absurd results. The correct interpretation is that, in zoning appeals, the exception to the automatic stay applies equally at each step of the appellate process, including an appeal from the circuit court to the Court of Appeals.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design,

and policy of the lawmakers.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

The clear intent behind section 6-29-830(B) is to prevent the mere filing of an appeal from functioning like an injunction by restraining the use and development of property without the appellant having to demonstrate irreparable harm or post bond. The Town’s narrow reading allows a losing party to freeze the use and development of property for many years just by filing appeals. Substantial delay, in and of itself, can be fatal to a development project and functionally outcome dispositive. In other words, the losers in this appeal can “win” merely by filing appeals. As long as the automatic stay is in effect, CKC will continue to suffer millions of dollars in damages. *See, Colbert Affidavit*. This cannot be the law in South Carolina because it substantially impairs property rights and dramatically favors those driven to stop development at all costs.

Reading section 6-29-830(B) narrowly also produces absurd results. For the automatic stay exception to apply only from the BOZA to the circuit court elevates the former over the latter in terms of significance and weight. Why should the BOZA’s decision have more presumed validity and weight than the Master-in-Equity’s? The BOZA is comprised of volunteer citizens, while the MIE is a judge. Moreover, this is an appeal from the Zoning Administrator’s interpretation of the term “Guest Room.” No special deference is due to the board in a case like this, as the scope of review is limited to whether the zoning ordinance was interpreted and applied correctly. *Mitchell*

v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.”). This is not a case where judicial deference is due to the board on factual matters – such as a variance or special exception requests.

The absurdity of the Town’s narrow reading is further illustrated by the following example. Assume a board upholds or grants a development permit and a neighbor appeals to circuit court. Clearly, the exception to the automatic stay applies under section 6-29-830(B). The developer is allowed to proceed through the development review process or establish its use absent a writ of supersedeas while the first level of appeal is pending. However, if the neighbor’s appeal is denied by the circuit court, a *subsequent* appeal by the neighbor would all of a sudden trigger an automatic stay and freeze the development or use of property. There is simply no logical reason whatsoever for different automatic stay rules to apply at different stages of the zoning appeals process. This simply could not have been the intent of the General Assembly in adopting section 6-29-830(B).

The Town’s narrow interpretation also fails to harmonize sections 6-29-830(B) and 6-29-850 (“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.”). The Town argues section 6-29-850 reveals a clear legislative intent to return to the general rule outlined in Rule 241(a), SCACR. This is a circular argument. Nothing in section 6-29-850 compels this result. The reference to the SCACR equally implicates Rule 241(b). Reading subsection (b) in conjunction with the exception to the automatic stay rule found in section 6-29-830(B), further supports CKC’s position.

Several of the enumerated exceptions to the automatic stay rule, contained in Rule 241(b), SCACR are relevant, especially when read together with section 6-29-830(B). Rule 241(b)(8),

SCACR provides an exception for “an order granting an injunction or temporary restraining order.” The ultimate relief in the MIE Order was tantamount to injunctive relief because it directs the Town to, among other things, allow CKC to “proceed to the DRB for Preliminary Approval of Site, Landscape, and Architecture.” Rule 241(b)(11), SCACR provides an exception for “[a]ppeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600(G)(5)”. Local zoning boards are functionally equivalent, in many ways, to administrative tribunals governed by the Administrative Procedures Act. Rule 241(b)(11), SCACR reflects South Carolina’s pro-property rights policy that precludes a losing party in an administrative appeal to functionally win simply by pursuing appeals and freezing development.

CONCLUSION

Based on the above, the Court of Appeals should deny the Town’s motion and confirm the MIE Order and the order denying the Town’s motion to reconsider are not automatically stayed simply by virtue of the Town’s appeal. Section 6-29-830(B) provides an exception to the general automatic stay rule, thus triggering Rule 241(b), SCACR. The Town’s narrow reading of section 6-29-830(B) runs counter to the General Assembly’s intent, fails to harmonize sections 6-29-830(B) and 6-29-850 with the SCACR, and produces absurd results.

Should the Court of Appeals determine that an automatic stay applies, CKC requests confirmation that the motion to lift the stay shall be first decided by the Master-in-Equity. Rule 241(d)(1), SCACR (“an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court ... which entered the order or decision on appeal.”

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

McCULLOUGH ▪ KHAN ▪ APPEL

s/Ross A. Appel

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Attorneys for Respondent

CKC Properties, LLC

Mt. Pleasant, South Carolina
October 23, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2021-CP-10-05211
CKC Properties, LLC,)	
)	
Appellant,)	
)	
vs.)	AFFIDAVIT OF COLIN COLBERT
)	
The Town of Mount Pleasant, South)	(BOZA Appeal)
Carolina; The Town of Mount Pleasant)	
Board of Zoning Appeals; Michael)	
Robertson, in his official capacity as Zoning)	
Administrator; Justin O'Toole Lucey; 415)	
Mill St., Inc.; and 69 Scott Street, LLC,)	
)	
Respondents.)	

PERSONALLY APPEARED BEFORE ME, Colin Colbert, who being duly sworn, states as follows:

1. I am a citizen and resident of Charleston, South Carolina.
2. I am a member and principal of CKC Properties, LLC (“CKC”).
3. CKC is a small development and property management company with a principal place of business in Charleston, South Carolina. I founded CKC after college.
4. In 2020, CKC identified several parcels in Mt. Pleasant near Shem Creek for a boutique hotel. The specific properties are located along Mill Street and they bear TMS Nos. 517-16-00-058, -057, -034, and -035 (the “Properties”).
5. After confirming the Neighborhood Commercial zoning of the Properties allowed for boutique hotels as a by-right use, CKC placed the Properties under contract on or about October 2020.
6. CKC engaged engineering and architectural professionals to draw up plans for a twenty-seven (27) room boutique hotel (the “Project”). These professionals along with myself had

several conversations and meetings with Town staff and the Zoning Administrator to confirm the Project complied with all applicable zoning ordinances.

7. On or around February and March 2021, the Town's former Zoning Administrator Kent Prause discussed with CKC and its representatives the Project's feasibility. These discussions involved the Project's compliance with issues including, but not limited to, use and off-street parking requirements.

8. Mr. Prause confirmed a boutique hotel was a use allowed, by right, under the Properties' existing zoning. He further confirmed that the Town's off-street parking regulations required 1 or 2 off-street parking spaces per "Guest Room," which includes – among other things – suite-style lodging units containing multiple bedrooms.

9. CKC proceeded with design and site-specific development plans based on the Zoning Administrator's determinations and feedback. To date, CKC has spent approximately one million dollars in reliance on the Town's approvals. These costs include engineering, architectural, and other subcontractor fees as well as development fees. This figure does not include the substantial legal fees incurred over the past two years.

10. The plan for the Project was carefully crafted, in close collaboration with the Zoning Administrator and Town staff, to satisfy all applicable zoning regulations without the need for any discretionary entitlements such as variances, special exceptions, or a rezoning. Only Commercial Design Review Board ("DRB") review and approval would be required prior to building permit eligibility.

11. On March 19, 2021, CKC formally submitted plans to determine feasibility of the Project.

12. On May 12, 2021, CKC filed an application and submitted plans for pre-application review (Conceptual Design Review Team). Conceptual DRT reviews projects for zoning compliance.

13. On or about June 9, 2021, the DRT, which includes the Zoning Administrator, confirmed the site-specific development plan for the Project complied fully with the Town's zoning ordinances.

14. After obtaining DRT approval, CKC was allowed by the Town to move forward with an application for "Preliminary Approval of Site, Landscape, and Architecture" and appear before the DRB.

15. On July 15, 2021, CKC filed an application and submittal for "Preliminary Approval of Site, Landscape, and Architecture."

16. Approximately twenty-four (24) hours before the DRB hearing on July 28, 2021, Town staff abruptly informed CKC that the Project would be removed from the agenda due to alleged minor technical deficiencies.

17. This last-minute revelation surprised CKC and its engineering and architecture team, especially considering the several months of close collaboration with Town staff and repeated assurances that the Project, as designed, fully complied with zoning.

18. The removal from the DRB agenda coincided with the Town's Mayor giving unfavorable comments about the Project to the local media. He posted similar comments on his social media accounts.

19. Internal Town e-mails reveal elected officials applied pressure on Town staff due to alleged controversy over the Project. **Exhibit 1**.

20. Michelle Reed, the Director of Planning, Land Use and Neighborhoods, stated in her e-mail to the Mayor and Town Council that the Project “is a permitted use by right” and “the applicant has gone through DRT.”

21. Ms. Reed then forwarded her e-mail to her team, stating as follows:

All – Sharing my email to Council with you as I know everyone is hearing about this project. If you have inquiries, feel free to use this or parts of it to answer requests.

You all have done a good job with this project, as you do all other projects, even in the midst of rumblings to the contrary.

Keep doing a great job, stick to the ordinances, stay professional, and stand strong.

Thankful for you all!!

22. Town Administrator Eric DeMoura responded to Ms. Reed’s email, stating “You’re doing good. Keep your team doing their jobs, stick to the ordinances, stay professional, then stand strong.”

23. On July 29, 2021, Item #8-10 was added to the August 2, 2021 Committee of Council agenda to consider the following:

- a. Discussion and possible action with regard to the Town’s definitions for hotels;
- b. Discussion and possible action with regard to hotels allowed as a permitted use in the Neighborhood Commercial Zoning District as well as in the Boulevard Overlay District; and
- c. Discussion and possible action pertaining to approval process with regard to property line adjustments on commercially-zoned parcels.

24. At the August 2, 2021 Committee of Council meeting, councilmember Laura Hyatt asked the town planner “how quickly she could draft an ordinance to remove boutique hotel from

NC zoning?” and “can council vote on a 1st reading for the change in ordinance without bringing this ordinance to planning commission first.”

25. Meanwhile, on August 12, 2021, a neighboring property owner – attorney Justin O’Toole Lucey – appealed the Zoning Administrator’s approval of the Project to the Board of Zoning Appeals (“BOZA”). His appeal (the “Lucey Appeal”) challenged the Zoning Administrator’s approval of the Project’s off-street parking (specifically, the interpretation of the phrase “Guest Room”), use, height, and curb-cut/visibility.

26. On September 27, 2021, the BOZA heard the Lucey Appeal. The Zoning Administrator (Mike Robertson, who assumed Kent Prause’s role after his retirement) strongly defended his and his predecessor’s approval of the Project. CKC offered additional evidence and testimony in support of the Zoning Administrator’s approval.

27. After the close of public comment, the BOZA immediately moved to enter executive discussion for “legal advice.” The BOZA was behind closed doors for approximately thirty minutes. Upon returning, a BOZA member – reading from a prepared script – moved to affirm the Zoning Administrator in all respects other than off-street parking. The substance of the motion was that the Zoning Administrator misinterpreted the phrase “Guest Room” to mean an individually-keyed lodging unit. The correct interpretation, according to the BOZA, was a sleeping room within an individually-keyed lodging unit. The motion was seconded and passed unanimously. There was no public discussion by the BOZA prior to or after the executive session.

28. CKC appealed the BOZA’s reversal of the Zoning Administrator’s approval of the Project. The Master-in-Equity for Charleston County reversed the BOZA, reinstated the Zoning Administrator’s approval, and ordered “the Project shall proceed through the development review

process under the ordinances and regulations which existed at the time CKC submitted its applications... .” (BOZA Order, p. 21).

29. After the MIE’s ruling, CKC reached out to the Town – through counsel – and communicated that CKC was ready, willing, and able to proceed to DRB review. On October 6, 2023, CKC’s architect formally re-submitted for DRB review. The Town has refused to allow the Project to proceed to the DRB despite the MIE’s ruling.

30. If an automatic stay is deemed to apply while the MIE Order is on appeal, CKC will suffer significant, ongoing financial and other damages.

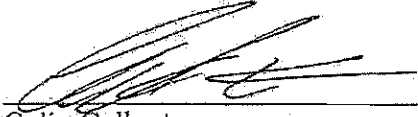
31. Interest rates and construction costs have soared since 2021 when the Project should have been approved. CKC has already suffered damages due to more than two-years of delay brought about the Lucey Appeal and the Town’s actions. Additional delay in the development review process will cause CKC to suffer more economic and non-economic damages.

32. While the MIE Order confirms CKC’s project is vested, the time period for vested rights is not unlimited. Under state law, vested rights are good for two years plus five annual one-year extensions. Lengthy appeals to the Court of Appeals and Supreme Court will cause most, if not all, of the vesting period to expire.

33. The Town elected officials and others have pulled out the stops since the summer of July 2021 to derail the Project, which is a by-right use as confirmed by the Zoning Administrator. Now that CKC has prevailed in overturning the BOZA’s decision, it should be allowed to proceed through the development review process without further lengthy and expensive delay.

34. For the above reasons, I believe that justice and equity call for lifting the automatic stay, if it is deemed to be triggered by the Town’s or Lucey’s appeal of the MIE Order.

FURTHER AFFIANT SAYETH NOT.



Colin Colbert

SWORN TO BEFORE ME THIS 19th
DAY OF October, 2023

Deborah Davis
NOTARY PUBLIC FOR THE STATE OF
SOUTH CAROLINA
MY COMMISSION EXPIRES: 10-12-2027

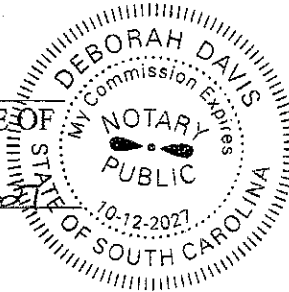


EXHIBIT 1

From: Eric DeMoura EDeMoura@tompsc.com
Subject: RE: Shem Creek Boutique Hotel
Date: July 27, 2021 at 12:50 PM
To: Michele Reed MCanon@tompsc.com



You're doing good. Keep your team doing their jobs, stick to the ordinances, stay professional, then stand strong.



Eric DeMoura
Town Administrator
100 Ann Edwards Lane
Mount Pleasant, SC 29464
Office (843)884-8517 ext. x3437

From: Michele Reed <MCanon@tompsc.com>
Sent: Tuesday, July 27, 2021 12:48 PM
To: Eric DeMoura <EDeMoura@tompsc.com>
Subject: RE: Shem Creek Boutique Hotel

Thank you. And thanks for the support/encouragement.



Michele Reed, AICP
Director of Planning, Land Use and Neighborhoods
100 Ann Edwards Lane
Mount Pleasant, SC 29464
Office (843)884-1229 ext. 3816

How are we doing? Please take our brief survey below.
[Planning Department Customer Survey](#)

From: Eric DeMoura <EDeMoura@tompsc.com>
Sent: Tuesday, July 27, 2021 12:47 PM
To: Michele Reed <MCanon@tompsc.com>
Subject: RE: Shem Creek Boutique Hotel

Good email.



Eric DeMoura
Town Administrator
100 Ann Edwards Lane
Mount Pleasant, SC 29464
Office (843)884-8517 ext. x3437

From: Michele Reed <MCanon@tompsc.com>
Sent: Tuesday, July 27, 2021 12:44 PM

Sent: Tuesday, July 27, 2021 12:44 PM

To: Mayor Will Haynie <WHaynie@tompsc.com>; All Council <AllCouncil@tompsc.com>

Cc: Eric DeMoura <EDeMoura@tompsc.com>; Christiane Farrell <CFarrell@tompsc.com>

Subject: RE: Shem Creek Boutique Hotel

Mayor and Council –

As many of you are aware, there was a proposed Boutique Hotel with approximately 27 rooms on the agenda for tomorrow's Design Review Board (DRB) meeting for Preliminary Review.

This has generated concerns and questions, so I am sending this message in hopes of clarifying a few things.

1. This area is zoned NC, Neighborhood Commercial District, and is located within the Boulevard Overlay District. It is not within the Shem Creek Overlay.
2. A Boutique Hotel is a permitted use in the NC zoning district, regardless of the Boulevard Overlay District.
3. Since this is a permitted use by right, the only approvals required are through DRB for site, architecture, etc.
4. The applicant has gone through DRT (Design Review Team), which is where staff from various departments and agencies looks at an application and provides feedback. They first went for a Feasibility Meeting in December of last year and again in March of this year. Most recently they went through DRT for Conceptual Review.
5. The applicant appeared before the Board of Zoning Appeals back in April requesting a variance from the height requirements. They were requesting 4 stories, which was subsequently denied. This was a public hearing and the property was posted with yellow signs.

Staff has been heavily involved with the review of this proposed project through the BOZA application, the DRT process, and now with DRB. The use is permitted, so staff, as we always do when a project comes before us, administers all adopted ordinances to ensure compliance. As an update on this project, staff has determined that the application submitted has too many outstanding comments and has therefore been removed from the agenda this month. Once they've addressed Staff comments they will be allowed back on the agenda.

With guidance from Council we have made a lot of progress over the last year, in spite of COVID. We have adopted a new nonconforming ordinance, amended the STR ordinance, amended the density in the Boulevard District, updated the requirements for zoning when properties are annexed, drafted the Shem Creek Zoning that is coming to Council in the next couple of months, and we've begun work on the Boulevard Overlay District. All the while, we continue with the full zoning code rewrite.

I trust that you find this information helpful. Please feel free to reach out to me if you want to discuss further.

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Oct 23 2023

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Respondents Below.

Of which The Town of Mount Pleasant, South Carolina, and
The Town of Mount Pleasant Board of Zoning Appeals are the

Appellants

PROOF OF SERVICE

I, Elizabeth M. Lademan, paralegal at McCullough Khan Appel hereby certify that a true and correct copy of Respondent's Return to Motion to Confirm Automatic Stay was served upon counsel for Appellants in the above-captioned matter, via email, this 23rd day of October, 2023, addressed as follows:

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sbrown@ycrlaw.com
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ssandifer@ycrlaw.com
Brian Lee Quisenberry
bquisenberry@ycrlaw.com
Zachary M. Kern
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25 Calhoun Street, Suite 400
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Charleston, South Carolina 29401


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jlucey@lucey-law.com
JUSTIN O'TOOLE LUCEY, P.A. Mount
Pleasant, South Carolina

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October 23, 2023
Mount Pleasant, South Carolina