

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson

Appellate Case No. 2019-001910
Common Pleas Case No. 2019-CP-10-1434

RECEIVED

Jul 02 2020

SC Court of Appeals

David Abdo, ... Appellant,

v.

City of Charleston and Board of Zoning Appeals-Zoning, ... Respondents.

RECORD ON APPEAL

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731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Pennye" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

—Original Message—

From: John A. Massalon [<mailto:jmassalon@wmalawfirm.net>]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

For office use only

Property address: 29 Broughton Road (The Crescent)

TMS # 421-14-00-024

Zoning SR-8

Request reconsideration of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. (Height of structures are limited to 35-ft).

Board of Zoning Appeals-Zoning
Order on Appeal

The Board of Zoning Appeals-Zoning held a public hearing on December 4, 2018 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 JK affirmed _____ reversed _____ modified as follows: _____

12/4/18

[Signature]

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

For office use only

Property address:

29 Broughton Rd. (The Crescent)

TMS #

421-14-00-024

Zoning

SR-8

Request reconsideration of the Board's decision on December 4, 2018, to deny an appeal of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance (Height of structures are limited to 35 ft).

Board of Zoning Appeals-Zoning
Order on Appeal

The Board of Zoning Appeals-Zoning held a public hearing on February 19, 2019 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:

2/19/19

Department of Planning, Preservation & Sustainability

2 George Street

Charleston, South Carolina 29401

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FAX (843) 724-3772

www.charleston.sc.gov

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
David Abdo,)
)
Appellant,)
)
v.)
)
City of Charleston and Board of Zoning)
Appeals-Zoning,)
)
Respondents.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2019-CP-10-01434

ORDER ON APPEAL

FILED
2019 OCT 14 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Respondents' Attorney:	Daniel McQueeney, Jr., Esq.
Appellant's Attorney:	John Massalon, Esq.
Date of Hearing:	July 30, 2019
Court Reporter:	Phyllis Norton

This matter came before the Court on July 30, 2019 by way of Appellant's Notice of Appeal pursuant to S.C. Code. Ann. § 6-29-820 seeking an order reversing the decision of the City of Charleston Board of Zoning Appeals- Zoning ("BZA-Z"), which was issued on February 19, 2019.

In this Zoning Appeal, Appellant David Abdo ("Appellant") argues that the City of Charleston's Board of Zoning Appeals-Zoning (the "Board") committed an error of law in determining that Appellant's flagpole is not a monument under the exceptions to the height limitations in the City of Charleston's (the "City's") Zoning Ordinance (the "CZO"). As a result, Appellant asserts he had the right to construct a 60-foot tall flagpole on his lot within a residentially zoned subdivision despite the CZO's 35-foot height limitations on any structures within the zoning district.

On July 30, 2019, the matter came to be heard before this Court. After considering the record, memorandum, and oral arguments of counsel the Court Affirms the BZA-Z's decision of February 19, 2019 and Dismisses Appellant's Petition for Appeal.

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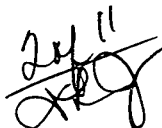
FACTUAL AND PROCEDURAL BACKGROUND

Appellant and his wife, Ilonka Sonja Taylor, own residentially zoned property in The Crescent, a residential subdivision in West Ashley. R. at 6; R. at 28; R. at 40, lines 23-25; R. at 42, lines 20-25.¹ The CZO limits the height of buildings and other structures on the Property to thirty-five (35) feet. R. at 33; R. at 41, line 21; R. at 42, line 3.

Appellant constructed an unpermitted, sixty-foot (60) tall flagpole on the Property. R. at 41, lines 3-5. In July 2018, after discovering the flagpole due to resident complaints, the City required Appellant to apply for a building permit after-the-fact.² R. at 13-19; R. at 41, lines 10-16. Appellant subsequently submitted an application to the City of Charleston to approve the installation of the flagpole, which the City of Charleston denied on October 17, 2018. Appellant contends that his flagpole is permitted to exceed the height limits in the residential zoning district based on section 54-505(a) of the CZO, which excepts, among other things, “monuments, water towers, observation towers, transmission towers, masts and aerials” from the thirty-five (35) foot height limitations in the CZO. R. at 60. Mr. Lee Batchelder (“Batchelder”) denied Appellant’s permit, explaining: “I believe the exception listed in Sec. 54-505 for ‘monuments’ is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event.” R. at 1.

¹ Unless otherwise provided, all citations herein are to the page and line numbers, if applicable, of the Record on Appeal filed by the City and the Board on April 22, 2019.

² Based on the testimony of Lee Batchelder, the City’s Zoning Administrator (R. at 41, lines 3-20), this Court finds that the City was not aware of the flagpole or its height until after Appellant installed it. Appellant, who attended the original hearing before the Board (R. p. 48, lines 3-7), did not contradict Batchelder’s testimony at this hearing. Instead, during a subsequent proceeding to determine whether the Board should rehear the matter, Appellant’s counsel read an email from Appellant to attempt to contradict Batchelder’s live testimony after the fact. R. at 120, line 17; R. at 121, line 3. Appellant did not attend the subsequent proceeding. R. at 119, lines 8-13. This Court finds that Appellant’s email is unavailing under these circumstances. Further, even if true, would not preclude zoning’s required permitting process nor the Board’s review.

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On December 11, 2018, Appellant requested the Board reconsider Batchelder's decision, which unanimously determined that Appellant's flagpole did not constitute a monument under section 54-505(a). R. at 6-11; R. at 54, lines 4-9; R. at 54, line 20; R. at 55, line 25; R. at 86. Appellant requested reconsideration of the Board's decision, and the Board denied the request on February 19, 2019. R. at 62-68; R. at 109.

STANDARD OF REVIEW

"Interpreting and applying statutes and regulations administered by an agency is a two-step process." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014). "First, a court must determine whether the language of a statute or regulation directly speaks to the issue." Id. "If so, the court must utilize the clear meaning of the statute or regulation." Id. "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Id. at 33, 766 S.E.2d at 717, quoting Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 843 (1984).

"As repeatedly stated in our decisions, our deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations unless there is a compelling reason to differ." Id. at 34, 766 S.E.2d at 718 (citations and internal quotation marks omitted). "Accordingly, the deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts . . . will defer to the agency's interpretation absent compelling reasons." Id. "We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute." Id. at 34-35, 766 S.E.2d at 718 (citations and internal quotation marks omitted); see also Purdy v. Moise, 223 S.C. 298, 304-05,

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75 S.E.2d 605, 608 (1953) (applying “deference doctrine” in reviewing decisions of boards of zoning appeals).

Generally, a trial court must uphold the decision of a zoning board unless there is no evidence to support it. See S.C. Code. Ann. § 6-29-840 (2019) (“The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury.”); Townes Assoc’s, Ltd. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976) (holding that factual findings of the jury will not be disturbed unless there is no evidence which reasonably supports the jury’s findings) (overruled on other grounds).

In reviewing the questions presented by the appeal, the Court shall determine only whether the decision of the zoning board is correct as a matter of law. See S.C. Code. Ann. § 6-29-840 (2019); Austin v. Board of Zoning Appeals, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). Furthermore, “[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” Id. (quoting Restaurant Row Assoc. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)).

The decision of a municipal zoning board will be overturned if it is “arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” Id. “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Boehm v. Town of Sullivan’s Island Board of Zoning Appeals, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018).

Further, “issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” Mikell v. City of Charleston, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (citing Eagle Container, LLC v. City of Newberry, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008)). “Although great deference is

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accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” Id. (citing Eagle Container, 379 S.C. at 568, 666 S.E.2d at 894).

The Court holds that this broader standard of review does not apply because Section 54-505(a) of the CZO does not require the Court to apply the rules of construction. “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning.” Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

Here, the language of Section 54-505(a) is plain and unambiguous, and conveys a clear and definite meaning. The Section provides an exception to the CZO’s height restriction for “church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone.” CZO § 54-505(a). These words are understood in common parlance and do not require the Court to apply the rules of construction to determine their meaning. Accordingly, the Court holds that the rules of construction do not apply, and the Court is bound to review the decision of the BZA-Z only for errors of law.

CONCLUSIONS OF LAW

- I. As a matter of law, the Board’s conclusion that Appellant’s flagpole is not a monument is correct inasmuch as the decision is not arbitrary, capricious, or manifestly contrary to the CZO.**

As a matter of law, the Court concludes that the Board’s decision that a flagpole is not a monument within the meaning of Section 54-505(a) of the CZO is correct. “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another

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meaning.” Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001). Further, this Court is bound to uphold the factual determination of a zoning board unless there is no evidence to support it. See S.C. Code. Ann. § 6-29-840 (2019); Townes Assoc’s, Ltd. V. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976). There is ample evidence in the record to support the Board’s determination that Appellant’s flagpole is not a monument entitling it to a height exception.

Batchelder defined a “monument” as “a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event.” R. at 1. The Board supported its interpretation of the word monument at the hearing, which Appellant and his counsel was present for, with citations to internet search-engine results, as well as the generally accepted meaning of the word in common parlance. R. at 36-36, 45-47.

Appellant disagrees with Batchelder’s decision that the term “monument” connotes a “public” or “semi-public” element or that it must commemorate a “famous” or “notable” person or event. Appellant also argues that a “monument” should be defined as a “memorial stone or building erected in remembrance of a person or event,” (Appellant’s Notice of Appeal at 5, ¶ 18) or “an outstanding, enduring, and memorable example of something.” Id. at 6, ¶ 20. The Court dismisses Appellant’s challenges to the Board’s definition because the Board’s interpretation is not arbitrary, capricious, or manifestly contrary to Section 54-505(a) of the CZO. Further, it is within the sound discretion of the Board to adopt a definition for the word monument that aligns with what the Board believes the City Council intended to except from the height restriction when it drafted the CZO. The definition promulgated by the Board and its subsequent factual determination that Appellant’s flagpole does not fall within that definition is a factual issue that should not be disturbed by the Court.

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However, the Court also concludes that the BZA's conclusion that Appellant's flagpole is not a statue, building, or other structure erected to commemorate *any* person or event is not arbitrary and is correct as a matter of law. Likewise, their conclusion: that Appellant's flagpole is neither a memorial stone nor a building. Moreover, their further conclusion that Appellant's flagpole is not an example of anything traditionally commemorative, nor is Appellant's flagpole outstanding, enduring, or memorable, in and of itself is with adequate factual support and not arbitrary or capricious.

The Court is also persuaded by the Board's argument that the attachment of an American flag to the flagpole to commemorate the service of our military does not change this conclusion. Even if Appellant subjectively intends to attach the same flag to the flagpole in perpetuity, a flag is interchangeable, and zoning approval typically runs with title to the land. See S.C. Code Ann. § 6-29-1550 (explaining that zoning approvals generally run with title to the land). Therefore, under Appellant's interpretation of the CZO and the word "monument," Appellant, or any successor-in-title to the Property may, by the simple action of changing out the flag, convert the flagpole from a "monument" to a "mere" flagpole and back again.

In addition, under Appellant's interpretation, a successor-in-title who does not subjectively intend for the same flag to commemorate anyone or anything would convert what Appellant characterizes as a monument back to a "mere" flagpole. The Court declines to disturb the Board's finding that such an interpretation would lead to an absurd result that was not intended by the City Council. See Lancaster Cty. Bar Ass'n v. S.C. Comm'n on Indigent Def., 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) ("In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.").

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To the extent Appellant argues that section 54-505(a) is silent or ambiguous on the issue, the Court defers to the Board's interpretation of the CZO and the term "monument" because nothing in the record supports a finding that the Board's interpretation is arbitrary, capricious, or manifestly contrary to its purpose. Further, because this Court finds that there is sufficient evidence to support the Board's interpretation, this Court is bound to uphold the decision of the Board and leave its findings of fact undisturbed. As a result, the Court Affirms the decision of the Board and Dismisses Appellant's Petition for Appeal.

II. As a matter of law, the Board's conclusion that the term "monument" in Section 54-505(a) of the CZO connotes a "public" or "semi-public" element is correct inasmuch as the decision is not arbitrary, capricious, or manifestly contrary to the statute.

The Court concludes that the Board's decision that the term "monument" in Section 54-505(a) connotes a "public" or "semi-public" element that is missing from Appellant's flagpole is correct as a matter of law. Accordingly, under the deference doctrine, the Court finds no compelling reason to ignore the Board's interpretation in this respect.

Section 54-505(a) provides, in pertinent part:

The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone.

R. at 34.

The Court finds no error of law in the Board's contention that "[c]learly, words in a statute must be construed in context." So. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). "According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." Id.; see also Eagle Container Co., LLC v. Cty. of Newberry,

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379 S.C. 564, 570, 666 S.E.2d 892, 895-96 (2008) (applying the same rules in interpreting a zoning ordinance).

Each of the terms associated with the term “monuments” in section 54-505(a)—water towers, observation towers, transmission towers, masts and aerials—connote a “public” or “semi-public” element. See, e.g., S.C. Regs. Ann. § 103-701 to -782 (regulating water plants, defined to include water towers); Ross v. Harris, 860 N.E.2d 602, 607-08 (Ind. Ct. App. 2006) (recognizing absurdity of permitting a 55-foot addition to applicant’s residence in the guise of an “observation tower,” when height limit is 30-feet).³

To hold otherwise would require the Court to assume that City Council intended these exceptions to be permitted as private, accessory uses on a residential lot within a residentially zoned subdivision, thereby substituting the Court’s judgment for that of the reviewing body, which it is not permitted to do when there is evidence to support the board’s decision. Austin, 362 S.C. at 29, 606 S.E.2d at 209 (quoting Restaurant Row Assoc., 335 S.C. at 216, 516 S.E.2d at 446). Accordingly, the Court is bound to leave undisturbed the Board’s conclusion that such an interpretation would be repugnant to the intent behind the creation of the underlying zoning district. Cf. Charleston Cty. Parks & Rec. Comm’n v. Somers, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995) (“Here, we are guided by Council’s express declaration of the purpose of a GC-1 zoning district: to foster an ‘economically healthy business environment.’ To be permitted within

³ Cited as guidance. It is well accepted in South Carolina that when explicit precedent is lacking in this state, Courts are permitted to turn to other jurisdictions to seek guidance. Magness v. Chicora Chapter, 193 S.C. 205, 8 S.E.2d 344, 347 (1940); State v. Edwards, 373 S.C. 230, 238, 644 S.E.2d 66, 70 (Ct. App. 2007); Wilson v. Willis, 426 S.C. 326, 340, 827 S.E.2d 167, 174 (2019).

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a GC-1 zoning district, therefore, the proposed municipal use must not be repugnant to that purpose.”).

Accordingly, the Court defers to the Board’s interpretation that the term “monument” includes a public or semi-public connotation because nothing in the record supports a finding that the Board’s interpretation is arbitrary, capricious, or manifestly contrary to its purpose. Further, because this Court finds that there is sufficient evidence to support the Board’s interpretation, this Court is bound to uphold the decision of the Board and leave its findings of fact undisturbed. As a result, the Court Affirms the decision of the Board and Dismisses Appellant’s Petition for Appeal.

III. As a matter of law, the Board’s factual conclusion that Appellant’s residential lot is not a “public” or “semi-public” is correct inasmuch as the decision is not arbitrary, capricious, or manifestly contrary to the statute.

During oral argument, Appellant asserted that the visibility of his residential lot from public or semi-public areas complies with the “public element” interpretation adopted by the Board. However, this argument was not raised in Appellant’s Notice of Appeal. Therefore, it is not preserved, and this Court will not disturb the factual findings of the Board. See Newton v. Zoning Bd. of Appeals for Beaufort Cty., 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011) (“[T]he sole preservation requirement for a first-level appeal of a zoning board’s decision is that an appellant must set forth his issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires.”).

Further, the Court holds that the Board’s decision that the visibility of Appellant’s residential lot within a residential neighborhood does not convert the lot into the type of “public” or “semi-public” space contemplated by section 54-505(a) of the CZO is within the sound discretion of the Board, and the Court will not disturb the Board’s finding because there is no

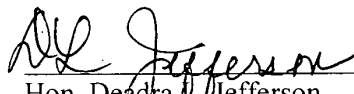
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evidence that the Board's decision was arbitrary, capricious, or manifestly contrary to the purpose of the CZO.

Accordingly, the Court finds that because the Board's decision has adequate factual support, was founded upon sufficient evidence, and the decision was not arbitrary, capricious, or manifestly contrary to the purpose of the CZO, the decision of the Board is correct as a matter of law.

IT IS THEREFORE ORDERED the Appellant's Petition for Appeal is Denied and the decision of the Board to deny Appellant's building permit is Affirmed.

IT IS SO ORDERED.



Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

October 10, 2019

Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10- 1434
DAVID ABDO,	)	
	)	
Appellant,	)	
	)	
v.	)	NOTICE AND PETITION FOR
	)	APPEAL PURSUANT TO
CITY OF CHARLESTON and	)	S.C. CODE ANN. SECTION 6-29-820
BOARD OF ZONING APPEALS-ZONING,	)	
	)	
Respondents.	)	
	)	

FILED
2019 MAR 20 PM 4:20
JULIE H. STRONG
CLERK OF COURT
BY _____

David Abdo (hereinafter "Abdo" or "Appellant") hereby appeals the final decision of the Board of Zoning Appeals-Zoning of the City of Charleston (hereafter "BZA-Z") issued on February 19, 2019, attached hereto as Exhibit "A", and the decision of the BZA-Z on December 4, 2018, attached hereto as Exhibit "B", denying Appellant's permit application to construct a monument on his property located at 29 Broughton Road in Charleston, South Carolina. The final decision of the BZA-Z denying the appeal for reconsideration was mailed to Appellant on February 27, 2019. This Petition is filed pursuant to S.C. Code Ann § 6-29-820 and City of Charleston Ordinance § 54-930 based upon the following grounds:

1. Appellant is a citizen and resident of the State of South Carolina, County of Charleston and the owner of the property located at 29 Broughton Road in Charleston, South Carolina (the "Property").
2. Respondent City of Charleston is a municipal subdivision of the State of South Carolina.
3. Respondent BZA-Z is a board of zoning appeals established pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code § 6-29-710

et seq.

4. Prior to June 15, 2018, Appellant contacted the City of Charleston Zoning Administrator to inquire as to whether there were any zoning restrictions in Charleston for flagpoles and if a permit was needed to erect a flagpole on the Property. Appellant was informed by the Zoning Administrator that no height restrictions applied to flagpoles and that the City of Charleston does not issue permits for flagpoles.
5. Based upon the advice of the Zoning Administrator, Appellant proceeded to install the flagpole on the Property as a monument to honor the military service of his father, his wife's father, their brother in law, and all who served in the armed forces.
6. On or about July 2, 2018, an inspector from the City of Charleston visited the Property and issued a citation to Mr. Abdo for installing the flagpole without a permit. A copy of the Citation is attached as Exhibit "C".
7. Thereafter on September 7, 2018 Mr. Abdo submitted the Building Plan Review and Permit Application (the "Application") to the City of Charleston to approve the installation of the monument. The Application is attached as Exhibit "D".
8. On October 17, 2018, the Zoning Administrator denied the Application on the grounds that the flagpole exceeded the thirty-five foot maximum height allowed for structures under the zoning ordinance. Further, the Zoning Administrator determined that it did not qualify for an exception to the height limitations provided for monuments based on his interpretation that the monuments exception contained in Sec. 54-505 of the City of Charleston Zoning Ordinance applied only to "a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event." A copy of the Zoning Administrator's decision is attached as Exhibit "E".

9. On October 31, 2018, Appellant submitted an appeal for reconsideration of the Zoning Administrator's decision to the BZA-Z. A copy of that appeal is attached as Exhibit "F".
10. The BZA-Z denied the appeal on December 4, 2018. A copy of that decision is attached as Exhibit "B".
11. On December 11, 2018, Appellant submitted an application for reconsideration of the BZA-Z's December 4, 2018 Order. A copy of that appeal is attached as Exhibit "G".
12. The BZA -Z denied the application for reconsideration on February 19, 2019. A copy of that decision is attached as Exhibit "A".
13. Sec 54-505 (a) of the Zoning Ordinance of Charleston, South Carolina provides without qualification that "the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone."
14. Sec. 54-505(a) does not further define "monument", differentiate between monuments located on public property or private property, include any requirement that the monument be located on public or private property, or limit a monument designation depending upon to whom or about what the monument commemorates.
15. "[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Boehm v. Town of Sullivan's Island Board of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018), cert. granted Sept. 21, 2018, citing *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)). "Although great deference is accorded the decisions

of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* Citing, *Helicopter Sols*, 414 S.C. at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).

16. A “zoning ordinance [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’ ” *Vulcan Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App 2000) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 337 S.C. 157, 177, 522 S.E.2d 153, 164 (Ct. App. 1999), rev’d, 344 S.C. 43, 543 S.E.2d 538 (2001)). “As with statutes, the lawmakers’ intent embodied in an ordinance ‘must prevail if it can be reasonably discovered in the language used.’ ” *Id.* at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).
17. “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 570, 666 S.E. 2d 892, 895 (2008) (quoting *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). “If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” *Id.* 379 S.C. at 570-71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).
18. The Zoning Administrator’s interpretation of 54-505(a) was not necessary or justified

according to the terms of the ordinance. The plain language of the ordinance clearly and unambiguously excuses monuments from the height requirements without qualification. The ordinance does not contain any definition of the term “monument” and so the Court should interpret the use of that term in accord with its common, ordinary meaning. The common definition of a “monument” as it appears in the on-line version of the Merriam Webster dictionary includes a “memorial stone or a building erected in remembrance of a person or event.” <https://www.merriamwebster.com/dictionary/>. There is no requirement in the Ordinance that the memorial be located on public property or that the person or event commemorated be famous or notable, and the term is not commonly defined or understood to include any requirements as to location or subject matter. The interpretation adopted by the City injects uncertainty and ambiguity into an otherwise clear ordinance.

19. At the hearing on December 4, 2018, the Board did not address the two grounds on which the Zoning Administrator denied the application. Instead, the Board essentially decided that a flagpole is not a monument after considering photographs of the Washington Monument, the Statue of Liberty and a few monuments, not specifically identified, that the Zoning Administrator located during an internet search. While those structures surely meet the definition of a monument as intended by the drafters of the Ordinance, the photographs submitted by the Zoning Administrator and relied upon by the Board do not amount to a comprehensive list of structures that are monuments. In fact, the diversity of those examples prove the point that a monument is a general classification of objects that are erected or recognized as a symbol of remembrance or honor. In addition to well-known monuments like the Washington Monument, other monuments that appear in an

- internet search include natural rock formations, engraved stones, plaques and flags.
20. The definition of “monument” submitted by the Zoning Administrator includes not only the one cited in the decision denying the application, but it also defines monument as “an outstanding, enduring and memorable example of something.”
21. After the BZA-Z denied Mr. Abdo’s appeal without considering the specific basis cited in the Zoning Administrator’s decision, Mr. Abdo filed a request with the BZA-Z for Reconsideration. Mr. Abdo included some examples of flag monuments located on the internet along with his appeal for reconsideration.
22. Appendix C, Rules and Regulations of the Board of Zoning Appeals – Zoning, Article III, Section 3 provides that “[t]o 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.”
23. During the hearing on February 19, 2019, counsel for Mr. Abdo argued that the BZA-Z should reverse its prior decision because it misapprehended the question involved and erred in its disposition of the appeal. Specifically, counsel pointed out that during the initial hearing the BZA-Z did not address the basis of the Zoning Administrator’s decision to deny the permit, i.e. that Mr. Abdo’s monument is not located in a public or semi-public space and it does not commemorate a famous or notable person or event. Additionally, for the reasons articulated above, counsel argued that the BZA-Z erred when it denied the appeal on the basis that a flagpole is not a monument and the Board was provided photographs of several examples of flag monuments. Nevertheless, the BZA-Z declined to address the substance of the Zoning Administrator’s decision and denied the appeal for reconsideration.

24. “Appellate courts regard appeals from zoning decisions in the same manner as appeals from other circuit court judgments in law cases.” *Newton v. Zoning Bd. of Appeals for Beaufort County*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (S.C. App. 2011), citing *Petersen v. City of Clemson*, 312 S.C. 162, 169–70, 439 S.E.2d 317, 322 (Ct.App.1993) (citing *Bishop v. Hightower*, 292 S.C. 358, 360, 356 S.E.2d 420, 421 (Ct.App.1987)). “Even if a court disagrees with a zoning board's decision, the court will refrain from substituting its judgment for that of the zoning board unless the decision ‘is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the [zoning] board has abused its discretion’.” *Id.* citing *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Id.* citing *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App.2002).
25. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (S.C. App. 2015), citing *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (citing *Eagle Container, LLC v. Cty. of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* (citing *Eagle Container*, 379 S.C. at 568, 666 S.E.2d at 894).
26. The reasoning in *Helicopter Solutions* is dispositive of the issues in this case and mandates a reversal of the BZA-Z’s decisions. In that case Helicopter Solutions received a building

permit to construct a helicopter sight-seeing business in Myrtle Beach and Mr. Hinde filed an appeal on the grounds that the helicopter business was not allowed in the Amusement/Commercial (hereafter "A/C") zoning district where the property was located. Much like the present case, the ordinance at issue in the Helicopter Solutions case permitted a variety of amusement activities in the A/C zone including "sight-seeing depots" but included no specific reference to helicopter amusements. *Id.* 414 S.C. at 5, 776 S.E. 2d at 755. The Zoning Board reversed the decision of the Zoning Administrator on the basis that "a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the A/C zoning district". *Id.* 414 S.C. at 7, 776 S.E. 2d at 756.

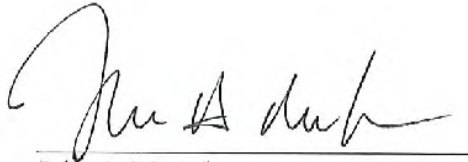
27. On appeal, the Circuit Court reversed the Zoning Board decision and the Court of Appeals upheld the Circuit Court decision that the helicopter business was allowed in the A/C district. Significantly, the Court of Appeals held that "in construing the County Ordinance the Zoning Administrator, and subsequently the Zoning Board, made a legal conclusion." *Id.* 414 S.C. at 10, 776 S.E. 2d at 758. Further, the Court of Appeals noted that Mr. Hinde's challenge was based largely on an attempt to draw a distinction between the phrase "sight-seeing depot" used in the ordinance and "helicopter tour facility". On that point the Court of Appeals observed that "[t]he true guide to statutory construction is not the phrasology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying the rule of strict construction, the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent." *Id.* 414 S.C. at 12, 776 S.E. 2d at 759, citing *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1967). Lastly, in rejecting Mr. Hinde's attempt to argue that

the ordinance should be read to include additional limiting language that restricted the use of the property to sight-seeing tours using some form of ground transportation, the Court of Appeals cited the long-standing principle that courts may not interpret statutes and ordinances to restrict property rights to a greater degree than intended by the legislative body that enacted them. *Id.* 414 S.C. at 13, 776 S.E. 2d at 759.

28. Applying these principles to the present case, it is clear that the City of Charleston Zoning Administrator was correct when he initially informed Mr. Abdo that the height limitations do not apply to his monument. Sec. 54-505 (a) provides without qualification that “the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone.” Much like the Board in the *Helicopter Solutions* case, the BZA-Z adopted an overly restrictive interpretation of the term “monument” that is inconsistent with not only the letter, but also the intent of the ordinance. The intent of the ordinance limiting the height of certain structures is clear. Based upon the structures listed, the intent was to except structures (such as flagpoles) from the height requirements because they are not used for human occupancy.

29. Finally, the Zoning Administrator’s reading of Sec. 54-505 improperly restricts the use of Mr. Adbo’s property more than intended by the legislative body that adopted it. Nothing in Sec. 54-505 or in the City’s Ordinance in general says or suggests that the exception for monuments was intended only to apply to structures in a particular location or that memorialized a particular person or event.

WHEREFORE, Appellant prays that this Court (a) reverse the decision of the Board of Zoning Appeals-Zoning denying Appellant's building permit application to erect a flagpole monument on his property; (b) award Appellant attorneys' fees and costs under SC Code § 15-77-300; and (c) grant such other and further relief as is just and proper.



John A. Massalon
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

ATTORNEYS FOR APPELLANT

CHARLESTON, SOUTH CAROLINA

March 20, 2019

EXHIBIT “A”

For office use only

Property address:

29 Broughton Rd. (The Crescent)

TMS #

421-14-00-024

Zoning

SR-8

Request reconsideration of the Board's decision on December 4, 2018, to deny an appeal of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance (Height of structures are limited to 35 ft).

Board of Zoning Appeals-Zoning
Order on Appeal

The Board of Zoning Appeals-Zoning held a public hearing on February 19, 2019 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:

EXHIBIT “B”

For office use only

Property address: 29 Broughton Road (The Crescent)

TMS # 421-14-00-024

Zoning SR-8

Request reconsideration of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. (Height of structures are limited to 35-ft).

Board of Zoning Appeals-Zoning
Order on Appeal

The Board of Zoning Appeals-Zoning held a public hearing on December 4, 2018 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 JK affirmed _____ reversed
_____ modified as follows: _____

12/4/18

[Signature]

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

EXHIBIT “C”

UNIFORM ORDINANCE SUMMONS

City of Charleston versus

If Individual: First, Middle, Last

If Business: Name of Business/Authorized Agent or Manager

David Abdo

Street Address: (of Individual or Business, whichever applicable)

29 Broughton Rd.

City

Charleston

State

SC

Zip

29407

State

Driver's License # (if available)

SS# (if available)

DESCRIPTION OF DEFENDANT (if available)

Race	Sex	DOB	Height	Hair	Weight	Eyes

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

Name of Trial Officer	Street and No.
City of Charleston Municipal Judge	180 Lockwood Boulevard Charleston, SC 29403
Date of Trial	Time of Trial
July 2nd	8:30 AM

Description of Violation

No Building Permit

Violation Section No.

54-903

Summons Issuance Date

June 15

Violation Location

29 Broughton

Violation Date

Apr/May 2015

Time

AM

PM

Badge - Issuing Officer

043 880

Name - Issuing Officer

D. O'Connell

Bond:

#1050



SEE IMPORTANT INFORMATION
FOR DEFENDANT ON BACK

U 34792

DEFENDANT COPY

EXHIBIT “D”

COPY



City of Charleston Building Inspections

Owners' Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Masselon Phone: 843-727-1144

Company: Will's Masselon & Hillea

Address: 97 Broad St City: Charleston State: SC Zip: 29401

Email: jmasselon@willamhillea.net

II. PROJECT INFORMATION please fill out all that applies

Property Owner: David W. Abdo & Zlonka Soja Taylor Phone: 843-813-3466

Address of Work: 29 Broughton Rd Charleston, SC

Subdivision or Project Name: Crescent Lot: 6 Block: R TMS #: 421-14-00-024

Flood Zone: _____ FIRM Panel #: _____

Is this property in BAR or DRB jurisdiction: ☐ Yes ☒ No

Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION please fill out all that applies

Scope of Work: Install flag monument

Current Use of building, if applicable: N/A Propose Use: Monument

 NON-RESIDENTIAL USES:
 A-PLACES OF ASSEMBLY
 B-BUSINESS
 E-EDUCATION
 F-FABRICATION
 H-HAZARDOUS
 I-INDUSTRIAL

 M-MERCANTILE
 S-STORAGE
 U-UTILITY

 R1-HOTELS AND MOTELS
 R2-APARTMENTS, CONDOS, DORMS
 R3-ONE AND TWO FAMILY OR TOWNHOMES

 RESIDENTIAL USES:
 RA-RESIDENTIAL CARE/ASSISTED LIVING
 U-GARAGES
 MANUFACTURED HOMES

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement

☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: N/A Right of Way Bond Required: Yes ☐ No ☒

Total cost of improvement (\$): Approx \$10,000 Square Footage of Addition or New Building: N/A

Check all approvals granted: ☐ BAR ☐ DRB ☐ BZA-2 ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS - FOR PROPERTY OWNERS ACTING AS CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

V. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission
State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VI. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.
If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for contacting and schedule all required inspections.

Signature [Signature] Date 2/6/18

2/6/18

- 1) ANYTHING SHOWN OUTSIDE THE DETAILED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
- 2) AREA DETERMINED BY COORDINATE METHOD.
- 3) THE BOUNDARIES SHOWN HEREON ARE APPROXIMATE AND AS SUCH ARE SUBJECT TO LOCAL ADJUSTMENT.
- 4) THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS OF ENGINEERS UNDESIGNATED BEHINDS IS UNDERTAKEN AS OF THE DATE OF THIS SURVEY.
- 5) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY, AND IS NOT THE RESULT OF A TITLE SEARCH.
- 6) THE SPECIES SHOWN HEREON ARE FOR ORIGIN ONLY AND HAVE NOT BEEN REVIEWED BY A CERTIFIED AGENCIES PRIOR TO ANY DEVELOPMENT OR TREE REMOVAL TREE.
- 7) DECLARATION IS MADE TO THOSE PERSONS FOR WHICH THIS PLAT WAS PREPARED, IT IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS. THIS DRAWING/PLAT IS AN INSTRUMENT OF CONVEYANCE AND IS THE SOLE PROPERTY OF GEORGE A. JOHNSON, JR. AND IT SHALL NOT BE REPRODUCED OR USED IN ANY MANNER WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF GEORGE A. JOHNSON, JR. PLS. SEE REG. 12000.
- 8) USE OF MATERIALS OF THIS DOCUMENT IN ANY COURT, FINANCIAL OR LAND TRANSACTIONS OR WITH ANY PUBLIC AGENCY OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COPYRIGHT LAWS.
- 9) "SURVEY INSPECTIONS" OR "UPDATES" OF THIS MAP ARE PROHIBITED.
- 10) THESE CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
- 11) NO IMPROVEMENTS SHALL BE MADE. THE PURPOSE OF THIS PLAT IS TO OBTAIN ORIGIN ORIGIN.

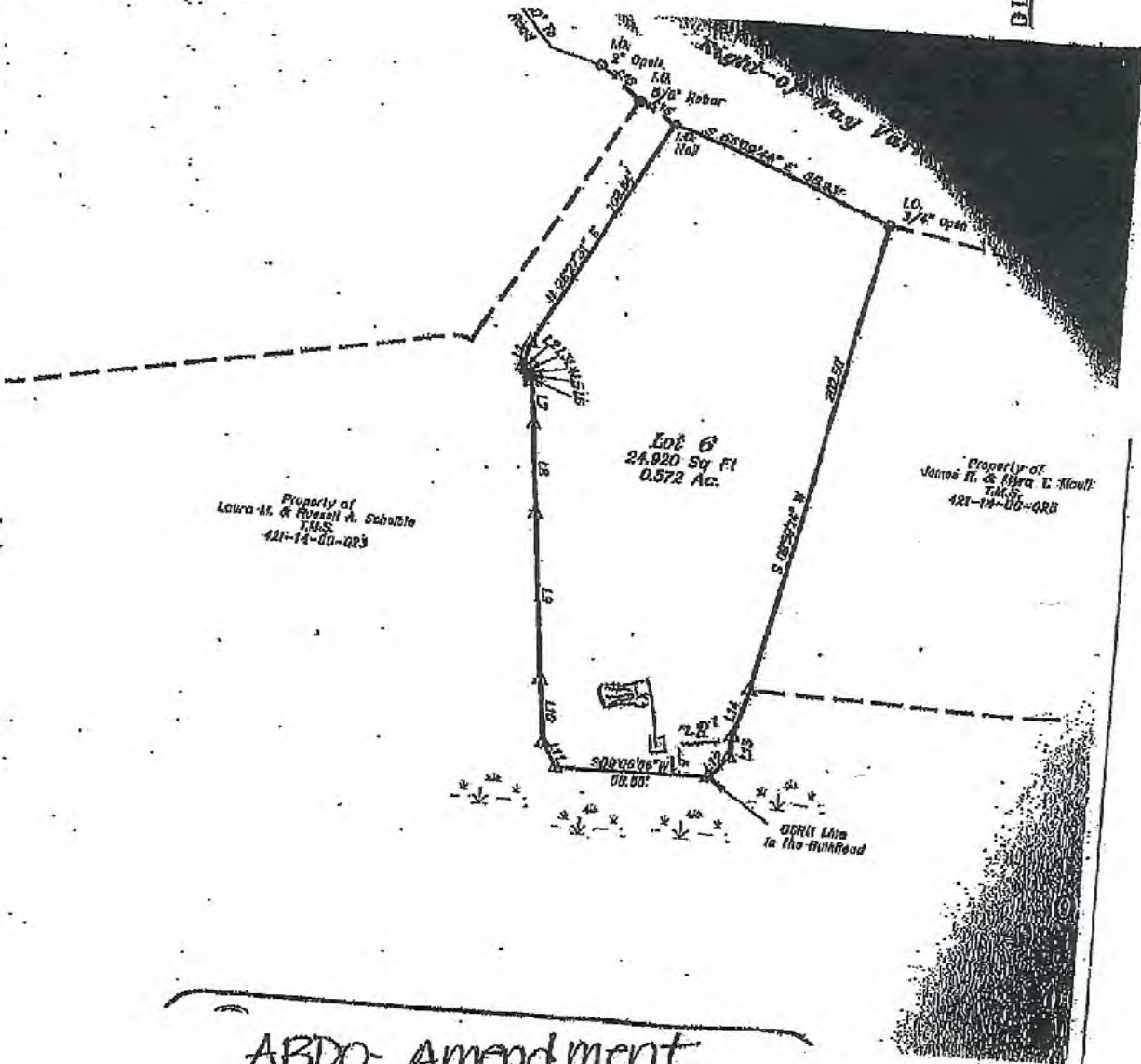
THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY, ORIGINALLY ACQUIRED BY THEIR HANDED, AND SUBJECT TO CHANGE OVER TIME. BY DETACHING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ARREST PERMIT JURISDICTION AT ANY TIME IN ANY ORIGIN. AREA ON THE SUBJECT PROPERTY, HANDED SHOWN HEREON OFF NOX.

George A. Johnson, Jr.
 SIGNATURE
 3/22/2011
 DATE

Any original this shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

General Property Survey

I, P. Steven Johnson, a Registered Professional Land Surveyor in the State of South Carolina, certify to certify that the survey shown herein was made in accordance with the requirements of the Minimum Standards Manual for the Profession of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein.



ABDO Amendment

2011-07-17R. +

Model ECXA60 - ESR60F13



10" - 14 gauge spun aluminum ball
gold anodized

Single sheave truck, cast aluminum
revolving, non-fouling type

2 Bronze swivel snaps with covers
per halyard

1 Set of halyard: #10 poly

1 - 8" Cast aluminum cleat

Aluminum flash collar

3000 PSI concrete

Hardwood wedges
(supplied by others)

Dry sand tightly tamped
after aligning pole

Foundation sleeve - 16 ga
hot dip galvanized steel

Steel centering wedges

1/4" Steel base plate

1/4" Steel support plate
welded to grounding spike

Exposed height: 60'-0"

Tapered portion: 44'-6"

Overall length: 66'-0"

Cleat height: 5'-0"

Foundation: 8'-0"

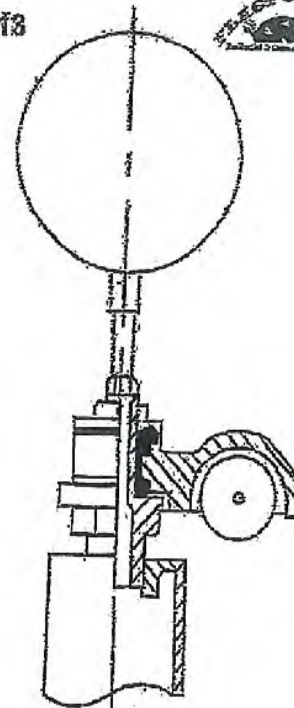
6'-0"

Overall length: 66'-0"

6'-0"

6'-0"

6'-0"



Truck Detail

Aluminum body
Stainless steel ball bearings
Aluminum sheave
Cast aluminum spindle

All shafts with overall
length of more than
38'-6" are shipped in
two sections.

Each section matched
marked for field assembly.
Exposed portion of jam
sleeve must be well
lubricated prior to
assembly.

1-1/2" maximum shop
gap allowed for field
fitting (ram for tight joint)



Filename: ECXA60 single sheave revolving truck

Project:	Ground set tapered aluminum flagpole: ALLOY: 6063T6	FLAGPOLES ETC.	Date:
Location:	Exposed height: 60'-0"	Overall height: 66'-0"	487 Hadley St
Architect:	Ship in 2 section	Butt diameter: 10"	Holly, MI 48442
Contractor:	Top diameter: 4"	Wall thickness: .250"	(888) 735-5591
Customer:	Finish: 100 grit polish		Job:



City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABINESS, P.E.
Director

Department of Public Service

The following is provided as require by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

9/6/18
Date

Signature of Owner

9/6/18
Date

Signature of Owner

Date

RECEIVED 7.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abdo
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Donka Sujia Taylor
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____
Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-08-024

Nature of Work: Flag monument.

Brenda Casey
Witness

Q. Rul
Witness

Dr. [Signature]
Signature of Owner (s)

9/6/18
9/6/18
Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18
Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

Q. Rul
Signature of Notary

2/3/2026
Exp Date

Elaine H. Bozman, ROD
Tia P. Shaw, Chief Deputy ROD



Received From:

CHARLESTON SC 29402

DATE: 07-Sep-18

INVOICE #: X000393825

DRAWER:	Drawer 1

CLERK: KLH

TIME: 11:47:11 AM

TIME: 11:47:11 AM

Description	#	#	Ex/Tr	Value in 000	Unit Price	Extra Ref Cost	County Fee	State Fee	Item Total
	Total Pgs	Bill'd Pgs	Page Cost						
Own/Int/Bld	2	1			\$10.00		\$ -	\$ -	\$ 10.00
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Paid:

Check #	Amount
9978	\$ 10.00
Check Total	\$ 10.00
Cash Total	

Total Paid: \$ 10.00

Balance: \$ -

The ROD Office retains any recording fee overages of \$5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!

EXHIBIT “E”

731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Pennye" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

—Original Message—

From: John A. Massalon [<mailto:jmassalon@wmalawfirm.net>]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

EXHIBIT “F”



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 – Submit this application, along with the required information and fee, 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: December 4, 2018

Property Address 29 Broughton Rd., Charleston, SC 29407 TMS # 421-14-00-024

Property Owner David W. Abdo & Ilonka Sonja Taylor Daytime Phone (843) 813-3466

Applicant John A. Massalon, Esq. Daytime Phone (843) 727-1144

Applicant's Mailing Address Wills Massalon & Allen LLC, 97 Broad Street, Charleston, SC 29401

E-mail Address jmassalon@wmlawfirm.net

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

Zoning of property SR-8

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 John A. Massalon Date 10/31/2018

For office use only			
Date application received	<u>10/31/18</u>	Fee \$ <u>150⁰⁰</u>	Time application received <u>2 PM</u>
Staffperson	<u>TPM</u>		Receipt # <u>2291053</u>

R 042



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

Page 1 of 2

City of Charleston

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

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary):

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):

See Attachment "A"

Signature of Applicant

Date 10/31/2018

For office use only

Date application received

10/31/18

Time application received

2pm

Staffperson

PA

ATTACHMENT "A"

Appellant, David Abdo, hereby appeals the decision of the Zoning Administrator for the City of Charleston, received October 17, 2018, denying Appellant's permit application to construct a flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

This appeal is based upon the following grounds:

1. The City of Charleston Zoning Ordinance allows for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning within ten (10) business days of receipt of the decision.
2. Appellant applied to the City of Charleston to erect a flagpole monument on his property to honor the military service of his father, his wife's father, their brother in law, and all who served in the armed forces. See Exhibit A (Application).
3. The Zoning Administrator for the City of Charleston denied Appellant's application on the grounds that the flagpole could not be considered a monument based on his interpretation that the height exception contained in Sec. 54-505 of the City of Charleston Zoning Ordinance applies only to "a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event." See Exhibit B (E-mail denying application).
4. Sec. 54-505 (a) provides without qualification that "the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone."

5. Sec. 54-505(a) does not further define “monument”, differentiate between monuments located on private property, include any requirement that the monument be located on public or private property, or limit a monument designation depending upon to whom or about what the monument commemorates.
6. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm v. Town of Sullivan’s Island Board of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018), citing *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* Citing, *Helicopter Sols.*, at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).
7. A “zoning ordinance [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’ ” *Vulcan Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App 2000) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 337 S.C. 157, 177, 522 S.E.2d 153, 164 (Ct. App. 1999), rev’d, 344 S.C. 43, 543 S.E.2d 538 (2001)). “As with statutes, the lawmakers’ intent embodied in an ordinance ‘must prevail if it can be reasonably discovered in the language used.’ ” *Id.* at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

8. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 666 S.E. 2d 892 (2008) (quoting *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Id.* 379 S.C. at 570-71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).

9. The Zoning Administrator's interpretation of 54-505(a) is not necessary or justified. The plain language of the ordinance clearly and unambiguously excuses memorials from the height requirements without qualification. The common definition of a "monument" as it appears in the on-line version of the Merriam Webster dictionary includes a "memorial stone or a building erected in remembrance of a person or event." <https://www.merriamwebster.com/dictionary/> . There is no requirement that the memorial be located on public property or that the person or event commemorated be famous or notable. The interpretation adopted by the City injects uncertainty and ambiguity into an otherwise clear ordinance.

For the reasons set forth above, Appellant respectfully requests that the Board of Zoning Appeals-Zoning reconsider his application, reverse the decision of the Zoning Administrator and grant a permit allowing Mr. Abdo to maintain the flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

EXHIBIT “A”

COPY



City of Charleston Building Inspections

Owners' Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Masselon Phone: 843-727-1144
 Company: Willis Masselon & Allen
 Address: 97 Broad St City: Charleston State: SC Zip: 29401
 Email: jmasselon@willamallanlawfirm.net

II. PROJECT INFORMATION please fill out all that applies

Property Owner: David W. Abdo & Zlounka Soja Taylor Phone: 843-813-3466
 Address of Work: 29 Broughton Rd Charleston, SC Unit: _____
 Subdivision or Project Name: Crescent Lot: 6 Block: K TMS #: 421-14-00-024
 Flood Zone: _____ FIRM Panel #: _____ Zoning: _____
 Is this property in BAR or DRB jurisdiction? ☐ Yes ☒ No Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION please fill out all that applies

Scope of Work: Install flag monumentCurrent Use of building, if applicable: N/A Propose Use: Monument

NON-RESIDENTIAL USES

A - PLACES OF ASSEMBLY
 B - BUSINESS
 E - EDUCATION

F - FABRICATION
 H - HAZARDOUS
 I - INDUSTRIAL

M - MERCANTILE
 S - STORAGE
 U - UTILITY

R1 - HOTELS AND MOTELS
 R2 - APARTMENTS, CONDOS, DORMS
 R3 - ONE AND TWO FAMILY OR TOWNHOMES

RESIDENTIAL USES

RA - RESIDENTIAL CARE/ASSISTED LIVING
 U - GARAGES
 MANUFACTURED HOMES

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement
☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: N/A Right of Way Bond Required: Yes ☐ No ☒Total cost of improvement (\$): Approx 10,000 Square Footage of Addition or New Building: N/ACheck all approvals granted: ☐ BAR ☐ DRB ☐ BZA-2 ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS FOR PROPERTY OWNERS ACTING AS CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

VI. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission
State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VII. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.

If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for calling to schedule all required inspections.

Signature: [Signature] Date: 2/6/18

2/6/18

DL

- 1) ANYTHING SHOWN OUTSIDE THE DELINEATED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
- 2) AREA DETERMINED BY COORDINATE METHOD.
- 3) THE BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.
- 4) THE PRESENCE OR ABSENCE OF U.S. ARMY CORP. OF ENGINEERS' UNOCCUPATIONAL STATUS IS INDICATED AS OF THE DATE OF THIS SURVEY.
- 5) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY, AND IS NOT THE RESULT OF A TITLE SEARCH.
- 6) THE SPACES SHOWN HEREON ARE OUR OWN ONLY AND HAVE NOT BEEN HERETOBY BY A CERTIFIED AGRICULTURIST, PRIOR TO ANY DEVELOPMENT OR OTHER AGRICULTURAL USE.
- 7) EXPLANATION IS MADE TO THOSE PERSONS FOR WHOM THIS PLAT WAS PREPARED, IT IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS. THIS DRAWING FEET IS IN PARTIALITY OF SERVICE AND IS THE SOLE PROPERTY OF GEORGE E. JOHNSON, JR., INC. IT SHALL NOT BE REPRODUCED OR USED IN ANY WAY WITHOUT THE WRITTEN PERMISSION OF G. E. JOHNSON, JR., INC. PLUS 50¢ REG. NO. 10034.
- 8) USE OF ANY PART OF THIS DOCUMENT IN ANY COURT, TRIBUNAL OR LAND TRANSACTION, OR FILED WITH ANY PUBLIC AGENCY OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COPYRIGHT LAWS.
- 9) "SURREY RESERVATIONS" OR "UPDATES" OF THIS SURVEY ARE PROHIBITED.
- 10) THESE COORDINATES ARE NOT TRANSFERABLE TO ADJUTANT INSTITUTIONS OR SUBSEQUENT OWNERS.
- 11) NO ADJUTANTS SHOWN. THE PURPOSE OF THIS PLAT IS TO CERTIFY DATA CRITICAL TO THE SURVEY.

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF IMPARTIAL PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSESS PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, NOTHING SHOWN HEREON OR NOT.

[Signature]
 3/22/2011
 DATE

The original filed shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

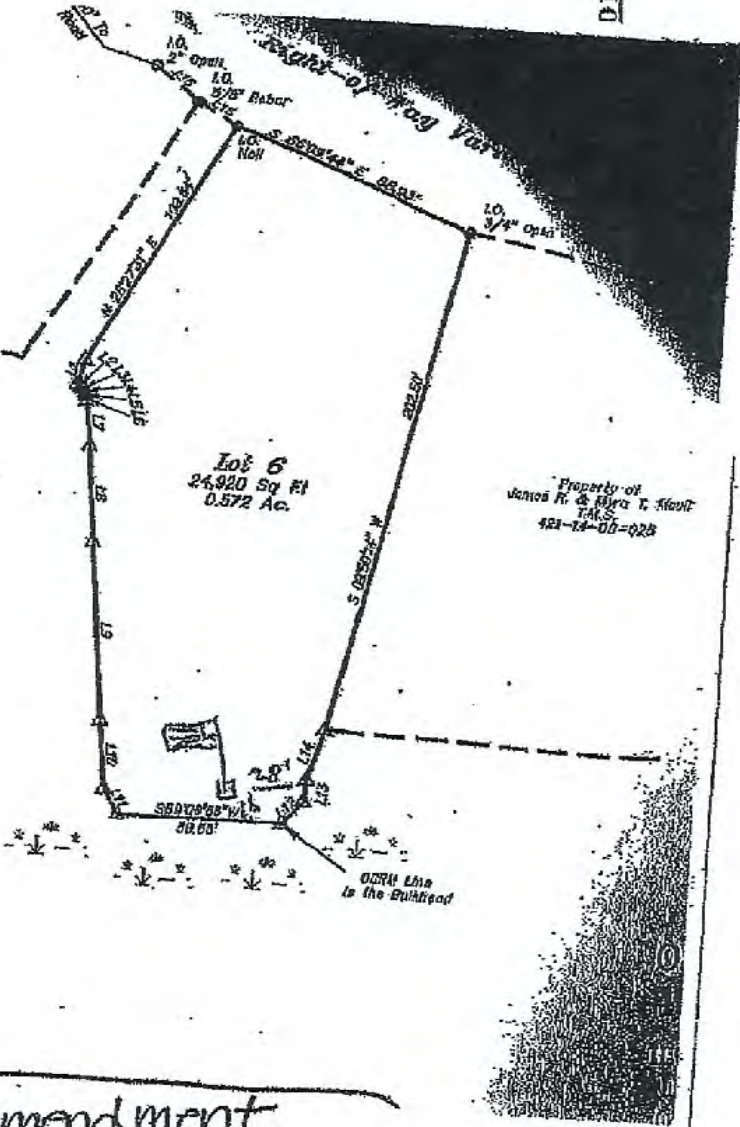
General Property Survey

I, G. E. Johnson, a Registered Professional Land Surveyor in the State of South Carolina, certify to certify that this survey shown herein was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a State Survey as specified therein.



Property of
 Laura M. & Robert A. Sahelie
 TMS
 421-14-00-023

Property of
 James R. & Myra T. Mount
 TMS
 421-14-00-023



ABDO- Amendment

ADDITIONAL 172.4

Model ECXA60 - ESR60F13



- 10" - 14 gauge spun aluminum ball
gold anodized
- Single sheave truck; cast aluminum
revolving, non-fouling type
- 2 Bronze swivel snaps with covers
per halyard
- 1 Set of halyard: #10 poly

1 - 9" Cast aluminum cleat

Aluminum flask collar

3000 PSI concrete

Hardwood wedges
(supplied by others)

Dry sand tightly tamped
after aligning pole

Foundation sleeve - 16 ga
hot dip galvanized steel

Steel centering wedges

1/4" Steel base plate

1/4" Steel support plate
welded to grounding spike

Exposed height: 66'-0"

Tapered portion: 44'-6"

Overall length: 66'-0"

Cleat height: 6'-0"

Foundation: 6'-6"

6'-0"

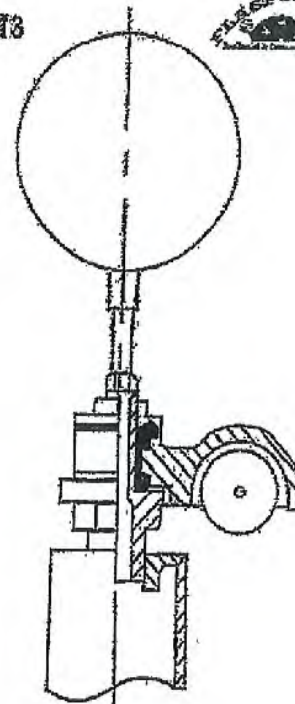
6'-0"

6"

12"

20"

50"



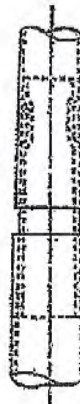
Truck Detail

Aluminum body
Stainless steel ball bearings
Aluminum sheave
Cast aluminum spindle

All shafts with overall
length of more than
38'-6" are shipped in
two sections.

Each section matched
marked for field assembly.
Exposed portion of jam
sleeve must be well
lubricated prior to
assembly.

1-1/2" maximum ship
gap allowed for field
fitting (ram for tight joint)



Filename: ECXA60-single sheave revolving truck.d

Project:	Ground set tapered aluminum flagpole; ALLQY: 608376	FLAGPOLES ETC.	Date:
Location:	Exposed height: 66'-0"	Overall height: 66'-0"	437 Hadley St.
Architect:	Ship in 2 section	Butt diameter: 10"	Holly, MI 48442
Contractor:	Top diameter: 4"	Wall thickness: .260"	(888) 735-5591
Customer:	Finish: 100 grit polish		Job:



City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABINESS, P.E.
Director

Department of Public Service

The following is provided as require by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

9/6/18
Date

Signature of Owner

9/6/18
Date

Signature of Owner

Date

RECEIVED 9.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abd.o

Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Honka Sujia Taylor

Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____

Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-08-024

Nature of Work: Flag monument.

Brenda Casey
Witness

A. R. L.
Witness

[Signature]
Signature of Owner (s)

9/6/18

9/6/18

Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18
Date

[Signature]
Signature of Notary

2/3/2026
Exp Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

Elaine H. Bozman, ROD
Tia P. Shaw, Chief Deputy ROD



DATE:	07-Sep-18
INVOICE #:	X000393825
DRAWER:	Drawer 1
CLERK:	KLH
TIME:	11:47:11 AM

[illegible]

Check #	Amount
9978	\$ 10.00
Check Total	\$ 10.00
Cash Total	

Total Paid: \$ 10.00

Balance: \$ -

The ROD Office retains any recording fee overages of \$5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!

EXHIBIT “B”

731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Penny" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

-----Original Message-----

From: John A. Massalon [<mailto:jmassalon@wmalawfirm.net>]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

EXHIBIT “G”



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 – Submit this application, along with the required information and fee, 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 29 Broughton Rd., Charleston, SC 29407 TMS # 421-14-00-024

Property Owner David W. Abdo & Ilonka Sonja Taylor Daytime Phone (843) 813-3466

Applicant John A. Massalon, Esq. Daytime Phone (843) 727-1144

Applicant's Mailing Address Wills Massalon & Allen LLC, 97 Broad Street, Charleston, SC 29401

E-mail Address jmassalon@wmalawfirm.net

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

Zoning of property SR-8

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 [Signature] Date 12/11/2018

For office use only.

Date application received 12-11-18

Staffperson ABH

Fee \$ 150.00

Time application received 1:05pm

Receipt # 224689

R 058

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)**

Page 1 of 2

City of Charleston

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

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary):

See Attachment "A"

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

Date 12/11/2018

For office use only

Date application received _____

Time application received _____

Staffperson _____

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

R 060

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: _____

ATTACHMENT "A"

Appellant, David Abdo, hereby requests reconsideration of the decision of the Board of Zoning Appeals – Zoning which upheld the decision of the Zoning Administrator for the City of Charleston, dated October 17, 2018, denying Appellant's permit application to construct a flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina. This appeal is based upon the following grounds:

1. Appendix C, Rules and Regulations of the Board of Zoning Appeals – Zoning, Article III, Section 3 provides that "[a]n 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."
2. Appellant applied to the City of Charleston to erect a flagpole monument on his property to honor the military service of his father, his wife's father, their brother in law, and all who served in the armed forces. See Exhibit A (Application).
3. The Zoning Administrator for the City of Charleston denied Appellant's application on the grounds that the flagpole could not be considered a monument based on his interpretation that the height exception contained in Sec. 54-505 of the City of Charleston Zoning Ordinance applies only to "a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event." See Exhibit B (E-mail denying application).

4. Sec. 54-505 (a) provides without qualification that “the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone.”
5. Sec. 54-505(a) does not further define “monument”, differentiate between monuments located on public property or private property, include any requirement that the monument be located on public or private property, or limit a monument designation depending upon to whom or about what the monument commemorates.
6. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm v. Town of Sullivan’s Island Board of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018), citing *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* Citing, *Helicopter Sols*, at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).
7. A “zoning ordinance [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’ ” *Vulcan Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App 2000) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 337

S.C. 157, 177, 522 S.E.2d 153, 164 (Ct. App. 1999), rev'd, 344 S.C. 43, 543 S.E.2d 538 (2001)). "As with statutes, the lawmakers' intent embodied in an ordinance 'must prevail if it can be reasonably discovered in the language used.' " Id. at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

8. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 666 S.E. 2d 892 (2008) (quoting *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." Id. 379 S.C. at 570-71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994)).
9. The Zoning Administrator's interpretation of 54-505(a) is not necessary or justified. The plain language of the ordinance clearly and unambiguously excuses memorials from the height requirements without qualification. The common definition of a "monument" as it appears in the on-line version of the Merriam Webster dictionary includes a "memorial stone or a building erected in remembrance of a person or event." <https://www.merriamwebster.com/dictionary/>. There is no requirement that the memorial be located on public property or that the person or event commemorated be famous or notable. The interpretation adopted by the City injects uncertainty and ambiguity into an otherwise clear ordinance.

10. At the hearing on December 4, 2018, the Board did not address the two grounds on which the Zoning Administrator denied the application. Instead, the Board considered photographs of the Washington Monument, the Statue of Liberty and a few monuments, not specifically identified, that the Zoning Administrator located during an internet search. While those surely meet the definition of a monument, the photographs submitted by the Zoning Administrator and relied upon by the Board do not amount to a comprehensive list of structures that are monuments. In addition to well-known monuments like the Washington Monument, other monuments that appear include natural rock formations, engraved stones, plaques and flags. Some examples of flag monuments located on the internet are attached as Exhibit C.
11. The definition of "monument" submitted by the Zoning Administrator includes not only the one cited in the decision denying the application but it also defines monument as "an outstanding, enduring and memorable example of something."
12. Finally, the Zoning Administrator submitted an email dated December 4, 2018 from one of the applicant's neighbors. As an initial matter, the email says among other things that the application is "just another attempt to circumvent the rules." The email is entirely irrelevant to the appeal before the Board. However, to avoid being unjustly placed in a negative light, the applicant would like to respond to a few points in that email. Prior to commencing construction the applicant contacted a representative of the City and was verbally advised that he did not need a building permit. Additionally, construction was completed by the time the applicant received the stop work order. Finally, the complaint about the noise is unfounded. The applicant lives closer to it than his neighbors and denies hearing any annoying sounds.

For the reasons set forth above, Appellant respectfully requests that the Board of Zoning Appeals-Zoning reconsider its decision to deny his appeal, reverse the decision of the Zoning Administrator and grant a permit allowing Mr. Abdo to maintain the flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

EXHIBIT “A”

COPY



City of Charleston Building Inspections

Owner's Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Masselon Phone: 843-727-1144

Company: Will Masselon & Allen

Address: 97 Broad St City: Charleston State: SC Zip: 29401

Email: jmasselon@willmasselonlawfirm.net

II. PROJECT INFORMATION please fill out all that applies

Property Owner: David W. Abdo & Zlounka Soria Taylor Phone: 843-813-3466

Address of Work: 29 Broughton Rd Charleston, SC Unit: _____

Subdivision or Project Name: Crescent Lot: 6 Block: K TMS #: 421-14-00-024

Flood Zone: _____ FIRM Panel #: _____ Zoning: _____

Is this property in BAR or DRB jurisdiction: ☐ Yes ☒ No Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION please fill out all that applies

Scope of Work: Install flag monument

Current Use of building, if applicable: N/A Propose Use: Monument

NON-RESIDENTIAL USES			RESIDENTIAL USES	
A - PLACES OF ASSEMBLY	F - FABRICATION	M - MERCHANTILE	R1 - HOTELS AND MOTELS	RA - RESIDENTIAL CARE/ASSISTED LIVING
B - BUSINESS	H - HAZARDOUS	S - STORAGE	R2 - APARTMENTS, CONDOS, DORMS	U - GARAGES
E - EDUCATION	I - INDUSTRIAL	U - UTILITY	R3 - ONE AND TWO FAMILY OR TOWNHOMES	MANUFACTURED HOMES

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement

☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: N/A Right of Way Bond Required: Yes ☐ No ☒

Total cost of improvement (\$): Approx \$10,000 Square Footage of Addition or New Building: N/A

Check all approvals granted: ☐ BAR ☐ DRB ☐ BZA-Z ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS - FOR PROPERTY OWNERS ACTING AS CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

V. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission
State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VI. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.

If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for calling to schedule all required inspections.

Signature [Signature] Date 2/6/18

2/6/18

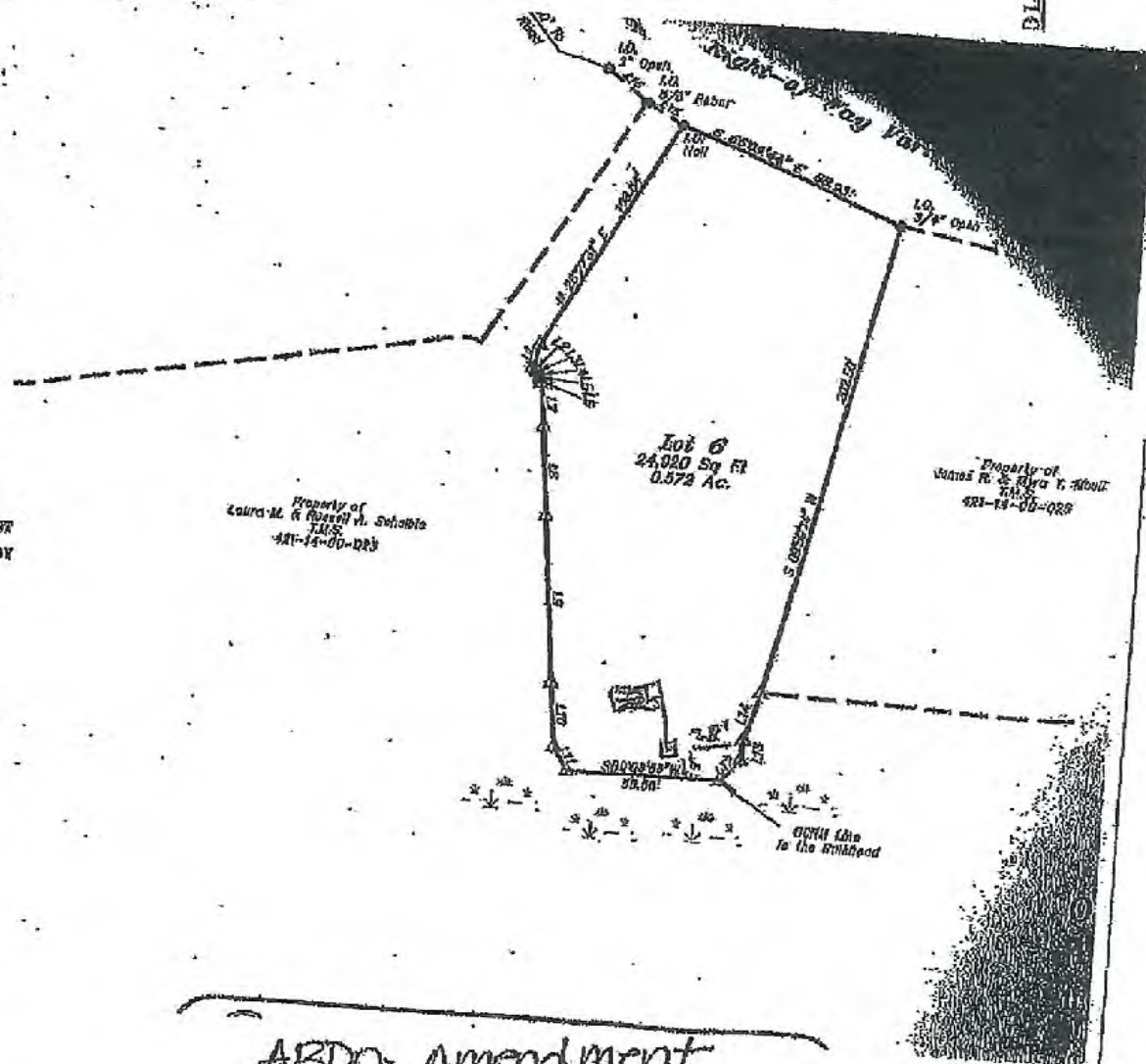
- 1) ANYTHING SAID OUTSIDE THE BOUNDARY OF THIS PLAY IS FOR INFORMATION PURPOSES ONLY.
- 2) AREA DATED BY CONTINUOUS METHOD.
- 3) THE PLAYERS SUCH MURDER ARE AVOIDED AND AS SUCH ARE SUBJECT TO LOCAL ATTENTION.
- 4) THE PRESENCE OF AROUND OF U.S. ARMY CORP OF ENGINEERS-UNUSUAL MATERIALS IS DETERMINED AS OF THE DATE OF THIS STATEMENT.
- 5) THIS MAY REPRESENT A SHAWNEY BIRTH ON THE 1910 NINETEENTH ONLY AND IS NOT THE RESULT OF A TRUE SENSE.
- 6) THE STORIES SUCH MURDER ARE OUR OWNERS ONLY AND HAVE NOT BEEN LIMITED BY A CERTAIN AREA, NOR TO ANY PARTICIPANT OF THIS CENTRAL TREE STORIES SHALL BE HELD.
- 7) DECLARATION-REASON TO THESE PERSONS FOR WHOM THIS PLAY WAS PREPARED, IT IS AN INSTRUMENT OF SERVICE TO SUBSEQUENT OWNERS. THIS INSTRUMENT IS AN INSTRUMENT OF SERVICE AND IS THE SAME PROPERTY OF SERVICE AS A PERSON'S DEED. IF IT SHALL NOT BE APPROVED OR USED IN ANY WAY WITHOUT THE WRITTEN PERMISSION OF A SIGNED-OWNING PLAY, SIGNED IN THE COMPANY OF U.S. ARMY CORP OF ENGINEERS.
- 8) USE OF UNUSUAL FORM OF THIS DOCUMENT IN ANY COURT, JUDICIAL OR EXAMINATION, OR ANY WITH ANY PUBLIC OFFICE OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COMPANY LAWS.
- 9) "SHAWNEY MURDER" OR "UPDATES" OF THIS MAY BE PREPARED.
- 10) THESE INSTRUMENTS ARE NOT TRANSFERABLE TO ADDITIONAL OWNERS OR SUBSEQUENT OWNERS.
- 11) NO APPROVED IS GIVEN THE PURPOSE OF THIS PLAY IS TO OBTAIN OWN CHILDREN, THIS DECLARATION.

THE AREA SHOWN ON THIS PLAN IS A REPRESENTATION OF DEPARTMENT
2. JURISDICTION AUTHORITY OF THE SUBSTANTIVE DEPARTMENT, CRIMINAL AREA OF
SUBSTANTIVE AREA, AND DEPARTMENT AND SUBSTANTIVE DEPARTMENT, CRIMINAL AREA OF
DEPARTMENT, THE JURISDICTION AUTHORITY OF THE DEPARTMENT, THE
JURISDICTION OF THE AREA IS NOT SUBJECT TO DEPARTMENT, THE
PROPERTY, THE AREA IS NOT SUBJECT TO DEPARTMENT, THE AREA IS NOT SUBJECT

~~CONFIDENTIAL~~ 3/22/2001
 The original has been on this list for over years from the date of this signature, subject to the customary language above.

General Property Survey

Dr. Joseph Johnson, a Republican Professional Land Surveyor in the State of South Carolina, writes to inform the above named that this survey shows there was made in accordance with the requirements of the American Standard Manual for the Progress of Land Surveying Class A, a survey on section three.



Model ECXA60 - ESR60F13



- 10' - 14 gauge spun aluminum ball gold anodized
- Single sheave truck, cast aluminum revolving, non-fouling type
- 2 Bronze swivel snaps with covers per halyard
- 1 Set of halyard: #10 poly

1 - 9" Cast aluminum cleat

Aluminum flash collar

3000 PSI concrete

Handwelded wedges (supplied by others)

Dry sand tightly tamped after aligning pole

Foundation sleeve - 16 ga hot dip galvanized steel

Steel centering wedges

1/4" Steel base plate

1/4" Steel support plate welded to grounding spike

Exposed height: 60'-0"

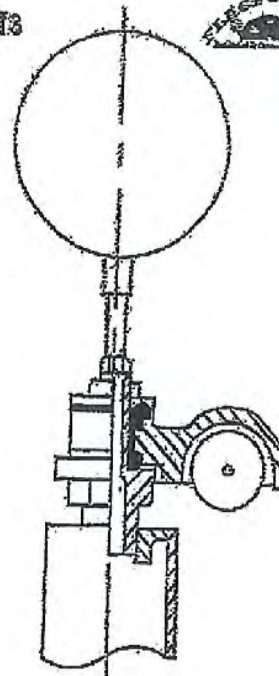
Tapered portion: 44'-8"

Overall length: 68'-0"

Foundation: 8'-0"

Cleat height: 4'-0"

Straight portion: 21'-8"



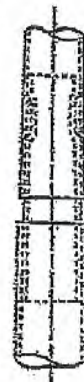
Truck Detail

Aluminum body
Stainless steel ball bearings
Aluminum sheave
Cast aluminum spindle

All shafts with overall length of more than 38'-6" are shipped in two sections.

Each section matched marked for field assembly. Exposed portion of jam sleeve must be well lubricated prior to assembly.

1-1/2" maximum shop gap allowed for field fitting (ram for tight joint)



Filename: ECXA60-single sheave revolving truck.c

Project:	Ground set tapered aluminum flagpole, ALLOY: 6063-T5	FLAGPOLES ETC.	Date:
Location:	Exposed height: 60'-0"	Overall height: 68'-0"	407 Hadley St.
Architect:	Ship in 2 section	Butt diameter: 10"	HOLLAND, MI 48442
Contractor:	Top diameter: 4"	Wall thickness: .250"	(888) 735-5591
Customer:	Finish: 100 grit polish		Job:



City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABINISS, P.E.
Director

Department of Public Service

The following is provided as require by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

9/6/18
Date

Signature of Owner

9/6/18
Date

Signature of Owner

Date

City of Charleston • Department of Public Service • 75 Calhoun Street, 3rd Floor, Charleston, SC

RECEIVED 7.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abdo
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Donka Sonja Taylor
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____
Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-06-024

Nature of Work: Flag monument.

Brenda Casen
Witness

Q. R.
Witness

Dr. [Signature]
Signature of Owner (s)

9/6/18

9/6/18

Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18
Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

Q. R.
Signature of Notary

2/3/2026
Exp Date

Elaine H. Bozman, ROD
Tia P. Shaw, Chief Deputy ROD



DATE:	07-Sep-18
INVOICE #:	X000393825
DRAWER:	Drawer 1
CLERK:	KLH
TIME:	11:47:11 AM

TOTAL	\$	10.00

It is our pleasure to serve you!

EXHIBIT “B”

731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Penny" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

—Original Message—

From: John A. Massalon [mailto:jmassalon@wmalawfirm.net]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

EXHIBIT “C”



Lakeville Veterans' Monument and Flagpole

The Lakeville Veterans' Monument and Flagpole are located at the intersection of 5 roads (Route 20A, Stone Hill Rd, combined Routes 15 and 20A, and Lakeville Park Rd) in the middle of Lakeville, New York, 14480. The memorial is dedicated to those who gave their lives in defense of America. It was established by the Lakeville Volunteer Fire Department sometime in the late 1940's World War II and is maintained by the Fire Department. It is in excellent condition.





World War II Memorial Flagpole

A granite based flagpole that was dedicated as a memorial to the township's ten war dead. Engraved on the front of the stone is: "Dedicated to the men of Freehold Township who made the supreme sacrifice World War II 1941 - 1945 that this flag may ever fly in honor and in peace". It then lists the names of 10 men who were killed in the war.

The back of the stone has a weathered bronze tablet that is inscribed: "In honor of citizens of Freehold Township who served in World War II". A four column list on the tablet names every citizen of Freehold Township who served during the war, with a star next to the names of those who didn't make it back.

Date of Installation:

November 11, 1948

Organization Responsible for Installation:

[<-- Back](#)

Columbus Monuments Pages

Site Search:



UNITED
STATES

[Home](#) _ [New/Updated](#) _ [Town/Country](#) _ [Chronology](#) _ [Contact](#)

Ocean City
Maryland

Columbus Flagpole

1985

Northside Park



<http://columbus.vanderkrogt.net>





Armed Forces Flag Pole and Plaque Memorial

The Armed Forces Flag Pole and Plaque Memorial is dedicated to our servicemen and women of Navy, US Army, US Marine Corp, and the US Air Force. It was designed and funded through an E Scout project of Nathan Chichester, Boy Scout Troup 174 and installed in December 2011 at the Dougherty Funeral Home on Big Tree Street, in Livonia, New York, 14487. It is maintained by the Home and is in excellent condition.

Date of Installation:

December 3, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
David Abdo,)
Appellant,)
v.)
City of Charleston and Board of Zoning)
Appeals-Zoning,)
Respondents.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-10-1434

**RESPONDENTS' ANSWER AND
RESPONSE TO NOTICE AND PETITION
FOR APPEAL**

FILED
2019 APR 22 PM 12:31
CLERK OF SUPERIOR COURT

Respondents City of Charleston (the “City”) and the City of Charleston’s Board of Zoning Appeals-Zoning (the “Board” or “BZA”) hereby respond to the Notice and Petition for Appeal (“Notice”) filed by Appellant David Abdo (“Appellant” or “Abdo”) in the above-referenced matter. In their capacity as respondents, the City and the BZA are collectively referred to herein as the “City.”

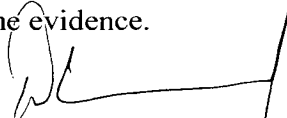
1. This is an appeal from a decision of the BZA upholding the City Zoning Administrator’s refusal to approve Abdo’s request for zoning approval to construct a 60-foot tall flagpole within a residential neighborhood known as the Crescent.

2. The City objects to consideration of the factual allegations in the Notice because this appeal must be determined based on the record. See S.C. Code Ann. Section 6-29-840(A) (“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.”); Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 38, 606 S.E.2d 209, 214 (Ct. App. 2004) (“When reviewing a Board decision, the circuit court sits as an appellate court. Its review is strictly limited to the facts and arguments raised to the Board below. Indeed, the circuit court is expressly forbidden from considering any new facts.”).

3. In responding to the allegations in the Notice, the City asserts that the BZA's decision should be affirmed because there is evidence supporting the BZA's decision. See S.C. Code Ann. Section 6-29-840(A) ("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."); cf. Sterling Dev. Co. v. Collins, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992) ("In an action at law, the factual findings of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings."). The City denies any allegations in the Notice which conflict with the findings of the BZA.

4. No answer or other pleading is required from the City because this appeal is limited to the evidence contained in the record presented to the BZA. See S.C. Code Ann. Section 6-29-840(A) ("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."); Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 38, 606 S.E.2d 209, 214 (Ct. App. 2004) ("When reviewing a Board decision, the circuit court sits as an appellate court. Its review is strictly limited to the facts and arguments raised to the Board below. Indeed, the circuit court is expressly forbidden from considering any new facts.").

5. Respondents are not required to plead or otherwise respond to the Notice; however, to the extent a response may be required, Respondents deny that Appellant is entitled to the relief requested in the Notice, and Respondents assert that the underlying decision should be affirmed because the BZA's decision is supported by the evidence.



Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 06802
E-mail: mcqueeneyd@charleston-sc.gov

CITY OF CHARLESTON

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

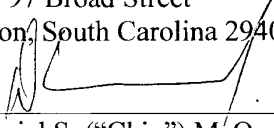
Attorneys for Plaintiff City of Charleston

April 22, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2019-CP-10-1434
David Abdo,	)	
	)	
Appellant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
City of Charleston and Board of Zoning	)	
Appeals-Zoning,	)	
	)	
Respondents.	)	

I certify that, on this date, I served a copy of Respondents' answer and return to the Notice and Petition for Appeal of Appellant David Abdo ("Appellant") by hand delivery to his attorney of record, as follows:

John A. Massalon
Wills Massalon & Allen LLC
97 Broad Street
Charleston, South Carolina 29401


Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 06802

April 22, 2019
Charleston, South Carolina

2019 APR 22 PM 12:31
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2019-CP-10-1434
	)	
David Abdo,	)	
	)	
Appellant,	)	
	)	
v.	)	<u>RECORD ON APPEAL</u>
	)	
City of Charleston and Board of Zoning	)	
Appeals-Zoning,	)	
	)	
Respondents.	)	

2019 APR 22 PM 12:32
JULIE N. ADAMS, CLERK OF COURT

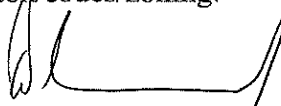
Pursuant to section 6-29-830(A) of the South Carolina Code, the following constitutes the Record on Appeal of the above-referenced matter:

Zoning Administrator's Decision (10/17/2018).....	pp. 1-5
Application for reconsideration of Zoning Administrator's decision (10/31/2018).....	pp. 6-21
Email of Non-Support (Schiabie) (11/28/2018).....	p. 22
Agenda (12/4/2018)	pp. 23-26
Zoning Administrator's Presentation (12/4/2018)	pp. 27-37
Transcript (12/4/2018)	pp. 38-57
Zoning Administrator's Handout (12/4/2018)	pp. 58-60
Order on Appeal (12/4/2018).....	p. 61
Application for reconsideration of BZA-Z's decision (12/11/2018)	pp. 62-84
Letter of Non-Support from Schiabie (1/11/2019)	p. 85
BZA-Z Agenda (2/19/2019).....	pp. 86-90
Email statement from Abdo (2/19/2019)	pp. 91-92
Zoning Administrator's Presentation (2/19/2019)	pp. 93-108
Transcript (2/19/2019)	filed 3/21/2019

Order on Appeal (2/19/2019)..... p. 109

Tracking Results (02/28/2019)..... pp. 110-111

Additionally, the Zoning Ordinance of the City of Charleston is available at
<https://library.municode.com/sc/charleston/codes/zoning>.



Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 06802
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
E-mail: mcqueeneyd@charleston-sc.gov

April 22, 2018
Charleston, South Carolina

Ashby, Pennye

From: Batchelder, Lee
Sent: Wednesday, October 17, 2018 2:30 PM
To: John A. Massalon
Cc: Borden, Janie; O'Connell, Dexter; Ashby, Pennye
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

-----Original Message-----

From: John A. Massalon [mailto:jmassalon@wmalawfirm.net]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELOERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

In response to your question below, Mr. Abdo tells me that he installed the monument to honor the military service of his father, his wife's father, their brother in law, and all that served in the armed forces. I understand that Mr. and Mrs. Abdo plan to dedicate it on June 14th, 2019 (flag day) which coincides with their wedding anniversary.

I am copying Dexter and Janie on this response. I think the others who were added to the email chain subsequently (Mr. Granata for example) are only concerned with the foundation/base issue and so I have not copied them here. However, if I left someone out of this email who needs to have it, would you please let me know or forward it to them.

Thank you very much.

John A. Massalon, Esq
Wills Massalon & Allen, LLC
P.O. Box 859
97 Broad Street
Charleston, SC 29401
jmassalon@wmalawfirm.net
843-793-6039 (Direct)
843-727-1144 (Front Desk)
843-727-7696 (Fax)

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-----Original Message-----

From: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Sent: Friday, September 28, 2018 12:41 PM
To: John A. Massalon <jmassalon@wmalawfirm.net>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; Granata, Ken <granatak@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

The monument explanation is the only zoning issue at this point.

Lee C. Batchelder AICP | Zoning Administrator City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

-----Original Message-----

From: John A. Massalon [mailto:jmassalon@wmalawfirm.net]
Sent: Friday, September 28, 2018 10:03 AM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; Granata, Ken <granatak@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

Thank you for the email. My understanding was that my client did have zoning approval and that the only unresolved zoning issue was that you wanted more info about the monument purpose for your department's files. Is there anything else or any other issue from a zoning standpoint?

I am aware that building inspections requested some more info about the base or foundation and I am also seeking clarification of that question so that I can be responsive to that issue.

John

-----Original Message-----

From: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>

Sent: Friday, September 28, 2018 8:48 AM

To: John A. Massalon <jmassalon@wmalawfirm.net>; O'Connell, Dexter <oconnelld@charleston-sc.gov>

Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; Granata, Ken <granatak@charleston-sc.gov>

Subject: RE: Abdo /29 Broughton

John,

I want to make sure you understand that your client does not have zoning approval for this flagpole. Apparently there is confusion about this so I want be sure all copied on this email have the correct information.

I look forward to reviewing your client's explanation of why this should be considered a monument. Thanks

Lee C. Batchelder AICP | Zoning Administrator City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401

T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

-----Original Message-----

From: John A. Massalon [mailto:jmassalon@wmalawfirm.net]

Sent: Friday, September 28, 2018 8:25 AM

To: O'Connell, Dexter <oconnelld@charleston-sc.gov>

Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; Batchelder, Lee <BATCHELDERL@charleston-sc.gov>; Granata, Ken <granatak@charleston-sc.gov>

Subject: Re: Abdo /29 Broughton

Thank you. I'll wait to hear from Mr Granata

I'll also send monument info

John

Sent from my iPhone

> On Sep 28, 2018, at 7:46 AM, O'Connell, Dexter <oconnelld@charleston-sc.gov> wrote:

>

> John,

>

> I am not familiar with the details of what inspections would want, but I've copied Deputy Building Official Ken Granata on this, and I'm sure he can explain what they would need.

>

> Additionally, please don't forget that Lee has requested the details of what the Monument is to or for.

>

> Thanks,

> Dexter

>

> Dexter N. O'Connell, Associate Planner-Zoning City of Charleston

> Planning, Preservation, and Sustainability

> 2 George Street Charleston, SC 29401

> T:(843) 724-3779 | E: oconnelld@charleston-sc.gov

>

> -----Original Message-----

> From: John A. Massalon [mailto:jmassalon@wmalawfirm.net]

> Sent: Thursday, September 27, 2018 3:32 PM

> To: O'Connell, Dexter <oconnelld@charleston-sc.gov>

> Cc: Borden, Janie <BORDENJ@charleston-sc.gov>

> Subject: RE: Abdo /29 Broughton

>

> Dexter:

>

> After I left the permit office Mr. Abdo stopped by to pick up the permit. The gentlemen in building inspections (I did not make a note of his name) told Mr. Abdo that he wanted an engineer to look at the base. I am trying to determine the info that is needed so that we can be responsive to the question. Can you tell me what information is needed about the base or direct me to the person who can? Thank you.

>

> John

>

> John A. Massalon, Esq

> Wills Massalon & Allen, LLC

> P.O. Box 859

> 97 Broad Street

> Charleston, SC 29401

> jmassalon@wmalawfirm.net

> 843-793-6039 (Direct)

> 843-727-1144 (Front Desk)

> 843-727-7696 (Fax)

>

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>

>

>

> -----Original Message-----

> From: Borden, Janie <BORDENJ@charleston-sc.gov>

> Sent: Friday, September 07, 2018 2:00 PM

> To: John A. Massalon <jmassalon@wmalawfirm.net>

> Cc: O'Connell, Dexter <oconnelld@charleston-sc.gov>

> Subject: RE: Abdo /29 Broughton

>

> Okay, we will request the continuance, so no need for you to appear.

>

> Best Regards,

> Janie E. Borden | Assistant Corporation Counsel City of Charleston |

> Legal Department

> 50 Broad Street | Charleston, SC 29401

> T:(843) 724-3730 | F:(843) 724-3706 | bordenj@charleston-sc.gov |

> www.charleston-sc.gov

>

>
> -----Original Message-----
> From: John A. Massalon <jmassalon@wmalawfirm.net>
> Sent: Friday, September 7, 2018 1:58 PM
> To: Borden, Janie <BORDENJ@charleston-sc.gov>
> Subject: Abdo /29 Broughton
>
> Janie
>
> Update on this one. Building Inspections wants engineer to look at the base so no permit issued. I would prefer to have another continuance to try to solve this. Can u agree or should I plan to be at Court on Monday? Thanks for considering this request
>
> John
>
>
> Sent from my iPhone



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 – Submit this application, along with the required information and fee, 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: December 4, 2018

Property Address 29 Broughton Rd., Charleston, SC 29407 TMS # 421-14-00-024

Property Owner David W. Abdo & Ilonka Sonja Taylor Daytime Phone (843) 813-3466

Applicant John A. Massalon, Esq. Daytime Phone (843) 727-1144

Applicant's Mailing Address Wills Massalon & Allen LLC, 97 Broad Street, Charleston, SC 29401

E-mail Address jmassalon@wmalawfirm.net

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

Zoning of property SR-8

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 John A. Massalon Date 10/31/2018

For office use only
Date application received
Staffperson

10/31/18

Fee \$ 150.00

Time application received
Receipt #

2:00 PM
224623

BZA RECORD p. 006

R 094

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.

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



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

Page 1 of 2

City of Charleston

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

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary):

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):

See Attachment "A"

Signature of Applicant

Date 10/31/2018

For office use only

Date application received

10/31/18

Time application received

2pm

Staffperson

P.A.

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

BZA RECORD p. 008

R 096

ATTACHMENT "A"

Appellant, David Abdo, hereby appeals the decision of the Zoning Administrator for the City of Charleston, received October 17, 2018, denying Appellant's permit application to construct a flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina. This appeal is based upon the following grounds:

1. The City of Charleston Zoning Ordinance allows for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning within ten (10) business days of receipt of the decision.
2. Appellant applied to the City of Charleston to erect a flagpole monument on his property to honor the military service of his father, his wife's father, their brother in law, and all who served in the armed forces. See Exhibit A (Application).
3. The Zoning Administrator for the City of Charleston denied Appellant's application on the grounds that the flagpole could not be considered a monument based on his interpretation that the height exception contained in Sec. 54-505 of the City of Charleston Zoning Ordinance applies only to "a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event." See Exhibit B (E-mail denying application).
4. Sec. 54-505 (a) provides without qualification that "the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone."

5. Sec. 54-505(a) does not further define “monument”, differentiate between monuments located on private property, include any requirement that the monument be located on public or private property, or limit a monument designation depending upon to whom or about what the monument commemorates.
6. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm v. Town of Sullivan’s Island Board of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018), citing *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* Citing, *Helicopter Sols*, at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).
7. A “zoning ordinance [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’ ” *Vulcan Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App 2000) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 337 S.C. 157, 177, 522 S.E.2d 153, 164 (Ct. App. 1999), rev’d, 344 S.C. 43, 543 S.E.2d 538 (2001)). “As with statutes, the lawmakers’ intent embodied in an ordinance ‘must prevail if it can be reasonably discovered in the language used.’ ” *Id.* at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

8. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 666 S.E. 2d 892 (2008) (quoting *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Id.* 379 S.C. at 570-71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994)).
9. The Zoning Administrator's interpretation of 54-505(a) is not necessary or justified. The plain language of the ordinance clearly and unambiguously excuses memorials from the height requirements without qualification. The common definition of a "monument" as it appears in the on-line version of the Merriam Webster dictionary includes a "memorial stone or a building erected in remembrance of a person or event." <https://www.merriamwebster.com/dictionary/> . There is no requirement that the memorial be located on public property or that the person or event commemorated be famous or notable. The interpretation adopted by the City injects uncertainty and ambiguity into an otherwise clear ordinance.

For the reasons set forth above, Appellant respectfully requests that the Board of Zoning Appeals-Zoning reconsider his application, reverse the decision of the Zoning Administrator and grant a permit allowing Mr. Abdo to maintain the flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

EXHIBIT “A”

COPY



City of Charleston Building Inspections

Owners' Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Masselon Phone: 843-727-1144
 Company: Will's Masselon & Miller
 Address: 97 Broad St City: Charleston State: SC Zip: 29401
 Email: jmasselon@willmlawfirm.net

II. PROJECT INFORMATION (Please fill out all that applies)

Property Owner: David W. Abdo & Zlounka Sonja Taylor Phone: 843-813-3466
 Address of Work: 29 Broughton Rd Charleston, SC Unit: _____
 Subdivision or Project Name: Crescent Lot: 6 Block: K TMS #: 421-14-00-024
 Flood Zone: _____ FIRM Panel #: _____ Zoning: _____
 Is this property in BAR or DRB jurisdiction: ☐ Yes ☒ No Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION (Please fill out all that applies)

Scope of Work: Install flag monument

Current Use of building, if applicable: W/H Propose Use: Monument

NON-RESIDENTIAL USES:		RESIDENTIAL USES:	
A - PLACES OF ASSEMBLY	F - FABRICATION	R1 - HOTELS AND MOTELS	RA - RESIDENTIAL CARE/ASSISTED LIVING
B - BUSINESS	H - HAZARDOUS	R2 - APARTMENTS, CONDOS, DORMS	U - GARAGES
E - EDUCATION	I - INDUSTRIAL	R3 - ONE AND TWO FAMILY OR TOWNHOMES	MANUFACTURED HOMES
M - MERCANTILE	S - STORAGE		
U - UTILITY			

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement
☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: W/H Right of Way Bond Required: Yes ☐ No ☒

Total cost of improvement (\$): Approx \$10,000 Square Footage of Addition or New Building: W/H

Check all approvals granted: ☐ BAR ☐ DRB ☐ BZA-Z ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS - FOR PROPERTY OWNERS ACTING AS CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

City of Charleston - Permit Center - 2 George Street, Charleston, SC 29401 - 843.577.5550

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

VI. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission

State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VII. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.

If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

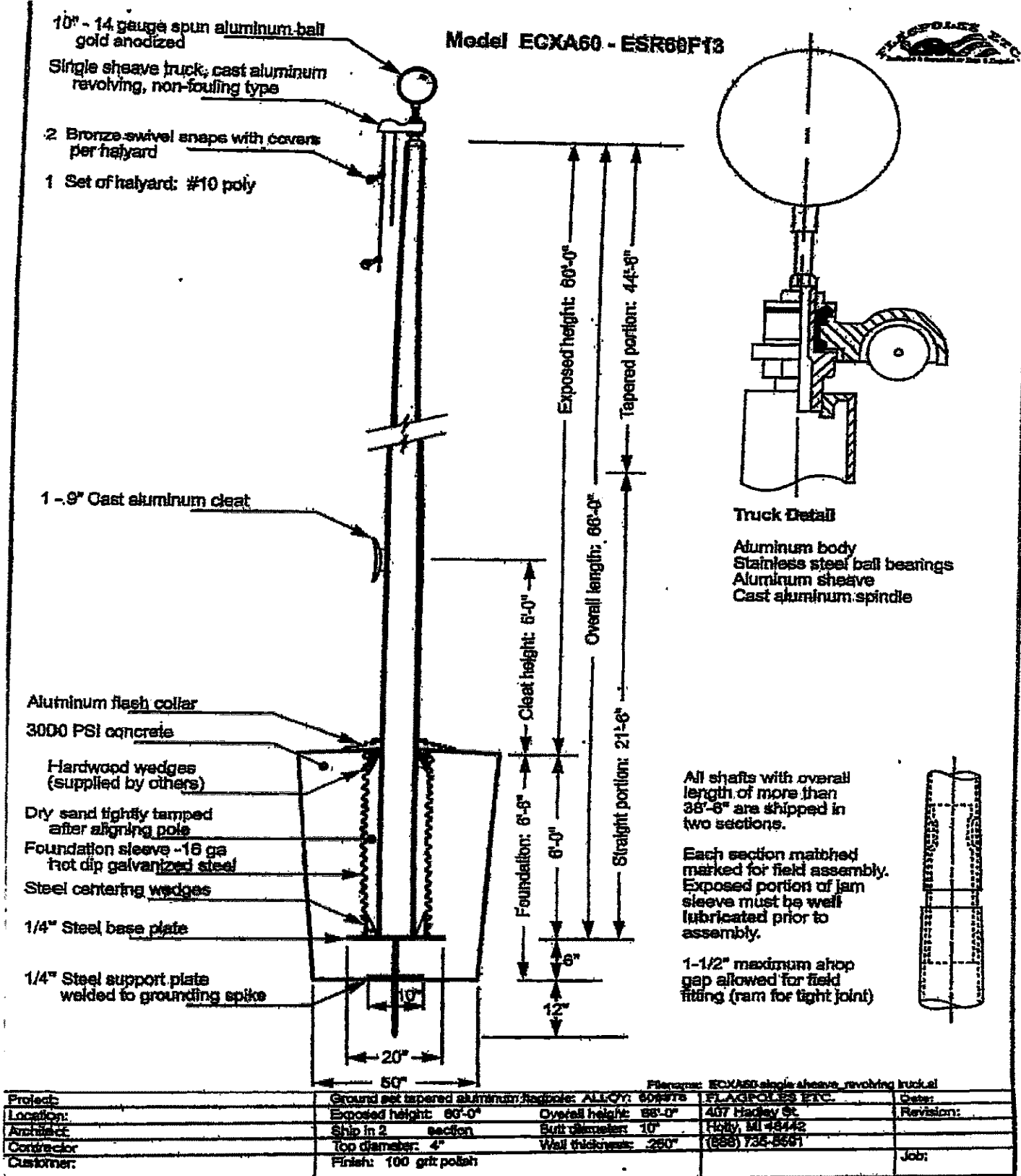
Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for calling to schedule all required inspections.

Signature: [Signature] Date: 2/6/18

2/6/18





City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABNESS, P.E.
Director

Department of Public Service

The following is provided as require by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

Date

9/6/18

Signature of Owner

Date

9/6/18

Signature of Owner

Date

City of Charleston • Department of Public Service • 75 Calhoun Street, 3rd Floor, Charleston, SC

BZA RECORD p. 017

RECEIVED 9.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abd.o
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Donka Sonya Taylor
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____
Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-08-024

Nature of Work: Flag monument.

Brenda Casey
Witness

Car Rul
Witness

Dr. [Signature]
Signature of Owner (s)

9/6/18
9/6/18
Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18
Date

Car Rul
Signature of Notary

2/3/2026
Exp Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

BZA RECORD p. 018

EXHIBIT “B”

731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Penny" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-50S for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

-----Original Message-----

From: John A. Massalon [<mailto:jmassalon@wmalawfirm.net>]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

Ashby, Pennye

Non-support

From: russell <Irschaible@mindspring.com>
Sent: Wednesday, November 28, 2018 10:35 AM
To: Ashby, Pennye
Cc: Laura; O'Connell, Dexter
Subject: Dec. 4 Zoning Hearing - 29 Broughton Road, Abdo Flagpole Appeal

Hi Pennye - We live next door to 29 Broughton and the flagpole that the owners of that property are trying to classify as a monument. We won't be attending the meeting, but would like to voice the following concerns:

We have issues with this appeal and feel it's just another attempt to circumvent the rules. Originally the 60' flagpole that exceeds SR-8's 35' height restriction was erected without a building permit - curious since the owners of 29 Broughton are in the real estate business. A Stop Work Order was immediately issued, but the flagpole was completed, improved, and put into daily use the past 7 months. We don't know the details of a SWO, but these actions seem to violate the principle, and again show a disregard for the rules. Now they're trying to use the height exception for monuments as a loophole, well for what it's worth, we simply do not agree and do not approve.

Concerning the flagpole itself, this exceptionally tall commercial flagpole does not fit the character of our residential neighborhood. Besides it's excessive height and negative visual impact, the extra large flag flapping in the breeze and halyard banging against the metal pole are audible problems as well. On some days the halyard and pole sounds like someone constantly ringing a bell - we can actually hear it in our house with the windows and doors closed! This is simply out of place and very inconsiderate to our neighborhood.

Thank you for your consideration, please let us know if you have any questions.

Regards,
Laura and Russell Schaible
31 Broughton Rd
(843)556-3796

MEMBERS PRESENT: LEONARDO KRAWCHECK, MICHAEL ROBINSON, MARGARET SMITH,
WALTER JAUDON, ALLISON GRASS, JOHN LESTER
STAFF PRESENT: LEE BATCHELOER, PENNYE ASHBY, VANESSA ELLINGTON

AGENDA

BOARD OF ZONING APPEALS-ZONING

DECEMBER 4, 2018 5:46-19 P.M. 2 GEORGE STREET
8:38 P.M.

A. Deferred application from previously advertised BZA-Z agendas. For information call 724-3781.

1. 27 SHEPPARD ST. (EASTSIDE) (459-05-03-030) APP. NO. 1812-04-A1

Request special exception under Sec. 54-110 to allow a 2-story addition (baths/ bedrooms/closets/covered porch that extends a non-conforming 0-ft. east side setback and a non-conforming 6-ft. west side setback (3-ft. and 7-ft. required). Request variance from Sec. 54-301 to allow a 2-story addition having a 64% lot occupancy (50% limitation; existing lot occupancy is 38%).
Zoned DR-2F.

Owner-Sweetgum, LLC/Applicant-Gene Morrison

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: M.Robinson SECOND: A.Grass VOTE: FOR 6 AGAINST 0

B. New Applications:

1. 29 BROUGHTON RD. (THE CRESCENT) APP. NO. 1812-04-B1
(421-14-00-024)

Request reconsideration of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance (Height of structures are limited to 35-ft).
Zoned SR-8.

Owners-David W. Abdo & Ilonka Sonja Taylor/Applicant-John A. Massalon, Esq.

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: M.Robinson SECOND: W.Jaudon VOTE: FOR 6 AGAINST 0

*M.Robinson leaves

2. MOUNT PLEASANT ST. (VACANT LDT) APP. NO. 1812-04-B2
(484-14-00-108)

Request one-year extension of a vested right that expires on December 31, 2018, pursuant to Sec. 54-962. Vested right pertains to a variance granted under Sec. 54-317 to allow construction of a 2-story office building with 5,500sf of office space and 500sf of inside restaurant patron use area with 4 off-street parking spaces with conditions on March 17, 2015, in a GB (General Business) zone district.
Zoned UP.

Owner-O Mt. Pleasant, LLC/Applicant-Collin Colbert

BOARD OF ZONING APPEALS-ZONING/DECEMBER 4, 2018
PAGE 2

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval – one-year extension through 12/31/19.

MADE BY: W.Jaudon SECOND: M.Smith VOTE: FOR 5 AGAINST 0

3. 270 KING ST. (457-08-01-125,126 AND 127) APP. NO. 1812-04-B3

Request one-year extension of a vested right that expires on December 31, 2018, pursuant to Sec. 54-952. Vested right pertains to a special exception granted under Sec. 54-511 on March 4, 2008 to allow the establishment of 19 dwelling units (Condos) without off-street parking spaces (Ordinance requires 29 spaces).

Zoned GB.

Owner-American Tea Growers, LLC/Applicants-East-West Partners, Inc. & Womble Bond Dickson (US) LLP

APPROVED 0

WITHDRAWN 0

DISAPPROVED 0

DEFERRED XX

MOTION: Deferred.

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

4. 5 WARREN ST. (RADCLIFFEBOROUGH) APP. NO. 1812-04-B4
(460-16-02-030)

Request use variance under Sec. 54-203 to allow an office use with days of operation Monday-Sunday and hours of operation 8am-8pm. in a DR-1 (Diverse-Residential) zone district.

Request special exception under Sec. 54-110 to allow a vertical extension (bath/kitchen expansion) that extends a non-conforming building footprint that does not meet required rear end west side setback (3-ft. and 9-ft. required).

Zoned DR-1.

Owner-J. Frone, LLC/Applicant-Simons Young

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: J.Lester SECOND: A.Grass VOTE: FOR 5 AGAINST 0

5. 10 WESTEDGE ST. (WESTSIDE) (460-00-00-014) APP. NO. 1812-04-B5

Request special exception under Sec. 54-220 to allow a 137-unit accommodations use in a MU-2/WH (Mixed Use-2/Workforce Housing) zone district.

Owner-10 West Edge Owner, LLC/Applicant-WhyHotel, Inc.

BOARD OF ZONING APPEALS—ZONING/DECEMBER 4, 2018
PAGE 3

APPROVED 0

WITHDRAWN 0

DISAPPROVED 0

DEFERRED XX

MOTION: Deferred.

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

6. 31 CAROLINA ST. (WESTSIDE) (460-04-03-101) APP. NO. 1812-04-B6

Request special exception under Sec. 54-110 to allow a horizontal expansion (bed room expansion and vertical extension (master bedroom) that extends a non-conforming 19-ft. rear setback (25-ft. required).
Zoned DR-1F.

Owner-Chris DiMattia/Applicant- S. Arch. Studio

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: M.Smith SECOND: W.Jeudon VOTE: FOR 5 AGAINST 0

7. GRAND OAKS BLVD. (301-00-00-049 AND 691) APP. NO. 1812-04-B7

Request special exception under Sec. 54-206 to allow a mini-warehouse/self-storage facility in a GB (General Business) zone district.
Owner-Bee Resources, LP/Applicant-Seamon Whiteside & Associates

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: J.Lester SECOND: A.Grass VOTE: FOR 5 AGAINST 0

8. 57 ½ CAROLINA ST. (WESTSIDE) APP. NO. 1812-04-B8
(460-04-03-045)

Request use variance from Sec. 54-203 to allow limited commercial uses (office and retail) with days of operation Monday-Saturday and hours of operation 8am-8pm in a DR-2F (Diverse-residential) zone district.
Request special exception under Sec. 54-511 to allow 454sf of gross floor area without off-street parking spaces (2 spaces required).
Zoned DR-1F.

Owner-James Zeigler/Applicant-David Richards, Architect

BOARD OF ZONING APPEALS—ZONING/DECEMBER 4, 2018
PAGE 4

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: W.Jaudon SECOND: M.Smith VOTE: FOR 5 AGAINST 0

9. 134 CANNON ST. (CANNONBOROUGH/
ELLIOTBOROUGH) (450-11-04-155) APP. NO. 1812-04-B9

Request special exception under Sec. 54-511 to allow a 100 seat theater without
off-street parking spaces (18 spaces required).

Zoned LB.

Owner-258 King Street, LLC/Applicant-City of Charleston

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: A.Grass SECOND: M.Smith VOTE: FOR 5 AGAINST 0

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 [schumacherj@charleston-
sc.gov](mailto:schumacherj@charleston-sc.gov) three business days prior to the meeting.



Board of Zoning Appeals-Zoning

December 4, 2018

The Board consists of seven members who are appointed by City Council. The Board is authorized to do three things:

- Hear appeals from decisions of the zoning administrator
- Grant or deny applications for zoning variances
- Grant or deny applications for zoning special exceptions

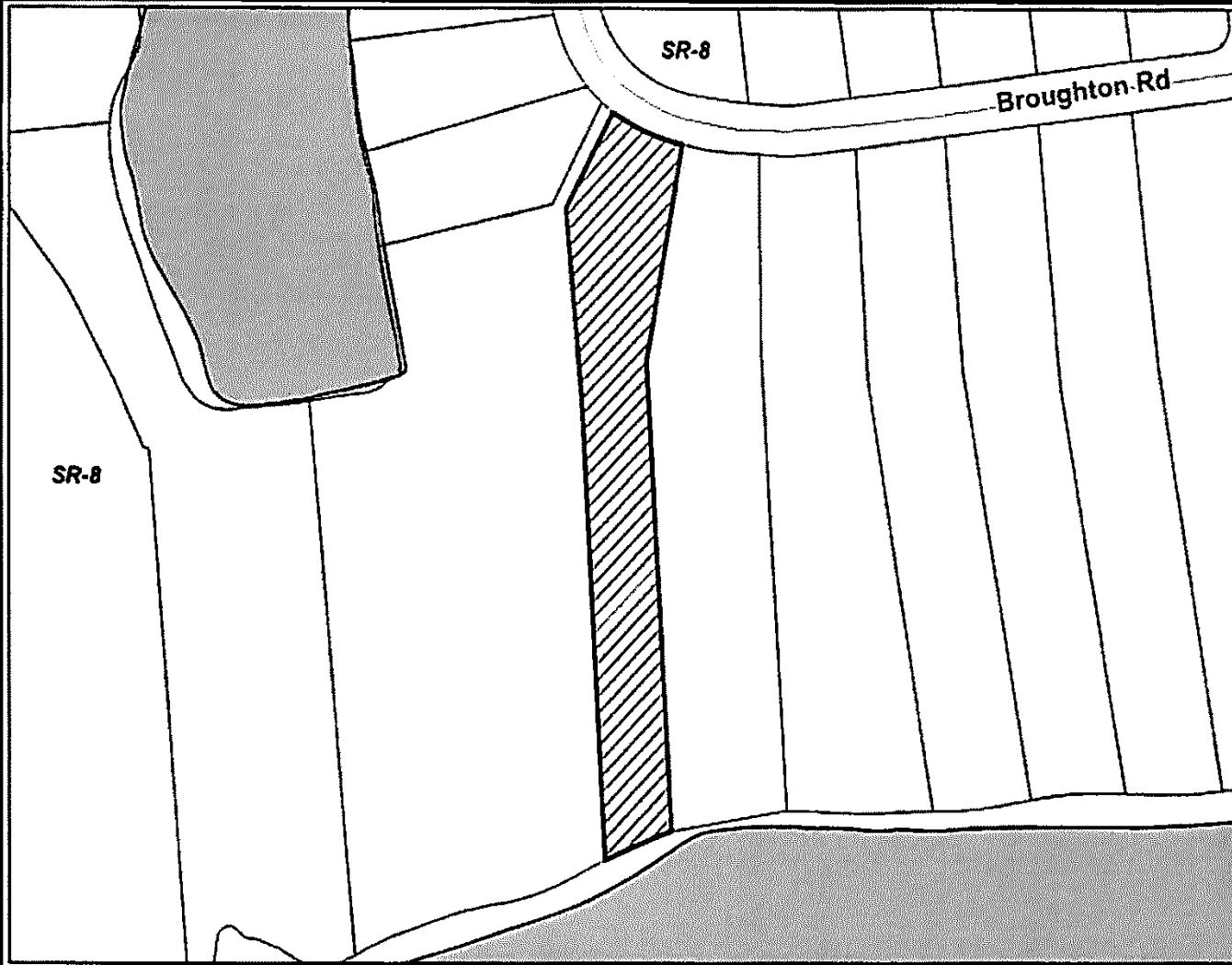
These proceedings are being recorded so please identify yourself and address your comments to the Board.

Please turn off your cell phones.

CITY OF CHARLESTON

DEPARTMENT OF PLANNING, PRESERVATION AND SUSTAINABILITY

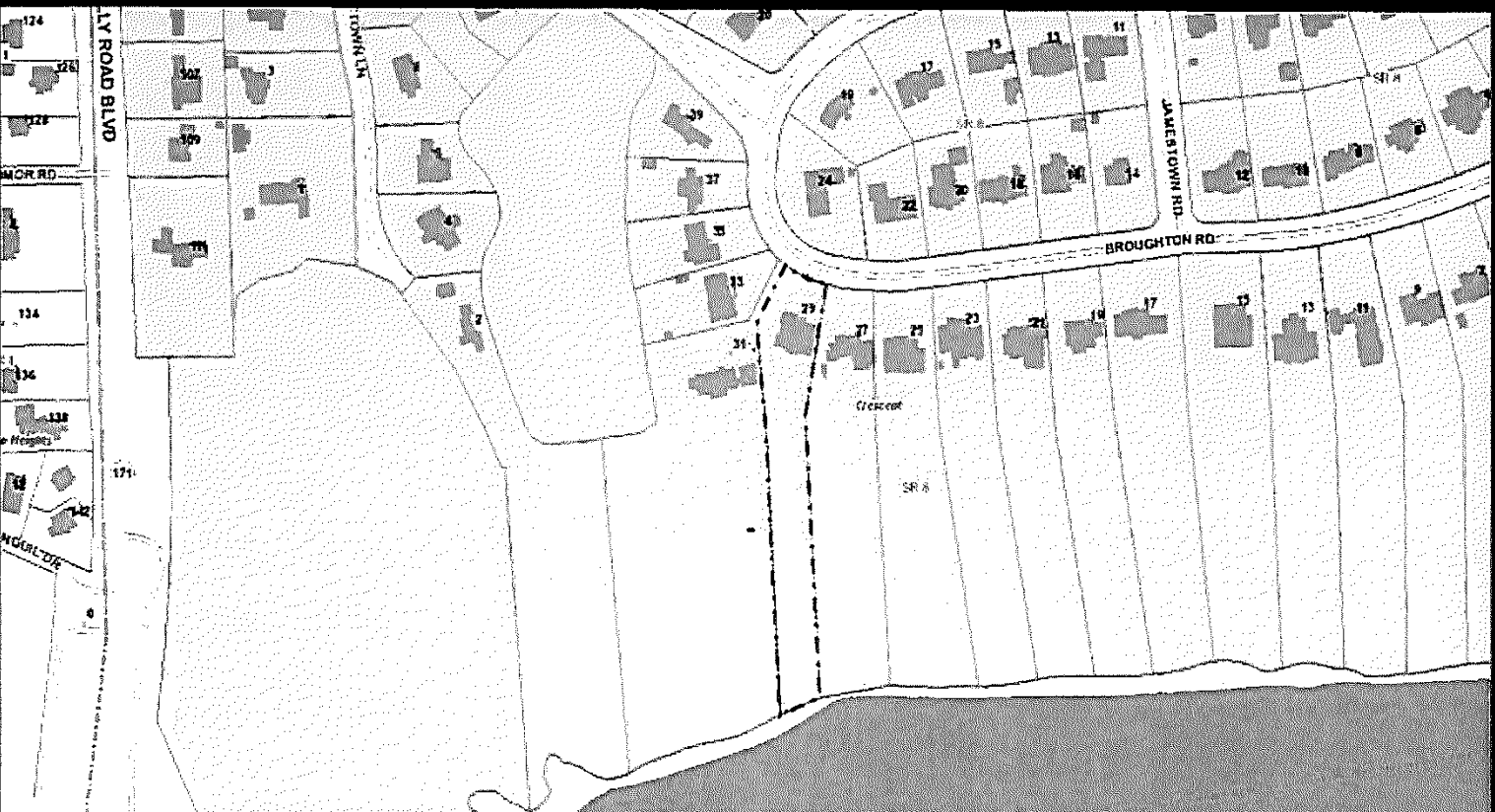
29 BROUGHTON ROAD



BZA RECORD p. 028



BZA RECORD p. 029



BZA RECORD P. 030

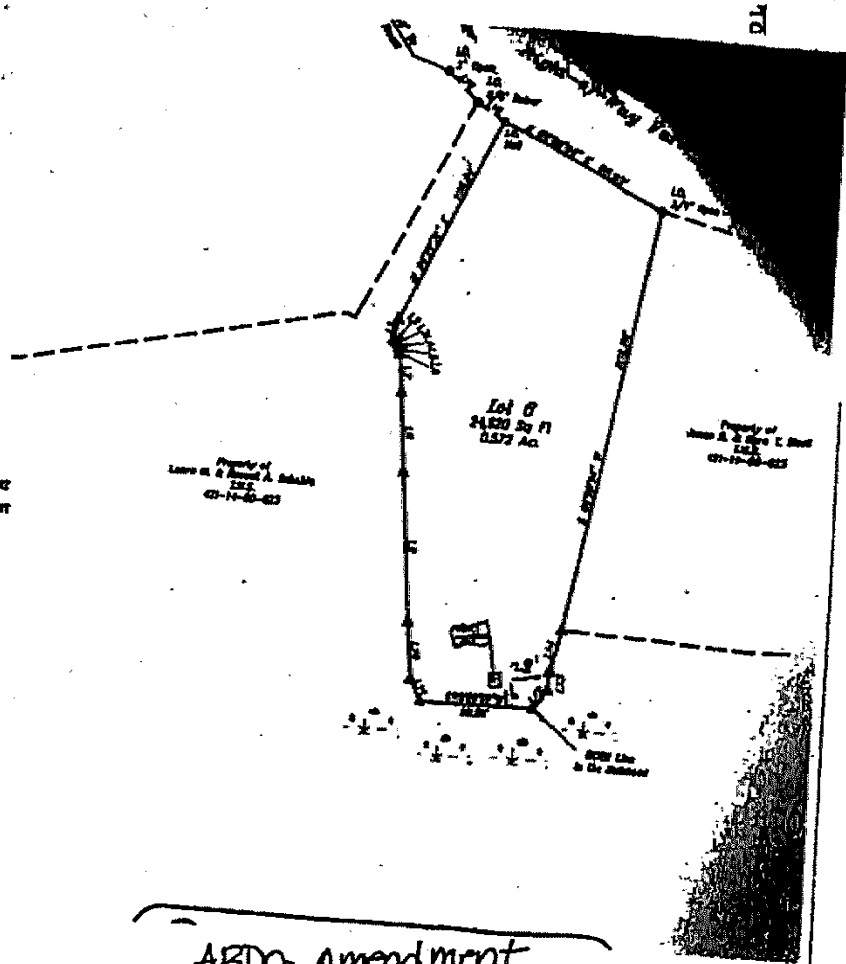
- 1) EXTENDING NORTH ALONG THE SOUTH BOUNDARY OF THIS PLAT TO THE CORNER OF THE ROAD.
- 2) AREA BOUNDARY TO BE REMOVED.
- 3) THE EXTENDING NORTH ALONG THE BOUNDARY AND AS SHOWN ARE SUBJECT TO THE ROAD.
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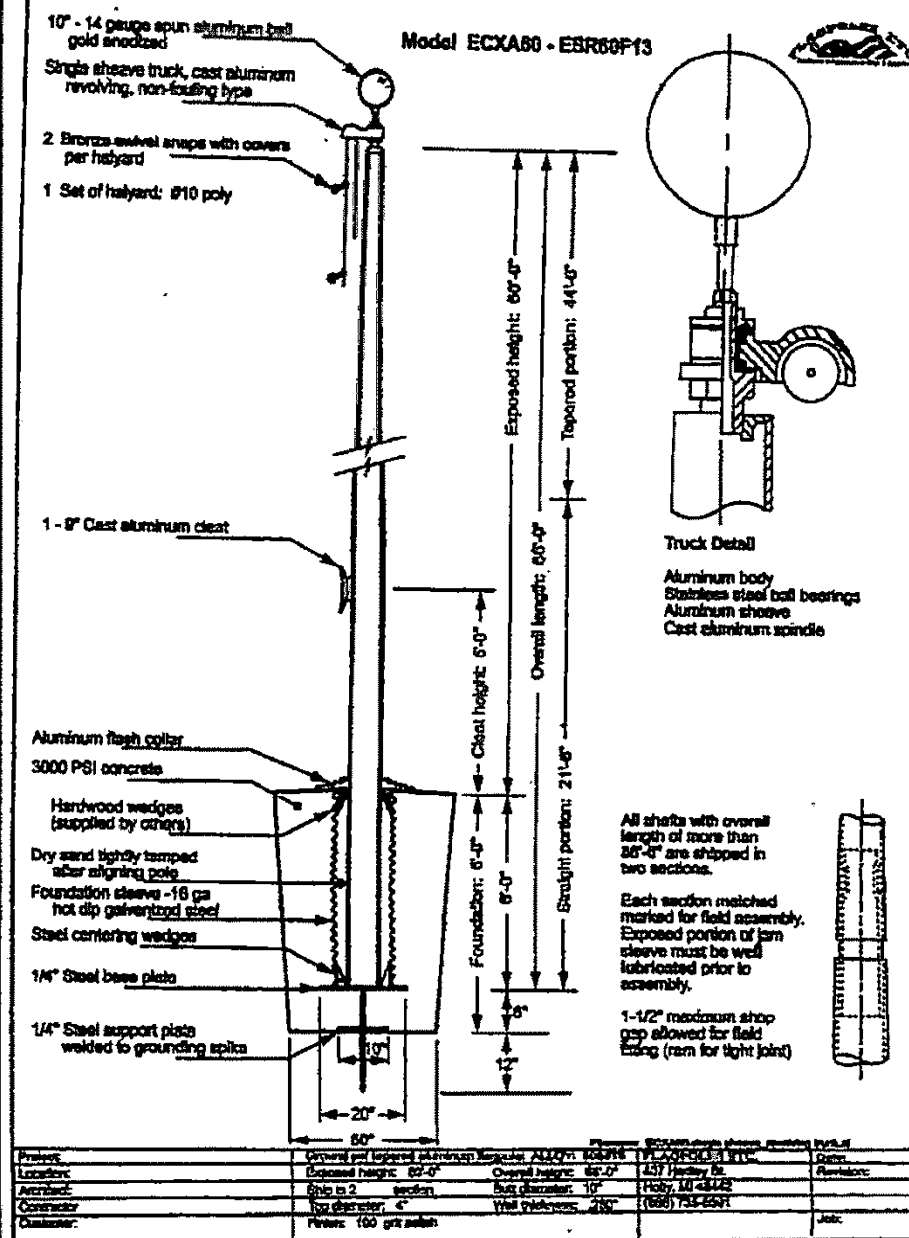
3/27/2011

THE EXTENDING NORTH ALONG THE BOUNDARY AND AS SHOWN ARE SUBJECT TO THE ROAD.

General, Professional Survey



ABDO Amendment
2004-07 12.1



ARTICLE 3 - SITE REGULATIONS

PART 1 - HEIGHT, AREA AND SETBACK REGULATIONS

Sec. 54-301. - Height, area and setback regulations.

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS 5/9/22

Zone District Designation	Max Height Limits ⁵ Structures
SR-8	35'2½ str.

S. See Article 5: Exceptions and Modifications, Part 2 Exceptions to Height and Setback Requirements.

Structure. Anything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land. The word "structure" shall include the word "building."

ARTICLE 5 - EXCEPTIONS AND MODIFICATIONS

PART 2 - EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. - Exceptions to height requirements.

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.



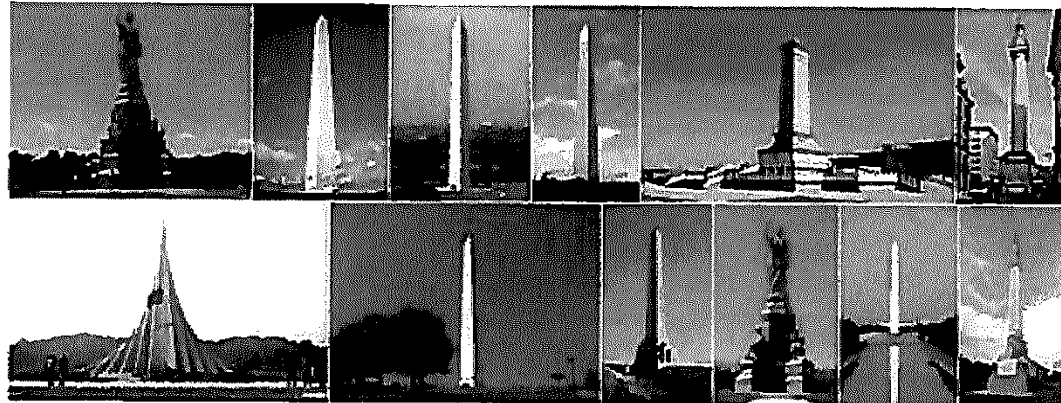
what is a monument



<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

Images of what is a monument

[bing.com/images](https://www.bing.com/images)



See more images of what is a monument

<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

mon·u·ment

[ˈmɒnyəmənt] 

NOUN

a statue, building, or other structure erected to commemorate a famous or notable person or event.

synonyms memorial · statue · pillar · column · obelisk · cross · cairn · dolmen · cromlech · monolith
megalith · henge · stone circle · cenotaph · tomb · mausoleum · shrine · [more]

- **a statue or other structure placed by or over a grave in memory of the dead.**

synonyms gravestone · headstone · tombstone

- **a building, structure, or site that is of historical importance or interest.**

"the amphitheater is one of the many Greek monuments in Sicily"

synonyms monument · distinctive/prominent feature · sight · spectacle

- **an outstanding, enduring, and memorable example of something.**

"recordings that are a monument to the art of playing the piano"

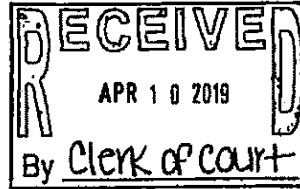
synonyms testament · record · reminder · remembrance · memorial · commemoration · witness
token · example · exemplar · model · archetype · pattern · nonpareil · paragon

27 Race St
Charleston, South Carolina
Google Inc.
Street View Jun 2017



BZA RECORD p. 037

2019-04-10-1434



AUDIO RECORDING TRANSCRIPTION
CHARLESTON CITY BOARD OF ZONING APPEALS
29 BROUGHTON ROAD
DECEMBER 4, 2018

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
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WWW.CLARK-ASSOCIATES.COM

1 A P P E A R A N C E S

2 BZA MEMBERS:

3 Leonard Krawcheck

Walter Jaudon

4 Allison Grass

John Lester

5 Margaret Smith

Michael Robinson

6

7

8 PLANNING STAFF:

9 Lee Batchelder

Pennye Ashby

10 Vanessa Ellington

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1 City of Charleston BZA Meeting

2 December 4, 2018

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4 CHAIRMAN: We welcome you to this
5 December 4, 2018, meeting of the City of
6 Charleston Board of Zoning Appeals. Present
7 Mr. Lester, Miss Grass, Mr. Jaudon, Miss Smith,
8 Mr. Robinson, and Mr. Krawcheck. From my right,
9 the staff, Miss Ellington, Miss Ashby, and
10 Mr. Batchelder.

11 These proceedings are being recorded.
12 We ask you, please, to identify yourself as you
13 speak.

14 * * * * *

15 CHAIRMAN: I have B1 is 29 Broughton
16 Road. It's for reconsideration of the zoning
17 administrator's decision that a 60-foot tall
18 flagpole cannot be considered a monument under
19 the terms of the City of Charleston's zoning
20 ordinance. Height of structures are limited to
21 35 feet, zoned SR-8.

22 Mr. Batchelder.

23 MR. BATCHELDER: 29 Broughton is a
24 residential property in The Crescent, West
25 Ashley. The appeal concerns a flagpole and

1 whether the height of that flagpole should be
2 allowed by the zoning ordinance.

3 This is a flagpole that was constructed
4 by the owner of the property without obtaining a
5 permit from the City. I'm not aware that any
6 contact with the City took place about whether a
7 permit would be required or whether zoning
8 regulations would apply to the placement of the
9 flagpole on the property, but it was installed.

10 The neighbor -- (Inaudible.) Owner of
11 the property, notified us in and -- and so we
12 placed a -- City placed a stop work order on
13 the -- on the project, and eventually the
14 applicant came forward to seek remedy to the
15 issue and try and obtain a permit from the City
16 for the construction of the flagpole.

17 During that, information came to us
18 about the actual height of the flagpole; and it
19 turns out that it's, I think, 60 feet tall, from
20 what I understand.

21 The zoning ordinance -- and I'll go
22 through this in more detail in a second, but the
23 zoning ordinance limits the height of
24 structures -- according to the language in the
25 ordinance, it limits the height of structures by

1 a zoning district; and in this particular zoning
2 district, the height limit is 35 feet, two-and-a-
3 half stories.

4 So I view a flagpole as a structure. By
5 definition a "structure" in the zoning ordinance
6 is defined as something that requires a fixed
7 placement on the ground, attached to the ground;
8 and a flagpole requires a foundation. It's
9 installed into the ground. So it becomes a
10 structure and is subject to the height
11 limitations.

12 I'll go on and go through some other
13 sections of the code as we progress, but let me
14 just show you the conditions surrounding the
15 property.

16 So that the lot is on Broughton. It's
17 along the Wappoo Cut. Most of the lot is marsh,
18 and I believe the flagpole was installed
19 somewhere in the backyard near the marsh.

20 The zoning map shows that The Crescent
21 shown here in this yellow color is zoned SR-8,
22 single-family residential. This is a site plan
23 that was submitted with the application, and I
24 believe the flagpole is somewhere right back here
25 in the back of the lot.

1 This is just information about the
2 foundation and the flagpole itself, and I don't
3 think any -- there's any dispute about what --
4 about how the zoning regulations apply to
5 structures and that this is a structure and that
6 the zoning regulations say 35 feet, and that's
7 the information that's contained here in this
8 slide; and I'm going to pass this out just so
9 everybody's got it in front of them.

10 What I'm passing out is the
11 information -- or these are copies of pages from
12 the zoning ordinance that -- that reflects the
13 information -- (Inaudible.)

14 (Inaudible.)

15 And so first page is Table 3.1. Height
16 area setback regulations SR-8 is listed on the
17 left-hand side. If you follow that across to the
18 highlighted height limitation under max height
19 limits/structures, you see 35 feet, two-and-a-
20 half stories. That's what's listed in this Power
21 Point slide, that information.

22 Now, there's a reference under max
23 height limits/structures to Footnote 5. And
24 Footnote 5, the end of the table on the next
25 page, says, see Article 5, exceptions,

1 modifications, Part 2, exceptions to height and
2 setback requirements.

3 So the table has height limits, but
4 there are exceptions in a different section of
5 the code to those height limits.

6 Moving on to the third page, you see the
7 section concerning exceptions to height and
8 setback requirements, Section 54-5-05, Subsection
9 A. The height limitations of this chapter shall
10 not apply to monuments. There are other
11 architectural features, building features, and
12 types of structures that are listed there; but
13 I've highlighted the relevant wording. So height
14 limitations in this chapter shall not apply to
15 monuments.

16 Now, the applicant, in making their
17 application, states that -- that the flagpole was
18 installed to honor the military service of the
19 owner's father, his wife's father, brother-in-
20 law, and all that served in the Armed Forces --
21 in the Armed Forces.

22 And that's, certainly, a commendable
23 type of monument; and so certainly no issue with
24 that. The issue that I have is the application
25 of the term "monument" in the zoning ordinance to

1 this type of situation.

2 So -- and I think we have to look at
3 the -- and consider what the intent of City
4 Council was when they passed the zoning ordinance
5 with this exception.

6 And, to me, a monument is something
7 that's more significant. And so just looking at
8 it and thinking how that might be defined, I
9 looked at the internet; and I did a bane search.
10 "What is a monument?" And that's the next page
11 in your handout here.

12 And you see the citations. You see
13 images of a monument. Certainly they, you know,
14 all have images in our mind that probably would
15 match or come close to the types of monuments
16 shown here in these photographs. Something
17 really significant in a public place.

18 And then the definition appears under
19 the citation is the statue, building, or other
20 structure erected to commemorate a famous or
21 notable person or event.

22 And I think that language is the intent
23 of what is meant by "monument." That it should
24 be statue, building, or other structure erected
25 to commemorate a famous or notable person or

1 event.

2 And applying it broadly to a flagpole on
3 your own personal property seems, to me, to be
4 too broad an interpretation, not what was meant
5 by the zoning ordinance because if that's the
6 case, then what would stop somebody from claiming
7 their home would -- was a monument to somebody,
8 something, something like that in building a home
9 that was larger or taller than 35 feet, two-and-
10 a-half stories.

11 And, certainly, in that neighborhood we
12 have homes that are approaching that size and
13 will continue to approach that size as new homes
14 are built to replace older, smaller homes.

15 So, to me, I think that the terminology
16 and the intent of the word "monument" in the
17 zoning ordinance is intended to apply to this
18 definition, what this definition says. And,
19 certainly, there are flagpoles that can be
20 shorter than 60 feet and still accomplish the
21 goal of having a flagpole on your property to
22 commemorate something.

23 And here's an example of one in the
24 City. It was installed a few years ago. This
25 happens to be a flagpole on the Greek Orthodox

1 Church property on Race Street, and I don't know
2 exactly how tall that flagpole is; but the house
3 shown in this image, the white house next door,
4 is a two-and-a-half story structure. So I think
5 it's safe to say that that flagpole was somewhere
6 around 25 feet tall. Perhaps it's 30 feet tall.
7 And that's certainly a very attractive flagpole,
8 serves that property well.

9 So just as an example of something that
10 could be done within the height limit and,
11 certainly, be a reasonable structure for a
12 flagpole.

13 So that explains my position and why I
14 denied the permit request to approve this 60-foot
15 flagpole on this property.

16 CHAIRMAN: Okay. Mr. Batchelder, your
17 decision is being appealed?

18 MR. BATCHELDER: That decision is being
19 appealed, that's correct; and I'll just hand out
20 one piece of information that we did receive.

21 This is an email that we received from a
22 neighbor on the property. And it's words --
23 (Inaudible.)

24 CHAIRMAN: Okay. Mr. Massalon, you
25 represent the appellant?

1 MR. MASSALON: I do. Thank you,
2 Mr. Krawcheck.

3 I'm John Massalon. I'm here with Dave
4 Abdo. He is the owner of the property, and I
5 agree with Mr. Batchelder that the issue that we
6 have here is what does the term "monument" mean
7 under the exceptions to the height requirement?

8 And I won't do much of this, but a
9 little bit of it. I think the standard that
10 applies here is, first, you look at the ordinance
11 or I ask you to look at the ordinance and decide
12 if we can understand what it means by reading it.
13 Because I think that construing any statute or
14 ordinance begins with a plain reading of it; and
15 if it's not ambiguous, I think basically what the
16 law says is that it means what it says.

17 If it's necessary to try to discern or
18 figure out what the intent is because it's
19 unclear in some way, then I think we get into
20 some of these other issues; but I think, as a
21 first step, we're just reading the words of the
22 ordinance and see what it says.

23 Now, what I think is notable here is one
24 of the exceptions to the height requirement is a
25 monument; but there's not a definition. The

1 ordinance is silent as to what a "monument" is.
2 I looked and was unable to find the definition in
3 the ordinance.

4 And Mr. Batchelder and I haven't talked
5 about it directly; but I assume he didn't find
6 one either, or he would have given you one in the
7 materials today.

8 So I think what we've got is an
9 ordinance that says monuments aren't subject to
10 the height requirement. We don't have any
11 further definition of it, and so I think we look
12 at what a monument is.

13 Mr. Batchelder submitted a definition
14 that he found on -- (Inaudible.) I submitted one
15 as well, and the definition I found --
16 (Inaudible.) Was basically a stone or a building
17 commemorating a notable person. (Inaudible.)

18 The other thing that I think that --
19 that is notable in the decision we got from the
20 zoning administrator, the decision was that this
21 wasn't a monument or isn't a monument because a
22 monument is in a public or semipublic place. So
23 Mr. Batchelder believes that it is partially
24 defined by a place and also by content. It -- it
25 must commemorate a famous person or event.

1 And, again, first of all, the statute,
2 the ordinance, does not say that. It says
3 monument, but it doesn't say where it could be or
4 has to be; and it doesn't say what kind of --
5 (Inaudible.)

6 So I submit to you that it means what it
7 says, and what Mr. Abdo has here is a flagpole
8 that he's constructing. His father, his wife's
9 father, his brother-in-law all served in the
10 military. His brother-in-law is a --
11 (Inaudible.) Vet and it's to commemorate them
12 and their service.

13 Now, a couple of things that I think are
14 worth noting in response to what we heard here,
15 first, if you disagree with me and you say,
16 "Well, we can't read this and figure out what a
17 monument is or is not." I think that if you look
18 at the rest of the items that are on this list,
19 it more clearly defines what the intent was
20 behind this. And, you know, I'll read it to you
21 just briefly.

22 It says, "This chapter shall not apply
23 to church spires, belfries, cupolas, or domes not
24 intended for human occupancy. And then it says
25 monuments, water towers, observation towers,

1 transmission towers, masts, and aerials.

2 So, again, if you don't think that the
3 meaning of a "monument" is clear, if you look at
4 everything else on the list, I tried to figure
5 out what they all have in common; and I think the
6 answer is none of them are intended or used for
7 occupation. Because it's an odd list like a
8 mast, I guess, is something on a boat. An
9 aerial, I guess, is a TV antenna or radio
10 antenna; and there are some non-occupied building
11 elements that are on this list.

12 But the only sense that I can take out
13 of that list is the intent here was the height
14 requirement doesn't apply if the structure or the
15 building that we're considering is not occupied
16 or intended for occupancy.

17 Clearly, what we have here is that. We
18 have a flagpole. Nobody's going to live in it,
19 obviously. Nobody's going to live on it, and it
20 fits squarely within these other items. As far
21 as I know, there is no other specific provision
22 that governs flagpoles and the height of
23 flagpoles.

24 And, finally, Mr. Batchelder said,
25 "Well, if we approve this, people are going to

1 start saying my house is a monument; and so I can
2 build my house as tall as I want to because it's
3 a monument" -- (Inaudible.) And I think that's a
4 clever idea, sort of a clever argument.

5 The problem, though, is if you read the
6 list, again, what I see in this list is exactly
7 the opposite. Something not intended or used for
8 occupancy. House is not a monument or any of
9 these other things because it's, obviously,
10 intended for people to live in and be used.

11 So I don't think the Board can open
12 Pandora's Box here and set off any parade of
13 horrible unintended consequences by letting
14 Mr. Abdo have his flagpole.

15 The final thing that I will mention to
16 you, kind of under the same heading or similar
17 heading, is if the Board reads this into the
18 ordinance, says even though it doesn't say that,
19 that's what it means, then, again, I think the
20 next question is: What do all these other words
21 mean that they don't say? And -- and I don't
22 know the answer to that. I don't think any of us
23 do.

24 So I think the Board's job,
25 respectfully, here is to read this issue. Read

1 the ordinance. It means what it says. What it
2 says is monuments are accepted. What my client
3 here has is a monument, and it's a little bit
4 exception. It's not -- (Inaudible.) Turn of
5 events. And that what the zoning administrator's
6 reading of this does, in my view, is inject
7 uncertainty into a statute that's pretty clear.

8 So for all those reasons, I'd ask the
9 Board to reverse the decision of the zoning
10 administrator and approve this application on the
11 ordinance.

12 Thank you.

13 CHAIRMAN: Thank you.

14 Any questions for Mr. Massalon?

15 (No response.)

16 CHAIRMAN: Would anyone else like to be
17 heard in connection with this appeal?

18 (No response.)

19 CHAIRMAN: Any discussion?

20 BOARD MEMBER: Very thought provoking.
21 I've been on the Board, I guess, close to 30
22 years; and never ceases to amaze me how many new
23 things will pop up. And I guess it would be that
24 way in the night -- (Inaudible.) Chairman has
25 been here longer than me.

1 And have you heard any appeal like this
2 before?

3 CHAIRMAN: This is a first.

4 BOARD MEMBER: That's what I thought.
5 Only thing I can say is I've never thought of a
6 flagpole as a monument. In my mind, it doesn't
7 meet the definition of a monument. In my
8 personal mind. A monument is something other
9 than that.

10 CHAIRMAN: Yeah. I just respectfully
11 disagree with Mr. Massalon. I think
12 Mr. Massalon's client's problem is the fact that
13 the ordinance says the height limitations of this
14 chapter do not apply to church spires, belfries,
15 cupolas, and domes not intended or used for human
16 occupancy. Monuments, water towers, observation
17 towers, transmission towers, masts, and aerials
18 provided that you're not running an aircraft
19 landing zone.

20 The trouble with Mr. Massalon's
21 position, in my humble opinion, is it doesn't say
22 "flagpoles." If the exception said flagpoles, we
23 wouldn't be here because we wouldn't have a
24 height limitation; and I just don't believe that
25 a flagpole is a monument.

1 When I think of a monument, I think of
2 the Washington Monument; and I think they are
3 something in public that commemorates a public
4 type event. And I think that when Mr. Batchelder
5 puts those pictures up of those monuments, those,
6 I think, in my view, are all monuments. I just
7 don't think a flagpole is a monument. I think if
8 City Council intended that, that they would have
9 accepted flagpoles.

10 And I know a duck when I see it, and
11 I just don't think a flagpole is a monument. So
12 I agree with Mr. Batchelder's decision.

13 Any further discussion?

14 (No response.)

15 CHAIRMAN: Any motions?

16 MR. ROBERTSON: I move for upholding the
17 zoning administrator's decision.

18 CHAIRMAN: Mr. Robertson moves to uphold
19 the -- and incidentally, I meant to say this.

20 Mr. Abdo can build a flagpole 35 feet
21 tall in honor of his father and so forth, which
22 hopefully he will do.

23 Is there a second to Mr. Robertson's
24 motion?

25 MR. JAUDON: Second.

1 CHAIRMAN: Mr. Jaudon seconds the
2 motion.

3 Any further discussion?

4 (No response.)

5 CHAIRMAN: All in favor of the motion,
6 please say aye.

7 (Board members respond aye.)

8 CHAIRMAN: All opposed.

9 (No response.)

10 CHAIRMAN: The decision is unanimously
11 affirmed.

12 MR. MASSALON: Thank you.

13 CHAIRMAN: Any other particulars?

14 MR. MASSALON: No. Thank you very much.

15 (End of requested recording.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, Ronda K. Blanton, a Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the audio recording in the foregoing
8 transcript was recorded stenographically by me
9 and thereafter transcribed by computer-aided
10 transcription; that the foregoing is a full,
11 complete, and true record of the audio recording.
12 Due to the quality of the recorded media,
13 portions were unable to be transcribed. The
14 transcript may also include misinterpreted words.
15 The Court Reporter was not present at the time of
16 the recording; therefore, this transcript should
17 not be considered verbatim.

18 I further certify that I am neither related
19 to nor counsel for any party to the cause pending
20 or interested in the events thereof.

21 Witness my hand, I have hereunto affixed my
22 official seal on April 5, 2019, at Myrtle Beach,
23 Horry County, South Carolina.

24
25 Ronda K. Blanton
NCRA REGISTERED PROFESSIONAL
REPORTER, RPR
My Commission expires:
May 15, 2028.

R 146

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS^(a)

May 15, 1966:

Zone District Designation	Front and Rear ^{10/17} Setback Minimum Depths			Side Setbacks- Minimum Widths			Minimum Lot ¹³ Area per Family in square Feet-Type Dwelling Unit			Maximum ⁷ Percent of Lot Occupied by Buildings	Max Height Limits ⁶ Structures	Max. Height Limits ¹⁸ Fences/ Walls	Accessory Bldgs. in Residences Setback Required		Add'l Dwelling Distance from Front Lot Line
	Total	Front	Rear	Total	South	North	1-Fam.	2-Fam.	Multi-Fam.				From Street	From Side Street	
					West	East									
C ^{2d}	85'	50'	35'	30'	15'	15'	1½ acres	3 acres	NA	25%	35' 2½ str.	NA	35'		
RR-1 ^{2d}	75'	50'	25'	30'	15'	15'	12,500(3.5)	NA	NA	35%	35' 2½ str.	6'	60'	35'	Not Allowed
SR-1	50'	25'	25'	18'	9'	9'	9,000(4.8)	NA	NA	35%	35' 2½ str.	6'	60'	25'	Not Allowed
SR-2	50'	25'	25'	18'	9'	9'	6,000(7.3)	NA	NA	50%	35' 2½ str.	6'	60'	25'	Not Allowed
SR-3 ¹	3'	NR	3'	18'	12'	6'	6,000(7.3)	NA	NA	35%	50' 3 str.	6'	60'	12'	Not Allowed
SR-4 ¹	3'	NR	3'	15'	9'	3'	4,000(10.0)	NA	NA	35%	50' 3 str.	6'	60'	9'	Not Allowed
SR-5 ¹	3'	NR	3'	10'	7'	3'	2,500(17.4)	NA	NA	35%	50' 3 str.	6'	60'	7'	Not Allowed
SR-6	28'	18'	10'	10'	5'	5'	5,000(8.7)	NA	NA	50%	35' 2½ str.	6'	60'	5'	Not Allowed
SR-7	75'	50'	25'	30'	15'	15'	43,560(1)	NA	NA	35%	35' 2½ str.	6'	60'	35'	Not Allowed
SR-8	50'	see footnote 18	25' ¹⁹	24'	9'	9'	15,000	NA	NA	25%	35' 2½ str.	6'		see footnote 20	Not Allowed
STR ¹	50'	25'	25'	18'	12'	6'	6,000(7.3)	4,500(9.7)	NA	50%	35' 2½ str.	6'	60'	25'	100'
DR-6 ^{11/12}	20'	10'	10'	6'	3'	3'	—	—	—(6.0)	35%	50' 3 str.	6'	NA	NA	NA
DR-9 ^{11/12}	20'	10'	10'	6'	3'	3'	—	—	—(9.0)	50%	50' 3 str.	6'	NA	NA	NA
DR-12 ¹²	20'	10'	10'	6'	3'	3'	—	—	—(12.0)	50%	50' 3 str.	6'	NA	NA	NA

$\frac{1}{2} \times \frac{1}{3} = \frac{1}{6}$

§ 54-301

CHARLESTON ZONING ORDINANCE

§ 54-301

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS⁶⁰⁰

Abbreviations: N/A - Not Applicable, NR - Not required.

Numbers in () indicate number of units per acre.

Max. 12, 1996

Zone District Designation	Front and Rear ^{100, 112} Setback Minimum Depths			Side Setbacks Minimum Widths			Minimum Lot ¹¹² Area per Family in square Feet-Type Dwelling Unit			Maximum ² Percent of Lot Occupied by Buildings	Max Height Limits ¹⁰ Fences/ Structures	Max. Height Limits ¹⁰ Walls	Accessory Bldgs. to Residences Setback Required		Add'l Dwelling Distance from Front Lot Line
	Total	Front	Rear	Total	South/ West	North/ East	1-Fam.	2 Fam.	Multi-Fam.	Buildings	Structures	Walls	From Street	From Side Street	from Front Lot Line
LP ¹ Non- residential	NR	NR	NR	NR	NR	NR	NA	NA	NA	NA	55'	NA	NA	NA	NA
LP ^{100/112} Residential	3	NR	3	15'	9'	3	4,000	3,000	2,250	50%	55'	NA	70'	9'	80'
HP ¹ Non- residential	20'	NR	20'	Minimum 25' side yard required on side adjoining residences or residential districts			NA	NA	NA	NA	55'	NA	NA	NA	NA
HP ¹⁰⁰ Residential	3'	NR	3	15'	9'	3	4,000	3,000	2,250	35%	55'	NA	70'	9'	80'

FOOTNOTES to Table 3.1: Height, Area and Setback Regulations

1. Attached single-family dwellings permitted. Refer to Article 3, Part 11, for special provision of standards and regulations for one family attached dwellings, town or row houses where permitted.
2. See definitions in Section 54-120 for "Building" and "Lot Occupancy."
3. Under no conditions shall the minimum distance between residences not joined by a common wall be less than three (3) feet.
4. In any district, it shall be unlawful to construct a porch, piazza or balcony so that the same extends in whole or in part over a public street, lane, court, or other public right-of-way without specific permission from the city executive body and compliance with all applicable city ordinances.
5. See Article 5: Exceptions and Modifications, Part 2 Exceptions to Height and Setback Requirements.
6. *Reserved.*
7. *Reserved.*
8. No structure, including appurtenant parts thereto, shall, except for the conditions as specified in Article 5: Exceptions and Modifications, exceed a height equal to three (3) times the least dimension, as measured from the center of the right-of-way to the face of the building.

§ 54-301

SITE REGULATIONS

§ 54-301

PART 2

EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. Exceptions to height requirements.

In all areas covered by this Zoning Ordinance, except in those areas covered by the Old City Height Districts as described in 54-305, the following exceptions shall apply:

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.
- b. In any General Business, Gathering Place, Urban Commercial, Business Park, or Light Industrial district, the maximum height for a communication tower shall be determined by Section 54-207, c. In any Heavy Industrial district, the maximum height for a communication tower shall not exceed four hundred (400) feet provided the tower is located no closer to a residential or conservation zoned property than a distance equal to one-half ($\frac{1}{2}$) the height of the proposed tower and no closer to the centerline of a public right-of-way than a distance equal to one-third ($\frac{1}{3}$) the height of the proposed tower. In any Light Industrial or Heavy Industrial district, the maximum height of any other non-residential structure may be increased to eighty (80) feet provided the structure is set back from all property lines a minimum distance equal to the total height of the structure.
- c. In any Conservation, RR-1, SR-1, SR-2, SR-6, SR-7 and STR zoning district, the height of a dwelling may be increased to forty (40) feet, but not exceed $2\frac{1}{2}$ stories, provided that the width of each side yard required by Table 3.1 for the districts in which the building is located is increased a distance equal to at least two times the added height of the buildings above the thirty-five (35) foot limitation of the district. Properties in the Conservation, RR-1, SR-1, SR-2, SR-6, SR-7 and STR zoning districts located within a Flood Insurance Rate Map (FIRM) special flood hazard area shall be permitted to have dwellings with a maximum height, not to exceed forty-six (46) feet or $2\frac{1}{2}$ stories, whichever is less, based on the following formula: (FIRM base flood elevation + one foot of additional freeboard - lowest curb line elevation adjacent to the site + 35).
- d. In any General Office, Limited Business, General Business, Urban Commercial, Light Industrial or Heavy Industrial district, the height limitation for public buildings, churches, hospitals or schools may be increased to eighty (80) feet, but not exceed six (6) stories; provided that the width of each side yard and rear yard is at least twenty-five (25) feet. In addition, the Commercial Corridor Design Review Board is authorized to permit architectural features such as parapets,

For office use only

Property address

29 Broughton Road (The Crescent)

TMS #

421-14-00-024

Zoning

SR-S

Request reconsideration of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance (Height of structures are limited to 35-ft).

**Board of Zoning Appeals-Zoning
Order on Appeal**

The Board of Zoning Appeals Zoning held a public hearing on December 4, 2018 to consider the above appeal for reconsideration of a decision of the Board or the zoning administrator or appeal of its decision made by the appellant and affecting the property described above. After consideration of the appeal and the arguments presented, the Board makes the following determination:

The Board makes the following findings of fact and conclusions:

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 JK affirmed _____ reversed _____ modified as follows _____

12/4/18

Department of Planning, Preservation & Sustainability

2 George Street

Charleston, South Carolina 29401

(843) 724-3781 FAX (843) 724-3772



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

Page 1 of 2

City of Charleston

Instructions – Submit this application, along with the required information and fee, 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 Varlance 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 Varlance and/or Special Exception approval.

MEETING DATE REQUESTED: 2/19/19

Property Address 29 Broughton Rd., Charleston, SC 29407 TMS # 421-14-00-024

Property Owner David W. Abdo & Ilonka Sonja Taylor Daytime Phone (843) 813-3466

Applicant John A. Massalon, Esq. Daytime Phone (843) 727-1144

Applicant's Mailing Address Wills Massalon & Allen LLC, 97 Broad Street, Charleston, SC 29401

E-mail Address jmassalon@wmalawfirm.net

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

Zoning of property SR-8

Information required with application: (check information submitted)

- ☐ Scaled plans or plats, including elevations, showing the varlance(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 varlances 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 [Signature] Date 12/11/2018

For office use only			
Date application received	<u>12-11-18</u>	Fee \$ <u>150.00</u>	Time application received <u>1:05 pm</u>
Staffperson	<u>ABH</u>		Receipt # <u>224689</u>



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

City of Charleston

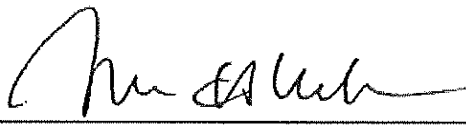
Page 1 of 2

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):

See Attachment "A"

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  Date 12/11/2018

For office use only

Date application received 12/11/18 Time application received 1:05 Staffperson PA

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

ATTACHMENT "A"

Appellant, David Abdo, hereby requests reconsideration of the decision of the Board of Zoning Appeals – Zoning which upheld the decision of the Zoning Administrator for the City of Charleston, dated October 17, 2018, denying Appellant's permit application to construct a flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina. This appeal is based upon the following grounds:

1. Appendix C, Rules and Regulations of the Board of Zoning Appeals – Zoning, Article III, Section 3 provides that "[a]n 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."
2. Appellant applied to the City of Charleston to erect a flagpole monument on his property to honor the military service of his father, his wife's father, their brother in law, and all who served in the armed forces. See Exhibit A (Application).
3. The Zoning Administrator for the City of Charleston denied Appellant's application on the grounds that the flagpole could not be considered a monument based on his interpretation that the height exception contained in Sec. 54-505 of the City of Charleston Zoning Ordinance applies only to "a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event." See Exhibit B (E-mail denying application).

4. Sec. 54-505 (a) provides without qualification that “the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone.”
5. Sec. 54-505(a) does not further define “monument”, differentiate between monuments located on public property or private property, include any requirement that the monument be located on public or private property, or limit a monument designation depending upon to whom or about what the monument commemorates.
6. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm v. Town of Sullivan's Island Board of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018), citing *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* Citing, *Helicopter Sols.* at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).
7. A “zoning ordinance [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’ ” *Vulcon Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App 2000) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 337

S.C. 157, 177, 522 S.E.2d 153, 164 (Ct. App. 1999), rev'd, 344 S.C. 43, 543 S.E.2d 538 (2001)). "As with statutes, the lawmakers' intent embodied in an ordinance 'must prevail if it can be reasonably discovered in the language used,' " Id. at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

8. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 666 S.E. 2d 892 (2008) (quoting *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." Id. 379 S.C. at 570-71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994)).
9. The Zoning Administrator's interpretation of 54-505(a) is not necessary or justified. The plain language of the ordinance clearly and unambiguously excuses memorials from the height requirements without qualification. The common definition of a "monument" as it appears in the on-line version of the Merriam Webster dictionary includes a "memorial stone or a building erected in remembrance of a person or event." <https://www.merriamwebster.com/dictionary/> . There is no requirement that the memorial be located on public property or that the person or event commemorated be famous or notable. The interpretation adopted by the City injects uncertainty and ambiguity into an otherwise clear ordinance.

10. At the hearing on December 4, 2018, the Board did not address the two grounds on which the Zoning Administrator denied the application. Instead, the Board considered photographs of the Washington Monument, the Statue of Liberty and a few monuments, not specifically identified, that the Zoning Administrator located during an internet search. While those surely meet the definition of a monument, the photographs submitted by the Zoning Administrator and relied upon by the Board do not amount to a comprehensive list of structures that are monuments. In addition to well-known monuments like the Washington Monument, other monuments that appear include natural rock formations, engraved stones, plaques and flags. Some examples of flag monuments located on the internet are attached as Exhibit C.
11. The definition of "monument" submitted by the Zoning Administrator includes not only the one cited in the decision denying the application but it also defines monument as "an outstanding, enduring and memorable example of something."
12. Finally, the Zoning Administrator submitted an email dated December 4, 2018 from one of the applicant's neighbors. As an initial matter, the email says among other things that the application is "just another attempt to circumvent the rules." The email is entirely irrelevant to the appeal before the Board. However, to avoid being unjustly placed in a negative light, the applicant would like to respond to a few points in that email. Prior to commencing construction the applicant contacted a representative of the City and was verbally advised that he did not need a building permit. Additionally, construction was completed by the time the applicant received the stop work order. Finally, the complaint about the noise is unfounded. The applicant lives closer to it than his neighbors and denies hearing any annoying sounds.

For the reasons set forth above, Appellant respectfully requests that the Board of Zoning Appeals-Zoning reconsider its decision to deny his appeal, reverse the decision of the Zoning Administrator and grant a permit allowing Mr. Abdo to maintain the flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

EXHIBIT “A”

COPY



City of Charleston Building Inspections

Owner's
Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Messela Phone: 843-727-1144
 Company: W.H.S. Messela & Allen
 Address: 97 Broad St City: Charleston State: SC Zip: 29401
 Email: jmessela@wma-lawfirm.net

II. PROJECT INFORMATION

Property Owner: David W. Abdo & Zlounka Soja Taylor Phone: 843-813-3466
 Address of Work: 29 Broughton Rd Charleston, SC Unit: _____
 Subdivision or Project Name: Crescent Lot: 6a Block: 15 TMS #: 421-14-00-024
 Flood Zone: _____ FIRM Panel #: _____ Zoning: _____
 Is this property in BAR or DRB jurisdiction: ☐ Yes ☒ No Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION

Scope of Work: Install flag monument

Current Use of building, if applicable: N/A Propose Use: Monument

NON-RESIDENTIAL USES:		RESIDENTIAL USES:	
A - PLACES OF ASSEMBLY	F - FABRICATION	M - MERCANTILE	R2 - HOTELS AND MOTELS
B - BUSINESS	H - HAZARDOUS	S - STORAGE	R2 - APARTMENTS, CONDOS, DORMS
E - EDUCATION	I - INDUSTRIAL	U - UTILITY	R3 - ONE AND TWO FAMILY OR TOWNHOMES
			RA - RESIDENTIAL CARE/ASSISTED LIVING
			U - GARAGES
			MANUFACTURED HOMES

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement
☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: N/A Right of Way Bond Required: Yes ☐ No ☒

Total cost of improvement (\$): Approx 19,600 Square Footage of Addition or New Building: N/A

Check all approvals granted: ☐ BAR ☐ DRB ☐ BZA-2 ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS FOR PROPERTY OWNERS AND CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

City of Charleston - Permit Center - 2 George Street, Charleston, SC 29401 - 843.577.5550

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

VI. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission

State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VII. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.

If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for calling to schedule all required inspections.

Signature [Signature] Date 2/6/18

R 160

- THE AREA SHOWN ON THIS PLAN IS A REPRESENTATION OF IMPROVED
FUTURE GROWTH OF THE ECONOMIC PROPERTY, CRITICAL AREAS, BY
CONCENTRATION OF THE ACTIVITIES AND SUBJECTS TO GROWTH OVER TIME. BY
CONCENTRATION OF THE FUTURE ACTIVITIES OF THE IMPROVED, THE
CONCENTRATION IS IN THE NORTH AND SOUTH TO AVOID FUTURE
CONCENTRATION OF ACTIVITY IN ANY CRITICAL AREA ON THE SUBJECT
PROPERTY, WHICH WOULD BECOME A FUTURE.

THE STATE OF NEW YORK, ss. I, the Clerk of the said Court, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears from the records of the said Court.

A. F. Morgan Johnson, a Registered Professional Land Surveyor in the State of South Carolina, hereby certifies that the above shown section and the survey thereon were made in accordance with the requirements of the Statute of this State for the Purpose of Land Surveying in South Carolina, and made in accordance with the requirements of the Statute of this State for the Purpose of Land Surveying in South Carolina.



DL

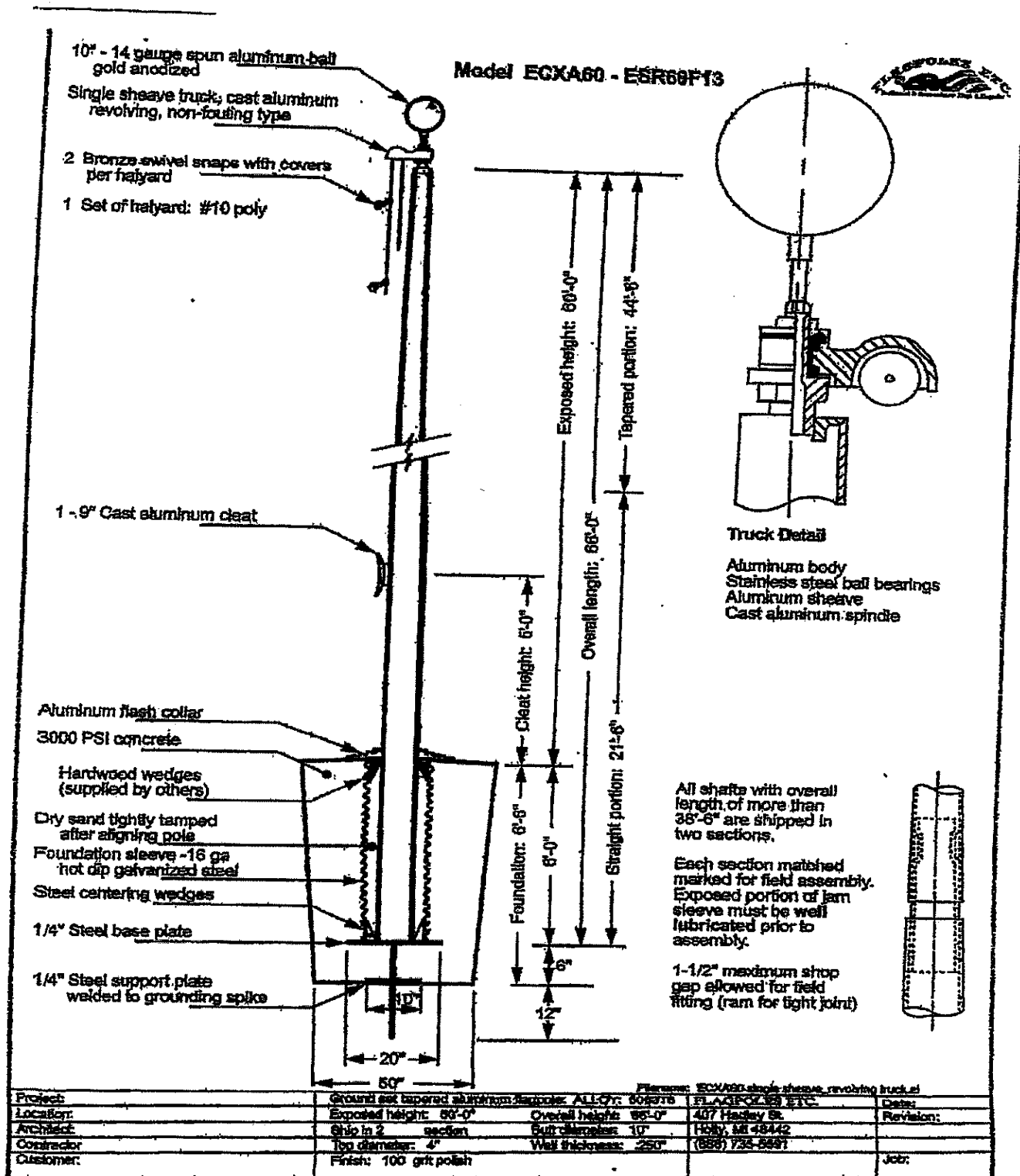
Lot 6
24,620 Sq Ft
0.572 Ac.

Property of
James R. & Clara T. Scott
TAL. 11
121-14-34-023

DITCH line is the Railroad

ABDO- Amendment

ハノカミルハニ 172.4





City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABINESS, P.E.
Director

Department of Public Service

The following is provided as require by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

Date

9/6/18

Signature of Owner

Date

9/6/18

Signature of Owner

Date

City of Charleston • Department of Public Service • 75 Calhoun Street, 3rd Floor, Charleston, SC

RECEIVED 7.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abdo
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Ibuka Sanja Taylor
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____
Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-00-024

Nature of Work: Flag monument.

Brenda Casery
Witness

A. R. H.
Witness

Dr. [Signature]
Signature of Owner (s)

9/6/18

9/6/18

Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18

Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

[Signature]
Signature of Notary

2/3/2026

Exp Date

101 Meeting Street, Suite 200 • Charleston, SC 29401
PO Box 726 • Charleston, SC 29402
V: 843.958.4800 • F: 843.958.4803
www.charlestoncounty.org

Elaine H. Bozman, ROD
Tia P. Shaw, Chief Deputy ROD



RECORDER'S RECEIPT

Received From:

WILLS & MASSALON & ALLEN LLC
PO BOX 859

CHARLESTON SC 29402

DATE:	07-Sep-18
INVOICE #:	X000393825
DRAWER:	Drawer 1
CLERK:	KLH
TIME:	11:47:11 AM

Description	# Total Pgs	# Bld'd Pgs	Ex / Tr Page Cost	# Refs	Chat	Pctg	Value In 000	Unit Price	Extra Ref Cost	County Fee	State Fee	Item Total
Owru/int/Bid	2	1						\$10.00		\$ -	\$ -	\$ 10.00
									\$ -	\$ -	\$ -	-
									\$ -	\$ -	\$ -	-
									\$ -	\$ -	\$ -	-
									\$ -	\$ -	\$ -	-
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									\$ -	\$ -	\$ -	-
									\$ -	\$ -	\$ -	-
TOTAL										\$ -	\$ -	\$ 10.00

Paid:

Check #	Amount
9978	\$ 10.00
Check Total	\$ 10.00
Cash Total	

Total Paid: \$ 10.00

Balance: \$ -

***Please note:**

The ROD Office retains any recording fee overages of \$5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!

EXHIBIT “B”

731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Penny" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

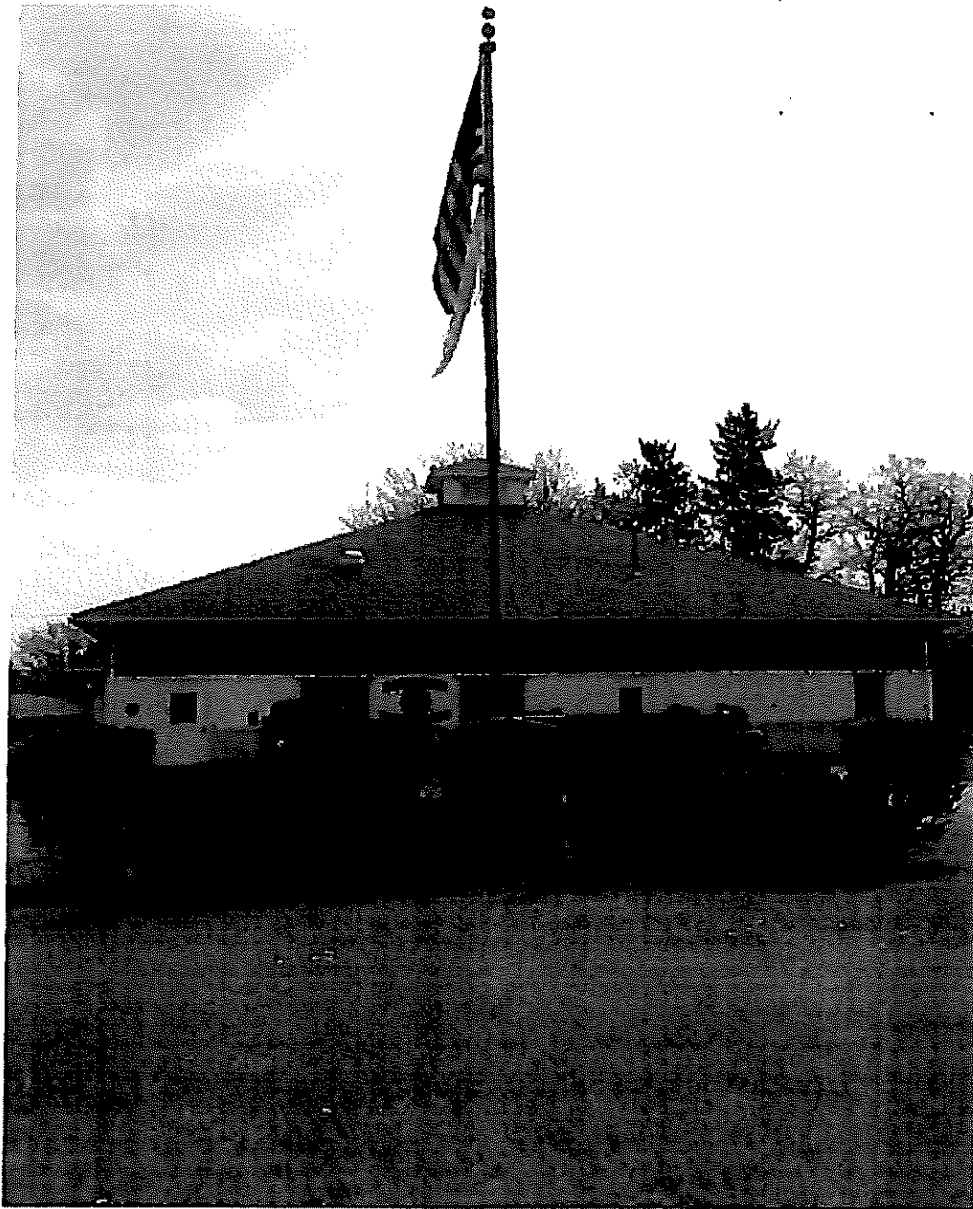
Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

—Original Message—

From: John A. Massalon [mailto:jmassalon@wmalawfirm.net]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

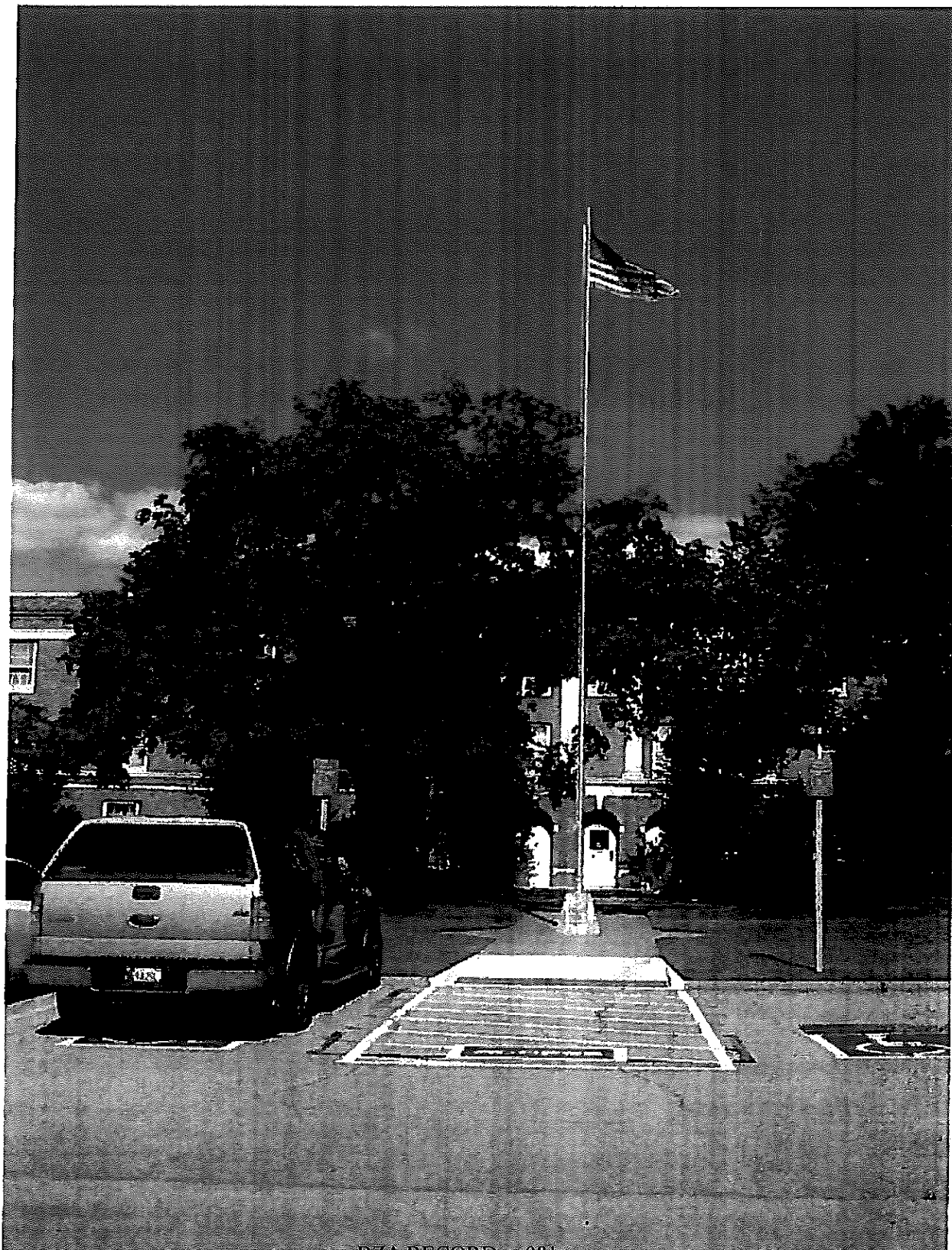
EXHIBIT “C”



Lakeville Veterans' Monument and Flagpole

The Lakeville Veterans' Monument and Flagpole are located at the intersection of 5 roads (Route 20A, Stone Hill Rd, combined Routes 15 and 20A, and Lakeville Park Rd) in the middle of Lakeville, New York, 14480. The memorial is dedicated to those who gave their lives in defense of America. It was established by the Lakeville Volunteer Fire Department sometime in the late 1940's World War II and is maintained by the Fire Department. It is in excellent condition.

BZA RECORD p. 080



BZA RECORD p. 081



World War II Memorial Flagpole

A granite based flagpole that was dedicated as a memorial to the township's ten war dead. Engraved on the front of the stone is: "Dedicated to the men of Freehold Township who made the supreme sacrifice in World War II 1941 - 1945 that this flag may ever fly in honor and in peace". It then lists the names of 10 men who were killed in the war.

The back of the stone has a weathered bronze tablet that is inscribed: "In honor of citizens of Freehold Township who served in World War II". A four column list on the tablet names every citizen of Freehold Township who served during the war, with a star next to the names of those who didn't make it back.

Date of Installation:

November 11, 1948

Organization Responsible for Installation:

BZA RECORD p. 082

[<-- Back](#)

Columbus Monuments Pages

Site Search:

Cl



UNITED
STATES

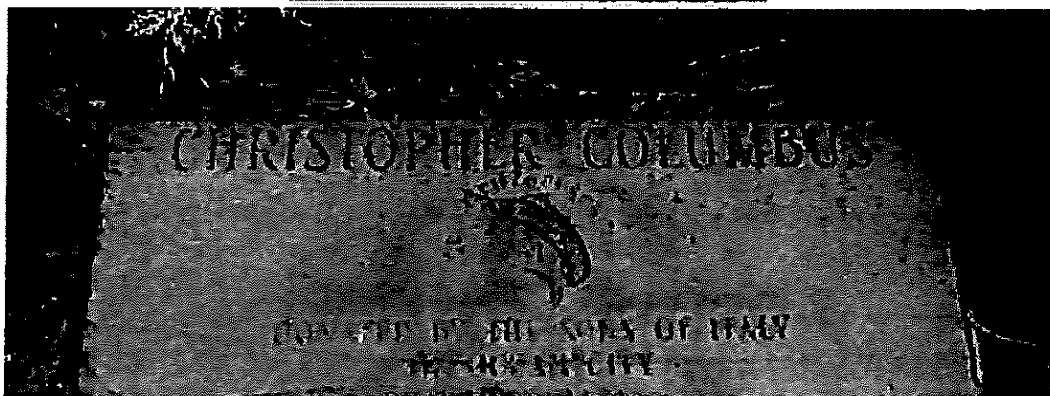
[Home](#) _ [New/Updated](#) _ [Town/Country](#) _ [Chronology](#) _ [Contact](#)

Ocean City
Maryland

Columbus Flagpole

1985

Northside Park



BZA RECORD p. 083



Armed Forces Flag Pole and Plaque Memorial

The Armed Forces Flag Pole and Plaque Memorial is dedicated to our servicemen and women of Navy, US Army, US Marine Corp, and the US Air Force. It was designed and funded through an E Scout project of Nathan Chichester, Boy Scout Troup 174 and installed in December 2011 at the Dougherty Funeral Home on Big Tree Street, in Livonia, New York, 14487. It is maintained by the Home and is in excellent condition.

Date of Installation:

December 3, 2011

BZA RECORD p. 084

January 11, 2019

Re : Abdo/29 Broughton Road/ Flag Pole as Monument Appeal

Dear Appeals Board,

Non-Support

I am writing to voice my strong disapproval of the Abdo's extreme flagpole which stands over my neighboring residential property at 31 Broughton Road. I wonder if you are aware they put the pole up *after* they moved out of the house, which is vacant? They live in a house they purchased on the other side of 29 Broughton, so they are removed from this "monument" they care so much about. At the moment it has no flag, so at least it is silent, as it represents the giant middle finger that the Abdo's display to any authority that tells them they can't do exactly as they please when it violates existing code and disturbs a community.

They were recently told by the City that the flagpole at sixty feet tall (erected nine months ago without a permit by a guy who manages properties for a living and would of course know he *should* obtain a permit) is out of bounds in a residential neighborhood. They had claimed, deeming themselves clever, that it was a "monument". They were told "no go" and so they took the flapping, clanging flag down as they now appeal the City's decision at a meeting scheduled for January 15th. More time wasted for City officials, and I wonder what their compelling appeal will be? If it is that they are some level of "Super Patriots", allow me to differ.

Such a "Super Patriot" argument would be quite a stretch. My grandfather served in the Navy during World War I, and my father was sunk on a ship in the Philippines as a young naval serviceman during World War II. My family is indeed patriotic. And you know what my Dad would say if he were alive to see that flapping, over-sized flag? He'd say, "What kind of (insert salty adjective) car dealership are they running over there, with that clanging, whipping, over-sized pole? This is a residential neighborhood, not a highway!" I was brought up to respect the flag and my country, absolutely. But also to respect neighbors and my community; I was brought up to realize that the world did not revolve around me. This is a lesson all have not learned.

The other issue I'd like to point out, is this: Suppose the Abdo's were to keep this 60 foot flagpole - who is to say what they would be flying on it next week? Perhaps instead of an American flag, it would be a huge sign that reads, "Dave's Used Car Emporium". We have no way of knowing what they would find entertaining to fly on that pole to flaunt convention.

I hope you and the City officials who review this "creative" appeal will let the Abdo's know that the word "flagpole" existed in the English language when the statute was written that expressly did not allow for sixty - footers on a residential property. If you get a chance, please also explain to them what a "good neighbor" is.

Thanks for listening.

Sincerely,

Laura M. Schaible
(B43) 556-3796
LMS200B@earthlink.net

BZA RECORD p. 085

MEMBERS PRESENT: LEONARD KRAWCHECK, MICHAEL ROBINSON, MARGARET SMITH,
WALTER JAUDON, JOHN LESTER, ROSS APPEL
STAFF PRESENT: LEE BATCHELDER, PENNYE ASHBY, (NO CLERK - RECORDED VIDEO)

AGENDA

BOARD OF ZONING APPEALS-ZONING

FEBRUARY 19, 2019

5:15-23 P.M.

2 GEORGE STREET

10:46 P.M.

A. Deferred applications from previously advertised BZA-Z agendas. For information call 724-3781.

1. 29 BROUGHTON RD. (THE CRESENT) APP. NO. 191-15-B2
(421-14-00-024)

Request reconsideration of the Board's decision on December 4, 2018, to deny an appeal of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance (Height of structures are limited to 35-ft.) Zoned SR-8.

Owners-David W. Abdo, Ilonke Sonja Taylor/Applicant-John A. Massalon, Esq.

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: M.Robinson SECOND: W.Jaudon VOTE: FOR 6 AGAINST 0

2. 585 King Street (CANNONBOROUGH/ ELLIOTBOROUGH) (460-06-04-065) APP. NO. 1902-19-A2

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

Owner-Vanderking 585 King, LLC/Applicant-Neil Stevenson Architects

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: J.Lester SECOND: W.Jaudon VOTE: FOR 5 AGAINST 1
*R.Appel

3. 15 STRAWBERRY LN (NORTH CENTRAL) APP. NO. 1902-19-A3
(460-03-02-168)

Request special exception under Sec. 54-501 to allow construction of a single-family residence on a lot of insufficient size (Lot area 1,880sf; 2,500sf required). Zoned DR-2F.

Owner-782 A Rutledge, LLC/Applicant-Clarke Design Group

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval with condition that pole blocking proposed driveway, must be removed before City approves permits for construction.

MADE BY: M.Smith SECOND: M.Robinson VOTE: FOR 4 AGAINST 2
*R.Appel
*W.Jaudon

BOARD OF ZONING APPEALS-ZONING/FEBRUARY 19, 2019
PAGE 2

4. 844 MAGNOLIA RD. (MARYVILLE/ APP. NO. 1902-19-A4
ASHLEYVILLE) (418-09-00-117)

Request variance from Sec. 54-317 to allow construction of a mixed-use building with 2,523sf of office space, 1,800sf of interior patron use area (café) and 1,196sf of retail space (art gallery/workshop) with 7 off-street parking spaces (37 spaces required).
Zoned CT.

Owner-546 Elm, LLC/Applicant-Matteo Rapallini

APPROVED 0 WITHDRAWN 0
DISAPPROVED 0 DEFERRED XX

MOTION: Deferral.

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

B. New Applications:

1. 8 ELMWOOD AVE. (HAMPTON PARK TERRACE) APP. NO. 1902-19-B1
(460-02-04-132)

Request an appeal of the Zoning Administrator's decision to deny an STR permit application based on the date the building was constructed (Ordinance requires building to have been constructed fifty (50) or more years ago).
Zoned DR-1F.

Owner/Applicant-A.Tyler Nance

APPROVED 0 WITHDRAWN 0
DISAPPROVED 0 DEFERRED XX

MOTION: Deferral.

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

2. 179 3rd AVENUE (WAGENER TERRACE) APP. NO. 1902-19-B2
(463-10-03-075)

Request use variance from Section 54-203 to allow up to six (6) dwelling units on this lot in a SR-2 (Single-Family Residential) zone district.

Owner-Michael Duane Dennis/Applicants-Michael & Emerald Dennis

APPROVED 0 WITHDRAWN 0
DISAPPROVED XX DEFERRED 0

MOTION: Deferral.

MADE BY: M.Robinson SECOND: M.Smith Motion withdrawn without a vote.

MOTION: Disapproval.

MADE BY: R.Appel SECOND: M.Robinson VOTE: FOR 6 AGAINST 0

BOARD OF ZONING APPEALS—ZONING/FEBRUARY 19, 2019
PAGE 3

3. 161 MOULTRIE ST. (HAMPTON PARK TERRACE) (460-02-04-005) APP. NO. 1902-19-B3

Request special exception under Sec. 54-110 to allow the horizontal extension of a non-conforming 1.4-ft. east side setback for a garage (3-ft. required).
Zoned DR-1F.

Owner/Applicant-Eric M. Poulin

APPROVED 0 WITHDRAWN 0
DISAPPROVED 0 DEFERRED XX

MOTION: Deferral.

MADE BY: M. Robinson SECOND: R. Appel VOTE: FOR 0 AGAINST 0

4. MAGNOLIA DR. (LOT 28) (ASHLEYVILLE/ MARYVILLE) (418-09-00-131) APP. NO. 1902-19-B4

Request special exception under Sec. 54-501 to allow construction of a single-family residence on a lot of insufficient size (Lot area 4,686sf; 6,000sf required).
Request variance from Sec. 54-301 to allow construction of a single-family residence with a 14-ft. 11-inch rear setback, a 3-ft. south side setback, a 7-ft. north side setback, a 10-ft. total side setback (25-ft., 9-ft., 9-ft. and 18-ft. required).
Zoned SR-2.

Owner-H. Allan Strickland Trust/Applicant-Douglas W. Hardman

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: M. Robinson SECOND: J. Lester VOTE: FOR 6 AGAINST 0

5. 36 STATE ST. (FRENCH QUARTER) (458-09-01-113) APP. NO. 1902-19-B5

Request variance from Sec. 54-301 to allow a detached accessory building addition (storage shed) with a 0-ft. rear setback, 3-ft. south side setback a 6-ft. total side setback, and having a 63% lot occupancy (3-ft., 7-ft., 10-ft. required, 35% limitation; existing lot occupancy 59%).
Zoned SR-5.

Owner-Deborah Nutting/Applicant-Charlotte Reeves

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: J. Lester SECOND: R. Appel VOTE: FOR 6 AGAINST 0

BOARD OF ZONING APPEALS—ZONING/FEBRUARY 19, 2019
PAGE 4

6. 654 KING ST. (WESTSIDE) (460-04-04-031) APP. NO. 1902-19-86

Request special exception under Sec. 54-206 to allow an existing restaurant and bar to have a late night use within 500 feet of a residential zoned district. Zoned MU-2/WH.

Owner-King Street Holdings, LLC/Applicant-Jeffrey Yurfest

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval to allow existing indoor and outdoor patron use area to be a late night use.

MADE BY: W.Jaudon SECOND: J.Lester VOTE: FOR 6 AGAINST 0

7. 8 VANDERHORST ST. (UNITS A&B) APP. NO. 1902-19-B7
(RADCLIFFEBOROUGH) (460-16-02-073 AND 074)

Request use variance from Sec. 54-203 to allow a boutique bridal salon in Unit A (first floor) and Unit B (second floor) in a DR-1 (Diverse-Residential) zone district. Owner-JFRONE, LLC-c/o Barry Gumb/Applicant-J. Sidney Boone, Jr., Esq.

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: W.Jaudon SECOND: J.Lester VOTE: FOR 6 AGAINST 0

8. 135 CALHOUN ST. (457-04-02-064) APP. NO. 1902-19-88

Request special exception under Sec. 54-220 to allow a 1-unit accommodations use in a GB-A (General Business-Accommodations) zone district.

Owner-Neil Lykins/Applicant-Briggs & Ingles, LLC

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: R.Appel SECOND: M.Smith VOTE: FOR 6 AGAINST 0

9. 431 MEETING ST. (459-09-01-049) APP. NO. 1902-19-89

Request special exception under Sec. 54-220 to allow a 252-unit accommodations use in a LI-A/GB-A (Light Industrial and General Business-Accommodations) zone district.

Owner-Charleston School of Law, LLC/Applicant-OMS Charleston, LLC c/o Seamon Whiteside+

BOARD OF ZONING APPEALS—ZONING/FEBRUARY 19, 2019
PAGE 5

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: M.Robinson SECOND: M.Smith VOTE: FOR 6 AGAINST 0

10. 4-6 BEAUFAIN ST. (UNIT 203) (457-08-01-099) APP. NO. 1902-19-B10

Request special exception under Sec. 54-220 to allow a 1-unit accommodations use in a GB-A (General Business-Accommodations) zone district.

Request variance from Sec. 54-317 to allow a 1-unit accommodations use without required off-street parking spaces (1 space required).

Zoned GB-A.

Owner/Applicant-Beau O'Steen

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: M.Smith SECOND: W.Jaudon VOTE: FOR 6 AGAINST 0

11. 82 COLUMBUS ST. (EASTSIDE) APP. NO. 1902-19-B11
(459-05-04-164)

Request special exception under Sec. 54-511 to allow a hair salon with 1200sf of gross floor area with 2 off-street parking spaces (3 spaces required).

Zoned LB.

Owners/Applicants-Marshall & Amy Walker

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: R.Appel SECOND: J.Lester VOTE: FOR 6 AGAINST 0

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 Schumecher at (843) 577-1389 or email to schumecherj@charleston-sc.gov three business days prior to the meeting.

Ashby, Pennye

From: John A. Massalon <jmassalon@wmalawfirm.net>
Sent: Tuesday, February 19, 2019 3:30 PM
To: Ashby, Pennye
Cc: Dave Abdo
Subject: BOZA meeting tonight
Attachments: 20190219152222645.pdf

Pennye:

Mr Abdo is traveling and will not be able to attend the meeting this afternoon. He wanted to address the Board about the request for reconsideration and so in his absence he asked me to forward the attached to you to include in the record and distribute to the Board. Thank you.

John

John A. Massalon, Esq
Wills Massalon & Allen, LLC
P.O. Box 859
97 Broad Street
Charleston, SC 29401
jmassalon@wmalawfirm.net
843-793-6039 (Direct)
843-727-1144 (Front Desk)
843-727-7696 (Fax)

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John A. Massalon

From: Ilonka Sonja Taylor <istaylor99@gmail.com>
Sent: Tuesday, February 19, 2019 1:07 PM
To: John A. Massalon; Dave Abdo
Subject: [REDACTED]

This comments are made without the approval of or consultation with my attorney.

At the last hearing several things were presented that I would like to address.

First, there were images of what does a monument look like. To no surprise, famous monuments like the Washington Monument were the images. I thought it would be interesting to google what does a car look like. I did not see a Volkswagen Beetle or a Model T. I did not see an iconic 1957 Chevy. Nor did I see a 1959 Cadillac El Dorado Barritz convertible and anyone that knows cars that that is one hell of a car.

I googled what does a flagpole monument look like, and dozens of examples popped up. It was portrayed at the last meeting that I had installed my monument without any consultation with the City or without regard for zoning or permitting. That is the furthest thing from the truth.

Before ordering the flagpole, I contacted the City. I have known Lee Batchelder for decades and knew that Lee would know whether there were any zoning issues. I contacted him personally and discussed height and whether I would need a permit. He advised that there was no height restriction for a flagpole and the City did not issue permits for flagpoles.

The day I installed the monument, a City inspector was leaving my backyard later in the day after I arrived home. He informed me that I did not get a permit and there is a height restriction. When I advised him I had previously contacted the City and was instructed that no permit was required and no height restriction applied, the inspector informed me I spoke with the wrong person and received the wrong answer.

I erected the monument because I was told by the City that no permit was required and that no height restriction applied. I ask that you reconsider and approve the monument.



Board of Zoning Appeals-Zoning

February 19, 2019

The Board consists of seven members who are appointed by City Council. The Board is authorized to do three things:

- Hear appeals from decisions of the zoning administrator
- Grant or deny applications for zoning variances
- Grant or deny applications for zoning special exceptions

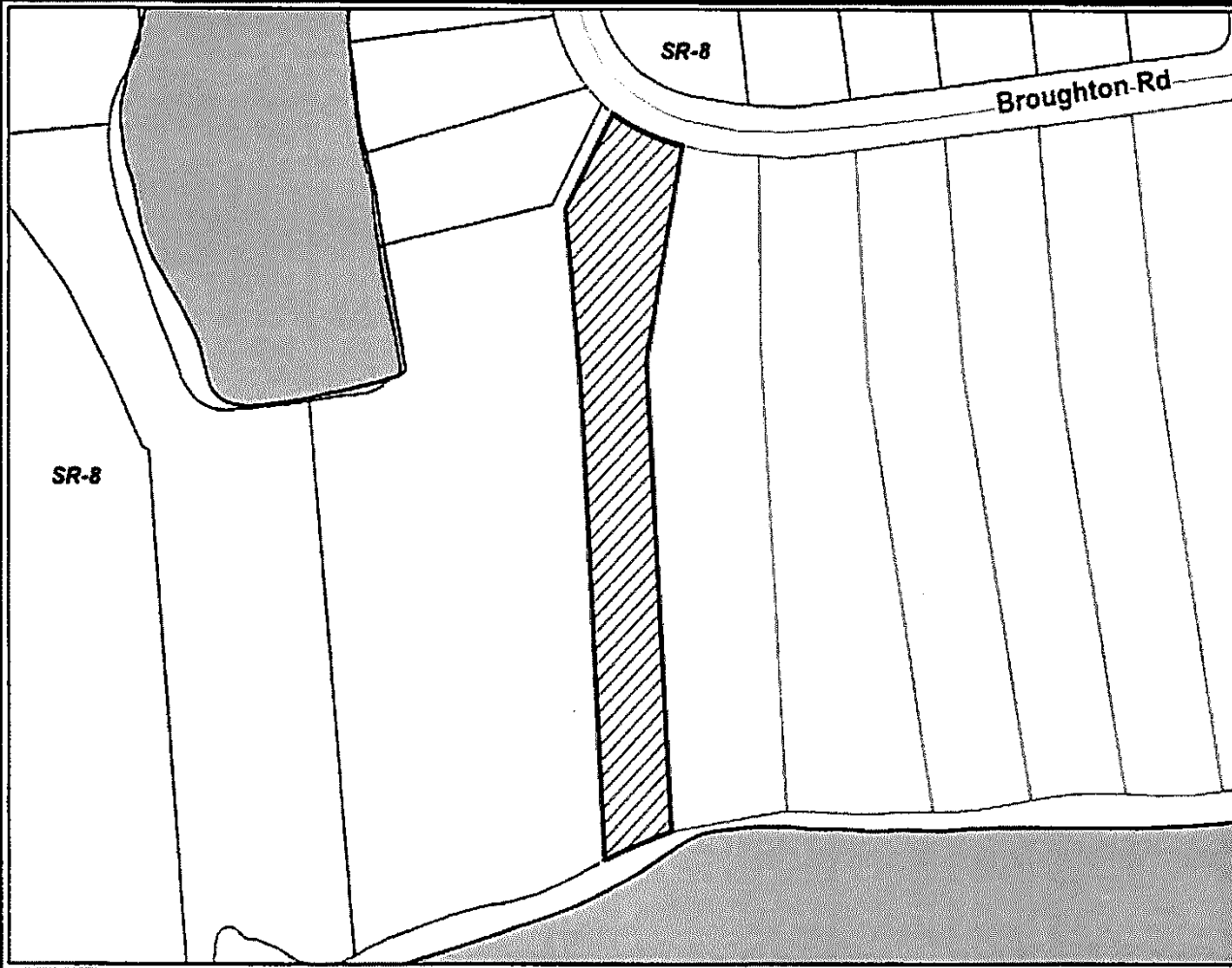
These proceedings are being recorded so please identify yourself and address your comments to the Board.

Please turn off your cell phones.

CITY OF CHARLESTON

DEPARTMENT OF PLANNING, PRESERVATION AND SUSTAINABILITY

29 BROUGHTON ROAD





BZA RECORD p. 095



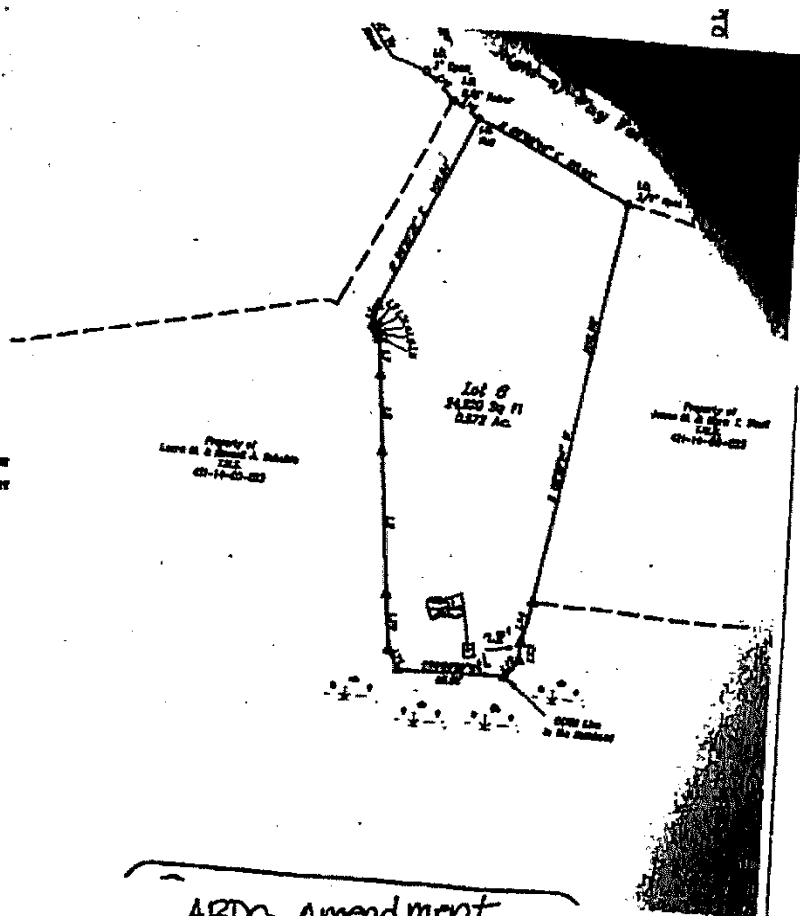
BZA RECORD p. 096

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~~9.10.2011~~ 3/27/2011

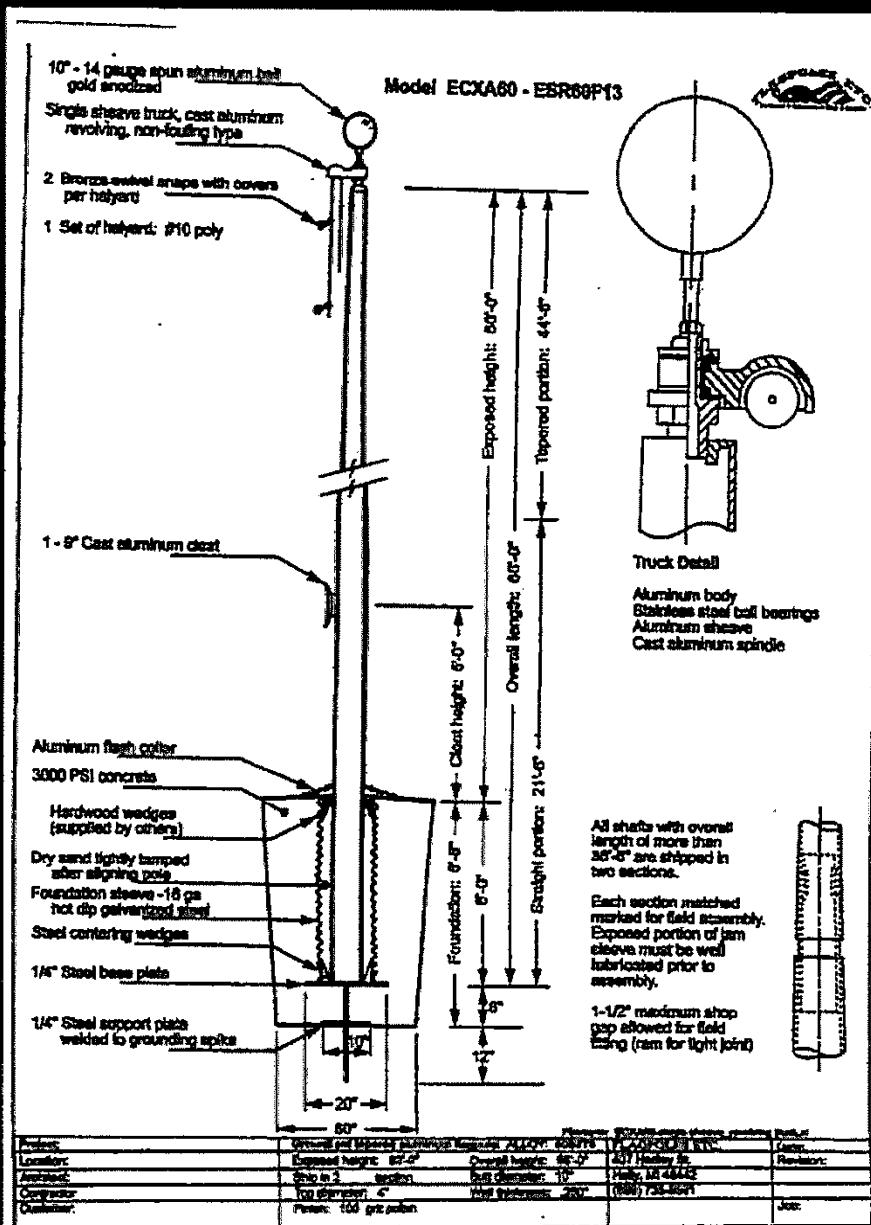
RE: [redacted] on the [redacted] by the [redacted] from [redacted] subject to the [redacted] [redacted] [redacted]

Standard Operating Procedure

[illegible]

ABDO Amendment

ACQUA-AR PER +



ARTICLE 5 - EXCEPTIONS AND MODIFICATIONS

PART 2 - EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. - Exceptions to height requirements.

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.

ARTICLE 3 - SITE REGULATIONS

PART 1 - HEIGHT, AREA AND SETBACK REGULATIONS

Sec. 54-301. - Height, area and setback regulations.

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS 5/9/22

Zone District Designation	Max Height Limits ⁵ Structures
SR-8	35'2½ str.

5. See Article 5: Exceptions and Modifications, Part 2 Exceptions to Height and Setback Requirements.

Structure. Anything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land. The word "structure" shall include the word "building."



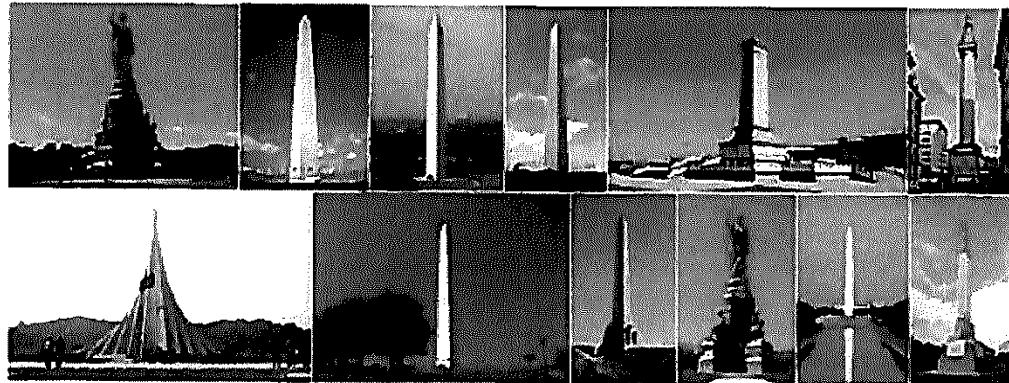
what is a monument



<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

Images of what is a monument

[bing.com/images](https://www.bing.com/images)



[See more images of what is a monument](#)

<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

mon·u·ment

[ˈmɒnyəmənt] 

NOUN

a statue, building, or other structure erected to commemorate a famous or notable person or event.

synonyms memorial · statue · pillar · column · obelisk · cross · cairn · dolmen · cromlech · monolith · megalith · henge · stone circle · cenotaph · tomb · mausoleum · shrine · [more]

- **a statue or other structure placed by or over a grave in memory of the dead.**

synonyms gravestone · headstone · tombstone

- **a building, structure, or site that is of historical importance or interest.**

"the amphitheater is one of the many Greek monuments in Sicily"

synonyms monument · distinctive/prominent feature · sight · spectacle

- **an outstanding, enduring, and memorable example of something.**

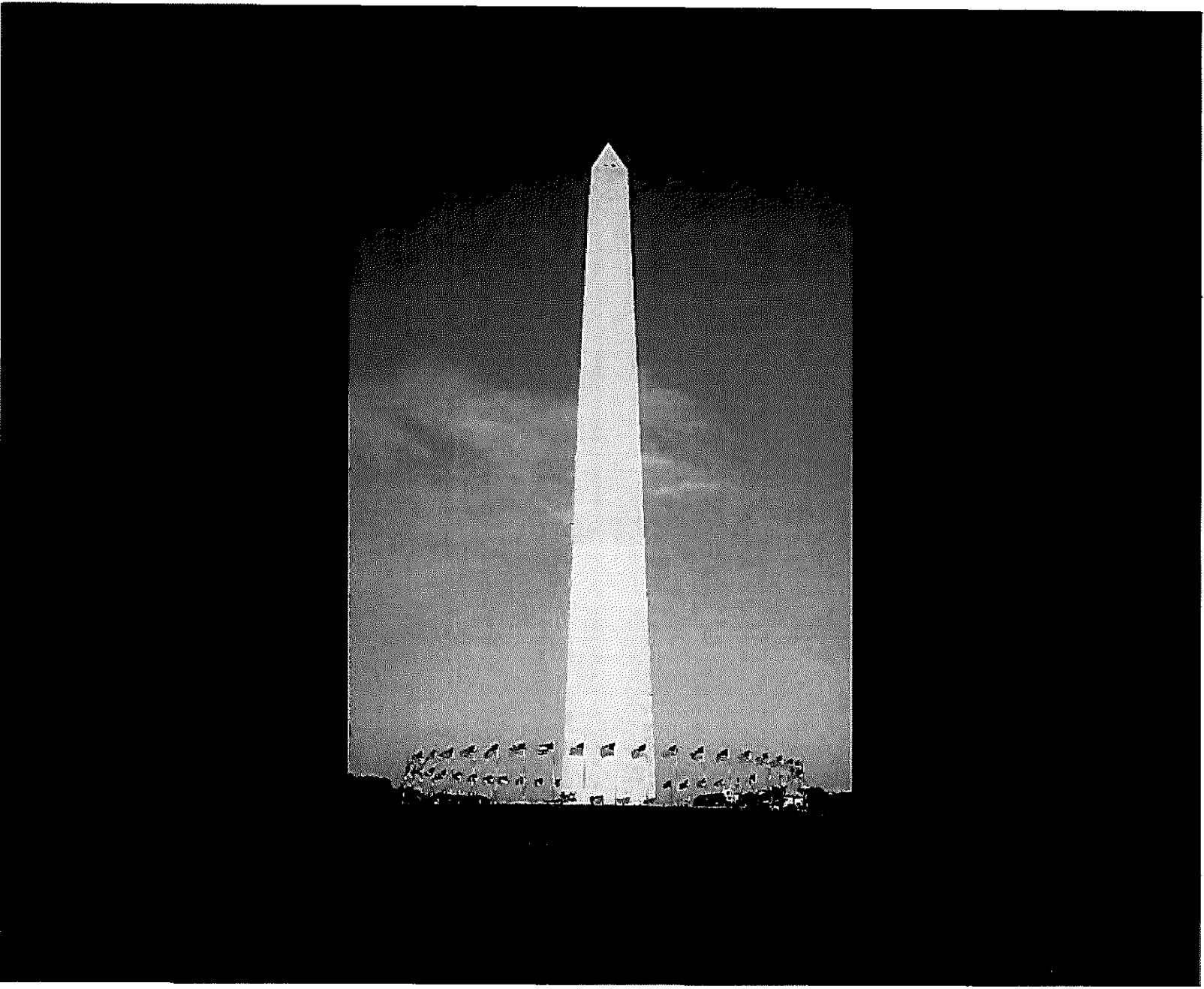
"recordings that are a monument to the art of playing the piano"

synonyms testament · record · reminder · remembrance · memorial · commemoration · witness · token · example · exemplar · model · archetype · pattern · nonpareil · paragon

27 Race St
Charlton, South Carolina
Google Inc.
Satellite View Jun 2011



BZA RECORD p. 103



BZA RECORD p. 104

1931 Zoning Ordinance

a distance equal to one-half the height of such point above the curb level

Section 23—Height of Monuments, Spires, etc.:

In any District, the height limitation of the District may be exceeded by a monument, spire, shaft, dome or tower for ornamental purposes only.

Section 24—Allowance for Terraces:
On a lot where terraces exist, the

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1952 Zoning Ordinance

Sec. 51-30. Height of monuments, spires, etc.

In any district, the height limitation of the district may be exceeded by a monument, spire, shaft, dome or tower for ornamental purposes only. (Code 1952, § 49-23.)

1966 Zoning Ordinance

Sec. 51-43. Exceptions to Height Limitations.

1. The height limitations of this chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.

1996 Zoning Ordinance

ARTICLE 5 - EXCEPTIONS AND MODIFICATIONS

PART 2 - EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. - Exceptions to height requirements.

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.

For office use only

Property address

TMS #

29 Broughton Rd. (The Crescent)

421-14-00-024

Zoning SR-8

Request reconsideration of the Board's decision on December 4, 2018, to deny an appeal of the Zoning Administrator's decision that a 60-ft. tall flag pole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance (Height of structures are limited to 35 ft).

**Board of Zoning Appeals-Zoning
Order on Appeal**

The Board of Zoning Appeals Zoning held a public hearing on February 19, 2019 to consider the above appeal for reconsideration of a decision of the Board or the zoning administrator appealed to be reconsidered by the appellant and affecting the property described above. After a public hearing, the Board makes the following findings of fact and conclusions:

1. The Board makes the following finding of fact and conclusions:

2. The Board concludes the following:

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.

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

USPS Tracking®**FAQs >** (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**Track Another Package +****Tracking Number:** 9114901496451847938991**Remove X****Expected Delivery on****THURSDAY****28**FEBRUARY
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1/2

BZA RECORD p. 110

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

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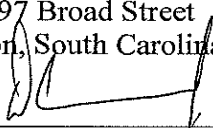
([https://reg.usps.com/entreg/RegistrationAction_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=USPSTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)

*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment. <https://tools.usps.com%2Fgc>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2019-CP-10-1434
	)	
David Abdo,	)	
	)	
Appellant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
City of Charleston and Board of Zoning	)	
Appeals-Zoning,	)	
	)	
Respondents.	)	

I certify that, on this date, I served a copy of the Record on Appeal (the "Record") on Appellant David Abdo, by hand delivery to his attorney of record, as follows:

John A. Massalon
Wills Massalon & Allen LLC
97 Broad Street
Charleston, South Carolina 29401



Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 06802

April 22, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

David Abdo,)
)
Appellant,)
)
v.)
)
City of Charleston and Board of Zoning)
Appeals-Zoning,)
)
Respondents.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-10-1434

**RESPONDENTS' MEMORANDUM
OF LAW IN OPPOSITION TO APPEAL**

2019 JUL 24 PM 1:55
JULIE J. ABRAHAMSON
CLERK OF COURT

This zoning appeal involves the issue of whether a 60-foot tall flagpole erected by Appellant David Abdo (“Abdo” or “Appellant”) on his residentially-zoned property is a “monument” under the exceptions to the height limitations in the City of Charleston’s Zoning Ordinance (the “CZO”).¹ Abdo alleges that the flagpole is a “monument” because it will commemorate his father, father-in-law, brother-in-law, and others who served in the United States Armed Forces. (R. p. 44, lines 16-21).

The BZA unanimously determined that a flagpole is *not* a monument. (R. p. 55, line 16-p. 56, line 11). As the BZA’s chair noted, this ruling does not prevent Abdo from erecting a flagpole on his property. (R. p. 55, lines 18-22). It simply means that the height of the flagpole is limited to 35 feet—the same height limitation applicable to other buildings and structures on Abdo’s property and other properties within the same base zoning district. (R. p. 33; R. p. 41, line 21-p. 42, line 3; R. p. 55, lines 18-22). The BZA’s decision should be affirmed and this appeal dismissed because a flagpole is not a monument.

¹ On April 22, 2019, Respondents City of Charleston (the “City”) and the Board of Zoning Appeals-Zoning (the “BZA”) served and filed the Record on Appeal in this matter. References herein to the Record on Appeal are designated as (R. p. ____). The City and BZA are collectively referred to herein as the “Respondents.”

FACTUAL AND PROCEDURAL BACKGROUND

Abdo and Ilonka Sonja Taylor own property located at 29 Broughton Road (the “Property”) within a residential subdivision known as The Crescent in the West Ashley area of the City. (R. p. 6; p. 40, lines 23-25). The Property is zoned Single-Family Residential (“SR-8”). (R. p. 28; p. 42, lines 20-25). As a result, the height of buildings and other structures is limited to 35 feet or 2 ½ stories. (R. p. 33; R. p. 41, line 21-p. 42, line 3). The CZO defines a “structure” to include “[a]nything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land.” (R. p. 33).

Abdo constructed a 60-foot tall flagpole on the Property without a building permit. (R. p. 41, lines 3-5).² After a neighbor complained, the City issued a citation and stop work order, and Abdo applied for after-the-fact approval of a building permit for a “flag monument.” (R. pp. 13-19; R. p. 41, lines 10-16). Among other things, section 54-505.a of the CZO exempts “monuments, water towers, observation towers, transmission towers, masts and aerials” from the height restrictions in the CZO, subject to certain conditions relating to aircraft landing approach zones. (R. p. 34). Each of these enumerated exceptions involves a public element, as discussed *infra*.

After evaluating the permit, in response to Abdo’s assertion that the flagpole was a monument, the Zoning Administrator opined as follows: “I believe the exception listed in Sec. 54-505 for ‘monuments’ is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event.” (R. p. 1).

Abdo requested reconsideration of the Zoning Administrator’s decision by the BZA. (R. pp. 6-11). On December 4, 2018, the BZA unanimously determined that a flagpole does not

² Abdo asserts on appeal that the City’s Zoning Administrator told Abdo that Abdo could erect the flagpole without any permit and that no height limit applied to a flagpole. (Notice of Appeal, p. 2, ¶¶ 4-5). The City’s Zoning Administrator testified to the contrary. (R. p. 41, lines 3-20).

constitute a monument, despite Abdo’s argument that the “common definition of a ‘monument’ . . . includes a ‘memorial stone or a building erected in remembrance of a person or event.’” (R. p. 11, ¶ 9; R. p. 54, lines 4-9; p. 54, line 20-p. 55, line 25; p. 86). Abdo requested reconsideration of the BZA’s decision.³ (R. pp. 62-68). On February 19, 2019, the BZA held a hearing and denied the request. (R. p. 109). This appeal followed.

STANDARD OF REVIEW

This appeal turns on the *factual* issue of whether the term “monument” in Sec. 54-505.a of the CZO applies to a flagpole. See Furr v. Horry Cty. Zoning Bd. of Appeals, 411 S.C. 178, 185, 767 S.E.2d 221, 225 (Ct. App. 2014) (reversing circuit court based on failure to defer to the BZA on the factual issue of whether a hospice—being undefined in the zoning ordinance—constituted a nursing home, group home, or hospital). On appeal from the decision of a board of zoning appeals, “[t]he 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.” S.C. Code Ann. § 6-29-840(A). “The factual findings of the Board must be affirmed by the circuit court if there is *any* evidence to support them and they are not influenced by an error of law.” Fairfield Ocean Ridge, Inc. v. Edisto Beach, 294 S.C. 475, 479-80, 366 S.E.2d 15, 18 (Ct. App. 1988) (emphasis in original).

ARGUMENT

I. A flagpole is not a monument.

Abdo contends that a flagpole is a monument as a matter of law, utilizing Merriam Webster’s on-line dictionary definition of “monument” as a “memorial stone or building erected in remembrance of a person or event.” (Notice of Appeal, p. 5, ¶ 18).

³ On March 21, 2019, Abdo separately filed the transcript of the February 21, 2019 hearing.

A flagpole is not a memorial stone or building. See Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001) (“If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning.”).

Abdo also points to a definition of “monument” included by the Zoning Administrator in his presentation to the BZA (R. p. 36) to contend that a monument is “an outstanding, enduring, and memorable example of something.” (Notice of Appeal, p. 6, ¶ 20). But a flagpole is not an example of anything, nor is a flagpole outstanding, enduring, or memorable.

The Zoning Administrator defined a “monument” as “a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event.” (R. p. 1). Abdo challenges this conclusion because it recognizes that the term “monument” connotes a public element. Respondents disagree with Abdo’s challenge. See Argument II, *infra*. However, even accepting this argument, a flagpole is not a statue, building, or other structure erected to commemorate a person or event.

A flagpole is not a monument in any sense of the word. The BZA’s decision should be affirmed and this appeal dismissed for this reason alone. See Anderson v. S.C. Dep’t of Highways & Pub. Transp., 322 S.C. 417, 420, 472 S.E.2d 253, 254 (1996) (recognizing appellate court need not address other issues when one is dispositive).

II. The BZA correctly found that “monument,” as used in section 54-505.a of the CZO, includes a public element, especially when read in the context of the other words associated with it.

Abdo criticizes the BZA for applying a public element to the term “monument.” A careful reading of the CZO emphasizes that each of the enumerated exceptions grouped with the term “monument” includes some public element.

Section 54-505.a provides, in pertinent part:

The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone.

(R. p. 34).

The first “group” of exceptions in section 54-505.a are “architectural” exceptions, applicable to noteworthy architectural elements of buildings or structures, provided these elements are not intended or used for human occupancy. Abdo argues the phrase “not intended or used for human occupancy” modifies all terms in section 54-505.a, such that any structure not intended for human occupancy, including a flagpole, is excepted from the height limitations in the CZO. (Notice of Appeal, p. 9, ¶ 28). It is clear that the referenced phrase only modifies the “architectural” exceptions.

The second “group” of exceptions in section 54-505.a are the “public tower” exceptions—“monuments, water towers, observation towers, transmission towers, masts and aerals,” each of which connote a public or semi-public element. (R. p. 34). “According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.” S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass’n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991); see also 6 McQuillin, The Law of Municipal Corporations § 20:63 (3d ed. 2007) (“The doctrine of *noscitur a sociis*, known from its associates, is applicable to the construction of an ordinance Words that are capable of analogous meaning, being associated together, take meaning from each other.”).

A water tower connotes a public or semi-public use, even if owned by a private utility provider. See, e.g., S.C. Code Ann. § 58-5-210 (vesting Public Service Commission with authority

to supervise and regulate services of every public utility); S.C. Code Ann. § 58-5-10(4) (defining “public utility” broadly to include any corporation or person “furnishing or supplying in any manner . . . water . . . to the public, or any portion thereof, for compensation”); S.C. Regs. § 103-702.16 (defining “water plant” as “[a]ll facilities owned by the utility for the collection, production, purification, storage, transmission, metering, and distribution of potable water”); S.C. Regs. §§ 103-705 to -756 (providing engineering standards for water plants); S.C. Regs. §§ 103-770 to -774 (providing standards and quality of service standards for water providers); S.C. Regs. §§ 103-780 to -782 (providing accepted good safety practices for water providers).

An “observation tower” also connotes a public element when included as an exception to height limitations in a zoning ordinance. The reasoning and conclusion of the Indiana Court of Appeals in Ross v. Harris, 860 N.E.2d 602, 607-08 (Ind. Ct. App. 2006) is directly on point:

It would be both an unjust and absurd result to require applicants for commercial communications to perform such an in-depth visual impact analysis on a tower that is banned from a residential district and to require nothing similar from a permit applicant who wishes to construct a 55-foot observation tower that blocks neighbors’ views of Lake Michigan and decreases neighbors’ property values in a residential district.

Based upon the foregoing, it is clear that the Michigan City Common Council did not intend for the tower exception in Section 160.010(D) to include structures such as the Rosses’ addition to their home. In fact, the Rosses’ addition is clearly the very type of structure that the zoning ordinance was enacted to prevent. The trial court did not err in interpreting the ordinance or in granting the mandatory injunction ordering the Rosses to remove that portion of their 55-foot addition that exceeds the 30-foot height limitation that the ordinance imposes on residential structures.

(Emphasis and double-emphasis added).

The last exception in the list applies to “transmission towers, masts and aerials.” “Transmission towers, masts and aerials” should be read together. The origination of these terms—

and the exception related thereto—involves slogging through various rules and regulations promulgated by the Federal Communications Commission (“FCC”) to protect amateur radio station communications. If the Court believes it necessary, Respondents can submit a separate brief on the issue because it would require one.

The intent behind this exception is to avoid partial preemption applicable to such facilities under federal law. See Williams v. Columbia, 906 F.2d 994, 997 (4th Cir. 1990) (evaluating limited preemption of local zoning ordinances relating to height by FCC regulations involving antenna structures); 9 Zoning and Land Use Controls § 53.11 (2019) (defining “telecommunication tower” to include “mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other standing tower, or other structure designated and primarily used to support antennas.”); <https://www.merriam-webster.com/dictionary/aerial> (defining “aerial” as an “antenna”).

This intent is emphasized in the definition of a “communication tower” in the CZO, which expressly excludes “communication towers for amateur radio operators licensed by the Federal Communications Commission which are exempt from municipal zoning restrictions.”⁴ From a height perspective, section 54-505.b governs communication towers. (R. p. 60).

The enabling legislation for the FCC emphasizes the public nature of “transmission towers, masts, and aerials.” See 47 USCS § 151 (“For the purpose of regulating interstate and foreign

⁴ Section 54-120 defines a “Communication Tower” as follows:

Communication Tower. A tower of any size which supports communication equipment, transmission or reception, and is utilized by commercial, governmental, or other public or quasi-public users. This does not include communication towers for amateur radio operators licensed by the Federal Communications Commission which are exempt from municipal zoning restrictions.

This is the entire definition. See <https://library.municode.com/sc/charleston/codes/zoning>.

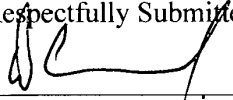
commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication . . . there is hereby created a commission to be known as the ‘Federal Communications Commission,’ which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.”).

Each of the “public tower” exceptions to the height limitations connote a public element, especially when interpreted together. On the other hand, under Abdo’s interpretation, any owner in the City outside the Historic District would be permitted to construct a *private* water tower of any height in his or her backyard or construct a *private* tower of unlimited height to observe the surrounding areas. This would be absurd. See S.C. Tax Comm’n v. Gaston Copper Recycling Corp., 316 S.C. 163, 168, 447 S.E.2d 843, 846 (1994) (“In giving effect to legislative intent, we are constrained to avoid an absurd result.”). It would also turn legislative intent on its head. See Charleston Cty. Parks & Rec. Comm’n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (“It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.”).

Consequently, the BZA’s decision should be affirmed and this appeal dismissed.⁵

⁵ Abdo’s extensive reliance on Helicopter Sols., Inc. v. Hinde, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015) is misplaced. Nothing in Hinde changes the fact that a flagpole is not a monument under any of the proffered definitions in this case. See Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001) (“If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning.”). Moreover, nothing in Hinde addresses the doctrine of *noscitur a sociis* applicable to the present case.

Respectfully Submitted,



Daniel S. ("Chip") McQueeney, Jr

S.C. Bar No. 06802

E-mail: mcqueeneyd@charleston-sc.gov

CITY OF CHARLESTON

50 Broad Street

Charleston, South Carolina 29401

Telephone: (843) 724-3730

Attorneys for Respondents City of Charleston and
the Board of Zoning Appeals-Zoning

July 24, 2019

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

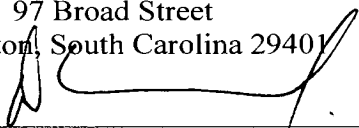
David Abdo,)
)
Appellant,)
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v.)
)
City of Charleston and Board of Zoning)
Appeals-Zoning,)
)
Respondents.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-10-1434

CERTIFICATE OF SERVICE

FILED
2019 JUL 24 PM 1:55
CLERK OF COURT
JULIE L. ARISTON

I certify that, on this date, I served a copy of Respondents' Memorandum of Law in Opposition to Appeal on Appellant David Abdo ("Appellant") by hand delivery to his attorney of record, as follows:

John A. Massalon
Wills Massalon & Allen LLC
97 Broad Street
Charleston, South Carolina 29401


Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 06802

July 24, 2019
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson

Common Pleas Case No. 2019-CP-10-1434

RECEIVED
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SC Court of Appeals

David Abdo, ...Appellant,

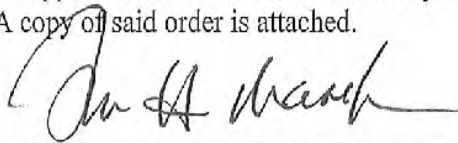
v.

City of Charleston and Board of Zoning Appeals-Zoning, ... Respondents.

NOTICE OF APPEAL

David Abdo appeals the order of The Honorable Deadra L. Jefferson dated October 10, 2019 denying Appellant's Petition for Appeal of the BZA-Z decision on February 19, 2019, which denied Appellant's building permit, as well as the BZA-Z decision on December 4, 2018 denying Appellant's permit application to construct a monument on his property located at 29 Broughton Road, Charleston, South Carolina 29407. Appellant received the Order Denying Appellant's Petition for Appeal on October 18, 2019. A copy of said order is attached.

November 13, 2019



John A. Massalon, Esquire (SC Bar #10279)
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DAVID ABDO

Other Counsel of Record:

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ATTORNEYS FOR RESPONDENTS
CITY OF CHARLESTON AND
THE BOARD OF ZONING APPEALS-ZONING

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
David Abdo,)
Appellant,)
v.)
City of Charleston and Board of Zoning)
Appeals-Zoning,)
Respondents.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2019-CP-10-01434

ORDER ON APPEAL

2019 OCT 14 PM 12:00
FILED
JULIE J. ADAMS, CLERK OF COURT

Presiding Judge: Hon. Deadra L. Jefferson
Respondents' Attorney: Daniel McQueeney, Jr., Esq.
Appellant's Attorney: John Massalon, Esq.
Date of Hearing: July 30, 2019
Court Reporter: Phyllis Norton

RECEIVED
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SC Court of Appeals

This matter came before the Court on July 30, 2019 by way of Appellant's Notice of Appeal pursuant to S.C. Code. Ann. § 6-29-820 seeking an order reversing the decision of the City of Charleston Board of Zoning Appeals- Zoning ("BZA-Z"), which was issued on February 19, 2019.

In this Zoning Appeal, Appellant David Abdo ("Appellant") argues that the City of Charleston's Board of Zoning Appeals-Zoning (the "Board") committed an error of law in determining that Appellant's flagpole is not a monument under the exceptions to the height limitations in the City of Charleston's (the "City's") Zoning Ordinance (the "CZO"). As a result, Appellant asserts he had the right to construct a 60-foot tall flagpole on his lot within a residentially zoned subdivision despite the CZO's 35-foot height limitations on any structures within the zoning district.

On July 30, 2019, the matter came to be heard before this Court. After considering the record, memorandum, and oral arguments of counsel the Court Affirms the BZA-Z's decision of February 19, 2019 and Dismisses Appellant's Petition for Appeal.

1 10/11


FACTUAL AND PROCEDURAL BACKGROUND

Appellant and his wife, Ilonka Sonja Taylor, own residentially zoned property in The Crescent, a residential subdivision in West Ashley. R. at 6; R. at 28; R. at 40, lines 23-25; R. at 42, lines 20-25.¹ The CZO limits the height of buildings and other structures on the Property to thirty-five (35) feet. R. at 33; R. at 41, line 21; R. at 42, line 3.

Appellant constructed an unpermitted, sixty-foot (60) tall flagpole on the Property. R. at 41, lines 3-5. In July 2018, after discovering the flagpole due to resident complaints, the City required Appellant to apply for a building permit after-the-fact.² R. at 13-19; R. at 41, lines 10-16. Appellant subsequently submitted an application to the City of Charleston to approve the installation of the flagpole, which the City of Charleston denied on October 17, 2018. Appellant contends that his flagpole is permitted to exceed the height limits in the residential zoning district based on section 54-505(a) of the CZO, which excepts, among other things, “monuments, water towers, observation towers, transmission towers, masts and aerals” from the thirty-five (35) foot height limitations in the CZO. R. at 60. Mr. Lee Batchelder (“Batchelder”) denied Appellant’s permit, explaining: “I believe the exception listed in Sec. 54-505 for ‘monuments’ is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event.” R. at 1.

¹ Unless otherwise provided, all citations herein are to the page and line numbers, if applicable, of the Record on Appeal filed by the City and the Board on April 22, 2019.

² Based on the testimony of Lee Batchelder, the City’s Zoning Administrator (R. at 41, lines 3-20), this Court finds that the City was not aware of the flagpole or its height until after Appellant installed it. Appellant, who attended the original hearing before the Board (R. p. 48, lines 3-7), did not contradict Batchelder’s testimony at this hearing. Instead, during a subsequent proceeding to determine whether the Board should rehear the matter, Appellant’s counsel read an email from Appellant to attempt to contradict Batchelder’s live testimony after the fact. R. at 120, line 17; R. at 121, line 3. Appellant did not attend the subsequent proceeding. R. at 119, lines 8-13. This Court finds that Appellant’s email is unavailing under these circumstances. Further, even if true, would not preclude zoning’s required permitting process nor the Board’s review.

2 

On December 11, 2018, Appellant requested the Board reconsider Batchelder's decision, which unanimously determined that Appellant's flagpole did not constitute a monument under section 54-505(a). R. at 6-11; R. at 54, lines 4-9; R. at 54, line 20; R. at 55, line 25; R. at 86. Appellant requested reconsideration of the Board's decision, and the Board denied the request on February 19, 2019. R. at 62-68; R. at 109.

STANDARD OF REVIEW

"Interpreting and applying statutes and regulations administered by an agency is a two-step process." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014). "First, a court must determine whether the language of a statute or regulation directly speaks to the issue." Id. "If so, the court must utilize the clear meaning of the statute or regulation." Id. "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Id. at 33, 766 S.E.2d at 717, quoting Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 843 (1984).

"As repeatedly stated in our decisions, our deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations unless there is a compelling reason to differ." Id. at 34, 766 S.E.2d at 718 (citations and internal quotation marks omitted). "Accordingly, the deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts . . . will defer to the agency's interpretation absent compelling reasons." Id. "We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute." Id. at 34-35, 766 S.E.2d at 718 (citations and internal quotation marks omitted); see also Purdy v. Moise, 223 S.C. 298, 304-05,

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75 S.E.2d 605, 608 (1953) (applying “deference doctrine” in reviewing decisions of boards of zoning appeals).

Generally, a trial court must uphold the decision of a zoning board unless there is no evidence to support it. See S.C. Code. Ann. § 6-29-840 (2019) (“The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury.”); Townes Assoc’s, Ltd. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976) (holding that factual findings of the jury will not be disturbed unless there is no evidence which reasonably supports the jury’s findings) (overruled on other grounds).

In reviewing the questions presented by the appeal, the Court shall determine only whether the decision of the zoning board is correct as a matter of law. See S.C. Code. Ann. § 6-29-840 (2019); Austin v. Board of Zoning Appeals, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). Furthermore, “[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” Id. (quoting Restaurant Row Assoc. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)).

The decision of a municipal zoning board will be overturned if it is “arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” Id. “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Boehm v. Town of Sullivan’s Island Board of Zoning Appeals, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018).

Further, “issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” Mikell v. City of Charleston, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (citing Eagle Container, LLC v. City of Newberry, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008)). “Although great deference is

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accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” Id. (citing Eagle Container, 379 S.C. at 568, 666 S.E.2d at 894).

The Court holds that this broader standard of review does not apply because Section 54-505(a) of the CZO does not require the Court to apply the rules of construction. “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning.” Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

Here, the language of Section 54-505(a) is plain and unambiguous, and conveys a clear and definite meaning. The Section provides an exception to the CZO’s height restriction for “church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone.” CZO § 54-505(a). These words are understood in common parlance and do not require the Court to apply the rules of construction to determine their meaning. Accordingly, the Court holds that the rules of construction do not apply, and the Court is bound to review the decision of the BZA-Z only for errors of law.

CONCLUSIONS OF LAW

- I. As a matter of law, the Board’s conclusion that Appellant’s flagpole is not a monument is correct inasmuch as the decision is not arbitrary, capricious, or manifestly contrary to the CZO.**

As a matter of law, the Court concludes that the Board’s decision that a flagpole is not a monument within the meaning of Section 54-505(a) of the CZO is correct. “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another

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meaning.” Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001). Further, this Court is bound to uphold the factual determination of a zoning board unless there is no evidence to support it. See S.C. Code. Ann. § 6-29-840 (2019); Townes Assoc’s, Ltd. V. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976). There is ample evidence in the record to support the Board’s determination that Appellant’s flagpole is not a monument entitling it to a height exception.

Batchelder defined a “monument” as “a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event.” R. at 1. The Board supported its interpretation of the word monument at the hearing, which Appellant and his counsel was present for, with citations to internet search-engine results, as well as the generally accepted meaning of the word in common parlance. R. at 36-36, 45-47.

Appellant disagrees with Batchelder’s decision that the term “monument” connotes a “public” or “semi-public” element or that it must commemorate a “famous” or “notable” person or event. Appellant also argues that a “monument” should be defined as a “memorial stone or building erected in remembrance of a person or event,” (Appellant’s Notice of Appeal at 5, ¶ 18) or “an outstanding, enduring, and memorable example of something.” Id. at 6, ¶ 20. The Court dismisses Appellant’s challenges to the Board’s definition because the Board’s interpretation is not arbitrary, capricious, or manifestly contrary to Section 54-505(a) of the CZO. Further, it is within the sound discretion of the Board to adopt a definition for the word monument that aligns with what the Board believes the City Council intended to except from the height restriction when it drafted the CZO. The definition promulgated by the Board and its subsequent factual determination that Appellant’s flagpole does not fall within that definition is a factual issue that should not be disturbed by the Court.

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However, the Court also concludes that the BZA's conclusion that Appellant's flagpole is not a statue, building, or other structure erected to commemorate *any* person or event is not arbitrary and is correct as a matter of law. Likewise, their conclusion that Appellant's flagpole is neither a memorial stone nor a building. Moreover, their further conclusion that Appellant's flagpole is not an example of anything traditionally commemorative, nor is Appellant's flagpole outstanding, enduring, or memorable, in and of itself is with adequate factual support and not arbitrary or capricious.

The Court is also persuaded by the Board's argument that the attachment of an American flag to the flagpole to commemorate the service of our military does not change this conclusion. Even if Appellant subjectively intends to attach the same flag to the flagpole in perpetuity, a flag is interchangeable, and zoning approval typically runs with title to the land. See S.C. Code Ann. § 6-29-1550 (explaining that zoning approvals generally run with title to the land). Therefore, under Appellant's interpretation of the CZO and the word "monument," Appellant, or any successor-in-title to the Property may, by the simple action of changing out the flag, convert the flagpole from a "monument" to a "mere" flagpole and back again.

In addition, under Appellant's interpretation, a successor-in-title who does not subjectively intend for the same flag to commemorate anyone or anything would convert what Appellant characterizes as a monument back to a "mere" flagpole. The Court declines to disturb the Board's finding that such an interpretation would lead to an absurd result that was not intended by the City Council. See Lancaster Cty. Bar Ass'n v. S.C. Comm'n on Indigent Def., 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) ("In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.").

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To the extent Appellant argues that section 54-505(a) is silent or ambiguous on the issue, the Court defers to the Board's interpretation of the CZO and the term "monument" because nothing in the record supports a finding that the Board's interpretation is arbitrary, capricious, or manifestly contrary to its purpose. Further, because this Court finds that there is sufficient evidence to support the Board's interpretation, this Court is bound to uphold the decision of the Board and leave its findings of fact undisturbed. As a result, the Court Affirms the decision of the Board and Dismisses Appellant's Petition for Appeal.

II. As a matter of law, the Board's conclusion that the term "monument" in Section 54-505(a) of the CZO connotes a "public" or "semi-public" element is correct inasmuch as the decision is not arbitrary, capricious, or manifestly contrary to the statute.

The Court concludes that the Board's decision that the term "monument" in Section 54-505(a) connotes a "public" or "semi-public" element that is missing from Appellant's flagpole is correct as a matter of law. Accordingly, under the deference doctrine, the Court finds no compelling reason to ignore the Board's interpretation in this respect.

Section 54-505(a) provides, in pertinent part:

The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone.

R. at 34.

The Court finds no error of law in the Board's contention that "[c]learly, words in a statute must be construed in context." So. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). "According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." Id.; see also Eagle Container Co., LLC v. Cty. of Newberry,

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379 S.C. 564, 570, 666 S.E.2d 892, 895-96 (2008) (applying the same rules in interpreting a zoning ordinance).

Each of the terms associated with the term “monuments” in section 54-505(a)—water towers, observation towers, transmission towers, masts and aials—connote a “public” or “semi-public” element. See, e.g., S.C. Regs. Ann. § 103-701 to -782 (regulating water plants, defined to include water towers); Ross v. Harris, 860 N.E.2d 602, 607-08 (Ind. Ct. App. 2006) (recognizing absurdity of permitting a 55-foot addition to applicant’s residence in the guise of an “observation tower,” when height limit is 30-feet).³

To hold otherwise would require the Court to assume that City Council intended these exceptions to be permitted as private, accessory uses on a residential lot within a residentially zoned subdivision, thereby substituting the Court’s judgment for that of the reviewing body, which it is not permitted to do when there is evidence to support the board’s decision. Austin, 362 S.C. at 29, 606 S.E.2d at 209 (quoting Restaurant Row Assoc., 335 S.C. at 216, 516 S.E.2d at 446). Accordingly, the Court is bound to leave undisturbed the Board’s conclusion that such an interpretation would be repugnant to the intent behind the creation of the underlying zoning district. Cf. Charleston Cty. Parks & Rec. Comm’n v. Somers, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995) (“Here, we are guided by Council’s express declaration of the purpose of a GC-1 zoning district: to foster an ‘economically healthy business environment.’ To be permitted within

³ Cited as guidance. It is well accepted in South Carolina that when explicit precedent is lacking in this state, Courts are permitted to turn to other jurisdictions to seek guidance. Magness v. Chicora Chapter, 193 S.C. 205, 8 S.E.2d 344, 347 (1940); State v. Edwards, 373 S.C. 230, 238, 644 S.E.2d 66, 70 (Ct. App. 2007); Wilson v. Willis, 426 S.C. 326, 340, 827 S.E.2d 167, 174 (2019).

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a GC-1 zoning district, therefore, the proposed municipal use must not be repugnant to that purpose.”).

Accordingly, the Court defers to the Board’s interpretation that the term “monument” includes a public or semi-public connotation because nothing in the record supports a finding that the Board’s interpretation is arbitrary, capricious, or manifestly contrary to its purpose. Further, because this Court finds that there is sufficient evidence to support the Board’s interpretation, this Court is bound to uphold the decision of the Board and leave its findings of fact undisturbed. As a result, the Court Affirms the decision of the Board and Dismisses Appellant’s Petition for Appeal.

III. As a matter of law, the Board’s factual conclusion that Appellant’s residential lot is not a “public” or “semi-public” is correct inasmuch as the decision is not arbitrary, capricious, or manifestly contrary to the statute.

During oral argument, Appellant asserted that the visibility of his residential lot from public or semi-public areas complies with the “public element” interpretation adopted by the Board. However, this argument was not raised in Appellant’s Notice of Appeal. Therefore, it is not preserved, and this Court will not disturb the factual findings of the Board. See Newton v. Zoning Bd. of Appeals for Beaufort Cty., 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Cl. App. 2011) (“[T]he sole preservation requirement for a first-level appeal of a zoning board’s decision is that an appellant must set forth his issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires.”).

Further, the Court holds that the Board’s decision that the visibility of Appellant’s residential lot within a residential neighborhood does not convert the lot into the type of “public” or “semi-public” space contemplated by section 54-505(a) of the CZO is within the sound discretion of the Board, and the Court will not disturb the Board’s finding because there is no

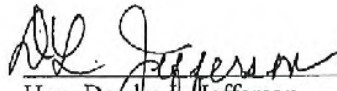
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evidence that the Board's decision was arbitrary, capricious, or manifestly contrary to the purpose of the CZO.

Accordingly, the Court finds that because the Board's decision has adequate factual support, was founded upon sufficient evidence, and the decision was not arbitrary, capricious, or manifestly contrary to the purpose of the CZO, the decision of the Board is correct as a matter of law.

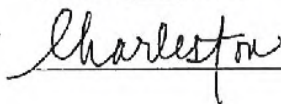
IT IS THEREFORE ORDERED the Appellant's Petition for Appeal is Denied and the decision of the Board to deny Appellant' building permit is Affirmed.

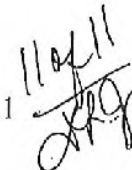
IT IS SO ORDERED.



Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

October 10, 2019

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson

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SC Court of Appeals

Common Pleas Case No. 2019-CP-10-1434

David Abdo, ...Appellant,

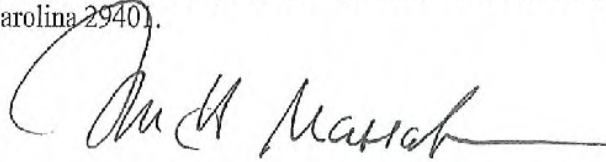
v.

City of Charleston and Board of Zoning Appeals-Zoning, ... Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents City of Charleston and Board of Zoning Appeals-Zoning by depositing a copy of it in the United States Mail, postage prepaid, on November 13, 2019, addressed to their attorney of record, Daniel S. McQueeney, Jr. at 50 Broad Street, Charleston, South Carolina 29401.

November 13, 2019



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AUDIO RECORDING TRANSCRIPTION
CHARLESTON CITY BOARD OF ZONING APPEALS
29 BROUGHTON ROAD
DECEMBER 4, 2018

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
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R 226

1 City of Charleston BZA Meeting

2 December 4, 2018

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4 CHAIRMAN: We welcome you to this
5 December 4, 2018, meeting of the City of
6 Charleston Board of Zoning Appeals. Present
7 Mr. Lester, Miss Grass, Mr. Jaudon, Miss Smith,
8 Mr. Robinson, and Mr. Krawcheck. From my right,
9 the staff, Miss Ellington, Miss Ashby, and
10 Mr. Batchelder.

11 These proceedings are being recorded.
12 We ask you, please, to identify yourself as you
13 speak.

14 * * * * *

15 CHAIRMAN: I have B1 is 29 Broughton
16 Road. It's for reconsideration of the zoning
17 administrator's decision that a 60-foot tall
18 flagpole cannot be considered a monument under
19 the terms of the City of Charleston's zoning
20 ordinance. Height of structures are limited to
21 35 feet, zoned SR-8.

22 Mr. Batchelder.

23 MR. BATCHELDER: 29 Broughton is a
24 residential property in The Crescent, West
25 Ashley. The appeal concerns a flagpole and

1 whether the height of that flagpole should be
2 allowed by the zoning ordinance.

3 This is a flagpole that was constructed
4 by the owner of the property without obtaining a
5 permit from the City. I'm not aware that any
6 contact with the City took place about whether a
7 permit would be required or whether zoning
8 regulations would apply to the placement of the
9 flagpole on the property, but it was installed.

10 The neighbor -- (Inaudible.) Owner of
11 the property, notified us in and -- and so we
12 placed a -- City placed a stop work order on
13 the -- on the project, and eventually the
14 applicant came forward to seek remedy to the
15 issue and try and obtain a permit from the City
16 for the construction of the flagpole.

17 During that, information came to us
18 about the actual height of the flagpole; and it
19 turns out that it's, I think, 60 feet tall, from
20 what I understand.

21 The zoning ordinance -- and I'll go
22 through this in more detail in a second, but the
23 zoning ordinance limits the height of
24 structures -- according to the language in the
25 ordinance, it limits the height of structures by

1 a zoning district; and in this particular zoning
2 district, the height limit is 35 feet, two-and-a-
3 half stories.

4 So I view a flagpole as a structure. By
5 definition a "structure" in the zoning ordinance
6 is defined as something that requires a fixed
7 placement on the ground, attached to the ground;
8 and a flagpole requires a foundation. It's
9 installed into the ground. So it becomes a
10 structure and is subject to the height
11 limitations.

12 I'll go on and go through some other
13 sections of the code as we progress, but let me
14 just show you the conditions surrounding the
15 property.

16 So that the lot is on Broughton. It's
17 along the Wappoo Cut. Most of the lot is marsh,
18 and I believe the flagpole was installed
19 somewhere in the backyard near the marsh.

20 The zoning map shows that The Crescent
21 shown here in this yellow color is zoned SR-8,
22 single-family residential. This is a site plan
23 that was submitted with the application, and I
24 believe the flagpole is somewhere right back here
25 in the back of the lot.

1 This is just information about the
2 foundation and the flagpole itself, and I don't
3 think any -- there's any dispute about what --
4 about how the zoning regulations apply to
5 structures and that this is a structure and that
6 the zoning regulations say 35 feet, and that's
7 the information that's contained here in this
8 slide; and I'm going to pass this out just so
9 everybody's got it in front of them.

10 What I'm passing out is the
11 information -- or these are copies of pages from
12 the zoning ordinance that -- that reflects the
13 information -- (Inaudible.)

14 (Inaudible.)

15 And so first page is Table 3.1. Height
16 area setback regulations SR-8 is listed on the
17 left-hand side. If you follow that across to the
18 highlighted height limitation under max height
19 limits/structures, you see 35 feet, two-and-a-
20 half stories. That's what's listed in this Power
21 Point slide, that information.

22 Now, there's a reference under max
23 height limits/structures to Footnote 5. And
24 Footnote 5, the end of the table on the next
25 page, says, see Article 5, exceptions,

1 modifications, Part 2, exceptions to height and
2 setback requirements.

3 So the table has height limits, but
4 there are exceptions in a different section of
5 the code to those height limits.

6 Moving on to the third page, you see the
7 section concerning exceptions to height and
8 setback requirements, Section 54-5-05, Subsection
9 A. The height limitations of this chapter shall
10 not apply to monuments. There are other
11 architectural features, building features, and
12 types of structures that are listed there; but
13 I've highlighted the relevant wording. So height
14 limitations in this chapter shall not apply to
15 monuments.

16 Now, the applicant, in making their
17 application, states that -- that the flagpole was
18 installed to honor the military service of the
19 owner's father, his wife's father, brother-in-
20 law, and all that served in the Armed Forces --
21 in the Armed Forces.

22 And that's, certainly, a commendable
23 type of monument; and so certainly no issue with
24 that. The issue that I have is the application
25 of the term "monument" in the zoning ordinance to

1 this type of situation.

2 So -- and I think we have to look at
3 the -- and consider what the intent of City
4 Council was when they passed the zoning ordinance
5 with this exception.

6 And, to me, a monument is something
7 that's more significant. And so just looking at
8 it and thinking how that might be defined, I
9 looked at the internet; and I did a bane search.
10 "What is a monument?" And that's the next page
11 in your handout here.

12 And you see the citations. You see
13 images of a monument. Certainly they, you know,
14 all have images in our mind that probably would
15 match or come close to the types of monuments
16 shown here in these photographs. Something
17 really significant in a public place.

18 And then the definition appears under
19 the citation is the statue, building, or other
20 structure erected to commemorate a famous or
21 notable person or event.

22 And I think that language is the intent
23 of what is meant by "monument." That it should
24 be statue, building, or other structure erected
25 to commemorate a famous or notable person or

1 event.

2 And applying it broadly to a flagpole on
3 your own personal property seems, to me, to be
4 too broad an interpretation, not what was meant
5 by the zoning ordinance because if that's the
6 case, then what would stop somebody from claiming
7 their home would -- was a monument to somebody,
8 something, something like that in building a home
9 that was larger or taller than 35 feet, two-and-
10 a-half stories.

11 And, certainly, in that neighborhood we
12 have homes that are approaching that size and
13 will continue to approach that size as new homes
14 are built to replace older, smaller homes.

15 So, to me, I think that the terminology
16 and the intent of the word "monument" in the
17 zoning ordinance is intended to apply to this
18 definition, what this definition says. And,
19 certainly, there are flagpoles that can be
20 shorter than 60 feet and still accomplish the
21 goal of having a flagpole on your property to
22 commemorate something.

23 And here's an example of one in the
24 City. It was installed a few years ago. This
25 happens to be a flagpole on the Greek Orthodox

1 Church property on Race Street, and I don't know
2 exactly how tall that flagpole is; but the house
3 shown in this image, the white house next door,
4 is a two-and-a-half story structure. So I think
5 it's safe to say that that flagpole was somewhere
6 around 25 feet tall. Perhaps it's 30 feet tall.
7 And that's certainly a very attractive flagpole,
8 serves that property well.

9 So just as an example of something that
10 could be done within the height limit and,
11 certainly, be a reasonable structure for a
12 flagpole.

13 So that explains my position and why I
14 denied the permit request to approve this 60-foot
15 flagpole on this property.

16 CHAIRMAN: Okay. Mr. Batchelder, your
17 decision is being appealed?

18 MR. BATCHELDER: That decision is being
19 appealed, that's correct; and I'll just hand out
20 one piece of information that we did receive.

21 This is an email that we received from a
22 neighbor on the property. And it's words --
23 (Inaudible.)

24 CHAIRMAN: Okay. Mr. Massalon, you
25 represent the appellant?

1 MR. MASSALON: I do. Thank you,
2 Mr. Krawcheck.

3 I'm John Massalon. I'm here with Dave
4 Abdo. He is the owner of the property, and I
5 agree with Mr. Batchelder that the issue that we
6 have here is what does the term "monument" mean
7 under the exceptions to the height requirement?

8 And I won't do much of this, but a
9 little bit of it. I think the standard that
10 applies here is, first, you look at the ordinance
11 or I ask you to look at the ordinance and decide
12 if we can understand what it means by reading it.
13 Because I think that construing any statute or
14 ordinance begins with a plain reading of it; and
15 if it's not ambiguous, I think basically what the
16 law says is that it means what it says.

17 If it's necessary to try to discern or
18 figure out what the intent is because it's
19 unclear in some way, then I think we get into
20 some of these other issues; but I think, as a
21 first step, we're just reading the words of the
22 ordinance and see what it says.

23 Now, what I think is notable here is one
24 of the exceptions to the height requirement is a
25 monument; but there's not a definition. The

1 ordinance is silent as to what a "monument" is.
2 I looked and was unable to find the definition in
3 the ordinance.

4 And Mr. Batchelder and I haven't talked
5 about it directly; but I assume he didn't find
6 one either, or he would have given you one in the
7 materials today.

8 So I think what we've got is an
9 ordinance that says monuments aren't subject to
10 the height requirement. We don't have any
11 further definition of it, and so I think we look
12 at what a monument is.

13 Mr. Batchelder submitted a definition
14 that he found on -- (Inaudible.) I submitted one
15 as well, and the definition I found --
16 (Inaudible.) Was basically a stone or a building
17 commemorating a notable person. (Inaudible.)

18 The other thing that I think that --
19 that is notable in the decision we got from the
20 zoning administrator, the decision was that this
21 wasn't a monument or isn't a monument because a
22 monument is in a public or semipublic place. So
23 Mr. Batchelder believes that it is partially
24 defined by a place and also by content. It -- it
25 must commemorate a famous person or event.

1 And, again, first of all, the statute,
2 the ordinance, does not say that. It says
3 monument, but it doesn't say where it could be or
4 has to be; and it doesn't say what kind of --
5 (Inaudible.)

6 So I submit to you that it means what it
7 says, and what Mr. Abdo has here is a flagpole
8 that he's constructing. His father, his wife's
9 father, his brother-in-law all served in the
10 military. His brother-in-law is a --
11 (Inaudible.) Vet and it's to commemorate them
12 and their service.

13 Now, a couple of things that I think are
14 worth noting in response to what we heard here,
15 first, if you disagree with me and you say,
16 "Well, we can't read this and figure out what a
17 monument is or is not." I think that if you look
18 at the rest of the items that are on this list,
19 it more clearly defines what the intent was
20 behind this. And, you know, I'll read it to you
21 just briefly.

22 It says, "This chapter shall not apply
23 to church spires, belfries, cupolas, or domes not
24 intended for human occupancy. And then it says
25 monuments, water towers, observation towers,

1 transmission towers, masts, and aerials.

2 So, again, if you don't think that the
3 meaning of a "monument" is clear, if you look at
4 everything else on the list, I tried to figure
5 out what they all have in common; and I think the
6 answer is none of them are intended or used for
7 occupation. Because it's an odd list like a
8 mast, I guess, is something on a boat. An
9 aerial, I guess, is a TV antenna or radio
10 antenna; and there are some non-occupied building
11 elements that are on this list.

12 But the only sense that I can take out
13 of that list is the intent here was the height
14 requirement doesn't apply if the structure or the
15 building that we're considering is not occupied
16 or intended for occupancy.

17 Clearly, what we have here is that. We
18 have a flagpole. Nobody's going to live in it,
19 obviously. Nobody's going to live on it, and it
20 fits squarely within these other items. As far
21 as I know, there is no other specific provision
22 that governs flagpoles and the height of
23 flagpoles.

24 And, finally, Mr. Batchelder said,
25 "Well, if we approve this, people are going to

1 start saying my house is a monument; and so I can
2 build my house as tall as I want to because it's
3 a monument" -- (Inaudible.) And I think that's a
4 clever idea, sort of a clever argument.

5 The problem, though, is if you read the
6 list, again, what I see in this list is exactly
7 the opposite. Something not intended or used for
8 occupancy. House is not a monument or any of
9 these other things because it's, obviously,
10 intended for people to live in and be used.

11 So I don't think the Board can open
12 Pandora's Box here and set off any parade of
13 horrible unintended consequences by letting
14 Mr. Abdo have his flagpole.

15 The final thing that I will mention to
16 you, kind of under the same heading or similar
17 heading, is if the Board reads this into the
18 ordinance, says even though it doesn't say that,
19 that's what it means, then, again, I think the
20 next question is: What do all these other words
21 mean that they don't say? And -- and I don't
22 know the answer to that. I don't think any of us
23 do.

24 So I think the Board's job,
25 respectfully, here is to read this issue. Read

1 the ordinance. It means what it says. What it
2 says is monuments are accepted. What my client
3 here has is a monument, and it's a little bit
4 exception. It's not -- (Inaudible.) Turn of
5 events. And that what the zoning administrator's
6 reading of this does, in my view, is inject
7 uncertainty into a statute that's pretty clear.

8 So for all those reasons, I'd ask the
9 Board to reverse the decision of the zoning
10 administrator and approve this application on the
11 ordinance.

12 Thank you.

13 CHAIRMAN: Thank you.

14 Any questions for Mr. Massalon?

15 (No response.)

16 CHAIRMAN: Would anyone else like to be
17 heard in connection with this appeal?

18 (No response.)

19 CHAIRMAN: Any discussion?

20 BOARD MEMBER: Very thought provoking.

21 I've been on the Board, I guess, close to 30
22 years; and never ceases to amaze me how many new
23 things will pop up. And I guess it would be that
24 way in the night -- (Inaudible.) Chairman has
25 been here longer than me.

1 And have you heard any appeal like this
2 before?

3 CHAIRMAN: This is a first.

4 BOARD MEMBER: That's what I thought.
5 Only thing I can say is I've never thought of a
6 flagpole as a monument. In my mind, it doesn't
7 meet the definition of a monument. In my
8 personal mind. A monument is something other
9 than that.

10 CHAIRMAN: Yeah. I just respectfully
11 disagree with Mr. Massalon. I think
12 Mr. Massalon's client's problem is the fact that
13 the ordinance says the height limitations of this
14 chapter do not apply to church spires, belfries,
15 cupolas, and domes not intended or used for human
16 occupancy. Monuments, water towers, observation
17 towers, transmission towers, masts, and aerials
18 provided that you're not running an aircraft
19 landing zone.

20 The trouble with Mr. Massalon's
21 position, in my humble opinion, is it doesn't say
22 "flagpoles." If the exception said flagpoles, we
23 wouldn't be here because we wouldn't have a
24 height limitation; and I just don't believe that
25 a flagpole is a monument.

1 When I think of a monument, I think of
2 the Washington Monument; and I think they are
3 something in public that commemorates a public
4 type event. And I think that when Mr. Batchelder
5 puts those pictures up of those monuments, those,
6 I think, in my view, are all monuments. I just
7 don't think a flagpole is a monument. I think if
8 City Council intended that, that they would have
9 accepted flagpoles.

10 And I know a duck when I see it, and
11 I just don't think a flagpole is a monument. So
12 I agree with Mr. Batchelder's decision.

13 Any further discussion?

14 (No response.)

15 CHAIRMAN: Any motions?

16 MR. ROBERTSON: I move for upholding the
17 zoning administrator's decision.

18 CHAIRMAN: Mr. Robertson moves to uphold
19 the -- and incidentally, I meant to say this.

20 Mr. Abdo can build a flagpole 35 feet
21 tall in honor of his father and so forth, which
22 hopefully he will do.

23 Is there a second to Mr. Robertson's
24 motion?

25 MR. JAUDON: Second.

1 CHAIRMAN: Mr. Jaudon seconds the
2 motion.

3 Any further discussion?

4 (No response.)

5 CHAIRMAN: All in favor of the motion,
6 please say aye.

7 (Board members respond aye.)

8 CHAIRMAN: All opposed.

9 (No response.)

10 CHAIRMAN: The decision is unanimously
11 affirmed.

12 MR. MASSALON: Thank you.

13 CHAIRMAN: Any other particulars?

14 MR. MASSALON: No. Thank you very much.

15 (End of requested recording.)

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1 CERTIFICATE OF REPORTER
STATE OF SOUTH CAROLINA
2 COUNTY OF HORRY

3 I, Ronda K. Blanton, a Registered
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4 State of South Carolina at Large, do hereby
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11 I further certify that I am neither related
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13 Witness my hand, I have hereunto affixed my
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18 REPORTER, RPR
My Commission expires:
19 May 15, 2028.
20
21
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23
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BOARD OF ZONING APPEALS
CITY OF CHARLESTON

FILED
JULIE J. ARMSTRONG
CLERK OF COURT
2019 MAR 21 PM 1:34

DATE: Tuesday, February 19, 2019
TIME: 5:15 P.M.
PLACE: Gaillard Center Municipal Building
Public Meeting Room - First Floor
2 George Street
Charleston, South Carolina
REPORTED BY: MARY ANN RIDENOUR, RPR, CLR, CVR-S
and Notary Public

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Deposition of:
Board of Zoning Appeals - Abdo,

vs.

Case #:
February 19, 2019



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A P P E A R A N C E S

REPRESENTING THE APPLICANT DAVID W. ABDO - 29 BROUGHTON
ROAD, THE CRESCENT:

JOHN MASSALON, ESQUIRE
Wills Massalon & Allen
97 Broad Street
Charleston, South Carolina 29401
(843) 727-1144
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BOARD OF ZONING APPEALS:

LEONARD KRAWCHECK, CHAIR
MICHAEL C. ROBINSON
MARGARET SMITH
WALTER JAUDON
JOHN LESTER
ROSS APPEL

ALSO PRESENT - CITY OF CHARLESTON:

PENNYE ASHBY
LEE BATCHELDER

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1 (The proceeding commenced at 5:22 p.m.)

2 (Excerpt:)

3 MR. KRAWCHECK: The first item on the agenda
4 is a little bit different in that it's for
5 reconsideration of the Board's decision, so the process
6 of procedure that I outlined originally is not
7 applicable to this item. But item number one is 29
8 Broughton Road, The Crescent. It's for reconsideration
9 of the Board's decision on December 4, 2018, to deny an
10 appeal of the zoning administrator's decision that a
11 60-foot-tall flagpole cannot be considered a monument.
12 Under the terms of the City of Charleston Zoning
13 Ordinance, height of structures are limited to 35
14 feet.

15 And, Mr. Batchelder, do you want to comment
16 or do you want me to call on Mr. Massalon?

17 MR. BATCHELDER: I will defer and let you
18 call on Mr. Massalon to give his presentation.

19 MR. KRAWCHECK: Mr. Massalon.

20 MR. MASSALON: Thank you, Mr. Chairman.

21 I'm John Massalon. I'm here for the
22 Applicant on this particular property.

23 And just as a quick reminder, 29 Broughton
24 Road, my client erected a monument that he installed, a
25 flagpole and an American flag. We applied for a

1 building permit. Initially, his understanding was he
2 didn't need one. Then he got a citation from the City,
3 so we applied for a building permit.

4 The zoning administrator denied the permit on
5 two grounds: One, that a monument has to be in a
6 public or semipublic place and, two, it's got to
7 commemorate a famous person or notable event.

8 As you're all well aware, Section 54-505 of
9 the ordinance exempts, among other things, monuments
10 from the height ordinance.

11 The exemption doesn't define "monument." And
12 I could not find any other definition of "monument" in
13 the ordinance. And so I believe, under the governing
14 rules of statutory interpretation, that means that
15 "monument" means what "monument" means. It's the
16 common and ordinary understanding of a monument.

17 Importantly, the definition doesn't include
18 anything about location. The ordinance doesn't say
19 where it can be or can't be. And it does not regulate
20 contents. It doesn't say it has to be about a famous
21 person or event, or anything of that nature.

22 Now, the standard, as you're all well aware,
23 for reconsideration is that the Board misapprehended or
24 misconceived the question involved, or that it erred in
25 its finding or disposition of the appeal.

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1 And the reason that I'm back here before you
2 tonight is, I believe that the discussion of the
3 monument and the grounds for denial got off track and
4 didn't consider the zoning ordinance and the
5 administrator's reason for denying it. Instead, as I
6 recall it, there were some photographs shown of
7 monuments. The Washington Monument is one that stands
8 out in my mind. And the discussion of the Board was to
9 the effect that, I know a monument when I see it and
10 this is not a monument.

11 And, again, that is certainly the Board's
12 prerogative, if that's your ultimate decision. But I
13 did want to ask you to look back at the decision. As I
14 said, it was that it has to be in a public or
15 semipublic place and has to commemorate someone that is
16 notable or an event that's notable.

17 Mr. Abdo put it up to commemorate the
18 military service of his father, his wife's father, and
19 brother-in-law, none of whom, as far as I know, are
20 notable. But I don't believe that that is a
21 requirement in the ordinance or within the common and
22 ordinary definition of the term "monument."

23 So I think what we've gotten here is some
24 confusion that's been added to an otherwise clear
25 ordinance. And so I would ask the Board to reconsider

1 that.

2 And, additionally -- and I attached them to
3 the material. And I don't know if we can pull that up
4 on the Power Point, but I can pass around some copies.

5 I think the fundamental problem with the last
6 decision was, in looking at the -- and Mr. Batchelder,
7 I think they may be at the end of the application. If
8 not, I can pass --

9 MR. BATCHELDER: I don't have those.

10 MR. MASSALON: Okay, I'll pass around a
11 couple of copies.

12 But the -- I think the problem, legally, with
13 inserting Google searches, Bing searches, any of those
14 kind of searches, is that on the Internet, generally,
15 you can find what you want to find.

16 And I attached some examples to my request
17 for reconsideration of monuments that have American
18 flags featured prominently in them. Some of them are
19 in public areas, some of them are in private areas. As
20 far as I know, none of them commemorate anybody that is
21 particularly famous. There are some to World War II
22 veterans, veterans who served, things of that nature.
23 But, again, there's no specific content that's
24 regulated here.

25 So I would ask that the Board reconsider its

1 decision, look at the decision of the zoning
2 administrator, and reverse itself and find that this
3 ordinance doesn't require it to be in any particular
4 place and commemorate any particular person or event.

5 The last thing I'll say -- and I think
6 Ms. Ashby there may have a couple of pictures of my
7 photographs just to pass down to the Board.

8 My client wanted to be here to address the
9 Board, but he was unable to be here because of some
10 prior travel commitments. He did have a statement that
11 he would like me to read. And I think that's also part
12 of the record. So if you'll indulge me just a moment,
13 I'll do this and I'll answer any questions.

14 First he says, These comments are made
15 without the approval of or consultation with my
16 attorney.

17 MR. KRAWCHECK: Mr. Massalon, are these
18 documents to demonstrate that the Board misconceived or
19 made an error in its earlier decision?

20 MR. MASSALON: They are, Mr. Chairman.

21 But, again, if you would rather just receive
22 them, as opposed to hearing me read them, that is
23 obviously --

24 MR. KRAWCHECK: No, I'm happy to hear you
25 read them, as long as they're on point.

1 MR. MASSALON: I believe that they generally
2 are. But, again, I didn't write them. And he would
3 like me to read them. So if you tire of this, you let
4 me know; I'll stop.

5 At the last hearing several things were
6 presented, which would I like to address. First, there
7 were images of what a monument -- what does a monument
8 look like. To no surprise, famous monuments like the
9 Washington monument were the images. I thought it
10 would be interesting to Google what does a car look
11 like. I did not see a Volkswagen Beetle or a Model T.
12 I did not see an iconic 1957 Chevy. Nor did I see a
13 1959 Cadillac El Dorado Biarritz convertible. And
14 anyone that knows anything about cars will say -- and
15 I'll edit here -- that's one heck of a car.

16 I Googled what does a flagpole monument look
17 like, and dozens of examples popped up. It was
18 portrayed at the last meeting that I had installed my
19 monument without any consultation with the City or
20 regard for the zoning ordinance. Nothing could be
21 farther from the truth.

22 Before ordering the flagpole, I contacted the
23 City. I had known Lee Batchelder for decades and knew
24 Lee would know whether there were any zoning issues. I
25 contacted him personally and discussed height and

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1 whether I would need a permit. He advised there was no
2 height restriction for a flagpole and the City did not
3 issue permits for flagpoles.

4 The day I installed the monument, the City
5 inspector was leaving my backyard later in the day,
6 after I arrived home. He informed me that I did not
7 get a permit and there is a height restriction. When I
8 advised him that I had previously contacted the City
9 and was instructed that no permit was required and no
10 height restriction applied, the inspector informed me I
11 spoke with the wrong person and received the wrong
12 answer. I erected the monument because I was told the
13 City -- by the City that no permit was required and
14 that no height restriction applied. I ask you to
15 reconsider and approve the monument.

16 So I would submit that, as well.

17 And I'll be happy to answer any questions the
18 Board may have.

19 MR. KRAWCHECK: Anyone have any questions for
20 Mr. Massalon?

21 MS. SMITH: I've got one question. Maybe
22 it's for Lee.

23 Does the History Commission have jurisdiction
24 over monuments on private property, as well as on
25 public property?

1 MR. BATCHELDER: The History Commission?

2 MS. SMITH: Uh-huh.

3 MR. BATCHELDER: Is that a commission of the
4 City?

5 MS. SMITH: Uh-huh.

6 MR. BATCHELDER: I -- I don't know the answer
7 to that question.

8 MS. SMITH: I know they're consulted about
9 all the monuments. That's -- that was just my
10 question.

11 MR. MASSALON: And if Mr. Batchelder does not
12 know, I certainly do not know. I'll be happy to see if
13 I can figure it out, but I don't know.

14 MR. KRAWCHECK: Mr. Massalon, I noticed that
15 you and also your client have referred to this flagpole
16 as a monument.

17 MR. MASSALON: Yes.

18 MR. KRAWCHECK: When Mr. Abdo applied for
19 permission to erect this flagpole that exceeded the
20 height limit of 35 feet, did he apply to erect a
21 monument or a flagpole?

22 MR. MASSALON: I believe the application was
23 to erect a monument or a flagpole. It's in the
24 materials. And I can certainly pass up a copy of the
25 original application. But I believe it was for a

1 monument or a flagpole monument.

2 MR. KRAWCHECK: Flagpole monument?

3 MR. MASSALON: Yeah. It's Exhibit A, I
4 think, in my motion for reconsideration.

5 Thank you very much. I appreciate your
6 attention.

7 MR. KRAWCHECK: Thank you, sir.

8 The question for the Board is whether it made
9 a mistake, whether it misapprehended or misconceived
10 the question involved. And if it did, then, under the
11 Board rules, we would rehear the matter on its merits
12 de novo, as if we had never heard it the first time.

13 Any discussion?

14 MR. ROBINSON: What I remember, and in my
15 take on it at that particular point in time, was that I
16 had thought that if City Council wanted for a flagpole
17 to be in the ordinance, they would have said
18 "flagpole." To me, a flagpole is a flagpole; a
19 monument is a monument. It's a semantic thing, but I
20 was hanging my feeling on the fact I saw it as a
21 flagpole. If they intended to cover flagpoles in the
22 ordinance, they would have said so. Flagpoles, you
23 see, they're ubiquitous. And why was it not classified
24 on its own as a flagpole. That's -- that's where I
25 came in.

1 MS. SMITH: I agree. I think -- I think that
2 if this came before us as a variance request, with the
3 support of the neighborhood, that we might pass it.

4 But to ask the Board to determine that a
5 flagpole is a monument and not subject to any height
6 restriction is -- it's -- this one is an American flag.
7 But there -- I just think if -- it's something that the
8 City Council would have to -- and I think that the Arts
9 and History Commission, too, has a say-so about all
10 monuments in the city. Even the ones on private
11 property, they look at and they're consulted about. I
12 think. I'm not positive about that. But I think that
13 that's so. And I think that -- I think, as far as I'm
14 concerned, this is -- a subject to the height
15 regulation.

16 MR. ROBINSON: Well, to further my reasoning
17 on it, just to be explicit as possible, if I turned it
18 around, if I walk up and I saw a flagpole, I wouldn't
19 say, There's a monument. If I saw a monument, I
20 wouldn't call a monument a flagpole. So a flagpole is
21 a flagpole. A monument is a monument.

22 MR. KRAWCHECK: I think that Mr. Massalon
23 cited the correct test, a requirement that -- that we
24 should give common and ordinary meaning to words. And
25 when you look at that stick with a flag on the top

1 that's more than 35 feet high, the common and ordinary
2 meaning that I give it is, a flagpole. I have to
3 really reach back to -- to give an ordinary and common
4 meaning to that flagpole as a monument. It only
5 becomes a monument in argument, I think, is that it
6 becomes a monument -- that flagpole becomes a monument
7 when you dedicate it to these servicemen who are
8 related to the applicants.

9 I thought some about this. And it occurs to
10 me that, you know, that it's a strange construction. I
11 usually agree with my friend Mr. Massalon, but I
12 respectfully disagree with him. I -- we have a limit
13 of 35 feet heighth. And if an applicant came in and
14 applied to Mr. Batchelder to build a house that was 45
15 feet, and in the application called it a house monument
16 because it was going to be dedicated to the servicemen
17 of World War I, and took the position that that
18 transformed that house into a monument, I don't think
19 that argument holds water. And I think that's what
20 we've got here, is, I think the applicant is trying to
21 make a flagpole a monument. And I just think that it
22 isn't.

23 And so I really don't think that -- we
24 considered a lot of things. But I think they were all
25 relevant. But I don't think we made a mistake. I

1 think it's going to be -- if this is appealed, and
2 it -- maybe it will be. And I think that's fine. I
3 think it's interesting. But I'll be interested in the
4 decision. But I just don't see where the Board has
5 made a mistake here. I think we understood the
6 question. I think we applied the correct reasoning.
7 And I think the ruling is correct.

8 Anyone else?

9 MR. JAUDON: I agree with you. It's my
10 understanding that trying to make a flagpole a
11 monument, that's -- a flagpole is a flagpole.
12 That's -- and when I think of monument, I think of some
13 granite rock or something carved in it, acknowledging,
14 you know, what -- what's it representing, rather than
15 just a plain flagpole. That's my feelings.

16 MR. KRAWCHECK: The common -- the common
17 meaning that jumps into my mind, when you say
18 "monument," I think Washington. I think Jefferson. I
19 think Lincoln. I think Lee. You know, all of those
20 things come to mind. Flagpole is not one of them. And
21 so I assume that -- that, to me, it's not common, it's
22 not ordinary, under Mr. Massalon's test.

23 Any further discussion?

24 (None heard.)

25 Any motions?

1 MR. ROBINSON: I make a motion that we uphold
2 our initial vote a couple of weeks ago.

3 MR. KRAWCHECK: That we deny the
4 reconsideration?

5 MR. ROBINSON: Deny the reconsideration.

6 MR. KRAWCHECK: Mr. Robinson so moves. Is
7 there a second to that motion?

8 MR. JAUDON: I second.

9 MR. KRAWCHECK: Mr. Jaudon seconds the
10 motion.

11 Any discussion?

12 (None heard.)

13 MR. KRAWCHECK: Okay. All in favor of the
14 motion to deny reconsideration please say "aye."

15 ALL: Aye.

16 MR. KRAWCHECK: Any opposed?

17 (None heard.)

18 MR. KRAWCHECK: Okay. The motion is
19 unanimously carried. The reconsideration is denied.

20 Thank you, Mr. Massalon.

21 MR. MASSALON: Thank you very much. I
22 appreciate it.

23 (End of excerpt.)
24
25

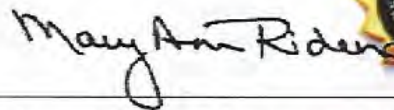
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, MARY ANN RIDENOUR, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing proceeding; and
that the transcript is a true record of such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of
February, 2019, in the City of Charleston, County of
Charleston, State of South Carolina.





Mary Ann Ridenour, RPR, CLR
and Notary Public
My commission expires:
March 14, 2021

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
David Abdo,	)	CASE NO. 2019-CP-10-01434
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
City of Charleston and Board	)	
of Zoning Appeals-Zoning,	)	
	)	
DEFENDANTS.	)	
	)	

July 30, 2019

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson

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

John A. Massalon, Esquire
For the Plaintiff

Daniel S. McQueeney, Jr., Esquire
For the Defense

Certified Transcript Provided For: John A. Massalon

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I N D E X

HEARING - Notice and Petition for Appeal -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 27

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: This is an appeal from zoning which was filed
2 on March 20th of 2019 by Mr. Massalon on behalf of Mr. Abdo,
3 A-B-D-O, pursuant to 629-820; and it appears to deal with the
4 zoning of his property, correct?

5 MR. MASSALON: It actually deals with the height
6 requirement under Section 54-505.

7 THE COURT: Which deals with his property, right?

8 MR. MASSALON: Correct; but it is -- it is a flagpole
9 monument issue, Your Honor.

10 THE COURT: A flagpole?

11 MR. MASSALON: Yes.

12 THE COURT: Where is it located?

13 MR. MASSALON: It is located at 28 Broughton Road which
14 is in the Crescent.

15 THE COURT: Was this in the paper?

16 MR. MASSALON: Yes, it was in the paper.

17 THE COURT: And, you know, and I -- but I -- you know, I
18 will tell you the truth, it just -- because you can see it
19 from the Connector, can't you?

20 MR. MASSALON: You can. Yes, Your Honor.

21 THE COURT: Okay. That is the only reason I -- I read --
22 I inherited -- I don't know if it is a good thing or a bad
23 thing from my dad, I read the paper from cover to cover every
24 day.

25 MR. MASSALON: Me too.

1 THE COURT: But -- because you have got to be informed.
2 And I can't adapt to reading anything on the computer. Just I
3 can't make that transition. I am tactile. I have got to feel
4 paper.

5 But I -- to be honest, I really didn't read the article
6 in any depth. I just sort of -- you know, it was a picture.
7 It caught my attention.

8 MR. MASSALON: Sure.

9 THE COURT: And I think it had a picture of the Connector
10 with the -- and that is the only reason it came to my mind.
11 But you may continue. I am sorry, I didn't mean to interrupt
12 you.

13 MR. MASSALON: And that is not an issue for me, and I ---

14 MR. MCQUEENEY: No, no issue for me.

15 THE COURT: Yeah.

16 MR. MASSALON: Okay. Thank you, Your Honor. As you
17 said, I represent Mr. Abdo. He is the owner of the property
18 at 28 Broughton Road. And just a little bit of background.
19 You know some of it. But ---

20 THE COURT: Actually all I looked at was the picture. I
21 didn't read -- I didn't read the article.

22 MR. MASSALON: Okay.

23 [Gentleman enters courtroom.]

24 THE COURT: Sir, do you need something? Have you got a
25 case today?

1 GENTLEMAN IN AUDIENCE: Yes, ma'am. For Shirley Lee
2 case.

3 (WHEREUPON, Court conveys that the case is question is
4 scheduled to be heard at 1:00 p.m.)

5 THE COURT: All right. Mr. Massalon, I apologize. You
6 may continue.

7 MR. MASSALON: That is no problem. Thank you, Judge.

8 Mr. Abdo wanted to construct a flagpole monument to
9 commemorate the military service of his father, his
10 father-in-law, and his brother-in-law.

11 Before he did that he contacted a representative of the
12 City of Charleston and asked if he needed a building permit
13 for that. And he didn't just contact anybody, he contacted
14 Lee Bachelder who is the zoning administrator there.

15 Mr. Abdo is in real estate and knew Mr. Bachelder for
16 years and knew him to be the person that makes decisions of
17 that kind. And Mr. Bachelder advised my client that he didn't
18 need a building permit for this; and so Mr. Abdo ordered it,
19 had it installed. And as you saw from the picture, it is a
20 60-foot flagpole with an American flag on it.

21 After it was installed one of his neighbors complained
22 about it, and so on July the 2nd of last year the City issued
23 a stop-work order ---

24 THE COURT: So where is it located; is it in his
25 backyard, is it in the front yard; where it is located?

1 MR. MASSALON: It is in his yard, but I am not sure what
2 part.

3 Back yard?

4 MR. ABDO: Back yard up against the marsh.

5 MR. MASSALON: It is -- you probably heard that.

6 THE COURT: So I would imagine it is constructed of some
7 form of metal to withstand ---

8 MR. MASSALON: It is ---

9 THE COURT: --- the elements?

10 MR. MASSALON: It is a metal flagpole with a foundation.
11 And if you are interested, there is actually a drawing in the
12 materials that we submitted, Exhibit A to my petition ---

13 THE COURT: Yeah.

14 MR. MASSALON: --- that has got an engineering drawing of
15 it.

16 But, anyway, last summer one of his neighbors complained
17 about it and the City issued a stop-work order and told him
18 that he needed to apply for an after-the-fact approval. And
19 asking for forgiveness is never as good as asking for
20 permission, I know; but this ---

21 THE COURT: So he never applied for a permit to put it up
22 to begin with is what you are saying?

23 MR. MASSALON: He didn't, but ---

24 THE COURT: And then he did it after the fact?

25 MR. MASSALON: But it was because he inquired and was

1 told that he didn't need a permit. So this isn't a case where
2 he did it and figured he would hope to get away with it and do
3 it later if somebody complained. He actually made an inquiry
4 and was told he didn't need it; and then he built it and then
5 the City retracted the advice they had given him before and
6 said, oh, you need a permit for that.

7 THE COURT: Okay.

8 MR. MASSALON: The issue that brings us to you, Your
9 Honor, is this. Mr. Abdo then filed his application for an
10 after-the-fact building permit. And that is attached to the
11 materials as Exhibit A. And we filed it under the exception
12 to the building code -- or the zoning height requirement for
13 among other things monuments. And that is in 54-505 of the
14 City ordinance.

15 The zoning administrator after considering it decided
16 that it did not qualify for the monument exception to the
17 height requirement because of two things. One, it was not in
18 a public or a semi-public place. And the second thing is that
19 it did not commemorate in his view a notable person or event
20 or famous or notable person or event.

21 So that was the decision we got. And that is in an email
22 that is also attached to the materials. So we appealed that
23 decision to the Board of Zoning-Appeals. And the basis of the
24 appeal, Your Honor, is essentially this: First of all, Mr.
25 McQueeney and I have a disagreement about whether this was a

1 legal decision that you are entitled to review for an error of
2 law or in Mr. McQueeney's view a factual determination to
3 which you have to give deference to the zoning administrator
4 before ---

5 THE COURT: Why would it be a matter of law, and as I
6 read it aren't -- don't -- I'm sorry, I can't talk today.

7 MR. MASSALON: That's okay.

8 THE COURT: Shouldn't I give deference to how they
9 interpret their ordinance?

10 MR. MASSALON: Respectfully, Your Honor, no. And I could
11 be ---

12 THE COURT: Tell me why.

13 MR. MASSALON: The answer ---

14 THE COURT: Because that is pretty -- that is pretty
15 standard precedent.

16 MR. MASSALON: Well, for a factual determination I would
17 agree with you. But we cited a case in our materials,
18 Helicopter Solutions versus - and I think this is Hinde,
19 H-I-N-D-E.

20 THE COURT: Hinde, H-I-N-D-E. Uh-huh.

21 MR. MASSALON: It is 776 S.E.2d 753. And I think that
22 case really resolves this issue about whether it is a factual
23 determination or it ---

24 THE COURT: Well, let's just say for argument sake it is
25 a factual determination -- well, you say it is a legal

1 determination.

2 MR. MASSALON: I say it is a legal determination that you
3 review for error of law.

4 THE COURT: So if it is a legal determination then what
5 is the standard?

6 MR. MASSALON: I think it is that you can correct errors
7 of law that they make ---

8 THE COURT: So why would it be a error of law in their
9 interpretation of their ordinance?

10 MR. MASSALON: For these reasons, Your Honor: First ---

11 THE COURT: Because isn't it pretty standard what the
12 definition of a monument is?

13 MR. MASSALON: Well, the statute does not define
14 monument.

15 THE COURT: No, but I mean in common parlaments isn't it
16 pretty standard what a monument is? I mean wouldn't we all
17 kind of agree as to what a monument is?

18 MR. MASSALON: I think we can all agree -- well, we can't
19 all agree, I guess, because we are here. But I think that
20 monument has a standard definition, and we cite it in the
21 materials.

22 But it is not what the zoning administrator said it is.
23 Meaning, he said it can only be a monument if it is in a
24 public or semi-public place and it commemorates a notable
25 person or event. And, again, that -- the definition of

1 monument includes those things. For instance ---

2 THE COURT: Does the ordinance define monument?

3 MR. MASSALON: The ordinance does not define monument.

4 So I think, Your Honor, under the standard of review ---

5 THE COURT: So does it ---

6 MR. MASSALON: --- that I believe applies then we
7 interpret the statute in accordance with its common and
8 ordinary meaning.

9 THE COURT: But don't you apply the rules of
10 interpretation if it is ambiguous? Is monument ambiguous?

11 MR. MASSALON: I don't believe it is, Your Honor. I
12 think as you said when we started this dialogue, I think
13 people know what a monument is. And what the City does in
14 their analysis is they take an overly narrow view and in my
15 opinion insert complexity and ambiguity where there is none.

16 And what they try to focus on, this as a flagpole. But
17 to me that would be like saying the Washington monument is a
18 big pointed rock, it is not a monument. So they try to focus
19 it on ---

20 THE COURT: I don't know that that -- based on what you
21 have presented -- and I have read the stuff y'all submitted to
22 me. What they are basically saying is that when you have a
23 monument it is for something that would be of such notoriety
24 that it really doesn't matter the format that it takes,
25 whether it is an obl -- obl- --- isn't that what the monument

1 is ---

2 MR. MASSALON: It is an obelisk.

3 THE COURT: It is an obelisk. I can't -- yeah, I am like
4 looking at the word in my mind; but I can't say it.

5 MR. MASSALON: That is it.

6 THE COURT: Or -- I am trying to think of another. Like
7 at Marion Square the Holocaust, ---

8 MR. MASSALON: That is ---

9 THE COURT: --- that is a monument ---

10 MR. MASSALON: That is another example.

11 THE COURT: --- although it is not stone.

12 MR. MASSALON: Right.

13 THE COURT: The statutes that are -- they generally
14 highlight the accomplishments of someone whose accomplishments
15 are beyond the average, ordinary person. Although I really
16 don't like that word average, ordinary. But you know what I
17 am saying ---

18 MR. MASSALON: Well, but ---

19 THE COURT: But you know what I am saying, that somehow
20 what they did is heightened above what everybody else has
21 done.

22 MR. MASSALON: Well, but using your example, the
23 holocaust is a good example. That doesn't commemorate
24 anybody; ---

25 THE COURT: Yeah, but it is a group of people.

1 MR. MASSALON: --- it commemorates an event ---

2 THE COURT: You know ---

3 MR. MASSALON: --- and people not specified. It is
4 certainly something that is notable and noteworthy.

5 But, again, I don't think that the statute does or could
6 regulate these based on content. And at least at this point
7 the City of Charleston I don't think is arguing -- oh, you ---

8 THE COURT: I am listening. I am telling my clerk to go
9 get something for me.

10 MR. MASSALON: Oh.

11 THE COURT: Go ahead. I'm sorry.

12 MR. MASSALON: No, but -- but I don't believe the City is
13 arguing content anymore. I think what the City argues now --
14 and I think this is significant for the appeal purposes
15 because when I appealed this to the Board of Zoning Appeals
16 and asked them to reconsider, I don't believe they ever
17 actually decided whether the zoning administrator was right.
18 The decision we got there was basically I know a monument when
19 I see a monument and this is not a monument.

20 And they were very patient and listened to me and
21 considered it, but they didn't really address the issues that
22 the zoning ---

23 THE COURT: Does it have a placard or something on it?

24 MR. MASSALON: Oh, now I don't know the answer to that.

25 MR. ABDO: I am -- may -- having one made. One addition

1 is ---

2 MR. MASSALON: Hold on. Why don't you talk to me and I
3 will talk to her.

4 (WHEREUPON, plaintiff confers with counsel.)

5 MR. MASSALON: And, Your Honor, ---

6 (WHEREUPON, pause for the Court.)

7 THE COURT: Go ahead. I am listening.

8 MR. MASSALON: Well, I will tell you what Mr. Abdo told
9 me; and then I will tell you something that he didn't that I
10 think is significant to the question. He said that he is
11 getting a plaque made. But the City issued a stop-work order
12 July the 2nd of 2018 -- and so I could be wrong about that.
13 But I think at this point if he does anything else to it until
14 we get to the bottom of this decision he probably would not be
15 allowed to do that.

16 I -- so I would say that it is his intention to put a
17 plaque on it. But he hasn't. And if he asks me if he should,
18 at this point I would tell him no because of the stop-work
19 order.

20 But, if I could, just getting back to the question of
21 monument. Your question also points out what I think is
22 really the substance of this, which is there are all sorts of
23 monuments. You mentioned a couple of examples.

24 Also in the materials - and we had some dialogue about
25 this in front of the BZA - if you Google flagpole monuments

1 there are lots of those and they are all over the place. And
2 we have a couple of examples of them in the materials. And
3 so ---

4 THE COURT: Are those -- are those in other states, or
5 are those in South Carolina?

6 MR. MASSALON: I believe those are in other states. I am
7 not sure ---

8 THE COURT: So what -- I don't know what their board
9 schematic is and whether they specifically like make provision
10 for that.

11 MR. MASSALON: Well, I ---

12 THE COURT: Wouldn't every county or state have its own
13 ordinances about -- you know, some might be more specific than
14 others. Some may designate that a flagpole is a monument. I
15 don't -- I don't know.

16 MR. MASSALON: And I would be guessing if I said anything
17 different from that. I would say surely they vary all over
18 the place. But again ---

19 THE COURT: Because I would imagine in Nevada they have
20 got different regulations than we have like for signs ---

21 MR. MASSALON: I would agree with you.

22 THE COURT: --- and size and all that kind of stuff.

23 MR. MASSALON: I would agree with you about that.

24 THE COURT: Yeah.

25 MR. MASSALON: But as far as what a monument is, there

1 are lots of different forms of them. Some are stones with
2 things carved into them. Some are sculptures. You mentioned
3 a statute. I have got a statute in my house that is not a
4 monument, but certainly the Lincoln Memorial is a monument.
5 So is the Statute of Abraham Lincoln.

6 And so, again, there are differences among them; and
7 there is no way that I know of to specifically define it by
8 its shape, what it is made out of, those sorts of things.

9 Now the City, as I understand it now, is saying that
10 this can't be a monument because it is not in a public or
11 semi-public place. And I have a couple of thoughts on that
12 that I would like to share with you.

13 First, the statute does not say that. And so the
14 construction of the statute is -- the City is adding things to
15 the statute that are not there. Which under the rules of
16 construction that we talked about a little earlier, I don't
17 think they are allowed to do.

18 I think if you are looking at a question of law and you
19 are construing it in accordance with its plain, ordinary
20 meaning then a monument means what a monument is and it
21 doesn't mean all these additional things.

22 The second thing I would point out is that if the
23 definition of semi-public is that it can be seen from the
24 public thoroughfare, the City would not be right about that,
25 for the reason you mentioned at the outset that the flag is

1 visible from the Connector. I am not a boater myself, but I
2 understand it is visible from the waterway on the Wappoo Cut.

3 A neighbor complained about it; and I am assuming that he
4 or she did not trespass on my client's property to go look at
5 it, which means they must be able to see it from their house.

6 And so, again, I don't think there is any hard and fast
7 definition of what a semi-public place is; but this is visible
8 from various public thoroughfares, which if that is what we
9 are doing and that is the City's explanation of why this isn't
10 a monument, it is a monument.

11 And so, Your Honor, as I said at the outset, Mr. Abdo
12 asked for permission. He got it. The City told him he didn't
13 need a building permit at the outset. And they were right.
14 They got a complaint and then they changed their minds, and
15 now they are not right. The Zoning administrator made an
16 error. The Board of Zoning Appeals affirmed that. And so for
17 those reasons, Your Honor, I would ask that you reverse the
18 decision and order the City to grant this gentleman a building
19 permit after the fact. Thank you.

20 THE COURT: Okay.

21 MR. MASSALON: Thank you.

22 THE COURT: You are welcome.

23 Yes, sir?

24 MR. MCQUEENEY: Thank you, Your Honor. My name is Chip
25 McQueeney. I am here for the respondents, City of Charleston

1 and the City of Charleston Board of Zoning Appeal and Zoning.

2 I did first want to touch off -- touch on the
3 conversation that allegedly occurred between Mr. Batchelder
4 and Mr. Abdo. So Mr. Batchelder is the zoning administrator
5 for the City of Charleston. He has been there for 30 years or
6 maybe a little bit more than that now.

7 During the hearing before the BZA Mr. Batchelder said
8 that this came to his attention at the time -- after a
9 neighbor complained about it and that he was not aware of it
10 before that and that to his knowledge nobody contacted the
11 City about it. This is at the first hearing before the BZA.

12 The record shows that Mr. Abdu was present at that
13 hearing, did not testify. Mr. Massalon did testify on behalf
14 of Mr. Abdu and did not contradict Mr. Batchelder's statement
15 in that regard.

16 And I don't know if Your Honor got the record. I
17 actually left hard copies ---

18 THE COURT: I believe I do.

19 MR. MCQUEENEY: Okay.

20 THE COURT: If I don't, I will let you know. But it
21 seems like I recall reading it.

22 MR. MCQUEENEY: Okay. Mr. Batchelder's testimony is on
23 Page 41 of the record. But then ---

24 THE COURT: How is -- could you spell that for the court
25 reporter, please.

1 THE COURT REPORTER: Thank you.

2 MR. MCQUEENEY: B-A-T-C-H-E-L-D-E-R.

3 THE COURT: I could feel her cringe like I need that
4 spelled.

5 THE COURT REPORTER: Thank you.

6 MR. MCQUEENEY: And I tend to go -- start talking fast
7 so ---

8 THE COURT: That's all right. You said it was Page 45?

9 MR. MASSALON: Page 41 ---

10 THE COURT: Forty-one.

11 MR. MASSALON: --- of the record, yes, Your Honor.

12 So issue -- that issue was not touched upon. And then
13 Mr. Massalon on behalf of his client moves for the Board to
14 rehear its own decision. And when he makes that application
15 there is a hearing on that application for reconsider- -- or a
16 re-hearing really of it -- of the Board's decision that it is
17 not that a flagpole was not a monument.

18 And at that point Mr. Abdo is not at the hearing and Mr.
19 Massalon reads an email into the record from Mr. Abdo saying I
20 talked to Mr. Batchelder and he told me I didn't need a
21 building permit before I installed it and before -- he also
22 told me that there was no height limit for flagpoles.

23 Mr. Batchelder -- Mr. Batchelder testified completely to
24 the contrary. Mr. Abdo could have contradicted that at the
25 first hearing; he didn't.

1 And then on rehearing which is not about adding more
2 facts, it is about you misapprehended or misconstrued
3 something, there is an email from Mr. Abdo addressing this
4 issue. That -- I think the record is pretty clear the only
5 truly admissible evidence is from Mr. Batchelder, and there
6 was no promise that Mr. Abdo could erect a flagpole or did not
7 need a building permit or that there was no height limits to
8 flagpoles.

9 Nevertheless, they raised that in their appellate brief
10 for whatever reason. But to me it is pretty clear from the
11 record.

12 The second thing I wanted to point out is there is sort
13 of -- the zoning administrator had defined a monument as
14 including -- as being within a public or semi-public place and
15 for notable or famous person or event or commemorating both of
16 those. And then Mr. Massalon appealed that decision of the
17 BZA and there was some criticism because the BZA essentially
18 said a flagpole was not a monument and, number two, there is a
19 public aspect to a monument. And Mr. Massalon has argued they
20 didn't really address the zoning administrator's definition
21 and they needed to do that.

22 I submitted a brief; but I didn't touch on this, so I do
23 want to touch on it in oral arguments. Section 629-800(e) of
24 the South Carolina code essentially states - and I am
25 paraphrasing, and I know Your Honor did earlier.

1 THE COURT: Okay.

2 MR. MCQUEENEY: It essentially states that the BZA steps
3 into the shoes of the person granting the permit. It is a
4 completely de novo review.

5 And there is a case, Clear Channel Outdoor. It was a
6 Court of Appeals case where the Supreme Court actually
7 affirmed this portion of it under 220(e)(1) or 220(c), one of
8 the 220 appellate court rules. Either way, they affirmed it.
9 The Court of Appeals opinion stating that the BZA in that case
10 did not have to rely on the same section that the zoning
11 administrator relied on. And I figured whether it is denying
12 or demanding the permanent -- but that it was -- it was a de
13 novo hearing before the BZA. They are not stuck in just
14 addressing the zoning administrator's decision.

15 So what we have is the Board's holding that a flagpole is
16 not a monument. And I think as a matter of law it is not a
17 monument, as a matter of statutory construction. As a matter
18 of fact, this flagpole is not a monument. To the extent a
19 flagpole could ever be.

20 And then also that there is this public aspect. And I
21 think importantly the Court can affirm just on the fact that a
22 flagpole regardless of the public aspect that a flagpole is
23 not a monument, period.

24 There were three definitions that were mentioned in the
25 record. The first is Mr. Batchelder's definition. And even

1 if you read out of it the things that Mr. Massalon says should
2 not be in the definition, the public space element and the
3 famous renewable person element, the definition would
4 read - if I can find it.

5 (Pause for defense counsel.)

6 MR. MCQUEENEY: Okay. The zoning administrator finds a
7 statute, building, or other structure erected in public or
8 semi-public space, to commemorate a famous or notable person
9 or event.

10 So read out famous or notable and read out public or
11 semi-public space; and a flagpole is a statute, building, or
12 other structure erected to commemorate a person or event.

13 A flagpole is not erected to commemorate a person or
14 event. A flagpole is erected to attach a flag to it. A flag
15 could be changed out by any person. Zoning runs with the
16 land. Arguing that an American flag on a flagpole
17 commemorates a person or event is like, you know, arguing that
18 a Clemson flag on a 60-foot flagpole is a monument to Dabo
19 Swinney who is a person or event. I mean it is just not --
20 that is not a monument.

21 I think the BZA in a six-zero decision, the zoning
22 administrator and other -- pretty much ---

23 THE COURT: What about Mr. Massalon's argument that this
24 is a legal question and not a factual question?

25 MR. MCQUEENEY: I think it's ---

1 THE COURT: I need you to address that.

2 MR. MCQUEENEY: I think statutory construction is a legal
3 question. Although you do defer to the agency's or the BZA's
4 interpretation of its own ordinances. I read the line of
5 cases -- and there are several that go back and forth, and it
6 is somewhat confusing. But essentially I think what City
7 Council intended when it said monument is a legal issue. And
8 whether or not a flagpole constitutes a monument under that
9 definition ---

10 THE COURT: Is a factual issue?

11 MR. MCQUEENEY: --- is a factual issue. And I think you
12 defer to the Board's factual findings on that issue.

13 Going to -- the other two -- I did want to mention, the
14 other two definitions of a monument that were in the record
15 before the BZA and in Mr. Massalon's brief for this court, is
16 a memorial stone or building erected in remembrance of a
17 person or event. A flagpole is not a memorial stone or a
18 building.

19 And then another one, an outstanding, enduring, and
20 memorable example of something. Again, a flagpole was not an
21 example of anything; and it is not outstanding, enduring or
22 memorable.

23 So I don't even think you need to get to the public
24 aspect element. Because a flagpole doesn't meet any
25 definition of the core definitions a monument issue will

1 before you even get to the public aspect.

2 But the BZA did hold there is a public aspect to a
3 monument. And I touch on this in my brief as well. They read
4 it I think in con- -- I think you have to read the exception
5 into the height limitation and context of the other words in
6 the ordinance.

7 So the height exception applies to monuments, water
8 towers, observation towers, transmission towers, mass, or --
9 and areas. Those are all public or semi-public type uses.
10 And more importantly they are not things that you would expect
11 your neighbor in a residential zoning district to put in their
12 backyard.

13 I mean I think Mr. Massalon's argument is that strictly
14 construing what a monument is and, you know, ignoring the sort
15 of public aspects of each of those things - and I think there
16 is a public connotation regardless of whether it is stated -
17 that someone could built the Washington Monument in their
18 backyard or the Lincoln Memorial in the backyard. And that is
19 not -- you don't interpret zoning ordinances in a vacuum. You
20 have to consider the context of it.

21 THE COURT: I think he can see that you can't do that.

22 MR. MCQUEENEY: Right.

23 THE COURT: It is all subject to approval, whether --
24 even it is a monument you still have to get approval and
25 comply with requirements to build something.

1 MR. MCQUEENEY: Correct, Your Honor. And I don't
2 think -- I don't think building any of those things in a -- on
3 a residential lot in a residential neighborhood that is zoned
4 residential, entirely zoned residential, the fact that you can
5 see it from the inland waterway or a bridge or something like
6 that, doesn't turn it into a public or semi-public -- public
7 place. It is still a residential lot within a residential
8 subdivision.

9 And, again, each of the structures listed in the
10 exceptions have -- have -- they have several things in common,
11 but they have that public aspect. There is a public use
12 element to them in common. And, number two, they are not
13 things that you are going to expect your neighbor to erect in
14 their backyard.

15 And then - let's see if I left anything out. I think I
16 touched on everything I wanted to touch on. If Your Honor has
17 any questions --

18 THE COURT: No, what I am going to do is I am going to
19 read everything y'all have submitted to me; and then I am --
20 if I need anything else I will let you know.

21 But I need you all to provide proposed orders to me
22 within five days of today with any findings of fact and
23 conclusions of law. If you could send that to me in Word
24 format. Send it to DJeffersonsc@sccourts.org, and copy one
25 another on it. Please tell your staff don't send it to me

1 directly. I will never get it.

2 MR. MCQUEENEY: And, Your Honor, I am actually -- I am
3 supposed to be on vacation today ---

4 THE COURT: You need to go on your vacation.

5 MR. MCQUEENEY: --- today through Sunday.

6 THE COURT: Do you need extra time? If you do, I believe
7 in a balanced life. You need to go on vacation.

8 MR. MCQUEENEY: If I could have maybe until Monday -- a
9 week ---

10 THE COURT: That's fine.

11 MR. MCQUEENEY: I guess two weeks from this past Monday.

12 THE COURT: So ---

13 MR. MCQUEENEY: August ---

14 THE COURT: --- you are going on vacation this coming
15 week?

16 MR. MCQUEENEY: Through -- yes, ma'am.

17 THE COURT: Through what date?

18 MR. MCQUEENEY: Through Friday. And then my dad's
19 seventieth birthday ---

20 THE COURT: Oh, how exciting.

21 MR. MCQUEENEY: --- is on Sunday. So ---

22 THE COURT: So how much time do you need? Do you
23 need ---

24 MR. MCQUEENEY: If I could have a week from next Monday
25 that would be great, to get back in the office and deal with

1 things.

2 THE COURT: So that would be the 12th?

3 MR. MCQUEENEY: 12th. That sounds right, yes, Your
4 Honor.

5 THE COURT: That is fine.

6 You don't have any objection to that, do you, Mr.
7 Massalon?

8 MR. MASSALON: Absolutely no objection, Your Honor.

9 THE COURT: All right, guys, y'all have a good day.

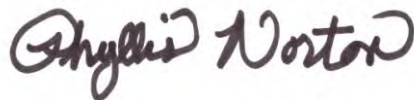
10 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on July 30, 2019.

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

A handwritten signature in dark ink, reading "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: January 2, 2020

Certified Transcript Provided For: John A. Massalon
Certification Reference #2020-0102 Original

COPY



City of Charleston Building Inspections

Owners' Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Masselon Phone: 843-727-1144

Company: Will's Masselon & Hillea

Address: 97 Broad St City: Charleston State: SC Zip: 29401

Email: jmasselon@willamhillea.net

II. PROJECT INFORMATION please fill out all that applies

Property Owner: David W. Abdo & Zlonka Soja Taylor Phone: 843-813-3466

Address of Work: 29 Broughton Rd Charleston, SC

Subdivision or Project Name: Crescent Lot: 6 Block: R TMS #: 421-14-00-024

Flood Zone: _____ FIRM Panel #: _____

Is this property in BAR or DRB jurisdiction: ☐ Yes ☒ No

Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION please fill out all that applies

Scope of Work: Install flag monument

Current Use of building, if applicable: N/A Propose Use: Monument

NON-RESIDENTIAL USES:

A-PLACES OF ASSEMBLY
B-BUSINESS
E-EDUCATION

F-FABRICATION
H-HAZARDOUS
I-INDUSTRIAL

M-MERCANTILE
S-STORAGE
U-UTILITY

R1-HOTELS AND MOTELS
R2-APARTMENTS, CONDOS, DORMS
R3-ONE AND TWO FAMILY OR TOWNHOMES

RESIDENTIAL USES:

R4-RESIDENTIAL CARE/ASSISTED LIVING
U-GARAGES
MANUFACTURED HOMES

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement

☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: N/A Right of Way Bond Required: Yes ☐ No ☒

Total cost of improvement (\$): Approx \$10,000 Square Footage of Addition or New Building: N/A

Check all approvals granted: ☐ BAR ☐ DRB ☐ BZA-2 ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS - FOR PROPERTY OWNERS ACTING AS CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

V. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission
State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VI. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.
If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for contacting and scheduling all required inspections.

Signature [Signature] Date 2/6/18

2/6/18

- 1) ANYTHING SHOWN OUTSIDE THE DETAILED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
- 2) AREA DETERMINED BY COORDINATE METHOD.
- 3) THE BOUNDARIES SHOWN HEREON ARE APPROXIMATE AND AS SUCH ARE SUBJECT TO LOCAL ADJUSTMENT.
- 4) THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS OF ENGINEERS UNDESIGNATED BEHINDERS IS UNDERTAKEN AS OF THE DATE OF THIS SURVEY.
- 5) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY, AND IS NOT THE RESULT OF A TITLE SEARCH.
- 6) THE SPECIES SHOWN HEREON ARE FOR ORIGIN ONLY AND HAVE NOT BEEN REVIEWED BY A CERTIFIED AGENCIES PRIOR TO ANY DEVELOPMENT OR TREE REMOVAL TREE.
- 7) DECLARATION IS MADE TO THOSE PERSONS FOR WHICH THIS PLAT WAS PREPARED, IT IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS. THIS DRAWING/PLAT IS AN INSTRUMENT OF SERVICE AND IS THE SOLE PROPERTY OF GEORGE A. JOHNSON, JR. AND IT SHALL NOT BE REPRODUCED OR USED IN ANY MANNER WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF GEORGE A. JOHNSON, JR. PLS. SEE REG. 12000.
- 8) USE OF MATERIALS OF THIS DOCUMENT IN ANY COURT, FINANCIAL OR LAND TRANSACTIONS OR WITH ANY PUBLIC AGENCY OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COPYRIGHT LAWS.
- 9) "SURVEY INSPECTIONS" OR "UPDATES" OF THIS MAP ARE PROHIBITED.
- 10) THESE CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
- 11) NO IMPROVEMENTS SHALL BE MADE. THE PURPOSE OF THIS PLAT IS TO OBTAIN ORIGIN ORIGIN.

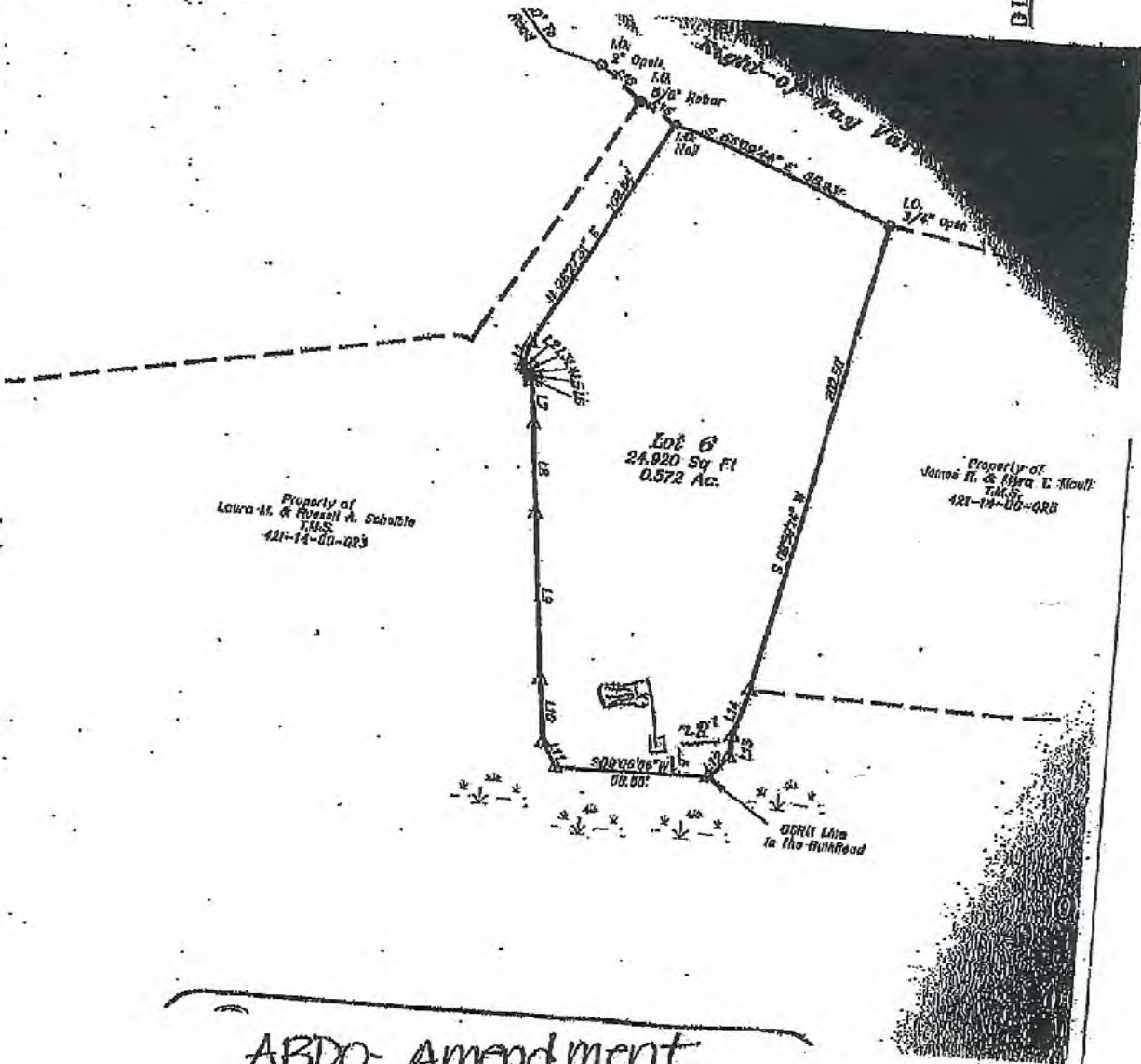
THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY, ORIGINALLY ACQUIRED BY THE DEPARTMENT OF THE ARMY AND SUBJECT TO CHANGE OVER TIME. BY DETACHING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ARREST PERMIT JURISDICTION AT ANY TIME IN ANY ORIGIN. AREA ON THE SUBJECT PROPERTY, NUMBER SHOWN HEREON OR NOT.

George A. Johnson, Jr.
 SIGNATURE
 3/22/2011
 DATE

Any original this shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

General Property Survey

I, *George A. Johnson, Jr.*, a Registered Professional Land Surveyor in the State of South Carolina, certify to certify that the survey shown herein was made in accordance with the requirements of the *Professional Land Surveyor's Manual* for the State of South Carolina, and made in accordance with the requirements for a *General Property Survey* as specified therein.



ABDO Amendment

APRIL 07 178. +

Model ECXA60 - ESR60F13



10" - 14 gauge spun aluminum ball
gold anodized

Single sheave truck, cast aluminum
revolving, non-fouling type

2 Bronze swivel snaps with covers
per halyard

1 Set of halyard: #10 poly

1 - 8" Cast aluminum cleat

Aluminum flash collar

3000 PSI concrete

Hardwood wedges
(supplied by others)

Dry sand tightly tamped
after aligning pole

Foundation sleeve - 16 ga
hot dip galvanized steel

Steel centering wedges

1/4" Steel base plate

1/4" Steel support plate
welded to grounding spike

Exposed height: 60'-0"

Tapered portion: 44'-6"

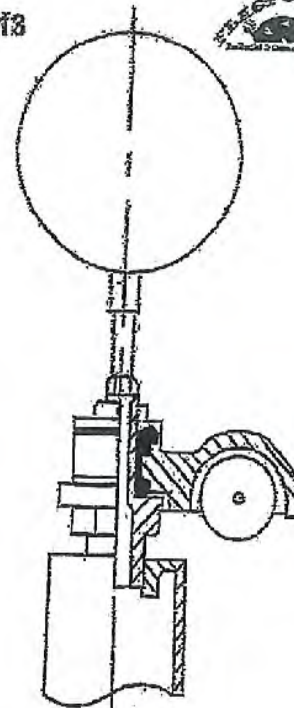
Overall length: 66'-0"

Cleat height: 5'-0"

Foundation: 8'-0"

6'-0"

Straight portion: 21'-6"



Truck Detail

Aluminum body
Stainless steel ball bearings
Aluminum sheave
Cast aluminum spindle

All shafts with overall
length of more than
38'-6" are shipped in
two sections.

Each section matched
marked for field assembly.
Exposed portion of jam
sleeve must be well
lubricated prior to
assembly.

1-1/2" maximum shop
gap allowed for field
fitting (ram for tight joint)



Filename: ECXA60 single sheave revolving truck

Project:	Ground set tapered aluminum flagpole: ALLOY: 6063T6	FLAGPOLES ETC.	Date:
Location:	Exposed height: 60'-0"	Overall height: 66'-0"	487 Hadley St
Architect:	Ship in 2 section	Butt diameter: 10"	Holly, MI 48442
Contractor:	Top diameter: 4"	Wall thickness: .250"	(888) 735-5591
Customer:	Finish: 100 grit polish		Job:



City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABINESS, P.E.
Director

Department of Public Service

The following is provided as require by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

9/6/18
Date

Signature of Owner

9/6/18
Date

Signature of Owner

Date

RECEIVED 7.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abdo
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Donka Sujia Taylor
Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____
Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-08-024

Nature of Work: Flag monument.

Brenda Casey
Witness

Q. Rul
Witness

Dr. [Signature]
Signature of Owner (s)

9/6/18
9/6/18
Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18
Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

Q. Rul
Signature of Notary

2/3/2026
Exp Date

101 Meeting Street, Suite 200 ↔ Charleston, SC 29401
PO Box 726 ↔ Charleston, SC 29402
V: 843.958.4800 ↔ F: 843.958.4803
www.charlestoncounty.org

Elaine H. Bozman, ROD
Tia P. Shaw, Chief Deputy ROD



Received From:

WILLS & MASSALON & ALLEN LLC
PO BOX 859

CHARLESTON SC 29402

DATE: 07-Sep-18

INVOICE #:	X000393825

DRAWER:	Drawer 1

CLERK:	KLH

TIME: 11:47:11 AM

TIME: 11:47:11 AM

Description	# Total Pgs	# Bill'd Pgs	Ex / Tr Page Cost	# Refs	Chat	Pstg	Value in 000	Unit Price	Extra Ref Cost	County Fee	State Fee	Item Total
Own/Int/Bld	2	1						\$10.00		\$ -	\$ -	\$ 10.00
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Paid:

Check #	Amount
9978	\$ 10.00
Check Total	\$ 10.00
Cash Total	

Total Paid: \$ 10.00

Balance: \$ -

The ROD Office retains any recording fee overages of \$5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!



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 – Submit this application, along with the required information and fee, 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: December 4, 2018

Property Address 29 Broughton Rd., Charleston, SC 29407 TMS # 421-14-00-024

Property Owner David W. Abdo & Ilonka Sonja Taylor Daytime Phone (843) 813-3466

Applicant John A. Massalon, Esq. Daytime Phone (843) 727-1144

Applicant's Mailing Address Wills Massalon & Allen LLC, 97 Broad Street, Charleston, SC 29401

E-mail Address jmassalon@wmlawfirm.net

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

Zoning of property SR-8

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 John A. Massalon Date 10/31/2018

For office use only			
Date application received	<u>10/31/18</u>	Fee \$ <u>150⁰⁰</u>	Time application received <u>2 PM</u>
Staffperson	<u>TPM</u>		Receipt # <u>2241053</u>



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

Page 1 of 2

City of Charleston

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

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary):

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):

See Attachment "A"

Signature of Applicant

Date 10/31/2018

For office use only

Date application received

10/31/18

Time application received

2pm

Staffperson

PA

ATTACHMENT "A"

Appellant, David Abdo, hereby appeals the decision of the Zoning Administrator for the City of Charleston, received October 17, 2018, denying Appellant's permit application to construct a flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

This appeal is based upon the following grounds:

1. The City of Charleston Zoning Ordinance allows for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning within ten (10) business days of receipt of the decision.
2. Appellant applied to the City of Charleston to erect a flagpole monument on his property to honor the military service of his father, his wife's father, their brother in law, and all who served in the armed forces. See Exhibit A (Application).
3. The Zoning Administrator for the City of Charleston denied Appellant's application on the grounds that the flagpole could not be considered a monument based on his interpretation that the height exception contained in Sec. 54-505 of the City of Charleston Zoning Ordinance applies only to "a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event." See Exhibit B (E-mail denying application).
4. Sec. 54-505 (a) provides without qualification that "the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone."

5. Sec. 54-505(a) does not further define “monument”, differentiate between monuments located on private property, include any requirement that the monument be located on public or private property, or limit a monument designation depending upon to whom or about what the monument commemorates.
6. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm v. Town of Sullivan’s Island Board of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018), citing *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* Citing, *Helicopter Sols.*, at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).
7. A “zoning ordinance [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’ ” *Vulcan Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App 2000) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 337 S.C. 157, 177, 522 S.E.2d 153, 164 (Ct. App. 1999), rev’d, 344 S.C. 43, 543 S.E.2d 538 (2001)). “As with statutes, the lawmakers’ intent embodied in an ordinance ‘must prevail if it can be reasonably discovered in the language used.’ ” *Id.* at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

8. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 666 S.E. 2d 892 (2008) (quoting *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Id.* 379 S.C. at 570-71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).

9. The Zoning Administrator's interpretation of 54-505(a) is not necessary or justified. The plain language of the ordinance clearly and unambiguously excuses memorials from the height requirements without qualification. The common definition of a "monument" as it appears in the on-line version of the Merriam Webster dictionary includes a "memorial stone or a building erected in remembrance of a person or event." <https://www.merriamwebster.com/dictionary/> . There is no requirement that the memorial be located on public property or that the person or event commemorated be famous or notable. The interpretation adopted by the City injects uncertainty and ambiguity into an otherwise clear ordinance.

For the reasons set forth above, Appellant respectfully requests that the Board of Zoning Appeals-Zoning reconsider his application, reverse the decision of the Zoning Administrator and grant a permit allowing Mr. Abdo to maintain the flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

EXHIBIT “A”

COPY



City of Charleston Building Inspections

Owners' Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Masselon Phone: 843-727-1144
 Company: Willis Masselon & Allen
 Address: 97 Broad St City: Charleston State: SC Zip: 29401
 Email: jmasselon@willamallanlawfirm.net

II. PROJECT INFORMATION please fill out all that applies

Property Owner: David W. Abdo & Zlounka Soja Taylor Phone: 843-813-3466
 Address of Work: 29 Broughton Rd Charleston, SC Unit: _____
 Subdivision or Project Name: Crescent Lot: 6 Block: K TMS #: 421-14-00-024
 Flood Zone: _____ FIRM Panel #: _____ Zoning: _____
 Is this property in BAR or DRB jurisdiction: ☐ Yes ☒ No Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION please fill out all that applies

Scope of Work: Install flag monumentCurrent Use of building, if applicable: N/A Propose Use: Monument

NON-RESIDENTIAL USES

A - PLACES OF ASSEMBLY
 B - BUSINESS
 E - EDUCATION

F - FABRICATION
 H - HAZARDOUS
 I - INDUSTRIAL

M - MERCANTILE
 S - STORAGE
 U - UTILITY

R1 - HOTELS AND MOTELS
 R2 - APARTMENTS, CONDOS, DORMS
 R3 - ONE AND TWO FAMILY OR TOWNHOMES

RESIDENTIAL USES

RA - RESIDENTIAL CARE/ASSISTED LIVING
 U - GARAGES
 MANUFACTURED HOMES

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement
☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: N/A Right of Way Bond Required: Yes ☐ No ☒Total cost of improvement (\$): Approx 10,000 Square Footage of Addition or New Building: N/ACheck all approvals granted: ☐ BAR ☐ DRB ☐ BZA-2 ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS FOR PROPERTY OWNERS ACTING AS CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

VI. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission
State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VII. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.

If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for calling to schedule all required inspections.

Signature [Signature] Date 9/6/18

DL

- 1) ANYTHING SHOWN OUTSIDE THE DELINEATED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
- 2) AREA DETERMINED BY COORDINATE METHOD.
- 3) THE BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.
- 4) THE PRESENCE OR ABSENCE OF U.S. ARMY CORP. OF ENGINEERS' UNOCCUPATIONAL STATUS IS INDICATED AS OF THE DATE OF THIS SURVEY.
- 5) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY, AND IS NOT THE RESULT OF A TITLE SEARCH.
- 6) THE SPACES SHOWN HEREON ARE OUR OWN ONLY AND HAVE NOT BEEN HERETOBY BY A CERTIFIED AGRICULTURIST, PRIOR TO ANY DEVELOPMENT OR THE HERETOBY THESE SPACES SHALL BE TIERED.
- 7) DECLARATION IS MADE TO THOSE PERSONS FOR WHOM THIS PLAT WAS PREPARED, IT IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS. THIS DRAWING FEET IS IN POSSESSION OF SERVICE AND IS THE SOLE PROPERTY OF GEORGE K. J. JOHNSON, JR. AND IT SHALL NOT BE REPRODUCED OR USED IN ANY WAY WHATSOEVER, WITHOUT THE WRITTEN PERMISSION OF K. STEVEN JOHNSON, PLUS 30 REG NO. 10034.
- 8) USE OF ANY PART OF THIS DOCUMENT IN ANY COURT, TRIBUNAL OR LAND TRANSACTION, OR FILED WITH ANY PUBLIC AGENCY OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COPYRIGHT LAWS.
- 9) "SHEET RESERVATIONS" OR "UPDATES" OF THIS PLAT ARE PROHIBITED.
- 10) THESE COORDINATES ARE NOT TRANSFERABLE TO ADJUTANT INSTITUTIONS OR SUBSEQUENT OWNERS.
- 11) NO ADDITIONS SHALL BE MADE TO THIS PLAT IS TO BEAT DATA CRITICAL TO THE SURVEY.

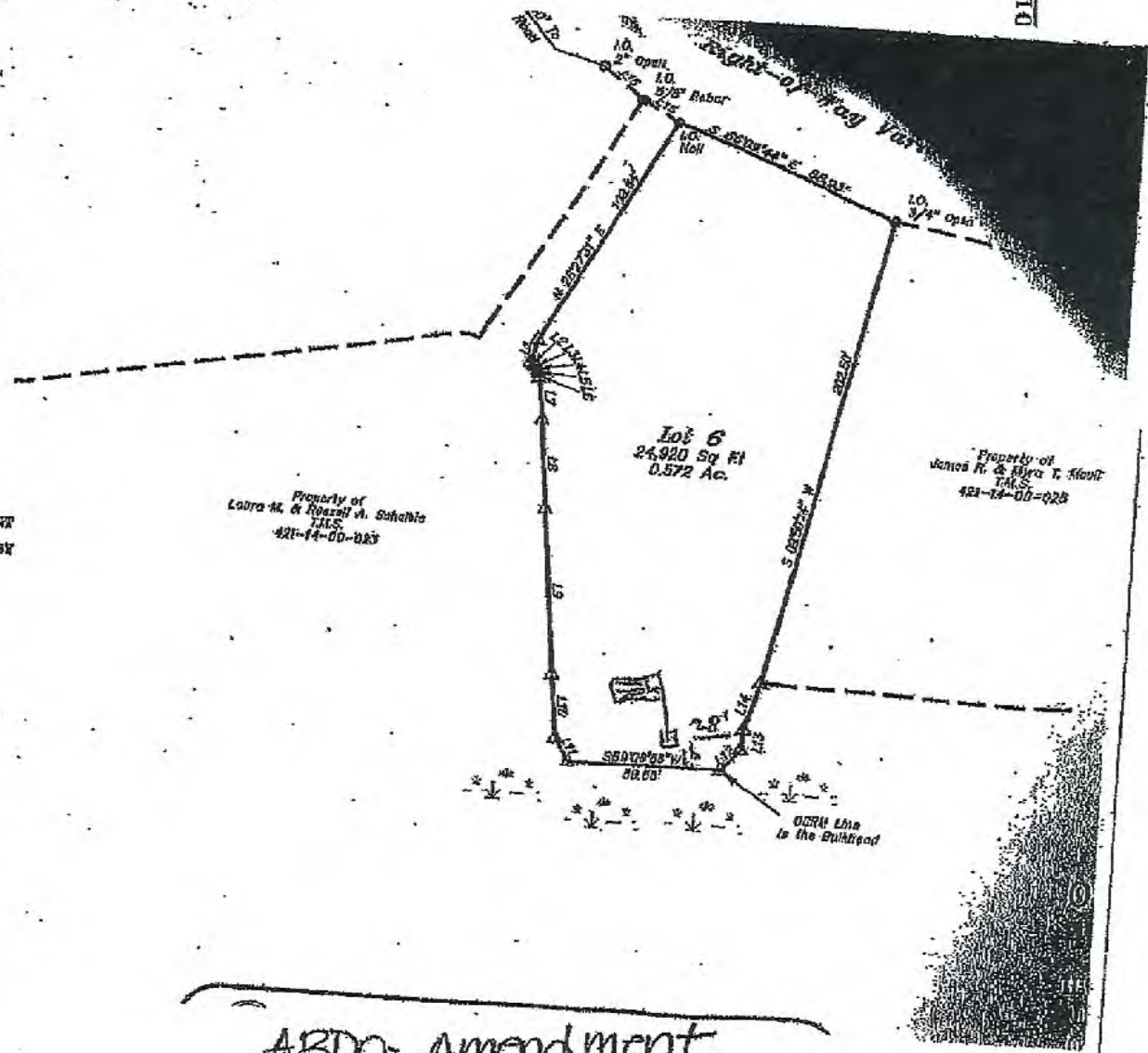
THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF IMPARTIAL PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSESS PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, NOTHING SHOWN HEREON OR NOT.

A. J. Johnson 3/22/2011
 SIGNATURE DATE

The official line shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

General Property Survey

I, K. Steven Johnson, a Registered Professional Land Surveyor in the State of South Carolina, certify to certify that this survey shown herein was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a State Survey as specified therein.



Property of
 Laura M. & Robert A. Sahabie
 LLC
 421-14-00-003

Property of
 James R. & Myra T. Mount
 LLC
 421-14-00-028

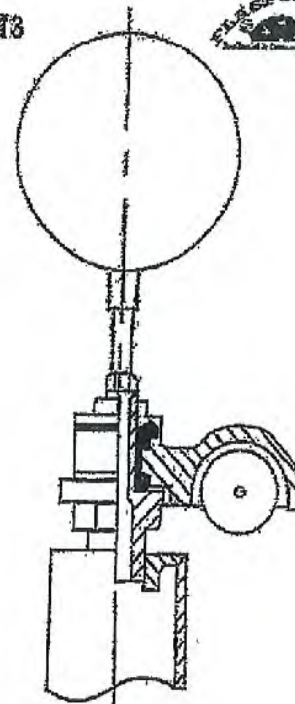
ABDO- Amendment

ADDITIONAL 172.4

Model ECXA60 - ESR60F13



- 10" - 14 gauge spun aluminum ball
gold anodized
- Single sheave truck; cast aluminum
revolving, non-fouling type
- 2 Bronze swivel snaps with covers
per halyard
- 1 Set of halyard: #10 poly



Truck Detail

Aluminum body
Stainless steel ball bearings
Aluminum sheave
Cast aluminum spindle

1 - 9" Cast aluminum cleat

Exposed height: 66'-0"

Tapered portion: 44'-8"

Overall length: 66'-0"

Foundation: 6'-6"

Cleat height: 6'-0"

6'-0"

6"

12"

20"

50"

Aluminum flask collar

3000 PSI concrete

Hardwood wedges
(supplied by others)

Dry sand tightly tamped
after aligning pole

Foundation sleeve - 16 ga
hot dip galvanized steel

Steel centering wedges

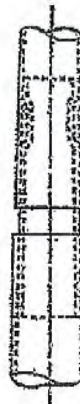
1/4" Steel base plate

1/4" Steel support plate
welded to grounding spike

All shafts with overall
length of more than
38'-6" are shipped in
two sections.

Each section matched
marked for field assembly.
Exposed portion of jam
sleeve must be well
lubricated prior to
assembly.

1-1/2" maximum ship
gap allowed for field
fitting (ram for tight joint)



Filename: ECXA60-single sheave revolving truck.d

Project:	Ground set tapered aluminum flagpole; ALLQY: 608376	FLAGPOLES ETC.	Date:
Location:	Exposed height: 66'-0"	Overall height: 66'-0"	437 Hadley St.
Architect:	Ship in 2 section	Butt diameter: 10"	Holly, MI 48442
Contractor:	Top diameter: 4"	Wall thickness: .260"	(888) 735-5591
Customer:	Finish: 100 grit polish		Job:



City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABINESS, P.E.
Director

Department of Public Service

The following is provided as require by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

9/6/18
Date

Signature of Owner

9/6/18
Date

Signature of Owner

Date

RECEIVED 9.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abd.o

Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Honka Sujia Taylor

Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____

Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-08-024

Nature of Work: Flag monument.

Brenda Casey
Witness

A. R. L.
Witness

[Signature]
Signature of Owner (s)

9/6/18

9/6/18

Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18

Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

[Signature]
Signature of Notary

2/3/2026

Exp Date

Elaine H. Bozman, ROD
Tia P. Shaw, Chief Deputy ROD



DATE:	07-Sep-18
INVOICE #:	X000393825
DRAWER:	Drawer 1
CLERK:	KLH
TIME:	11:47:11 AM

[illegible]

Check #	Amount
9978	\$ 10.00
Check Total	\$ 10.00
Cash Total	

Total Paid: \$ 10.00

Balance: \$ -

The ROD Office retains any recording fee overages of \$5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!

EXHIBIT “B”

731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Penny" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

-----Original Message-----

From: John A. Massalon [<mailto:jmassalon@wmalawfirm.net>]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:



Board of Zoning Appeals-Zoning

December 4, 2018

The Board consists of seven members who are appointed by City Council. The Board is authorized to do three things:

- Hear appeals from decisions of the zoning administrator
- Grant or deny applications for zoning variances
- Grant or deny applications for zoning special exceptions

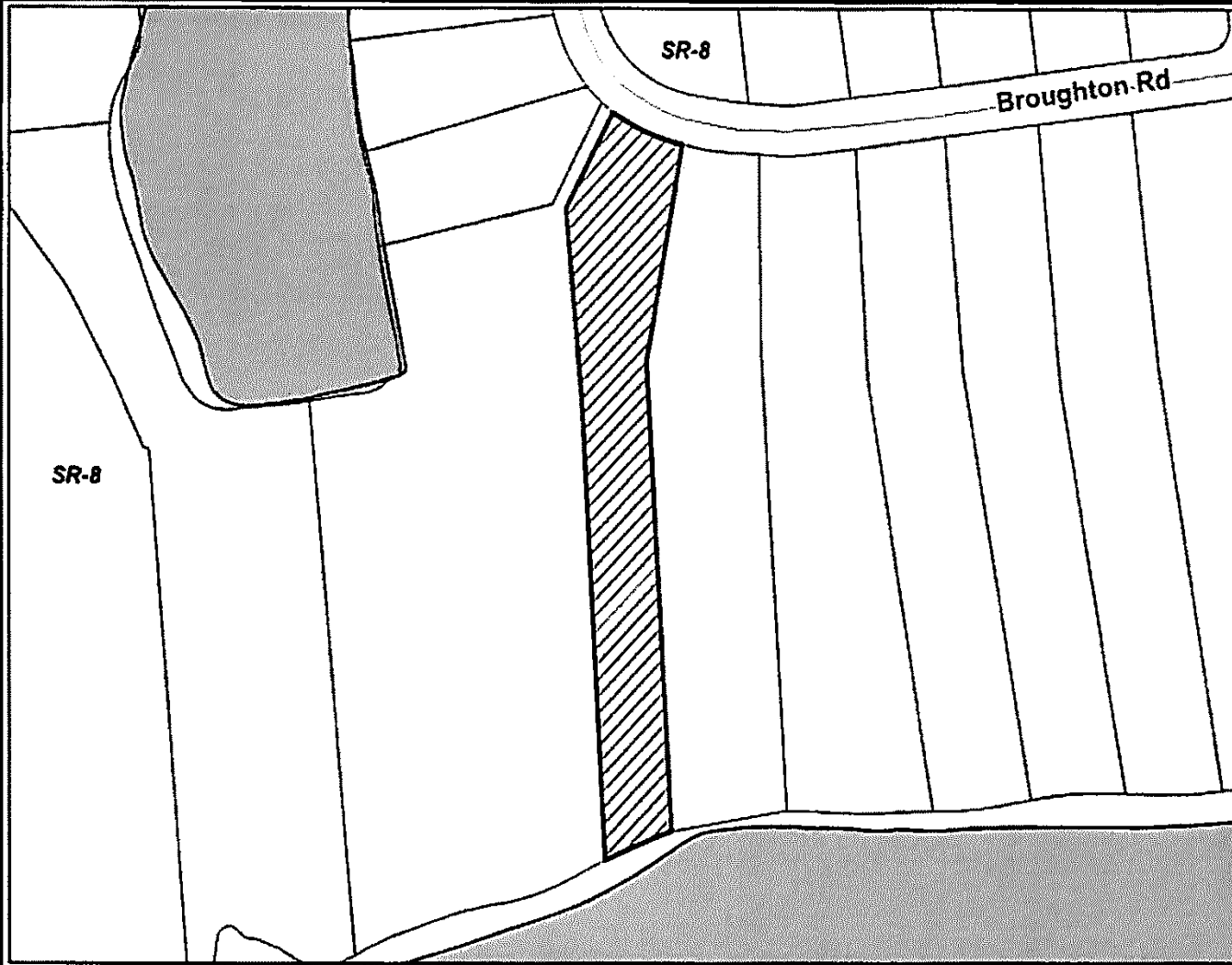
These proceedings are being recorded so please identify yourself and address your comments to the Board.

Please turn off your cell phones.

CITY OF CHARLESTON

DEPARTMENT OF PLANNING, PRESERVATION AND SUSTAINABILITY

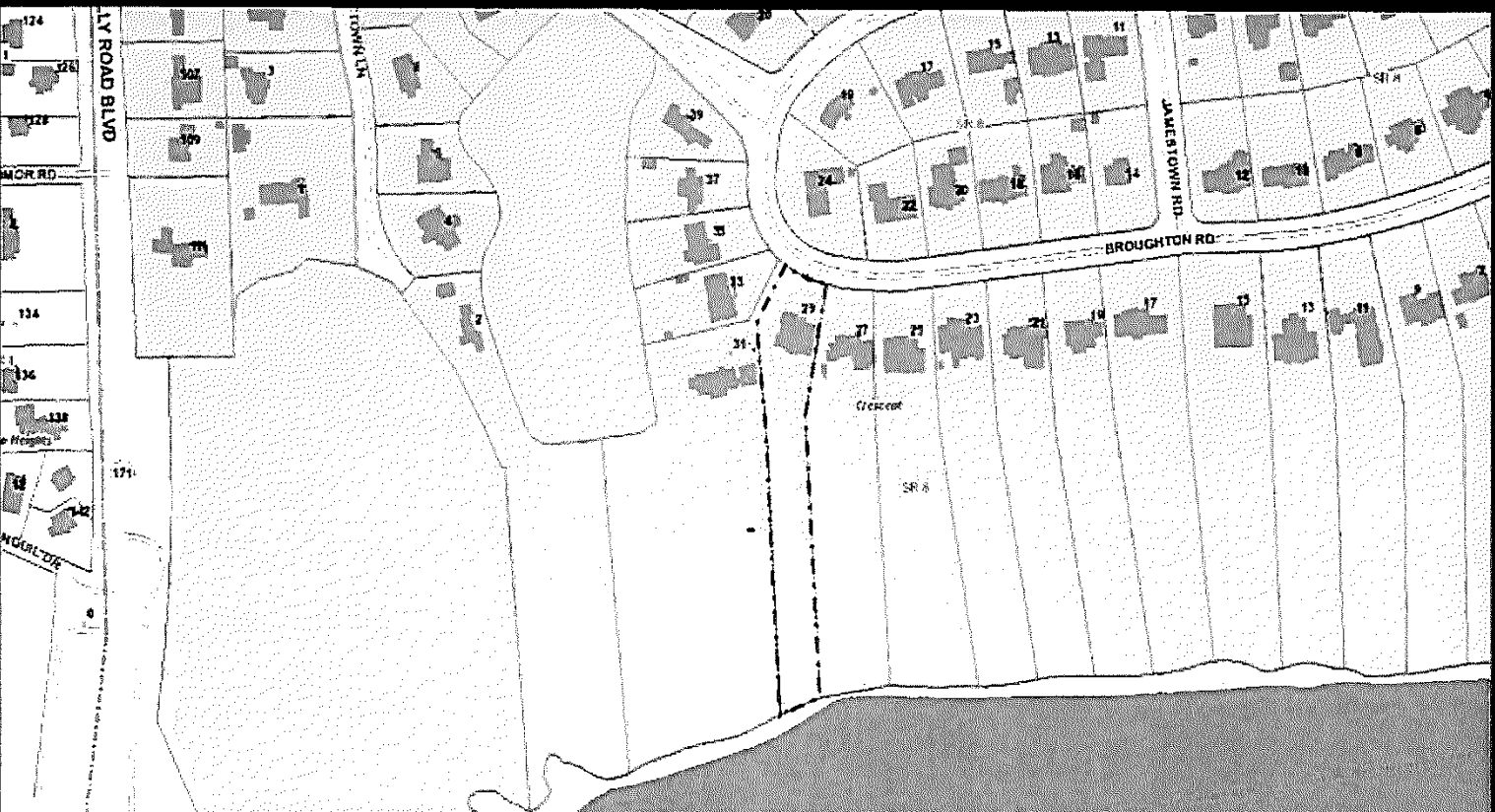
29 BROUGHTON ROAD



BZA RECORD p. 028



BZA RECORD p. 029

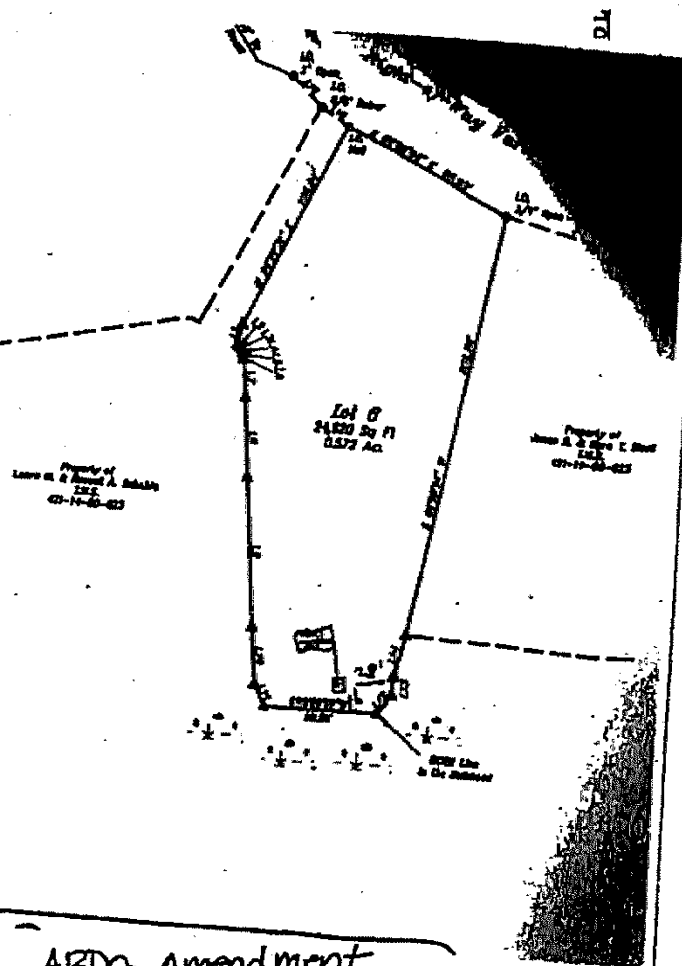


BZA RECORD P. 030

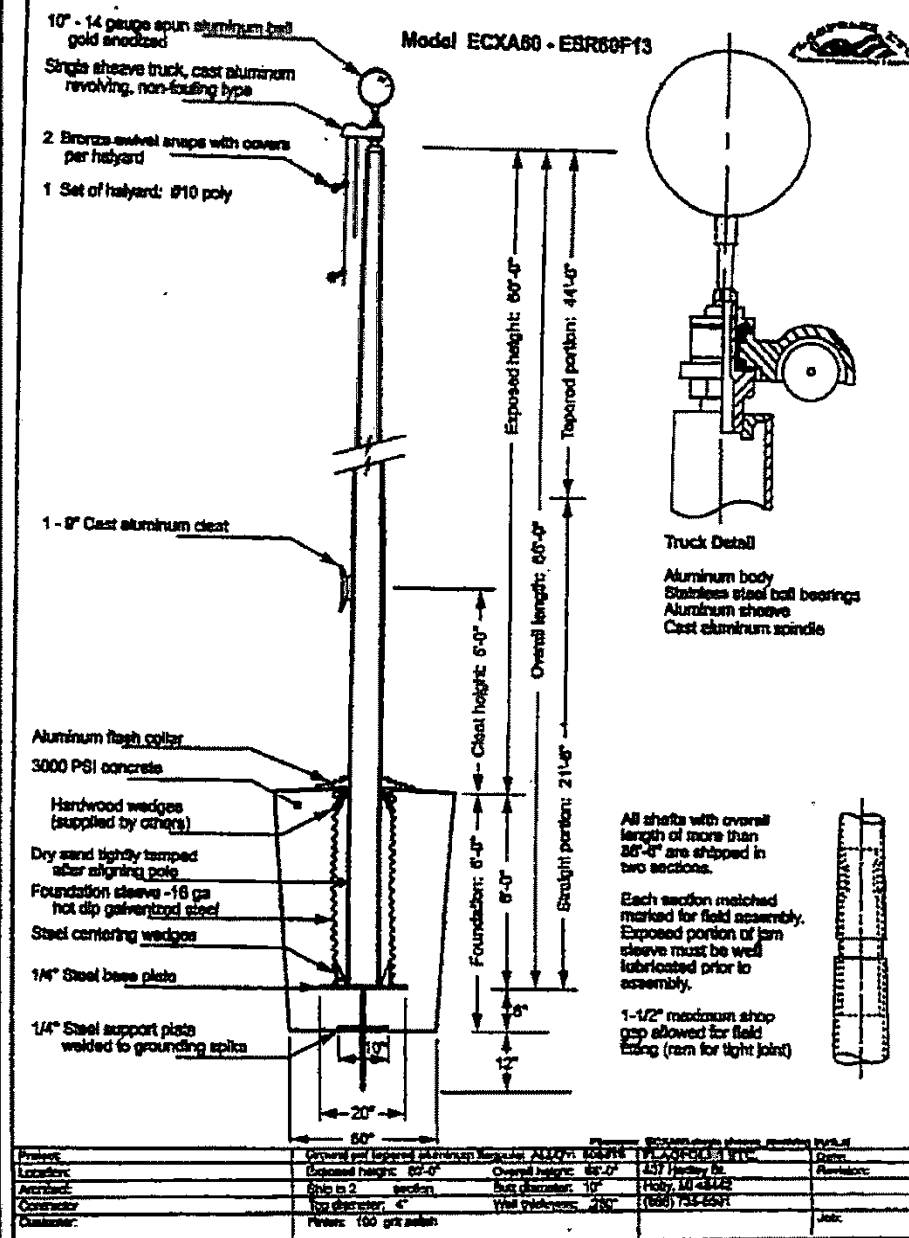
- [illegible]

THE UNITED STATES OF AMERICA
DO hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the Department of the Interior.

Dr. J. Edgar Hoover, Director of Federal Bureau of Investigation, advised that he had no information regarding any such activities.



ACQUA-AR. 172. 1



ARTICLE 3 - SITE REGULATIONS

PART 1 - HEIGHT, AREA AND SETBACK REGULATIONS

Sec. 54-301. - Height, area and setback regulations.

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS 5/9/22

Zone District Designation	Max Height Limits ⁵ Structures
SR-8	35'2½ str.

S. See Article 5: Exceptions and Modifications, Part 2 Exceptions to Height and Setback Requirements.

Structure. Anything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land. The word "structure" shall include the word "building."

ARTICLE 5 - EXCEPTIONS AND MODIFICATIONS

PART 2 - EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. - Exceptions to height requirements.

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.



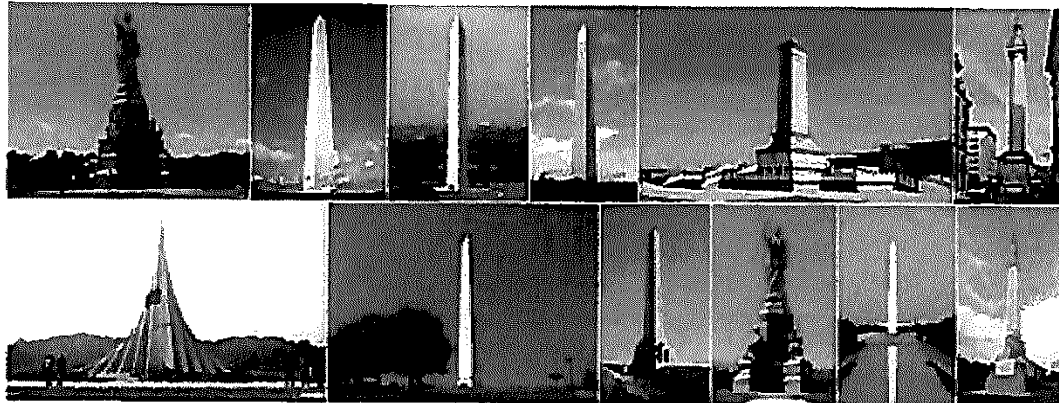
what is a monument



<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

Images of what is a monument

[bing.com/images](https://www.bing.com/images)



See more images of what is a monument

<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

mon·u·ment

[ˈmänyəmənt] 

NOUN

a statue, building, or other structure erected to commemorate a famous or notable person or event.

synonyms memorial · statue · pillar · column · obelisk · cross · cairn · dolmen · cromlech · monolith
megalith · henge · stone circle · cenotaph · tomb · mausoleum · shrine · [more]

- **a statue or other structure placed by or over a grave in memory of the dead.**

synonyms gravestone · headstone · tombstone

- **a building, structure, or site that is of historical importance or interest.**

"the amphitheater is one of the many Greek monuments in Sicily"

synonyms monument · distinctive/prominent feature · sight · spectacle

- **an outstanding, enduring, and memorable example of something.**

"recordings that are a monument to the art of playing the piano"

synonyms testament · record · reminder · remembrance · memorial · commemoration · witness
token · example · exemplar · model · archetype · pattern · nonpareil · paragon



27 Race St
Charleston, South Carolina
Google Inc.
Street View Jun 2017

BZA RECORD p. 037

BZA RECORD p. 058

1000
1000
1000

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS^(M)

§ 54-301

Numbers in () indicate number of units per acre.

May 15, 1946

Zone District Designation	Front and Rear ^{10/17} Setback Minimum Depths			Side Setbacks- Minimum Widths			Minimum Lot ¹³ Area per Family in square Feet-Type Dwelling Unit			Maximum ⁷ Percent of Lot Occupied by Buildings	Max Height Limits ⁶ Structures	Max. Height Limits ¹⁶ Fences/ Walls	Accessory Bldgs. to Residences Setback Required		Add'l Dwelling Distance from Front Lot Line
	Total	Front	Rear	Total	South	North	1-Fam.	2-Fam.	Multi-Fam.				From Street	From Side Street	
					West	East									
C ^{2a}	85'	50'	35'	30'	15'	15'	1½ acres	3 acres	NA	25%	35' / 2½ str.	NA	35'		
RR-1 ^{2a}	75'	50'	25'	30'	15'	15'	12,500(3.5)	NA	NA	35%	35' / 2½ str.	6'	60'	35'	Not Allowed
SR-1	50'	25'	25'	18'	9'	9'	9,000(4.8)	NA	NA	35%	35' / 2½ str.	6'	60'	25'	Not Allowed
SR-2	50'	25'	25'	18'	9'	9'	6,000(7.3)	NA	NA	50%	35' / 2½ str.	6'	60'	25'	Not Allowed
SR-3 ¹	3'	NR	3'	18'	12'	6'	6,000(7.3)	NA	NA	35%	50' / 3 str.	6'	60'	12'	Not Allowed
SR-4 ¹	3'	NR	3'	15'	9'	3'	4,000(10.0)	NA	NA	35%	50' / 3 str.	6'	60'	9'	Not Allowed
SR-5 ¹	3'	NR	3'	10'	7'	3'	2,500(17.4)	NA	NA	35%	50' / 3 str.	6'	60'	7'	Not Allowed
SR-6	28'	18'	10'	10'	5'	5'	5,000(8.7)	NA	NA	50%	35' / 2½ str.	6'	60'	5'	Not Allowed
SR-7	75'	50'	25'	30'	15'	15'	43,560(1)	NA	NA	35%	35' / 2½ str.	6'	60'	35'	Not Allowed
SR-8	50'	see footnote 18	25' ^{1b}	24'	9'	9'	15,000	NA	NA	25%	35' / 2½ str.	6'		see footnote 20	Not Allowed
STR ¹	50'	25'	25'	18'	12'	6'	6,000(7.3)	4,500(9.7)	NA	50%	35' / 2½ str.	6'	60'	25'	100'
DR-6 ^{11/12}	20'	10'	10'	6'	3'	3'	—	—	—(6.0)	35%	50' / 3 str.	6'	NA	NA	NA
DR-9 ^{11/12}	20'	10'	10'	6'	3'	3'	—	—	—(9.0)	50%	50' / 3 str.	6'	NA	NA	NA
DR-12 ¹²	20'	10'	10'	6'	3'	3'	—	—	—(12.0)	50%	50' / 3 str.	6'	NA	NA	NA

CHARLESTON ZONING ORDINANCE

§ 54-301

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS⁶⁰⁰

Abbreviations: N/A - Not Applicable, NR - Not required.

Numbers in () indicate number of units per acre.

Max. 12, 1996

Zone District Designation	Front and Rear ^{100, 112} Setback Minimum Depths			Side Setbacks Minimum Widths			Minimum Lot ¹¹² Area per Family in square Feet-Type Dwelling Unit			Maximum ² Percent of Lot Occupied by Buildings	Max Height Limits ⁹ Structures	Max. Height Limits ¹⁰ Fences/ Walls	Accessory Bldgs. to Residences Setback Required		Add'l Dwelling Distance from Front Lot Line
	Total	Front	Rear	Total	South /	North /	1-Fam.	2 Fam.	Multi-Fam.				From Street	From Side Street	
					West	East									
LP ¹ Non- residential	NR	NR	NR	NR	NR	NR	NA	NA	NA	NA	55'	NA	NA	NA	NA
LP ^{100/112} Residential	3	NR	3	15'	9'	3	4,000	3,000	2,250	50%	55'	NA	70'	9'	80'
HP ¹ Non- residential	20'	NR	20'	Minimum 25' side yard required on side adjoining residences or residential districts			NA	NA	NA	NA	55	NA	NA	NA	NA
HP ¹⁰⁰ Residential	3'	NR	3	15'	9'	3	4,000	3,000	2,250	35%	55	NA	70'	9'	80'

FOOTNOTES to Table 3.1: Height, Area and Setback Regulations

1. Attached single-family dwellings permitted. Refer to Article 3, Part 11, for special provision of standards and regulations for one family attached dwellings, town or row houses where permitted.
2. See definitions in Section 54-120 for "Building" and "Lot Occupancy."
3. Under no conditions shall the minimum distance between residences not joined by a common wall be less than three (3) feet.
4. In any district, it shall be unlawful to construct a porch, piazza or balcony so that the same extends in whole or in part over a public street, lane, court, or other public right-of-way without specific permission from the city executive body and compliance with all applicable city ordinances.
5. See Article 5: Exceptions and Modifications, Part 2 Exceptions to Height and Setback Requirements.
6. *Reserved.*
7. *Reserved.*
8. No structure, including appurtenant parts thereto, shall, except for the conditions as specified in Article 5: Exceptions and Modifications, exceed a height equal to three (3) times the least dimension, as measured from the center of the right-of-way to the face of the building.

§ 54-301

SITE REGULATIONS

§ 54-301

PART 2

EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. Exceptions to height requirements.

In all areas covered by this Zoning Ordinance, except in those areas covered by the Old City Height Districts as described in 54-305, the following exceptions shall apply:

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerials, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.
- b. In any General Business, Gathering Place, Urban Commercial, Business Park, or Light Industrial district, the maximum height for a communication tower shall be determined by Section 54-207, c. In any Heavy Industrial district, the maximum height for a communication tower shall not exceed four hundred (400) feet provided the tower is located no closer to a residential or conservation zoned property than a distance equal to one-half ($\frac{1}{2}$) the height of the proposed tower and no closer to the centerline of a public right-of-way than a distance equal to one-third ($\frac{1}{3}$) the height of the proposed tower. In any Light Industrial or Heavy Industrial district, the maximum height of any other non-residential structure may be increased to eighty (80) feet provided the structure is set back from all property lines a minimum distance equal to the total height of the structure.
- c. In any Conservation, RR-1, SR-1, SR-2, SR-6, SR-7 and STR zoning district, the height of a dwelling may be increased to forty (40) feet, but not exceed $2\frac{1}{2}$ stories, provided that the width of each side yard required by Table 3.1 for the districts in which the building is located is increased a distance equal to at least two times the added height of the buildings above the thirty-five (35) foot limitation of the district. Properties in the Conservation, RR-1, SR-1, SR-2, SR-6, SR-7 and STR zoning districts located within a Flood Insurance Rate Map (FIRM) special flood hazard area shall be permitted to have dwellings with a maximum height, not to exceed forty-six (46) feet or $2\frac{1}{2}$ stories, whichever is less, based on the following formula: (FIRM base flood elevation + one foot of additional freeboard - lowest curb line elevation adjacent to the site + 35).
- d. In any General Office, Limited Business, General Business, Urban Commercial, Light Industrial or Heavy Industrial district, the height limitation for public buildings, churches, hospitals or schools may be increased to eighty (80) feet, but not exceed six (6) stories; provided that the width of each side yard and rear yard is at least twenty-five (25) feet. In addition, the Commercial Corridor Design Review Board is authorized to permit architectural features such as parapets,



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 – Submit this application, along with the required information and fee, 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 29 Broughton Rd., Charleston, SC 29407 TMS # 421-14-00-024

Property Owner David W. Abdo & Ilonka Sonja Taylor Daytime Phone (843) 813-3466

Applicant John A. Massalon, Esq. Daytime Phone (843) 727-1144

Applicant's Mailing Address Wills Massalon & Allen LLC, 97 Broad Street, Charleston, SC 29401

E-mail Address jmassalon@wmalawfirm.net

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

Zoning of property SR-8

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 [Signature] Date 12/11/2018

For office use only.

Date application received 12-11-18

Staffperson ABH

Fee \$ 150.00

Time application received 1:05pm

Receipt # 224689

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)**

Page 1 of 2

City of Charleston

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

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary):

See Attachment "A"

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

Date 12/11/2018

For office use only

Date application received _____

Time application received _____

Staffperson _____

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

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: _____

ATTACHMENT "A"

Appellant, David Abdo, hereby requests reconsideration of the decision of the Board of Zoning Appeals – Zoning which upheld the decision of the Zoning Administrator for the City of Charleston, dated October 17, 2018, denying Appellant's permit application to construct a flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina. This appeal is based upon the following grounds:

1. Appendix C, Rules and Regulations of the Board of Zoning Appeals – Zoning, Article III, Section 3 provides that "[a]n 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."
2. Appellant applied to the City of Charleston to erect a flagpole monument on his property to honor the military service of his father, his wife's father, their brother in law, and all who served in the armed forces. See Exhibit A (Application).
3. The Zoning Administrator for the City of Charleston denied Appellant's application on the grounds that the flagpole could not be considered a monument based on his interpretation that the height exception contained in Sec. 54-505 of the City of Charleston Zoning Ordinance applies only to "a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event." See Exhibit B (E-mail denying application).

4. Sec. 54-505 (a) provides without qualification that “the height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone.”
5. Sec. 54-505(a) does not further define “monument”, differentiate between monuments located on public property or private property, include any requirement that the monument be located on public or private property, or limit a monument designation depending upon to whom or about what the monument commemorates.
6. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm v. Town of Sullivan’s Island Board of Zoning Appeals*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018), citing *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (quoting *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* Citing, *Helicopter Sols*, at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).
7. A “zoning ordinance [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’ ” *Vulcan Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App 2000) (quoting *City of Myrtle Beach v. Juel P. Corp.*, 337

S.C. 157, 177, 522 S.E.2d 153, 164 (Ct. App. 1999), rev'd, 344 S.C. 43, 543 S.E.2d 538 (2001)). "As with statutes, the lawmakers' intent embodied in an ordinance 'must prevail if it can be reasonably discovered in the language used.' " Id. at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

8. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 666 S.E. 2d 892 (2008) (quoting *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." Id. 379 S.C. at 570-71, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994)).
9. The Zoning Administrator's interpretation of 54-505(a) is not necessary or justified. The plain language of the ordinance clearly and unambiguously excuses memorials from the height requirements without qualification. The common definition of a "monument" as it appears in the on-line version of the Merriam Webster dictionary includes a "memorial stone or a building erected in remembrance of a person or event." <https://www.merriamwebster.com/dictionary/>. There is no requirement that the memorial be located on public property or that the person or event commemorated be famous or notable. The interpretation adopted by the City injects uncertainty and ambiguity into an otherwise clear ordinance.

10. At the hearing on December 4, 2018, the Board did not address the two grounds on which the Zoning Administrator denied the application. Instead, the Board considered photographs of the Washington Monument, the Statue of Liberty and a few monuments, not specifically identified, that the Zoning Administrator located during an internet search. While those surely meet the definition of a monument, the photographs submitted by the Zoning Administrator and relied upon by the Board do not amount to a comprehensive list of structures that are monuments. In addition to well-known monuments like the Washington Monument, other monuments that appear include natural rock formations, engraved stones, plaques and flags. Some examples of flag monuments located on the internet are attached as Exhibit C.
11. The definition of "monument" submitted by the Zoning Administrator includes not only the one cited in the decision denying the application but it also defines monument as "an outstanding, enduring and memorable example of something."
12. Finally, the Zoning Administrator submitted an email dated December 4, 2018 from one of the applicant's neighbors. As an initial matter, the email says among other things that the application is "just another attempt to circumvent the rules." The email is entirely irrelevant to the appeal before the Board. However, to avoid being unjustly placed in a negative light, the applicant would like to respond to a few points in that email. Prior to commencing construction the applicant contacted a representative of the City and was verbally advised that he did not need a building permit. Additionally, construction was completed by the time the applicant received the stop work order. Finally, the complaint about the noise is unfounded. The applicant lives closer to it than his neighbors and denies hearing any annoying sounds.

For the reasons set forth above, Appellant respectfully requests that the Board of Zoning Appeals-Zoning reconsider its decision to deny his appeal, reverse the decision of the Zoning Administrator and grant a permit allowing Mr. Abdo to maintain the flagpole monument on his property located at 29 Broughton Road in Charleston, South Carolina.

EXHIBIT "A"

COPY



City of Charleston Building Inspections

Owners' Representative

BUILDING PLAN REVIEW AND PERMIT APPLICATION

I. APPLICANT INFORMATION

Name: John Masselon Phone: 843-727-1144

Company: Will Masselon & Allen

Address: 97 Broad St City: Charleston State: SC Zip: 29401

Email: jmasselon@willmasselonlawfirm.net

II. PROJECT INFORMATION please fill out all that applies

Property Owner: David W. Abdo & Zlounka Soria Taylor Phone: 843-813-3466

Address of Work: 29 Broughton Rd Charleston, SC Unit: _____

Subdivision or Project Name: Crescent Lot: 6 Block: K TMS #: 421-14-00-024

Flood Zone: _____ FIRM Panel #: _____ Zoning: _____

Is this property in BAR or DRB jurisdiction? ☐ Yes ☒ No Do you have their approvals? ☐ Yes ☒ No

III. TYPE AND COST OF CONSTRUCTION please fill out all that applies

Scope of Work: Install flag monument

Current Use of building, if applicable: N/A Propose Use: Monument

NON-RESIDENTIAL USES			RESIDENTIAL USES	
A - PLACES OF ASSEMBLY	F - FABRICATION	M - MERCHANTILE	R1 - HOTELS AND MOTELS	RA - RESIDENTIAL CARE/ASSISTED LIVING
B - BUSINESS	H - HAZARDOUS	S - STORAGE	R2 - APARTMENTS, CONDOS, DORMS	U - GARAGES
E - EDUCATION	I - INDUSTRIAL	U - UTILITY	R3 - ONE AND TWO FAMILY OR TOWNHOMES	MANUFACTURED HOMES

Type of Improvement: ☐ New Building ☐ Addition ☐ Alteration ☐ Interior Work ☐ Exterior Work ☐ Repair ☐ Replacement

☐ Demolition ☐ Moving ☐ Foundation ☐ Pool ☐ Right-of-way ☐ Structural ☐ Painting ☐ Fence ☐ Concrete

Number of Units Added/Renovated: N/A Right of Way Bond Required: Yes ☐ No ☒

Total cost of improvement (\$): \$4,970 x 10, 600 Square Footage of Addition or New Building: N/A

Check all approvals granted: ☐ BAR ☐ DRB ☐ BZA-2 ☐ BZA-SD ☐ TRC ☐ ENCROACHMENT ☐ SIDEWALK/STREET BLOCKING

IV. SPECIFICS - FOR PROPERTY OWNERS ACTING AS CONTRACTOR ONLY

When the total cost of construction is over \$5,000, property owners must file exemption form and disclosure statement with the Charleston County RMC office before submitting permit application with the City of Charleston. Building Inspections requires a receipt of the filing with the RMC office and completed disclosure statement before a permit can be obtained.

Copy of the exemption form and disclosure statement attached? ☒ Yes ☐ No

City of Charleston - Permit Center - 2 George Street, Charleston, SC 29401 - 843.577.5550

ALL PERSONS HIRED TO PERFORM WORK MUST BE PROPERLY LICENSED BY THE STATE OF SOUTH CAROLINA AND THE CITY OF CHARLESTON. EACH CONTRACTOR AND SUBCONTRACTOR HIRED TO PERFORM WORK ON THIS PROJECT MUST COMPLETE AND SUBMIT THEIR OWN BUILDING PERMIT & PLAN REVIEW APPLICATION.

V. PROFESSIONAL INFORMATION

ARCHITECT

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

ENGINEER

Name: N/A Company: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

GENERAL CONTRACTOR

Name: N/A Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

State License Agency: ☐ South Carolina Contractors' Licensing Board ☒ South Carolina Residential Builders Commission
State Lic. Classification: _____ State Lic. #: _____ State Lic. Limitation: _____

ELECTRICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

MECHANICAL CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

PLUMBING CONTRACTOR: if known

Name: _____ Phone: _____
Company: _____ City of Charleston Bus License #: _____
Address: _____ City: _____ State: _____ Zip: _____
Email: _____

VI. DISCLAIMER AND SIGNATURE

I understand and agree that this permit does not authorize any encroachment upon City or State owned property.

If a Construction Permit is issued by the City for this project that Construction Permit only provides authorization for the limited scope of work identified on the permit and the permit remains the property of the City of Charleston.

By signing below, I certify that I am the owner of the property where the work stated above will be performed or the authorized agent for the company performing the work stated above and that all information provided is true and correct.

I further understand and agree that if any information provided is found to be incorrect or falsely stated that any permits granted as a result of submitting this application will become immediately null and void. Additionally, I do hereby covenant and agree to comply with the ordinances of this jurisdiction and to perform the work herein stated in accordance with the plans and specifications submitted herewith. I shall be responsible for any and all violations of state laws and local ordinances.

I understand and agree that any alteration or change in plans made without approval of the Building Official subsequent to the issuance of the Construction Permit shall constitute grounds for revocation of such permit.

Permit void if work not started within SIX months of date of issue or if work stops for a period of SIX months. All permits expire two years from the date of their issuance.

All City Ordinances and Building Codes can be reviewed at the City of Charleston Division of Inspections located at 2 George Street, Ground Floor, Charleston, SC. Additional Construction Permits shall be required for any additional work not authorized under a permit issued for this application.

Applicant is responsible for calling to schedule all required inspections.

Signature: [Signature] Date: 2/6/18

2/6/18

Model ECXA60 - ESR60F13



- 10" - 14 gauge spun aluminum ball gold anodized
- Single sheave truck, cast aluminum revolving, non-fouling type
- 2 Bronze swivel snaps with covers per halyard
- 1 Set of halyard: #10 poly

1 - 9" Cast aluminum cleat

Aluminum flash collar

3000 PSI concrete

Handwelded wedges (supplied by others)

Dry sand tightly tamped after aligning pole

Foundation sleeve - 16 ga hot dip galvanized steel

Steel centering wedges

1/4" Steel base plate

1/4" Steel support plate welded to grounding spike

Exposed height: 60'-0"

Tapered portion: 44'-8"

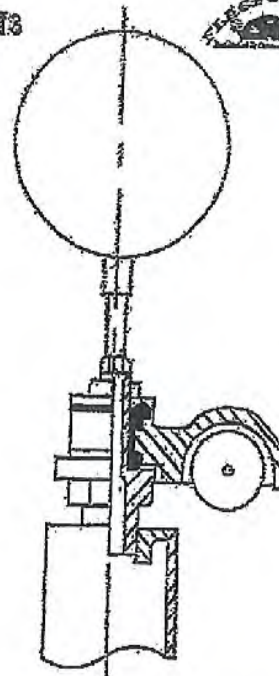
Overall length: 68'-0"

Foundation: 8'-0"

Cleat height: 4'-0"

8'-0"

Straight portion: 21'-8"



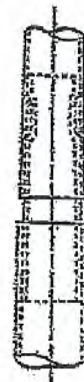
Truck Detail

Aluminum body
Stainless steel ball bearings
Aluminum sheave
Cast aluminum spindle

All shafts with overall length of more than 38'-6" are shipped in two sections.

Each section matched marked for field assembly. Exposed portion of jam sleeve must be well lubricated prior to assembly.

1-1/2" maximum shop gap allowed for field fitting (ram for tight joint)



Flare: ECXA60 single sheave revolving truck

Project:	Ground set tapered aluminum flagpole, ALLOY: 6063-T5	FLAGPOLES ETC.	Date:
Location:	Exposed height: 60'-0"	Overall height: 68'-0"	407 Hadley St.
Architect:	Ship in 2 section	Butt diameter: 10"	Revision:
Contractor:	Top diameter: 4"	Wall thickness: .250"	1800, MI 48442
Customer:	Finish: 100 grit polish		(888) 735-5591
			Job:



City of Charleston

JOSEPH P. RILEY, JR.
Mayor

South Carolina

LAURA S. CABINISS, P.E.
Director

Department of Public Service

The following is provided as required by "Title 40 Chapter 59 Section 40-59-260" of the Code of Laws of South Carolina:

Disclosure Statement

State law requires residential construction to be done by licensed residential builders, specialty contractors or general contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family residence. The building must be of your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you built or improved yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your builder or contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable law, ordinances, building codes and zoning regulations.

Your Certificate of Occupancy cannot be approved until you have filed as a matter of public record with the Charleston County RMC Office or Berkeley County Register of Deeds, indexed under the owner(s) name in the grantor's index, the copy of the Notice of Non-Licensed Owner's Intent to Build and returned proof of filing to this office.

Address of Referenced Property

29 Broughton Rd
Charleston, SC 29407

Signature of Owner

9/6/18
Date

Signature of Owner

9/6/18
Date

Signature of Owner

Date

City of Charleston • Department of Public Service • 75 Calhoun Street, 3rd Floor, Charleston, SC

RECEIVED 7.1.18
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

NOTICE

NON-LICENSED OWNER'S INTENT TO BUILD

Owner's Name David Abdo

Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name Donka Sonja Taylor

Address 29 Broughton Rd
Charleston, SC 29407

Owner's Name _____

Address _____

Location of Work 29 Broughton Rd

PID No. 421-14-06-024

Nature of Work: Flag monument.

Brenda Casen
Witness

Q. R.
Witness

Dr. [Signature]
Signature of Owner (s)

9/6/18

9/6/18

Date

The foregoing instrument was acknowledged before me by its maker.

9/7/18
Date



Emily Renaud
NOTARY PUBLIC
State of South Carolina
My Commission Expires
February 3, 2026

Q. R.
Signature of Notary

2/3/2026
Exp Date

Elaine H. Bozman, ROD
Tia P. Shaw, Chief Deputy ROD



DATE:	07-Sep-18
INVOICE #:	X000393825
DRAWER:	Drawer 1
CLERK:	KLH
TIME:	11:47:11 AM

TOTAL	\$ 10.00

The ROD Office retains any recording fee overages of \$5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!

EXHIBIT “B”

731-4

From: "Batchelder, Lee" <BATCHELDERL@charleston-sc.gov>
Date: October 17, 2018 at 2:30:24 PM EDT
To: "John A. Massalon" <jmassalon@wmalawfirm.net>
Cc: "Borden, Janie" <BORDENJ@charleston-sc.gov>, "O'Connell, Dexter" <oconnelld@charleston-sc.gov>, "Ashby, Penny" <ASHBYP@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

John,

Thank you for providing the explanation below. After considering this information, I have concluded that the flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance. I believe the exception listed in Sec. 54-505 for "monuments" is intended to apply to a statue, building, or other structure erected in a public or semi-public space to commemorate a famous or notable person or event. Therefore, the request for a building permit to allow the flagpole will be denied due to the height of the flagpole exceeding the 35 foot height limit set by the zoning ordinance.

Should your client disagree, the zoning ordinance does allow for an appeal of an administrative decision to the Board of Zoning Appeals-Zoning if the application form, appeal form and fee are submitted to the zoning desk in the Permit Center of 2 Georges Street within 10 business days from the date of this notice. This means the appeal period to the BZAZ should conclude at 5 pm on October 31.

Please let me know if you have any questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

—Original Message—

From: John A. Massalon [mailto:jmassalon@wmalawfirm.net]
Sent: Friday, September 28, 2018 3:22 PM
To: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Cc: Borden, Janie <BORDENJ@charleston-sc.gov>; O'Connell, Dexter <oconnelld@charleston-sc.gov>
Subject: RE: Abdo /29 Broughton

Lee:

EXHIBIT “C”



Lakeville Veterans' Monument and Flagpole

The Lakeville Veterans' Monument and Flagpole are located at the intersection of 5 roads (Route 20A, Stone Hill Rd, combined Routes 15 and 20A, and Lakeville Park Rd) in the middle of Lakeville, New York, 14480. The memorial is dedicated to those who gave their lives in defense of America. It was established by the Lakeville Volunteer Fire Department sometime in the late 1940's World War II and is maintained by the Fire Department. It is in excellent condition.





World War II Memorial Flagpole

A granite based flagpole that was dedicated as a memorial to the township's ten war dead. Engraved on the front of the stone is: "Dedicated to the men of Freehold Township who made the supreme sacrifice World War II 1941 - 1945 that this flag may ever fly in honor and in peace". It then lists the names of 10 men who were killed in the war.

The back of the stone has a weathered bronze tablet that is inscribed: "In honor of citizens of Freehold Township who served in World War II". A four column list on the tablet names every citizen of Freehold Township who served during the war, with a star next to the names of those who didn't make it back.

Date of Installation:

November 11, 1948

Organization Responsible for Installation:

[<-- Back](#)

Columbus Monuments Pages

Site Search:



UNITED
STATES

[Home](#) _ [New/Updated](#) _ [Town/Country](#) _ [Chronology](#) _ [Contact](#)

Ocean City
Maryland

Columbus Flagpole

1985

Northside Park



<http://columbus.vanderkrogt.net>





Armed Forces Flag Pole and Plaque Memorial

The Armed Forces Flag Pole and Plaque Memorial is dedicated to our servicemen and women of Navy, US Army, US Marine Corp, and the US Air Force. It was designed and funded through an E Scout project of Nathan Chichester, Boy Scout Troup 174 and installed in December 2011 at the Dougherty Funeral Home on Big Tree Street, in Livonia, New York, 14487. It is maintained by the Home and is in excellent condition.

Date of Installation:

December 3, 2011

MEMBERS PRESENT: LEONARD KRAWCHECK, MICHAEL ROBINSON, MARGARET SMITH,
WALTER JAUDON, JOHN LESTER, ROSS APPEL
STAFF PRESENT: LEE BATCHELDER, PENNYE ASHBY, (NO CLERK - RECORDED VIDEO)

AGENDA

BOARD OF ZONING APPEALS-ZONING

FEBRUARY 19, 2019

5:15-23 P.M.

2 GEORGE STREET

10:46 P.M.

A. Deferred applications from previously advertised BZA-Z agendas. For information call 724-3781.

1. 29 BROUGHTON RD. (THE CRESENT) APP. NO. 191-15-B2
(421-14-00-024)

Request reconsideration of the Board's decision on December 4, 2018, to deny an appeal of the Zoning Administrator's decision that a 60-ft. tall flagpole cannot be considered a "monument" under the terms of the City of Charleston Zoning Ordinance (Height of structures are limited to 35-ft.) Zoned SR-8.

Owners-David W. Abdo, Ilonke Sonja Taylor/Applicant-John A. Massalon, Esq.

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: M.Robinson SECOND: W.Jaudon VOTE: FOR 6 AGAINST 0

2. 585 King Street (CANNONBOROUGH/ ELLIOTBOROUGH) (460-08-04-065) APP. NO. 1902-19-A2

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

Owner-Vanderking 585 King, LLC/Applicant-Neil Stevenson Architects

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: J.Lester SECOND: W.Jaudon VOTE: FOR 5 AGAINST 1
*R.Appel

3. 15 STRAWBERRY LN (NORTH CENTRAL) APP. NO. 1902-19-A3
(460-03-02-168)

Request special exception under Sec. 54-501 to allow construction of a single-family residence on a lot of insufficient size (Lot area 1,880sf; 2,500sf required). Zoned DR-2F.

Owner-782 A Rutledge, LLC/Applicant-Clarke Design Group

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval with condition that pole blocking proposed driveway, must be removed before City approves permits for construction.

MADE BY: M.Smith SECOND: M.Robinson VOTE: FOR 4 AGAINST 2
*R.Appel
*W.Jaudon

BOARD OF ZONING APPEALS-ZONING/FEBRUARY 19, 2019
PAGE 2

4. 844 MAGNOLIA RD. (MARYVILLE/
ASHLEYVILLE) (418-09-00-117) APP. NO. 1902-19-A4

Request variance from Sec. 54-317 to allow construction of a mixed-use building with 2,523sf of office space, 1,800sf of interior patron use area (café) and 1,196sf of retail space (art gallery/workshop) with 7 off-street parking spaces (37 spaces required).
Zoned CT.

Owner-546 Elm, LLC/Applicant-Matteo Rapallini

APPROVED 0 WITHDRAWN 0
DISAPPROVED 0 DEFERRED XX

MOTION: Deferral.

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

B. New Applications:

1. 8 ELMWOOD AVE. (HAMPTON PARK TERRACE) APP. NO. 1902-19-B1
(460-02-04-132)

Request an appeal of the Zoning Administrator's decision to deny an STR permit application based on the date the building was constructed (Ordinance requires building to have been constructed fifty (50) or more years ago).
Zoned DR-1F.

Owner/Applicant-A.Tyler Nance

APPROVED 0 WITHDRAWN 0
DISAPPROVED 0 DEFERRED XX

MOTION: Deferral.

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

2. 179 3rd AVENUE (WAGENER TERRACE) APP. NO. 1902-19-B2
(463-10-03-075)

Request use variance from Section 54-203 to allow up to six (6) dwelling units on this lot in a SR-2 (Single-Family Residential) zone district.

Owner-Michael Duane Dennis/Applicants-Michael & Emerald Dennis

APPROVED 0 WITHDRAWN 0
DISAPPROVED XX DEFERRED 0

MOTION: Deferral.

MADE BY: M.Robinson SECOND: M.Smith Motion withdrawn without a vote.

MOTION: Disapproval.

MADE BY: R.Appel SECOND: M.Robinson VOTE: FOR 6 AGAINST 0

BOARD OF ZONING APPEALS—ZONING/FEBRUARY 19, 2019
PAGE 3

3. 161 MOULTRIE ST. (HAMPTON PARK TERRACE) (460-02-04-005) APP. NO. 1902-19-B3

Request special exception under Sec. 54-110 to allow the horizontal extension of a non-conforming 1.4-ft. east side setback for a garage (3-ft. required).
Zoned DR-1F.

Owner/Applicant-Eric M. Poulin

APPROVED 0 WITHDRAWN 0
DISAPPROVED 0 DEFERRED XX

MOTION: Deferral.

MADE BY: M.Robinson SECOND: R.Appel VOTE: FOR 0 AGAINST 0

4. MAGNOLIA DR. (LOT 28) (ASHLEYVILLE/ MARYVILLE) (418-09-00-131) APP. NO. 1902-19-B4

Request special exception under Sec. 54-501 to allow construction of a single-family residence on a lot of insufficient size (Lot area 4,686sf; 6,000sf required).
Request variance from Sec. 54-301 to allow construction of a single-family residence with a 14-ft. 11-inch rear setback, a 3-ft. south side setback, a 7-ft. north side setback, a 10-ft. total side setback (25-ft., 9-ft., 9-ft. and 18-ft. required).
Zoned SR-2.

Owner-H. Allan Strickland Trust/Applicant-Douglas W. Hardman

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: M.Robinson SECOND: J.Lester VOTE: FOR 6 AGAINST 0

5. 36 STATE ST. (FRENCH QUARTER) (458-09-01-113) APP. NO. 1902-19-B5

Request variance from Sec. 54-301 to allow a detached accessory building addition (storage shed) with a 0-ft. rear setback, 3-ft. south side setback a 6-ft. total side setback, and having a 63% lot occupancy (3-ft., 7-ft., 10-ft. required, 35% limitation; existing lot occupancy 59%).
Zoned SR-5.

Owner-Deborah Nutting/Applicant-Charlotte Reeves

APPROVED XX WITHDRAWN 0
DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: J.Lester SECOND: R.Appel VOTE: FOR 6 AGAINST 0

BOARD OF ZONING APPEALS—ZONING/FEBRUARY 19, 2019
PAGE 4

6. 654 KING ST. (WESTSIDE) (460-04-04-031) APP. NO. 1902-19-86

Request special exception under Sec. 54-206 to allow an existing restaurant and bar to have a late night use within 500 feet of a residential zoned district. Zoned MU-2/WH.

Owner-King Street Holdings, LLC/Applicant-Jeffrey Yurfest

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval to allow existing indoor and outdoor patron use area to be a late night use.

MADE BY: W.Jaudon SECOND: J.Lester VOTE: FOR 6 AGAINST 0

7. 8 VANDERHORST ST. (UNITS A&B) APP. NO. 1902-19-B7
(RADCLIFFEBOROUGH) (460-16-02-073 AND 074)

Request use variance from Sec. 54-203 to allow a boutique bridal salon in Unit A (first floor) and Unit B (second floor) in a DR-1 (Diverse-Residential) zone district.

Owner-JFRONE, LLC-c/o Barry Gumb/Applicant-J. Sidney Boone, Jr., Esq.

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: W.Jaudon SECOND: J.Lester VOTE: FOR 6 AGAINST 0

8. 135 CALHOUN ST. (457-04-02-064) APP. NO. 1902-19-88

Request special exception under Sec. 54-220 to allow a 1-unit accommodations use in a GB-A (General Business-Accommodations) zone district.

Owner-Neil Lykins/Applicant-Briggs & Ingles, LLC

APPROVED XX WITHDRAWN 0

DISAPPROVED 0 DEFERRED 0

MOTION: Approval.

MADE BY: R.Appel SECOND: M.Smith VOTE: FOR 6 AGAINST 0

9. 431 MEETING ST. (459-09-01-049) APP. NO. 1902-19-89

Request special exception under Sec. 54-220 to allow a 252-unit accommodations use in a LI-AGB-A (Light Industrial and General Business-Accommodations) zone district.

Owner-Charleston School of Law, LLC/Applicant-OMS Charleston, LLC c/o Seamon Whiteside+

BOARD OF ZONING APPEALS—ZONING/FEBRUARY 19, 2019
PAGE 5

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: M.Robinson SECOND: M.Smith VOTE: FOR 6 AGAINST 0

10. 4-6 BEAUFAIN ST. (UNIT 203) (457-08-01-099) APP. NO. 1902-19-B10

Request special exception under Sec. 54-220 to allow a 1-unit accommodations use in a GB-A (General Business-Accommodations) zone district.

Request variance from Sec. 54-317 to allow a 1-unit accommodations use without required off-street parking spaces (1 space required).

Zoned GB-A.

Owner/Applicant-Beau O'Steen

APPROVED 0

WITHDRAWN 0

DISAPPROVED XX

DEFERRED 0

MOTION: Disapproval.

MADE BY: M.Smith SECOND: W.Jaudon VOTE: FOR 6 AGAINST 0

11. 82 COLUMBUS ST. (EASTSIDE) APP. NO. 1902-19-B11
(459-05-04-164)

Request special exception under Sec. 54-511 to allow a hair salon with 1200sf of gross floor area with 2 off-street parking spaces (3 spaces required).

Zoned LB.

Owners/Applicants-Marshall & Amy Walker

APPROVED XX

WITHDRAWN 0

DISAPPROVED 0

DEFERRED 0

MOTION: Approval.

MADE BY: R.Appel SECOND: J.Lester VOTE: FOR 6 AGAINST 0

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 Schumecher at (843) 577-1389 or email to schumecherj@charleston-sc.gov three business days prior to the meeting.

Ashby, Pennye

From: John A. Massalon <jmassalon@wmalawfirm.net>
Sent: Tuesday, February 19, 2019 3:30 PM
To: Ashby, Pennye
Cc: Dave Abdo
Subject: BOZA meeting tonight
Attachments: 20190219152222645.pdf

Pennye:

Mr Abdo is traveling and will not be able to attend the meeting this afternoon. He wanted to address the Board about the request for reconsideration and so in his absence he asked me to forward the attached to you to include in the record and distribute to the Board. Thank you.

John

John A. Massalon, Esq
Wills Massalon & Allen, LLC
P.O. Box 859
97 Broad Street
Charleston, SC 29401
jmassalon@wmalawfirm.net
843-793-6039 (Direct)
843-727-1144 (Front Desk)
843-727-7696 (Fax)

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John A. Massalon

From: Ilonka Sonja Taylor <istaylor99@gmail.com>
Sent: Tuesday, February 19, 2019 1:07 PM
To: John A. Massalon; Dave Abdo
Subject: [REDACTED]

This comments are made without the approval of or consultation with my attorney.

At the last hearing several things were presented that I would like to address.

First, there were images of what does a monument look like. To no surprise, famous monuments like the Washington Monument were the images. I thought it would be interesting to google what does a car look like. I did not see a Volkswagen Beetle or a Model T. I did not see an iconic 1957 Chevy. Nor did I see a 1959 Cadillac El Dorado Barritz convertible and anyone that knows cars that that is one hell of a car.

I googled what does a flagpole monument look like, and dozens of examples popped up. It was portrayed at the last meeting that I had installed my monument without any consultation with the City or without regard for zoning or permitting. That is the furthest thing from the truth.

Before ordering the flagpole, I contacted the City. I have known Lee Batchelder for decades and knew that Lee would know whether there were any zoning issues. I contacted him personally and discussed height and whether I would need a permit. He advised that there was no height restriction for a flagpole and the City did not issue permits for flagpoles.

The day I installed the monument, a City inspector was leaving my backyard later in the day after I arrived home. He informed me that I did not get a permit and there is a height restriction. When I advised him I had previously contacted the City and was instructed that no permit was required and no height restriction applied, the inspector informed me I spoke with the wrong person and received the wrong answer.

I erected the monument because I was told by the City that no permit was required and that no height restriction applied. I ask that you reconsider and approve the monument.



Board of Zoning Appeals-Zoning

February 19, 2019

The Board consists of seven members who are appointed by City Council. The Board is authorized to do three things:

- Hear appeals from decisions of the zoning administrator
- Grant or deny applications for zoning variances
- Grant or deny applications for zoning special exceptions

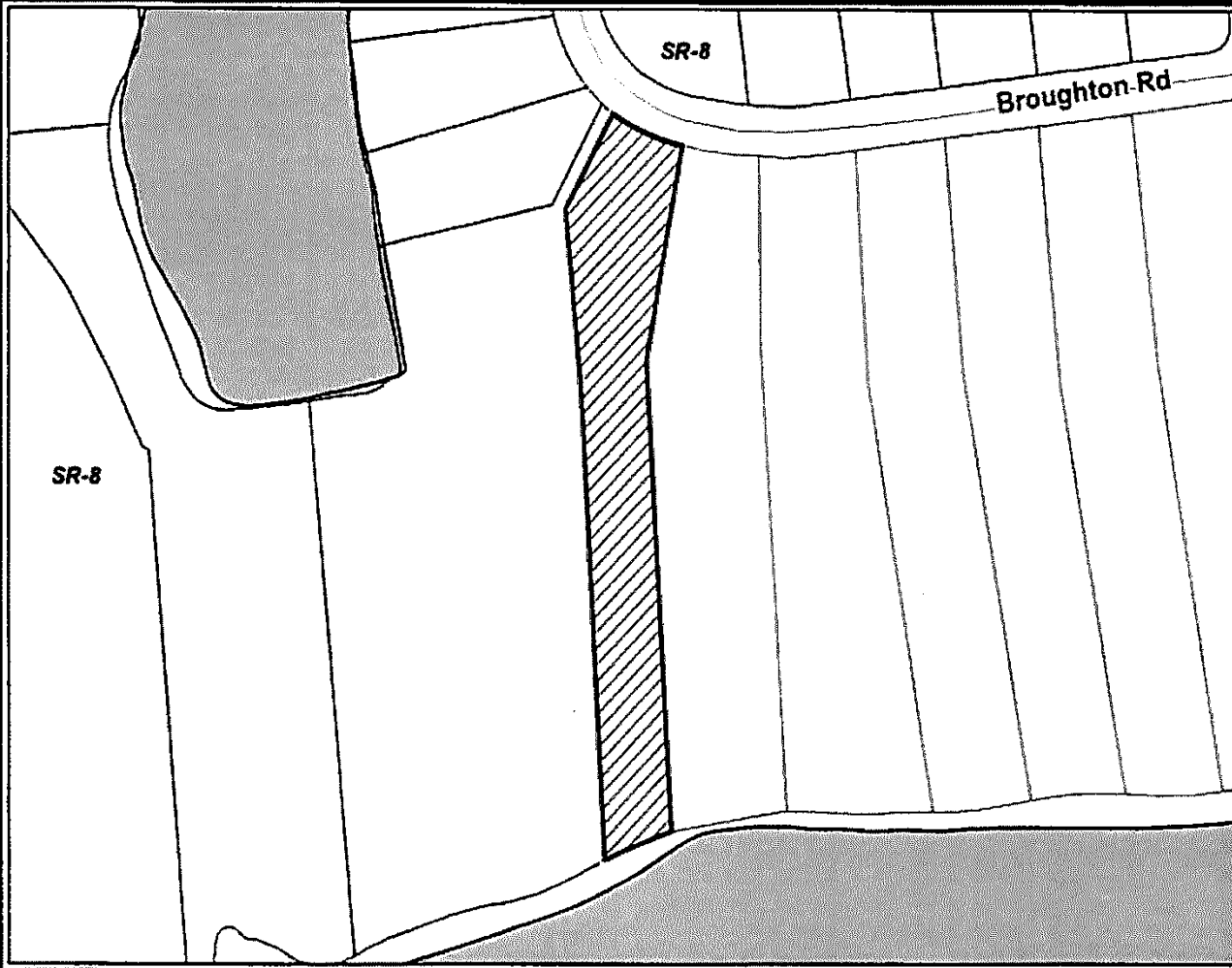
These proceedings are being recorded so please identify yourself and address your comments to the Board.

Please turn off your cell phones.

CITY OF CHARLESTON

DEPARTMENT OF PLANNING, PRESERVATION AND SUSTAINABILITY

29 BROUGHTON ROAD





BZA RECORD p. 095



BZA RECORD p. 096

- [illegible]

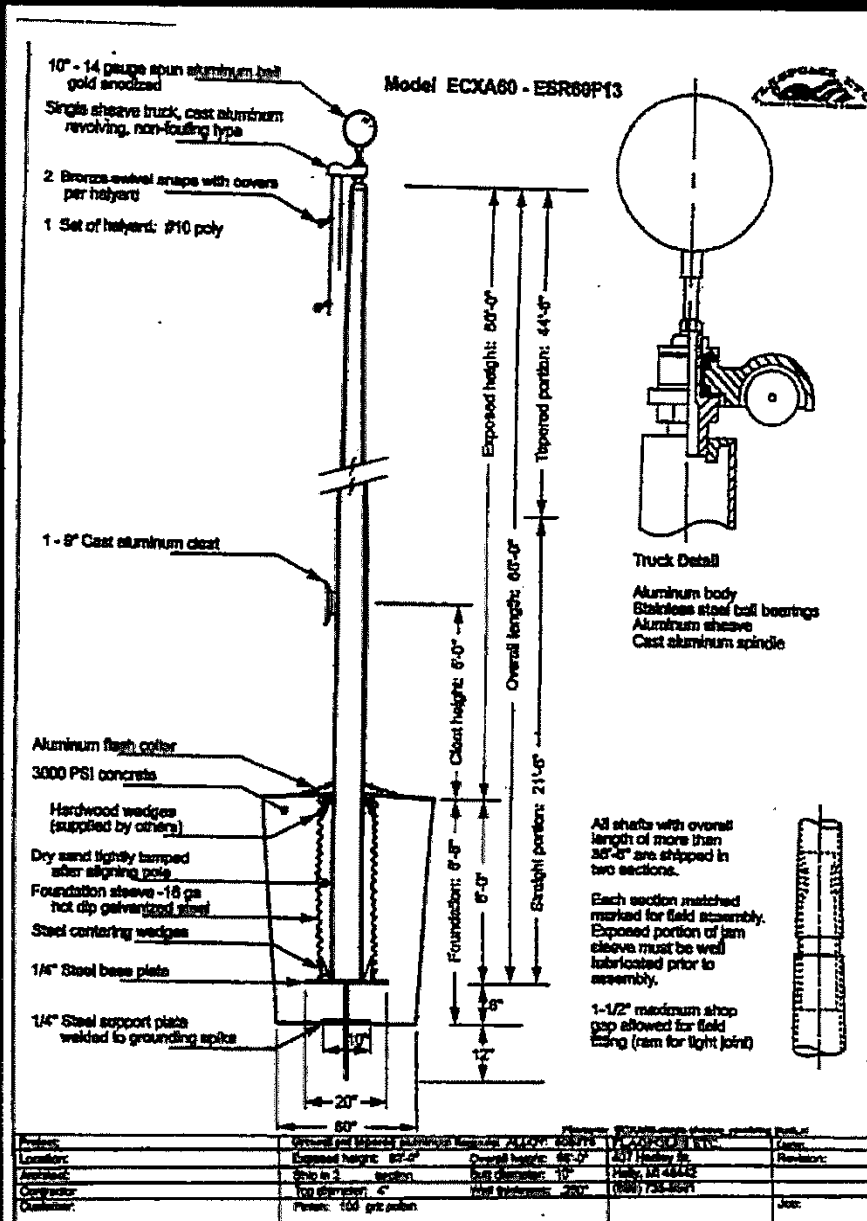
The report of the group on this plot is held by the press from the time of the outbreak, subject to the necessary language given.

[illegible]

Lot 8
MAY 29 11
2:57 AC

PROPERTY OF
JAMES M. HARRIS & SONS
L.L.C.
67-70-00-000

ABDO Amendment
0000-07 DR. +



ARTICLE 5 - EXCEPTIONS AND MODIFICATIONS

PART 2 - EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. - Exceptions to height requirements.

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.

ARTICLE 3 - SITE REGULATIONS

PART 1 - HEIGHT, AREA AND SETBACK REGULATIONS

Sec. 54-301. - Height, area and setback regulations.

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS 5/9/22

Zone District Designation	Max Height Limits ⁵ Structures
SR-8	35'2½ str.

5. See Article 5: Exceptions and Modifications, Part 2 Exceptions to Height and Setback Requirements.

Structure. Anything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land. The word "structure" shall include the word "building."



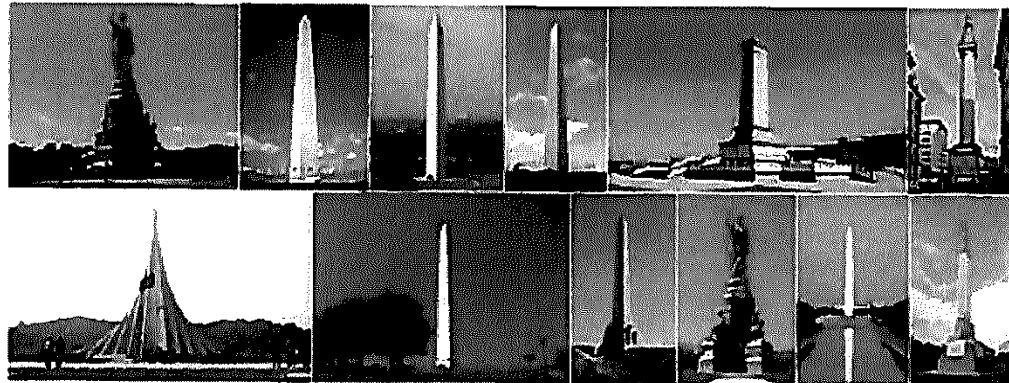
what is a monument



<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

Images of what is a monument

[bing.com/images](https://www.bing.com/images)



[See more images of what is a monument](#)

<https://www.bing.com/search?q=what%20is%20a%20monument&qs=n&form=QBRE&sp=-1&pq=what%20is%20a%20monument&sc=8-18&sk=&cvid=91372C3F0A9647F388742A8D16CAF636>

mon·u·ment

[ˈmɒnyəmənt] 

NOUN

a statue, building, or other structure erected to commemorate a famous or notable person or event.

synonyms memorial · statue · pillar · column · obelisk · cross · cairn · dolmen · cromlech · monolith · megalith · henge · stone circle · cenotaph · tomb · mausoleum · shrine · [more]

- **a statue or other structure placed by or over a grave in memory of the dead.**

synonyms gravestone · headstone · tombstone

- **a building, structure, or site that is of historical importance or interest.**

"the amphitheater is one of the many Greek monuments in Sicily"

synonyms monument · distinctive/prominent feature · sight · spectacle

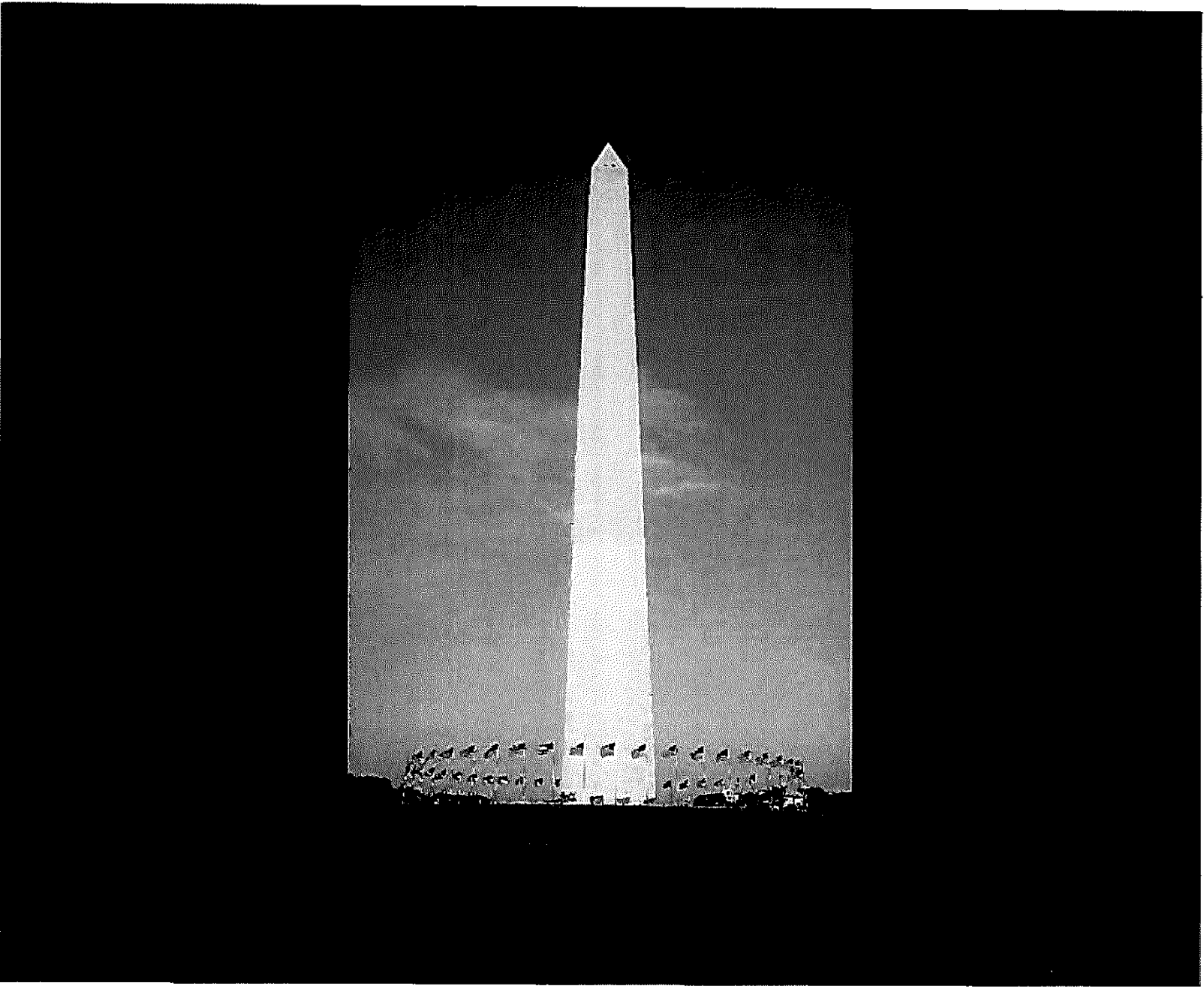
- **an outstanding, enduring, and memorable example of something.**

"recordings that are a monument to the art of playing the piano"

synonyms testament · record · reminder · remembrance · memorial · commemoration · witness · token · example · exemplar · model · archetype · pattern · nonpareil · paragon

27 Race St
Charlton, South Carolina
Google Inc.
Satellite View Jun 2011





BZA RECORD p. 104

1931 Zoning Ordinance

a distance equal to one-half the height of such point above the curb level

Section 23—Height of Monuments, Spires, etc.:

In any District, the height limitation of the District may be exceeded by a monument, spire, shaft, dome or tower for ornamental purposes only.

Section 24—Allowance for Terraces:
On a lot where terraces exist, the

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1952 Zoning Ordinance

Sec. 51-30. Height of monuments, spires, etc.

In any district, the height limitation of the district may be exceeded by a monument, spire, shaft, dome or tower for ornamental purposes only. (Code 1952, § 49-23.)

1966 Zoning Ordinance

Sec. 51-43. Exceptions to Height Limitations.

1. The height limitations of this chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.

1996 Zoning Ordinance

ARTICLE 5 - EXCEPTIONS AND MODIFICATIONS

PART 2 - EXCEPTIONS TO HEIGHT AND SETBACK REQUIREMENTS

Sec. 54-505. - Exceptions to height requirements.

- a. The height limitations of this Chapter shall not apply to church spires, belfries, cupolas and domes not intended or used for human occupancy; monuments, water towers, observation towers, transmission towers, masts and aerals, provided that such uses are not within the aircraft landing approach zone. Whenever any of the above uses are proposed within aircraft approach zones, an applicant must submit written approval received from the proper aeronautical authorities before a building permit may be issued.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson

Appellate Case No. 2019-001910
Common Pleas Case No. 2019-CP-10-1434

RECEIVED

Jul 02 2020

SC Court of Appeals

David Abdo, ... Appellant,

v.

City of Charleston and Board of Zoning Appeals-Zoning, ... Respondents.

CERTIFICATION OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 15, 2020

s/John A. Massalon

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