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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Mikell R. Scarborough, Master-in-Equity

Case No. 2021-CP-10-05211
Appellate Case No. 2023-001615

CKC Properties, LLC,

Respondent,

v.

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

Respondents Below,

Of which The Town of Mount Pleasant, South Carolina;
The Town of Mount Pleasant Board of Zoning Appeals;
Justin O'Toole Lucey; 415 Mill St., Inc.; and 69 Scott Street, LLC, are

Appellants.

RECORD ON APPEAL
VOLUME 1 (PAGES 1 – 324)

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2021-CP-10-04416
CKC Properties, LLC,	)	
	)	
Appellant,	)	
	)	
vs.	)	CONSENT ORDER OF REFERENCE
	)	
The Town of Mount Pleasant, South	)	
Carolina; and The Town of Mount Pleasant	)	
Commercial Design Review Board,	)	
	)	
Respondents.	)	

It is stipulated, consented, and agreed by the above-named parties, by and through their respective undersigned counsel, (the "Parties") that these zoning appeals involving the same development in the Town of Mount Pleasant are appropriate to be referred to the Honorable Mikell R. Scarborough, as Master-in-Equity for Charleston County, South Carolina, in accordance with Rule 53 of the SCRCP.

The Parties consent to refer to the Master-in-Equity all pending and future motions, the final hearing on the merits, and all other matters pertaining to the above-captioned zoning appeals. None of Appellant's civil causes of action arising out of the same conduct, transaction, or occurrence of the matters at issue in the above-captioned zoning appeals shall be referred to the Master-in-Equity. The Parties agree to cooperate and coordinate with the Master-in-Equity on scheduling and other matters.

IT IS ORDERED that the above-captioned appeals be referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, who, pursuant to Rule 53(b) of the SCRCR, shall exercise all power and authority which a circuit court judge sitting without a jury would have, with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the SCACR.

The Reference Fee shall be paid to the Office of the Master-in-Equity for Charleston County within thirty (30) days of the date of this Order or the Master will dismiss the case for non-payment of the Reference Fee without further notice. The Parties agree to split the Master-in-Equity fees equally.

AND IT IS SO ORDERED.

Clerk of Court or Circuit Court Judge
Charleston County

_____, 2022

[SIGNATURES APPEAR ON NEXT PAGE]

WE SO MOVE AND CONSENT:

McCULLOUGH ▪ KHAN ▪ APPEL

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October 19, 2022
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Ckc Properties Llc VS Mount Pleasant South Carolina Town Of The ,
defendant, et al

Case Number: 2021CP1005211

Type: Order/Referred to Master or Special Referee

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of
Court, by BLC

Electronically signed on 2022-10-19 15:08:23 page 4 of 4

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05211

CKC Properties, LLC)
)
 Appellant,)
)

vs.)
)

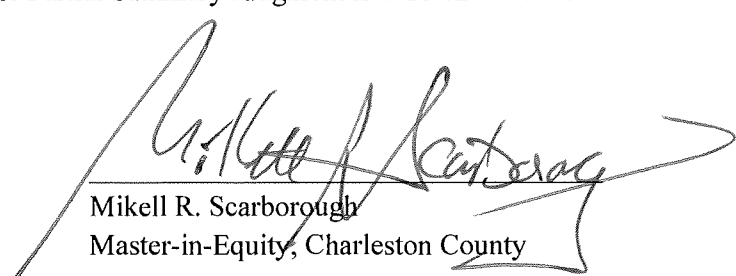
The Town of Mount Pleasant, South)
 Carolina; The Town of Mount Pleasant)
 Board of Zoning Appeals; Michael)
 Robertson, in his official capacity as)
 Zoning Administrator; Justin O'Toole)
 Lucey; 415 Mill St., Inc.; and 69 Scott)
 Street, LLC,)
)

Respondents.)

ORDER

This matter came before the Court on Appellant CKC Properties, LLC's Motion to Supplement the Record on Appeal, filed September 27, 2022. Based upon the briefs and arguments of counsel at a hearing on March 6, 2023, this Court DENIES the request in large part, but GRANTS Appellant's request to transcribe the record from the BOZA hearing at its own expense. The Town of Mount Pleasant shall provide the recording to Appellant to transcribe, and the original shall be returned to the Town of Mount Pleasant upon transcription. Appellant's Motion for Partial Summary Judgment is WITHDRAWN.

3/8, 2023


 Mikell R. Scarborough
 Master-in-Equity, Charleston County

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CKC PROPERTIES, LLC,

APPELLANT,

vs.

THE TOWN OF MOUNT PLEASANT,
SOUTH CAROLINA, THE TOWN OF
MOUNT PLEASANT BOARD OF
ZONING APPEALS; MICHAEL
ROBERTSON IN HIS OFFICIAL
CAPACITY AS ZONING
ADMINISTRATOR; JUSTIN O'TOOLE
LUCEY; 415 MILL ST., INC.; AND 69
SCOTT STREET, LLC,

RESPONDENTS.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-05211

**ORDER GRANTING
MOTION TO DISMISS
RESPONDENT MICHAEL ROBERTSON
IN HIS CAPACITY AS
ZONING ADMINISTRATOR**

2023 MAY -4 AM 10:43
JULIE J. ARMSTRONG
CLERK OF COURT
/o

FILED

This matter comes before the Court on Michael Robertson, in his official capacity as Zoning Administrator's (the "Zoning Administrator"), Motion to Dismiss filed on March 23, 2023 (the "Motion"). The Motion seeks to remove the Zoning Administrator as a party respondent in this zoning appeal.

The Court conducted a hearing on the Motion on April 19, 2023. Ross Appel appeared on behalf of CKC Properties, LLC ("CKC"), Brian Quisenberry appeared on behalf of The Town of Mount Pleasant, South Carolina (the "Town") and the Town of Mount Pleasant Board of Zoning Appeals (the "BOZA"), and Beth Santilli appeared on behalf of the Zoning Administrator. Justin O'Toole Lucey did not appear at the hearing on behalf of himself or his entities, 415 Mill St., Inc. and 69 Scott Street, LLC (collectively "Lucey"). Prior to the hearing, CKC filed a Memorandum in Opposition to the Motion to Dismiss on April 17, 2023. None of the other parties filed memoranda supporting or opposing the Motion.

FACTUAL BACKGROUND

This matter arises out of a zoning appeal of The Town of Mount Pleasant Board of Zoning Appeals (“BOZA”) regarding off-street parking at the Appellant’s proposed hotel (the “Hotel”). Kent Prause, the prior zoning administrator, made several decisions concerning the Hotel including that the zoning ordinance required only one parking space per keyed unit in the Hotel regardless of the number of bedrooms within each keyed unit.

On August 2, 2021, Mr. Prause retired, and Michael Robertson, a Town employee for nearly two decades, was appointed zoning administrator. On August 12, 2021, Mr. Lucey appealed Mr. Prause’s determinations to BOZA by submitting a letter to the Town outlining his grounds for the appeal.

On September 27, 2021, BOZA held a hearing on Mr. Lucey’s appeal. Mr. Robertson prepared the staff report for the appeal hearing and drafted two briefs, which together concluded that Mr. Lucey’s August 12, 2021 letter constituted a timely appeal, presented the rationale that he believed the previous zoning administrator most likely used on the disputed issues, and asked BOZA to deny the appeal. BOZA denied all of Mr. Lucey’s appeal, except for his challenge to off-street parking, holding that Appellant’s Hotel lacked sufficient parking.

Following the hearing, Appellant filed this appeal to the Circuit Court. The issue on appeal is whether BOZA committed an error of law in reversing the zoning administrator’s calculation of off-street parking under the Town’s zoning code.

LEGAL STANDARD

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. Doe v. Marion, 373 S.C. 390, 395 (2007). The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. Clearwater Trust v. Bunting, 367 S.C. 340, 343 (2005). Rule

12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim. Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 180 (2019).

FINDING OF FACTS AND CONCLUSIONS OF LAW

Appellant has brought this appeal pursuant to S.C. Code Ann. § 6-29-820(A) which states that a person who may have a substantial interest in any decision of the board of appeals may appeal . . . , by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. However, the Code is silent as to whom should be named in such an appeal as a necessary party.

Rule 74, SCRCP, Procedure on Appeal to the Circuit Court, states that, “The proceedings in the circuit court shall be in accordance with these rules . . . ,” which allows for a 12(b)(6) dismissal based on Rule 19, SCRCP. Pursuant to Rule 19, SCRCP, a person . . . shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Case law is sparse as to whom should be named in a zoning appeal, but Spanish Wells Prop. Owners Asso. v. Bd. of Adjustment provides guidance. 295 S.C. 67, 68-69 (1988). In Spanish Wells the sole question was whether a permittee was a necessary party in an action to revoke a development permit. Id. The Court held that designating the permittee a necessary party insured the **most vitally interested** party’s participation in the appellate process. Id. (*emphasis added*). The Court stated that a development permittee was a necessary party because naming the

permittee “serves judicial economy” and ensured “the permittee will be bound because it is a party to the appeal.” Id.

Appellant filed a Petition in writing setting forth the reasons it believed BOZA’s decision was contrary to law. In doing so, it named Michael Robertson in His Official Capacity as Zoning Administrator as a party to the appeal. Mr. Robertson is not a necessary party to the appeal because complete relief can be accorded among those already named. Specifically, the Town is a named party, and Mr. Robertson is an employee of the Town. No relief will be obtained from Mr. Robertson separate from the Town. Mr. Robertson’s absence will not leave any party subject to incurring double, multiple, or otherwise inconsistent obligations because Mr. Robertson will be bound by any decision of the Court as an employee of the Town. Mr. Robertson does not claim an interest in the appeal because, when BOZA overturned the zoning administrator’s determination on parking, that position became the position of the Town and Mr. Robertson in his official capacity.

Appellant argued that Mr. Robertson has an interest in the appeal arising out of law to advocate for his decision and defend his position on appeal. It was Mr. Robertson’s job to defend his predecessor’s position in front of BOZA even though Mr. Robertson acknowledged that the term “guest room” was not defined in the zoning ordinance. Regardless, Appellant provided no case law to support this assumption. In fact, Appellant has provided no case law or statute that requires a zoning administrator to be a necessary party to any BOZA appeal. A scan of case law, including Spanish Wells, for other zoning appeals **does not name** the zoning administrator or applicable town administrator. *See* Spanish Wells Prop. Owners Asso. v. Bd. of Adjustment, 295 S.C. 67 (1988); Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480 (Ct. App. 2000); Austin v. Bd. of Zoning Appeals, 362 S.C. 29 (Ct. App. 2004); McCrowey v.

Zoning Bd. of Adjustment, 360 S.C. 301 (Ct. App. 2004); DT LLC v. Horry Cty. Zoning Bd. of Appeals (In re Venture Eng'g), 433 S.C. 419, 858 S.E.2d 638 (Ct. App. 2021).

Appellant relied on Spanish Wells in its argument. Spanish Wells is distinguishable and does not apply. Naming Michael Robertson in His Official Capacity as Zoning Administrator serves no judicial economy because he is superfluous as a Town employee. Equally, Mr. Robertson would be bound by the Court's Order as an employee of the Town. Any language in the Order directing the Town to either cease the project or move the project forward would be binding on Mr. Robertson. Spanish Wells speaks to the "most vitally interested party" in an appeal so that he or she would be bound by the Court's Order. Mr. Robertson is not separate from the Town as a "most vitally interested party." He is an employee of the Town, acting on behalf of the Town, and the Town is already a party to this appeal.

Appellant suggests that failing to name Mr. Robertson would have made it subject to jurisdictional dismissal. At the hearing, the Town rejected this argument and stated it does not believe Mr. Robertson is a necessary party because the Town is already a named party. The Town's position is that it would not have filed for jurisdictional dismissal based on Mr. Robertson's absence. During the hearing and in its memo, Appellant pointed to the Order Granting Defendant's WIN515, LLC's Motion to Dismiss Plaintiff's Appeal. In this Court Order, a Design Review Board appeal filed by Justin Lucey was dismissed. This Order is also distinguishable and does not apply. The WIN515, LLC's appeal was dismissed because Mr. Lucey did not name the Design Review Board in addition to the Town. The Court held, "The Town and the DRB are distinct legal entities with separate interest and roles in this appeal." This is very different from Mr. Robertson and the Town. Mr. Robertson in his official capacity (as he is named here) and the Town are the same legal entity in this appeal.

A handwritten signature in black ink, appearing to be 'JLS', is located in the bottom right corner of the page.

Additionally, Mr. Robertson caused no damage to Appellant. In fact, Mr. Robertson's position was completely aligned with Appellant's position at the BOZA appeal. Appellant states that it is in opposition to Mr. Robertson on the issue of whether Justin Lucey's appeal was timely filed. Regardless of Mr. Robertson's decision that the appeal was timely, BOZA also accepted Mr. Lucey's appeal as timely thereby making the ultimate determination a BOZA decision.

Nevertheless, there is no difference whether Mr. Robertson is aligned with the Appellant or adverse to the Appellant. Mr. Robertson in his official capacity is not a necessary party to the appeal as complete relief would be accorded to all parties. Mr. Robertson has no separate interest in the appeal except to follow the Order of the Court. By virtue of being an employee of the Town, Mr. Robertson would be bound by the Court's Order. Counsel for the Appellant conceded at the hearing on this Motion that Appellant seeks no damages from Mr. Robertson and full relief can be granted if this appeal is successful by Order of the Court issued to BOZA and the Town. Mr. Robertson's positions in this matter are well documented in the record as his staff report, two briefs, and testimony to BOZA are all in the record. Mr. Robertson is not a necessary party and should not be a party to the appeal because he is duplicative of the Town as a Town employee.

CONCLUSION

For all these reasons, the Motion to Dismiss Respondent Michael Robertson in His Official Capacity as Zoning Administrator is granted.

IT IS SO ORDERED.

5/4, 2023
Charleston, South Carolina


Mikell R. Scarborough

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

This matter comes before the Court by way of a Consent Order of Reference entered on October 19, 2022 (the "Consent Order"). The Consent Order referred the above-captioned case (the "BOZA Appeal") and Case No. 2021-CP-10-04416 (the "DRB Appeal"), a related quasi-judicial zoning appeal involving the same development project.

On May 26, 2023, the Court conducted a hearing on the BOZA Appeal. Ross Appel appeared on behalf of Appellant CKC Properties, LLC ("CKC"). Brian Quisenberry, David Pagliarini, and James Ward appeared on behalf of Respondents the Town of Mount Pleasant, South Carolina (the "Town") and the Town of Mount Pleasant Board of Zoning Appeals (the "BOZA").¹ Respondent Justin O'Toole Lucey, Esquire, appeared on behalf of himself and Respondents 415 Mill St., Inc. and 69 Scott Street, LLC (collectively, "Lucey"), each of which own property adjoining or nearby to the subject development.

¹ By order dated May 4, 2023, the Court dismissed Michael Robertson, in his official capacity as Zoning Administrator finding that he was not a necessary party to this action.

The Court has fully considered CKC's Appeal Petition, the parties' respective memoranda of law, the arguments of counsel at the hearing, the record on appeal pursuant to S.C. Code Ann. § 6-29-830(A), and the applicable law.

This appeal consists of two issues. On the procedural issue, the court concludes Lucey's appeal was timely filed. On the substantive issue, Court finds the BOZA Order granting the appeal on the issue of off-street parking should be reversed as the BOZA committed legal error in reversing the Zoning Administrator's interpretation of "Guest Room."

RECORD ON APPEAL

On August 24, 2022, the BOZA filed the Record on Appeal in the instant BOZA Appeal pursuant to S.C. Code Ann. § 6-29-830(A). This filing included the following documents:

- Exhibit A - BOZA's Final Order;
- Exhibit B - September 27, 2021 Revised BOZA Meeting Agenda;
- Exhibit C - September 27, 2021 Staff Report;
- Exhibit D - September 27, 2021 BOZA Meeting Minutes;
- Exhibit E - September 27, 2021 Staff Brief 1;
- Exhibit F - September 27, 2021 Staff Brief 2;
- Exhibit G - September 27, 2021 BOZA Meeting Correspondence;
- Exhibit H - August 12, 2021 Letter from Mr. Lucey appealing to BOZA; and
- Exhibit I - Town's August 23, 2021 response letter confirming receipt of Mr. Lucey's August 12, 2021 appeal.

On September 27, 2022, CKC filed a Motion to Supplement the Record. On March 3, 2023, prior to the hearing on CKC's Motion to Supplement the Record, the BOZA filed a Supplement to the Record. The documents therein include the following:

- Exhibit J - September 24, 2021 Letter from Ross Appel;
- Exhibit K - September 27, 2021 Letter/Outline from Justin Lucey;
- Exhibit L - September 27, 2021 Letter/Memorandum from Colin Colbert;
- Exhibit M - September 27, 2021 Letter from Gabe Joseph; and
- Exhibit N - Processing Form for Lucey's Appeal.

On March 6, 2023, this Court held a hearing on CKC's Motion to Supplement the Record. By Order dated March 8, 2023, the Court granted CKC's request to transcribe the record from the BOZA hearing at its expense, but denied the Motion to Supplement the Record in all other respects.

On April 20, 2023, the BOZA filed a "Respondents' Supplement of the Record," which included the following documents:

- Exhibit O - BOZA Rules of Procedure;
- Exhibit P - Mt. Pleasant Code of Ordinances, § 156.410 – 413, as of September 27, 2021;
- Exhibit Q - Mt. Pleasant Code of Ordinances, § 156.007, as of September 27, 2021;
- Exhibit R - Mt. Pleasant Code of Ordinances, § 156.170-176, as of September 27, 2021; and
- Exhibit S- Transcript of BOZA September 27, 2021 Hearing.

Exhibit A through Exhibit S constitute the "BOZA Record" and are referenced below.

BACKGROUND ON APPEAL

The Shem Creek Boutique Hotel and Final Zoning Approval

This case involves a proposed twenty-seven (27) room "boutique hotel" located along Mill Street in Mt. Pleasant at TMS Nos. 517-16-00-058, -057, -034, and -035 (the "Properties"). (BOZA Record, Exhibit A, p. 3). Shem Creek Boutique, LLC, an affiliate of CKC, is the owner of the Properties. CKC is the developer of the "Shem Creek Boutique Hotel" (the "Project"). (BOZA Record, Exhibit J, p. 1).

The Properties are base-zoned Neighborhood Commercial ("NC") and located in the Boulevard Overlay District (BOD). (BOZA Record, Exhibit F, p. 1). There is no dispute that "Boutique Hotel or Inn" is a use permitted by-right under this zoning designation. (BOZA Record, Exhibit F, p. 1). The BOZA Order confirms this finding:

We find that the proposed development of a Boutique Hotel is generally a permissible use for these parcels, and we find that the proposed development satisfies the definition of "Boutique Hotel."

(BOZA Record, Exhibit A, p. 4). Neither Lucey nor the Town appealed this aspect of the BOZA Order.

CKC contracted to purchase the Properties in October 2020. Shortly thereafter, CKC and its engineers and architects began working with the Town's then long-time Zoning Administrator Kent Prause² to evaluate whether the Project complied with the Town's Zoning Ordinance. The BOZA Staff Report confirms the chronology as follows:

- “The Zoning Administrator discussed off-street parking requirements with the developer of the Shem Creek Boutique Hotel on or around February and March 2021.”
- “The developer proceeded with project design and site-specific development plans based on the determination made by the Zoning Administrator.”
- CKC “submitted plans to determine feasibility of the project on March 19, 2021.”
- CKC subsequently “filed an application and submitted plans for pre-application review (Conceptual Design Review Team) of the project on May 13, 2021. Conceptual DRT reviews projects for zoning compliance.”
- CKC “filed an application and submittal for Preliminary Design Review Board review on July 15, 2021. The submittal was hyperlinked to the Commercial Design Review Board July 2[8] (sic), 2021, meeting agenda.”
- “The [DRB] agenda [including the Project] was posted to the Town website on July 19th, 2021, at 11:35 am.”

(BOZA Record, Exhibit C, p. 5).

On or about June 9, 2021, the Design Review Team (“DRT”), which includes the Zoning Administrator, confirmed the site-specific development plan for the Project, including its off-street parking plan, complied with the Town's Zoning Code. This reaffirmed the Zoning Administrator's confirmation of zoning compliance from March 2021. After obtaining DRT approval, CKC

² Mike Robertson became the Town's Zoning Administrator on August 2, 2021, after Kent Prause retired.

applied for “Preliminary Approval of Site, Landscape, and Architecture” before the Commercial Design Review Board (the “DRB”). DRB approval is the only quasi-judicial entitlement necessary for the Project prior to securing construction and building permits. This appeal is pending.

Justin Lucey’s Appeal

On August 12, 2021, Lucey³ sent a letter to the Town’s corporation counsel objecting to the Project (the “Lucey Letter”). (BOZA Record, Exhibit H). The Lucey Letter challenged, among other things, numerous zoning, design, and policy decisions pertaining to the Project. (*Id.*). The Lucey Letter stated it was an appeal of the Zoning Administrator’s approval of the Project. (*Id.*).

On August 23, 2021, the Town’s assistant corporation counsel replied to the Lucey Letter (BOZA Record, Exhibit I) stating that some, but not all, of the matters raised in the Letter are appealable to the BOZA. (*Id.*) The Town’s assistant corporation counsel highlighted the parts of the Lucey Letter he believed were appropriately appealable to the BOZA and concluded:

While the Town acknowledges August 12, 2021, as the date of your appeal to BOZA for the applicable issues highlighted in green in Exhibit A, we ask that you complete the BOZA appeal application found on our website at www.tompsc.com/157/Applications-Forms. A \$200 fee is required for all BOZA appeals. (*Id.*).

Later that day, on August 23, 2021, Lucey completed and submitted the Town’s official BOZA appeal application through the Town’s online portal (the “Lucey Appeal”). (BOZA Record, Exhibit N). The Lucey Appeal included, as an exhibit, both the Lucey Letter (as highlighted by the Town’s assistant corporation counsel) along with the Town’s August 23, 2021 response letter. (*Id.*, pp. 3-8.). It also included an executed “Property Owner Acknowledgement Form” and a map of the area showing Lucey’s parcels in relation to the Properties. (*Id.*, pp. 9-10).

³ 415 Mill St., Inc. and 69 Scott Street, LLC are Lucey controlled and affiliated entities.

The Lucey Appeal claims the Zoning Administrator erred when he concluded that the specific plans for the Project satisfied the applicable use, off-street parking, height, and curb-cut regulations in the Town's Zoning Ordinance.

The BOZA Hearing on the Zoning Administrator Appeal

The BOZA heard the Lucey Appeal at its September 27, 2021 meeting. (BOZA Record, Exhibits A and D).

Prior to the meeting, the Town's new Zoning Administrator Michael Robertson filed two briefs for the BOZA's consideration. The briefs contain detailed analysis supporting the Project's final zoning approvals. (BOZA Record, Exhibits E and F). Exhibit E focuses entirely on the off-street parking requirements and approval for the Project, and Exhibit F focuses on all other zoning matters raised by the Lucey Appeal. (*Id.*).

Exhibit E summarizes the rationale behind Kent Prause's and Michael Robertson's approval of the Project's off-street parking plan as follows:

The boutique hotel project is comprised of three buildings: Building A, Building B, and Building C. Building A contains 19 guest rooms or lodging units as defined above. Buildings B and C contain 4 guest rooms or lodging units each. The total number of guest rooms in all three buildings is 27. Using the standards established in §156.171 [Table], the minimum off-street parking space requirement for the boutique hotel is a range of 27 to 54 parking spaces. Plans for the boutique hotel indicate that the project provides 35 total parking spaces: 1 parking space for each guest room or lodging unit in Building A (19) and two parking spaces for each guest room or lodging unit in Buildings B and C (16). The 35 parking spaces are in the range of 27-54 minimum parking spaces established in 156.171 [Table]. **The parking standards meet the minimum parking off-street parking standards established by Town Council in the ordinance.**

(BOZA Record, Exhibit E, p. 4) (Emphasis added).

Prior to the BOZA meeting, counsel for CKC submitted a letter with various exhibits opposing the Lucey Appeal. (BOZA Record, Exhibit J). The letter argued that the Lucey Appeal should be dismissed because it was untimely, Lucey lacked standing, and the Zoning Administrator

correctly determined the Project complied with all relevant regulations in the Town's Zoning Ordinance, including off-street parking. (*Id.*) CKC's principal, Colin Colbert, and counsel for the owners of the Properties also submitted letters in opposition to the Lucey Appeal. (BOZA Record, Exhibits L and M).

At the September 27, 2021 BOZA hearing, the Zoning Administrator stated that the Project satisfied all applicable zoning regulations, including off-street parking requirements. (BOZA Record, Exhibit S, 12:17–15:9; Exhibit D). The Zoning Administrator acknowledged the term “Guest Room” was undefined in the Zoning Code. He explained his interpretative process and how he arrived at the interpretation that a “Guest Room” meant an individually keyed unit – and not a bedroom. He concluded his remarks on off-street parking by stating, “Council does not give any discretion to the staff to determinate (sic) what would constitute the required parking. It is a range in the parking requirement, and we must approve it.” (BOZA Record, Exhibit S, 13:19-23).

After the Zoning Administrator's presentation, Lucey offered arguments in support of the Appeal. He did not discuss the issue of off-street parking. Instead, he focused on tree issues, floor area ratios, the definition of “boutique hotel,” and various other topics. (BOZA Record, Exhibit S, 7:21–12:14; 35:17–39:23; Exhibit D). Lucey also remarked as follows: “this board is here to judge the suitability of this project for this neighborhood ... and you have complete discretion on that.” (BOZA Record, Exhibit S, 9:1-4).⁴

The BOZA then allowed for public comment. CKC's counsel and representatives spoke in favor of the Zoning Administrator's approval and against the Lucey Appeal. Counsel for the owner of the Properties commented further on standing and mentioned prior attempts by Lucey to

⁴ As stated below, the BOZA is not a policy making body. Rather, its scope of review is confined to evaluating whether the Zoning Administrator's determinations were correct as a matter of law based on the text of the Zoning Ordinance and the facts in the record before the BOZA.

purchase the Properties. Finally, CKC's engineering and architecture team testified about their close collaboration with Town staff for nearly a year on the project and offered further support to the Zoning Administrator's application of the Zoning Code. Particularly compelling to this court was the testimony of Kevin Berry, the engineer for CKC, who illustrated the impact of the off-street parking calculations by showing the definition and purpose of the 1-2 parking range for projects such as this hotel. He argued that the Ordinance allowed for a 20% deviation from the actual number of spaces required that CKC was not utilizing while, at the same time, stating CKC was going to pave seven on-street parking spaces for the benefit of the area which do not count in favor of the developer. (Exhibit S, transcript of BOZA hearing, pp. 27-29. Emphasis added.)

After several public comments, the BOZA immediately moved to go into executive session to obtain legal advice. No specific purpose was mentioned. The BOZA met behind closed doors for approximately thirty (30) minutes. When the BOZA returned to the meeting, without any public discussion, a motion was immediately made to reverse the Zoning Administrator only as to the off-street parking calculation and to affirm the Zoning Administrator on all other matters.

The basis of the BOZA's motion was that the Zoning Administrator erred by interpreting the phrase "Guest Room," as used in the off-street parking calculations table. The BOZA concluded "Guest Room" means the number of rooms within each lodging unit (or beds). This overturned the Zoning Administrator's determination that a "Guest Room" means an individually keyed lodging unit. The motion passed unanimously without any public discussion by the members of the BOZA. (BOZA Record, Exhibit S, 40:8-41:21; Exhibit D).

BOZA Order and CKC's Appeal

The final order of the BOZA, memorializing its September 27, 2021 vote, was signed on October 25, 2021 (the “BOZA Order”). (BOZA Record, Exhibit A). The BOZA Order was mailed to the parties in interest on October 26, 2021. (*Id.*).

The BOZA Order found, among other things, that the Lucey Appeal was “timely filed and that [Lucey] has standing as an aggrieved party.” (BOZA Record, Exhibit A, p. 2). Reversing the Zoning Administrator’s interpretation of “Guest Room” as it appears in Section 156.171 of the Town’s Zoning Ordinance, the BOZA Order found “it was an error for the Town Administrator to find that ‘Guest Room’ and ‘Lodging Unit’ are identical.” (BOZA Record, Exhibit A, p. 4). “We find that Town Council’s use of the phrase “Guest Room” references the number of bed rooms in a proposed accommodation and lodging development, rather than simply the number of keyed lodging units.” (*Id.*).

On November 16, 2021, CKC filed a “Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition” pursuant to S.C. Code Ann. §§ 6-29-820, and -825(A). The parties participated in a mediation session on January 27, 2022. The mediation was kept open after that date, and the parties continued settlement discussions. On June 24, 2022, the mediator filed an ADR Report declaring an impasse. On June 28, 2022, CKC filed an amended Appeal Petition (the “BOZA Appeal”).

According to its Appeal Petition, CKC appeals the BOZA Order only with respect to the reversal of the Zoning Administrator’s approval of the Project’s off-street parking plan and interpretation of “Guest Room.” CKC also challenged the timeliness of the Lucey Appeal and Lucey’s statutory standing.

STANDARD OF REVIEW

“The findings of fact by the board of [zoning] 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 court “must determine only whether the decision of the board is correct as a matter of law.” *Id.*

“A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007). “However, a decision of a city 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.” *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

ISSUE

This appeal concerns the interpretation and application of the definition of a Guest Room for parking purposes of a Boutique Hotel situated in the Neighborhood Commercial zoning category of the Boulevard Overlay District within the Town.

CONCLUSIONS OF LAW

I. The BOZA erred by reversing the Zoning Administrator’s interpretation of “Guest Room” and the approval of the Project’s off-street parking plan.

CKC does not challenge the BOZA’s authority to review the Zoning Administrator’s interpretation of “Guest Room.” Rather, CKC argues the BOZA erred by reversing the Zoning Administrator’s and his predecessor’s interpretation that a “Guest Room” means a “Lodging Unit.” Essentially this appeal comes down to whether “Guest Room,” as it appears in the Town’s off-

street parking table found in Section 156.171, is an individually keyed lodging unit (the Zoning Administrator's interpretation) or each bedroom within an individually keyed lodging unit (the BOZA's interpretation). (emphasis added)

As an initial matter, the Court finds that the interpretation of "Guest Room" presents a *legal question* for this Court's review. "Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). 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.* at 568, 666 S.E.2d at 894 *citing Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). The determination of legislative intent is also a question of law. *Id.*

Since the interpretation of "Guest Room" presents a pure question of law, the Court need not defer to the interpretation expressed in the BOZA Order. S.C. Code Ann. § 6-29-840(A). Instead, the Court must conduct a *de novo* review of this ordinance interpretation dispute.

The Court's analysis starts with the observation that "Guest Room" is undefined in the Zoning Ordinance. (BOZA Record, Exhibit Q). This is significant for the purposes of this appeal because undefined terms in zoning ordinances must be liberally construed for the benefit of the property owner and in favor of the free exercise of property rights – *as a matter of law*.

"It is a well-founded principle of law that 'statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms

limiting the use of the property must be liberally construed for the benefit of the property owner.” *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753 (Ct. App. 2015) (citing *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)) (emphasis added). “Local governments have wide latitude to enact ordinances regulating what people can do with their property,” but they “must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.” *Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

The Court finds the Zoning Administrator’s five-page brief presented to the BOZA, defending his and his predecessor’s interpretation of “Guest Room” (BOZA Record, Exhibit E), to be well-reasoned and consistent with the applicable rules of statutory interpretation in the zoning context. In applying the 35 parking spaces to the range of 27-54 minimum established in the Ordinance Table at 156.171, the Administrator stated, “The parking standards meet the minimum ...off-street parking standards established ... in the ordinance” and further, “Town Council has determined ... the appropriate number of parking spaces and staff has no authority to require additional parking spaces beyond the minimum required.” (Ex. E, Application and Analysis).

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in the statute their “plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *Id.* at 499, 640 S.E.2d at 459.

Acknowledging “Guest Room” was undefined in the Zoning Ordinance, the Zoning Administrator performed an ordinary meaning analysis. (BOZA Record, Exhibit E). He concluded “[t]he term in common usage most closely associated with a *guest room* in a hotel ... is the term

hotel room.” (*Id.*) (emphasis in original).⁵ The Zoning Administrator went on to observe, in his professional judgment, that suite-style lodging units are commonly understood to be one of many different types of hotel rooms, all of which are considered individual lodging units.

Section 156.171 requires “1-2” off-street parking spaces per “Guest Room.” The Court finds that expressing the number of required spaces in terms of a *range* supports the Zoning Administrator’s ordinary meaning analysis and recognition that lodging units come in different configurations (single rooms, suites, etc.). It further reveals Town Council’s intent that some types of lodging units require more parking than others, as determined by the Zoning Administrator.

The BOZA’s narrow interpretation of “Guest Room” renders the “1-2” range irrelevant and superfluous. Under the BOZA’s definition, each bedroom, at a minimum, requires at least 1 off-street parking space. If that were indeed the meaning of “Guest Room,” there would be no reason to express the parking requirements in terms of a “1-2” discretionary range for the Zoning Administrator to apply in case-by-case applications. Had that been Town Council’s intent, Section 156.171 would simply have required only one off-street parking space per “Guest Room.”

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995).

⁵ While the Town and the BOZA present various dictionary definitions of “guest room” to the Court (none of which are in the BOZA Record), the Court finds the dictionary definitions advanced by the Town and the BOZA are in the context of a single-family residence (a guest room within a home) – not in the accommodations context. For that reason, the court concludes these proffered definitions are inconsistent with the ordinary meaning of the term “guest room” in the accommodations context, as explained by the Zoning Administrator in Exhibit E.

Here, the Zoning Administrator applied the “1-2” space discretion granted by Town Council to require the larger suite-style units in the Project to have two off-street parking spaces while the smaller units only required one off-street parking space each.⁶ This interpretation and application is faithful to the range of parking spaces set forth in Section 156.171 for each “Guest Room,” is consistent with the term’s ordinary meaning, and honors the legislative intent.

The Court further finds the following excerpt from the Zoning Administrator’s brief to be especially persuasive on the issue of legislative intent:

The 2014 Parking Schedule revision changed the method of calculating parking for hotels and lodging from *sleeping room* to *guest room*. Following the rules of statutory construction, one must presume that the change in terminology by Town Council was intentional. (BOZA Record, Exhibit E, p. 3) (Emphasis in Original).

The BOZA Order concluded the term refers to “the number of bed rooms in a proposed accommodation and lodging development, rather than simply the number of keyed lodging units.” (BOZA Record, Exhibit A, p. 4). This fails to appreciate the 2014 amendment to the off-street parking table discussed in the Zoning Administrator’s Staff Report (Exhibit E). The BOZA’s interpretation is more in line with the term “sleeping room” as opposed to “Guest Room” which would comport with the prior Ordinance definition. Town Council’s amendment of the off-street parking table from “sleeping room” to “Guest Room” reveals the clear intent to calculate accommodations parking not on the basis of bed rooms within a unit. There is no evidence in the BOZA Record challenging the Zoning Administrator’s legislative history analysis.

⁶ Specifically, “Plans for the boutique hotel indicate that the project provides 35 total parking spaces: 1 parking space for each guest room or lodging unit in Building A (19) and two parking spaces for each guest room or lodging unit in Buildings B and C (16).” (BOZA Record, Exhibit E, p. 4) The math is simple: $19+16=35$ parking spaces. Under the BOZA interpretation of the ordinance, the Inn would have 0.54 parking spaces per bedroom. Under the staff interpretation, the Inn would have 1.3 parking spaces per unit. This falls within the range of 1-2 spaces required by the ordinance.

Given the foregoing, the Court finds the BOZA committed an error of law and an abuse of discretion by reversing the Zoning Administrator's interpretation of "Guest Room." While the BOZA surely has the authority to review the Zoning Administrator's interpretation and application of the Zoning Ordinance, the BOZA is a quasi-judicial body – not a legislative one. Contrary to Lucey's suggestion at the hearing, *the BOZA is not a policy making body*. The BOZA's sole role is to interpret the Zoning Ordinance, as written, and review final decisions of the Town's professional staff. Town Council is the appropriate body for making policy decisions.

This Court's analysis and conclusion are guided by the special rules of statutory construction in the zoning context outlined in *Helicopter Solutions, Inc. v. Hinde* and *Keane v. Hodge*. Zoning ordinances, especially undefined terms such as "Guest Room," must be "strictly construed" and "terms limiting the use of the property must be liberally construed for the benefit of the property owner."

The Zoning Administrator's interpretation is well-reasoned and consistent with the ordinary meaning of the undefined term "Guest Room" in the applicable ordinance. To the extent there are alternative interpretations of the term "Guest Room," they do not appear in the express language of the Zoning Ordinance, as they must to be enforceable. This court concludes the Zoning Administrator's interpretation therefore trumps the BOZA's interpretation.

A narrower definition of "Guest Room" may have been a preferred policy by Lucey, BOZA members, and some members of the public. The Court does not express a position on the pros and cons of these policy arguments. However, the BOZA – as a quasi-judicial body – lacks the authority to reach this policy outcome when it is not clearly and unambiguously compelled by the plain meaning of the ordinance. *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C.

14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) (“Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.”)

The *exclusive* way for the Town to address the parking concerns raised by Lucey is by prospectively amending the Zoning Ordinance to define “Guest Room.” The South Carolina Supreme Court has long maintained that zoning amendments are legislative acts. *See Conway v. City of Greenville*, 254 S.C. 96, 104, 173 S.E. (2d) 648, 652 (1970) (action by landowner to have municipality rezone a portion of landowner's property in which the Supreme Court stated that it “recognize[d] that the adoption of zoning ordinances is a legislative function.”).

While not affecting this court’s decision, the Town enacted legislative policy after this appeal when the Town adopted Ordinance No. 21071 which, among other things, defined “Guest Room” for the first time and added a new definition for “Guest Suite.”⁷ The new definitions are consistent with the BOZA Order; however, Ordinance No. 21071 was enacted on December 15, 2021⁸ and so was not the law in effect at the time of the September 27, 2021 BOZA hearing. As “Guest Room” at that time was undefined, the BOZA was limited to reviewing and applying the law in effect when CKC’s Project was reviewed by staff and appealed to the BOZA.

For these reasons, the Court finds the BOZA abused its discretion and reinstates the Zoning Administrator’s interpretation of the term, which is consistent with the approved plans for the Project.

⁷ Ordinance No. 21071 reads, in relevant part, as follows:

GUEST ROOM (includes BEDROOM). Any room in a HOTEL or BOUTIQUE HOTEL containing one or more beds (excluding pull-out beds) provided for transient guests.

GUEST SUITE. Two or more GUEST ROOMS grouped together within a single rentable or leasable unit in any HOTEL or BOUTIQUE HOTEL.

⁸ The Court takes judicial notice of Ordinance No. 21071 pursuant to Rule 201, SCRE. *See, Martin v. Bay*, 400 S.C. 140, 732 S.E.2d 667 (Ct. App. 2012) (upholding the Charleston Master-In-Equity’s taking judicial notice of Charleston County’s zoning ordinances and their application).

II. The BOZA did not err in concluding the Lucey Appeal was timely.

In addition to challenging the interpretation of “Guest Room,” CKC argues the BOZA erred by finding the Lucey Appeal was timely filed. The procedure governing zoning administrator appeals, like the Lucey Appeal, is governed by the Zoning Ordinance and the BOZA’s Rules of Procedure. Section 156.411(A)(5)(a) governs timeliness as follows:

The appeal must be taken within **30 days** from the date the appealing party has received **actual notice** of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal. (Emphasis added).

Accordingly, for purposes of compliance with Section 156.410 this Court must analyze the date Lucey received actual notice of the staff’s determinations, and the date he filed his appeal.

The Zoning Administrator presented to BOZA during the September 27, 2021 hearing that Lucey’s appeal was timely filed. (*See Exhibit, C, September 27, 2021 Staff Report*). On August 12, 2021, Mr. Lucey served an appeal to the Town Attorney via letter detailing his numerous zoning concerns regarding the proposed Hotel. (*See Exhibit H, August 12, 2021 Letter from Mr. Lucey Appealing to BOZA*). Mr. Lucey’s letter states “Please ***accept this letter as an appeal*** of the following errors relating to the Mill Street Boutique Hotel project currently pending before the Design Review Committee.” (*See Exhibit H, August 12, 2021 Letter from Mr. Lucey Appealing to BOZA*) (Emphasis Added).

The Zoning Administrator noted that staff first published on July 19, 2021 determinations regarding the proposed Hotel development in their staff report for the July Design Review Board meeting. The Zoning Administrator concluded that July 19, 2021 was the earliest date Lucey could have received actual notice of staff determinations because that was the first date staff published

the determinations.⁹ Based on the August 12, 2021 date of Mr. Lucey's appeal letter, which Lucey submitted within thirty days of staff's July 19, 2021 posting, the Zoning Administrator concluded Mr. Lucey timely filed his appeal. BOZA accepted this analysis when they decided to hear Mr. Lucey's appeal. (*See Exhibit A, October 26, 2021 Final Order*).

Appellant first argues that this court should impute notice to Lucey as far back as April of 2021. Specifically, Appellant relies on an April 26, 2021 letter Lucey submitted to the Town complaining generally about the proposed development in opposition to an April 2021 height variance hearing. At the variance hearing Appellant sought to add an additional floor to the development. At that time, however, design plans showing the number of rooms and number of parking spaces had not yet been completed and staff had not yet made final determinations. **Appellant did not apply for preliminary approval with completed plans until July 15, 2021. (*See Exhibit, C, September 27, 2021 Staff Report*)**. Lucey's April 26, 2021 letter submitted in opposition to the height variance hearing thus cannot show he had actual notice of staff's final determinations regarding parking calculations because staff had not yet made its final determinations at that time.

Appellant also argues that even if Lucey's actual notice date is July 19, 2021, Lucey's appeal is still untimely because Lucey submitted his appeal on August 12, 2021 in the form of a letter to counsel for the Town instead of using the form prescribed by BOZA. Appellant argues that Lucey did not submit his processing form and pay his appeal fee until August 23, 2021 (*See*

⁹ At the hearing on this appeal, Mr. Lucey argued to this Court that he received actual notice on July 25, 2021 after reading a Post and Courier news article on the proposed development that cited to the July 19, 2021 staff report. This Court is unable to find any evidence in the record showing Mr. Lucey received actual notice on that date, and therefore the court uses July 19, 2021 as the actual notice date for purposes of the timeliness analysis.

Exhibit N, Processing Form for Lucey's Appeal), which Appellant points out is more than thirty days after staff's July 19, 2021 posting.

To support this argument, Appellant cites to BOZA's Rules of Procedure, which state in relevant part: "Requests to be heard before a Board shall be made by submitting the appropriate application form(s) approved by the Department of Planning and Development in accordance with the submittal deadline...", and "Applications may require a submittal and review fee in an amount specified by the schedule of fees established by the Town", "Failure to submit required information or forms and applicable fees may be grounds for rejection of the application." (*See* Exhibit O, BOZA Rules of Procedure). Appellant further relies on Ordinance Section 156.413(D), which states that "complete applications" are required, and that "incomplete applications will be returned to the applicant." (*See* Exhibit P, Mt. Pleasant Code of Ordinances Sec. 156.410 – 413, as of September 27, 2021).

This Court disagrees that BOZA's Rules of Procedure and Ordinance §156.413(D) strip BOZA of the ability to accept Lucey's August 12, 2021 appeal letter as the date of his appeal submission. Appellant misreads Mt. Pleasant Code of Ordinances §156.413(D). The section states that an incomplete application will be returned if it remains incomplete "prior to consideration by the Board." (*See* Exhibit P, Mt. Pleasant Code of Ordinances Sec. 156.410 – 413, as of September 27, 2021). BOZA received Lucey's processing form and fee long before consideration by BOZA on September 27, 2021. After receiving Lucey's appeal letter, **the Town Attorney informed Lucey that BOZA accepted his August 12, 2021 letter as his appeal, but requested that he prepare the form and pay the \$200 fee.** (*See* Exhibit I, Town's August 23, 2021 Response Letter Confirming Receipt of Mr. Lucey's August 12, 2021 Appeal). On August 23, 2021, Mr. Lucey

submitted his fee and processing form – well before the September 27, 2021 BOZA hearing. Thus, Section 156.413(D) does not render Lucey’s Appeal untimely.

CKC offers no authority holding that failure to file a processing form with a BOZA appeal letter constitutes an ineffective appeal for purposes of timeliness. The governing statute S.C. Code Ann. § 6-29-800(B) contains no reference to a processing form requirement in order to perfect a zoning appeal. “[A] regulation has the force of law, [but] it must fall when it alters or adds to a statute.” *Chapman* at 190-91; *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Envtl. Control*, 390 S.C. 418, 429 (2010); *see Goodman v. City of Columbia*, 318 S.C. 488, 490 (1995) (finding a regulation that required a particular form for review of a hearing commissioner’s decision added to the statute, which only required the filing of notice of intent to appeal within fourteen days).

This Court will not disturb BOZA’s determination on timeliness. BOZA determination that Mr. Lucey timely filed his appeal is affirmed.

III. The BOZA did not err in concluding Lucey possessed statutory standing as an adjacent property owner.

CKC argues Lucey lacked statutory standing to appeal the Zoning Administrator’s approval of the Project. In so doing, CKC maintains mere adjacency, in and of itself, does not render an appellant an “aggrieved” party under S.C. Code Ann. § 6-29-800(B) and Section 156.411(A)(5). The Court disagrees and concludes that neighboring property owners have statutory standing to appeal final zoning approvals. The Court further finds that Lucey is not a business competitor of CKC; therefore, *ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 669 S.E.2d 337 (2008) does not apply.

FINAL ORDER AND JUDGMENT

IT IS THEREFORE ORDERED that the Lucey appeal was timely made and that Lucey has standing to challenge the actions of the Town and assert his appeal.

IT IS FURTHER ORDERED that the BOZA Order is reversed *only* with respect to its findings and conclusions regarding the interpretation of “Guest Room” and the Project’s compliance with the ordinance. The Court hereby affirms the Zoning Administrator’s interpretation of “Guest Room,” and reinstates the Zoning Administrator’s final planning approval of the Project’s off-street parking plan and site-specific development plan for the Project as approved by the Zoning Administrator.

IT IS FURTHER ORDERED that the BOZA Order affirming the Zoning Administrator’s approval of the Project, in all other respects, was not not appealed and are final decisions binding on all parties.

IT IS FURTHER ORDERED that the Project shall proceed through the development review process under the ordinances and regulations which existed at the time CKC submitted its applications to the Town and DRB and the Lucey Appeal was filed. The Project shall proceed to the DRB for Preliminary Approval of Site, Landscape, and Architecture.

IT IS FURTHER ORDERED that the Project is vested against the application of Ordinance No. 21071 and any other ordinance in conflict with the Project adopted after CKC submitted its applications to the Town and DRB.

IT IS SO ORDERED!

Signature page to follow



Charleston Common Pleas

Case Caption: Ckc Properties Llc VS Mount Pleasant South Carolina Town Of The ,
defendant, et al

Case Number: 2021CP1005211

Type: Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-07-14 12:35:46 page 22 of 22

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CKC Properties, LLC,

Appellant,

vs.

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

Respondents.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2021-CP-10-05211
) CASE NO.: 2021-CP-10-04416

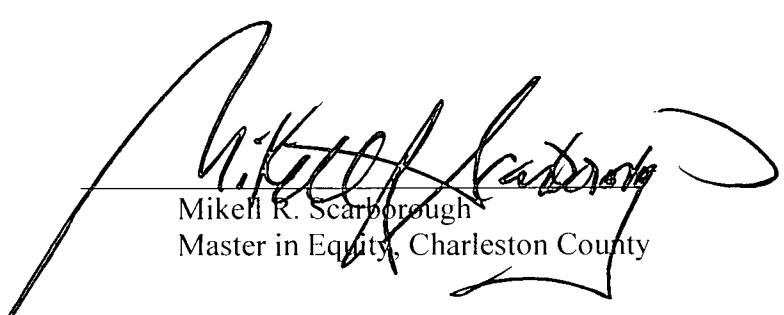
ORDER

2023 SEP 21 PM 2:49

Upon review of the Defendants' Motions to Reconsider filed by the Town of Mount Pleasant, the Mount Pleasant Board of Zoning Appeals, and Justin Lucey and his entities, as well as Appellant CKC's Memorandum in Opposition, the Court adopts the reasoning of Appellant's Memorandum and respectfully DENIES the Defendants' Motions to Reconsider. This matter shall be remanded to Circuit Court for further proceedings as this Court has addressed the appeal from the Consent Order of Reference, entered October 19, 2022.

IT IS SO ORDERED!

Charleston, South Carolina


Mikell R. Scarborough
Master in Equity, Charleston County

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NUMBER 2021-CP-10-05211
4

5 CKC Properties, LLC,)
6 Appellant,)
7 vs.)
8 The Town of Mount Pleasant, South)
9 Carolina; The Town of Mount Pleasant)
10 Board of Zoning Appeals; Michael) Appeal Hearing
11 Robertson, in his official capacity)
12 as Zoning Administrator; Justin) May 26, 2023
13 O'Toole Lucey; 415 Mill St., Inc.;)
14 and 69 Scott Street, LLC,)
15)
16 Respondents.)
17
18

19 Hearing before the Honorable Mikell R.
20 Scarborough, reported by Josie Allen Boehm, Registered
21 Professional Reporter and Notary Public, at 100 Broad
22 Street, Courtroom 2A, Charleston, South Carolina, May
23 26th, 2023 commencing at 10:19 a.m.
24
25

APPEARANCES

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1 THE COURT: Okay. All right. So this
2 morning, we have the case of *CKC Properties, LLC v.*
3 *the Town of Mount Pleasant*, and today's hearing is on
4 the Board of Zoning Appeals, an appeal from the Board
5 of Zoning Appeals by the plaintiffs/appellants CKC
6 Properties.

7 I have received from both the plaintiff as
8 well as the Town as well as Mr. Lucey of the Town's
9 decision that was heard by the Board of Zoning
10 Appeals, and it was in September of '21. And the
11 appeal was by the board affirmed in large part but
12 denied as to the Town's interpretation of the parking
13 ordinance as relates to boutique hotels in the town of
14 Mount Pleasant. Is that a fair recitation of what's
15 before the Court?

16 MR. APPEL: Yes, Your Honor. May it please
17 the Court. Ross Appel on behalf of CKC Properties,
18 LLC. You summed it up exactly right. That's what
19 we're here for today, and we're happy to proceed when
20 you're ready.

21 THE COURT: Very good. So Mr. Appel for the
22 appellant. Mr. Quisenberry present for the Town,
23 correct?

24 MR. QUISENBERRY: Brian Quisenberry here for
25 the Town and the Board of Zoning Appeals. I have some

1 people here with me I'd like to introduce. Laura
2 Hyatt, who's a council member for the Town, is here;
3 Michele Reed, who is the planning director for the
4 Town; David Pagliarini is the Town's attorney; and
5 James Ward, who's the assistant corporate counsel for
6 the Town.

7 THE COURT: Good to see you again. Been a
8 while.

9 And Mr. Lucey is sitting quietly. Glad we
10 could get together.

11 MR. LUCEY: Thank you, sir.

12 THE COURT: All right. And your clients are
13 here as well; are they not?

14 MR. APPEL: Yes, Your Honor. I'm here with
15 Tim and Colin Colbert. Tim is Colin's father, and
16 Colin is here in the audience. This is the entirety
17 of CKC Properties, LLC. It's just a two-man show.

18 THE COURT: All right. Very good. Let me
19 hear from you, and as I see it, there's sort of three
20 issues that we need to deal with. One is standing.
21 One is timeliness of the appeal, jurisdictional
22 question there. And then of course the merits of the
23 decision of the Board of Zoning Appeals.

24 So you can take those in any order you'd
25 like, but let's do it. That's how I see the issues

1 we've got to deal with.

2 MR. APPEL: Absolutely. Before diving into
3 that, I just want to hit some brief background for the
4 Court's purposes. These issues have been fully
5 briefed, as Your Honor knows, but I want to first
6 start off by saying -- you know, as I mentioned a
7 minute ago, CKC Properties, LLC is a small family
8 business.

9 It was started by Colin after he graduated
10 from College of Charleston, and his father joined the
11 business shortly thereafter. They're involved in a
12 variety of small projects on the peninsula and in the
13 town of Mount Pleasant. And they have never been
14 involved in a lawsuit before. This has been a new
15 experience for CKC Properties.

16 The project at issue in this case is a
17 27-unit boutique hotel. This is not one of the
18 200-unit monstrosities that we see downtown
19 Charleston.

20 It's a 27-unit boutique hotel, emphasis on
21 the boutique. And what's very important to know about
22 this project is at the time my clients put these
23 properties under contract and for about a year plus as
24 they were going through the staff level development
25 review process, boutique hotels were a use allowed by

1 right under the neighborhood commercial base zoning
2 district on the properties.

3 This is not a situation like we had in the
4 city of Charleston where nobody has a right to a hotel
5 anywhere. If you're in the accommodations overlay,
6 you've got to go to the BZA for a special exception.

7 This has at all times relevant prior to the
8 BZA hearing, this is a by right use. And the staff at
9 various points repeatedly through a yearlong process
10 assured CKC Properties, LLC that the project complied
11 with all applicable zoning ordinances, including but
12 not limited to use, offstreet parking, et cetera.

13 And based on that information and those
14 reliance factors, CKC Properties invested several
15 hundred thousand dollars to the tune of approximately
16 half a million bucks in engineers, architects, and
17 other costs to develop plans that were to go before
18 the design review board in the Town of Mount Pleasant.

19 Design review is the only quasi judicial
20 approval that this project needed. This is a by right
21 use, but given its location in Shem Creek, it's
22 subject to the DRB review, which is akin to the BAR
23 here in Charleston.

24 24 hours before they were supposed to go
25 before the DRB, the matter was pulled off the agenda

1 at the last minute, and some more of that background
2 is included in our brief. I don't need to get into
3 the whole play by play there.

4 Shortly thereafter on August 23rd, Justin
5 Lucey, neighboring commercial property owner, filed a
6 zoning administrator appeal to the BOZA.

7 He didn't just challenge the offstreet
8 parking. He essentially took the position that the
9 zoning administrator erred with respect to every
10 single zoning approval that was made to the project.

11 He challenged the use. He challenged the
12 curb cuts. He challenged everything under the sun.
13 It was a shotgun approach to try to stop this project
14 at all costs.

15 And as the Court mentioned, we had the BOZA
16 hearing on September 27th, 2021. After a 30-minute
17 executive session, Board of Zoning Appeals came out
18 and voted to affirm the zoning administrator on all
19 points other than the offstreet parking issue.

20 And at its very core, the town zoning -- not
21 one but two Town of Mount Pleasant zoning
22 administrators, Kent Prouse and Michael Robertson
23 after him, took the position that the term "guest
24 room" as it appears in the Town's offstreet parking
25 table is equivalent to a unit, which is the way that

1 boutique hotel as a use is defined.

2 Boutique hotel is a 50-unit use or less. So
3 to establish harmony within the code, the staff
4 interpreted unit to mean a guest room. That's our
5 position we share in this case.

6 The BOZA's opinion is that a guest room means
7 a bedroom within a unit. And based on that finding,
8 the 35 parking spots that were on the plan that was
9 approved by the Town zoning administrator was no
10 longer compliant. Because if you apply BOZA's logic,
11 the number of parking spaces would have doubled if not
12 more because you would be counting every single
13 bedroom within all the units in the 27-unit boutique
14 hotel. So the project was essentially --

15 THE COURT: So the BOZA said it's not every
16 key in the unit, it's every bedroom that requires a
17 parking space?

18 MR. APPEL: That is correct. And that's --

19 THE COURT: If I read the ordinance
20 correctly, it was -- I think it was category one or
21 two. There's a table in there somewhere. It's either
22 one, two, two. So we're working off of one to one?

23 MR. APPEL: Exactly. But, Your Honor, it's
24 important to point out that some of these units within
25 the 27-unit boutique hotel are suite style units.

1 So for the one-bedroom/two-bedroom units,
2 staff only required us to have one parking space per
3 keyed unit. But for the four-bedroom units within
4 this project, we provided two spaces for those.

5 So that's part of our argument is that one to
6 two encompasses this idea that, you know, hotel
7 accommodation units come in different shapes and
8 sizes.

9 So the Town Council, when they adopted the
10 parking table and gave that one to two, it provides
11 administrative flexibility to achieve a common sense
12 result at the administrative level.

13 THE COURT: Total number of units was 27 but
14 that was divided between the two different formats?

15 MR. APPEL: That's correct. And the project
16 as approved had 35 unit parking spots which actually
17 exceeds the minimum requirements. So this was a well
18 parked project.

19 That's the background, Your Honor. There's
20 some more details in our brief. I'll sort of leave
21 that to the Court to review.

22 But the net effects of the BOZA order was
23 that the project was essentially stopped and the DRB
24 ended up deferring the matter indefinitely.

25 We're still waiting on the DRB decision.

1 That's ultimately the goal here. If we can get the
2 BOZA decision reversed, send it back down to the DRB.
3 And as all this was happening, the Town enacted a
4 series of zoning amendments to, among other things,
5 eliminate boutique hotels with a use by right in the
6 district and define the term guest room in the parking
7 table for the first time ever. And that was effective
8 in December of 2021 about four months after the BOZA's
9 order was issued in this case.

10 So turning to the legal issues on appeal,
11 Your Honor identified the three legal issues that are
12 before the Court. We've got two procedural legal
13 issues and then the substantive issue of the
14 interpretation of the guest room.

15 Before getting into the weeds on each of
16 those items, I want to first talk about the scope of
17 review. This is a zoning administrator appeal. The
18 Court is sitting in an appellate capacity.

19 S.C. Code 6-29-840(A) establishes the
20 standard of review in zoning appeals. The Court is
21 supposed to treat findings of fact on the BOZA as
22 findings of fact by the jury, and the Court is
23 supposed to provide a very deferential standard of
24 review.

25 However, as to legal issues, the Court has a

1 de novo review. And we would submit, as we stated in
2 our reply brief, that all three issues in this case
3 are legal issues. The timeliness of the appeal is a
4 jurisdictional issue.

5 The standing of Mr. Lucey to initiate this
6 appeal in the first place is an issue that gets to
7 justiciability, which is a legal issue. And of
8 course, the interpretation of a guest room is an
9 interpretation of an ordinance which is a legal
10 question. And we cited to all that legal authority in
11 our brief.

12 Often times in these zoning appeals, how you
13 characterize the issues on appeal and often times the
14 outcome dispositive given that very differential
15 standard of review right there -- so I understand why
16 the Town wants to kind of steer things in this case
17 over to the area of findings of fact, but we would
18 submit that you have three legal issues before you
19 today.

20 This is a zoning administrator appeal. So
21 the whole basis of this matter going before the BZA in
22 the first place is the argument that there's a bunch
23 of legal errors by the zoning administrator.

24 This is not a case of -- most of what the BZA
25 does is hear variances, special exceptions, where it's

1 all about the facts. Is the use appropriate? Does
2 the use negatively impact others? This is a very
3 legal driven matter from the get go.

4 THE COURT: Well, what really drives the
5 train here is what constitutes a guest room; is it
6 not?

7 MR. APPEL: Absolutely.

8 THE COURT: And what is it about section
9 62-9-800(A) which does not give the board of appeals
10 the authority to determine that question?

11 MR. APPEL: It's not our position that the
12 Board of Zoning Appeals didn't have the ability to
13 define what a guest room is. It's just our position
14 that the interpretation of a guest room is an
15 interpretation of an ordinance, which is a legal
16 question.

17 And we have cited to the *Eagle Container, LLC*
18 *v. County of Newberry* case in our reply brief. It
19 states that issues involving the construction of an
20 ordinance or review as a matter of law under a broader
21 standard of review that is applied in reviewing issues
22 of fact.

23 And then there's the -- in that same case, it
24 goes on to say: Although great deference is accorded
25 to the decisions of those charged with interpreting

1 and applying local zoning ordinances like the zoning
2 administrator, a broader and more independent review
3 is permitted when the issue concerns the construction
4 of an ordinance.

5 So this is all about a construction of the
6 ordinance, interpreting what did the Town Council of
7 Mount Pleasant mean when they used the term guest room
8 in the context of their offstreet parking table.

9 And so, Your Honor, we have those three legal
10 issues. I want to just take the guest room issue head
11 on. We have got two procedural issues that say BOZA
12 never had jurisdiction to entertain the appeal from
13 the get go.

14 Let's take the guest room issue head on. As
15 I mentioned earlier, there are not one but two Town of
16 Mount Pleasant zoning administrators that agree with
17 us. Okay.

18 There was some indications in some prior
19 hearings that the new zoning administrator, Michael
20 Robertson, was doing his best to defend the
21 interpretation of Kent Prouse. But once Justin filed
22 his appeal to the BOZA, it was a de novo hearing.

23 Mike Robertson, if he disagreed with Kent
24 Prouse, he could have done so. He didn't. And
25 Exhibit E in the record on appeal filed by the Town is

1 an extremely impressive, thorough memorandum prepared
2 by Michael Robertson explaining why a guest room means
3 a keyed unit.

4 And he goes in through painstaking detail of
5 how he reached that conclusion. I'm not going to read
6 through that for the purposes of this morning. I just
7 want to highlight one issue that I think is very, very
8 relevant, and this is on the second page of Exhibit E,
9 which is the zoning administrator's brief that was
10 presented to the Board of Zoning Appeals.

11 And he talks about how in 2014 the parking
12 table was revised. Originally the parking
13 calculations were cast in terms of a sleeping room.
14 That was changed to guest room in 2014.

15 If we were dealing with sleeping room today,
16 if that was the law that was in effect when my clients
17 invested half a million dollars and spent a year
18 designing this project, if we're talking about a
19 sleeping room, maybe, maybe, the Board of Zoning
20 Appeals' interpretation would hold some water that
21 we're not talking about keyed units, we're talking
22 about bedrooms within a unit.

23 But by going from sleeping room to guest
24 room, we have to assume that the legislature meant
25 something by that change and that the term guest room

1 means what we all acknowledge -- I'm renting a hotel
2 room. I'm checking out of my hotel room.

3 It's not substantively different than a
4 concept of a keyed unit. So we agree wholeheartedly
5 with Kent Prouse, Michael Robertson, the memorandum in
6 Exhibit E in the record on appeal and we fully embrace
7 that reasoning.

8 We believe that if you interpret a guest room
9 to mean a bedroom within a room, it produces absurd
10 results. It would create such an over parked
11 situation that -- especially these days when people
12 that come to Charleston and other places take Ubers,
13 they're not driving in like they used to decades ago.

14 Modern zoning ordinances are designed towards
15 minimizing and streamlining offstreet parking
16 requirements, not requiring an overabundance of
17 parking because that is a very inefficient use of
18 land.

19 The Town's brief spends a lot of time going
20 into the dictionary about guest rooms, and that's not
21 how you resolve interpretive disputes on zoning
22 ordinances in South Carolina.

23 We cite to the *Heilker v. Zoning Board of*
24 *Appeals for the City of Beaufort* case, Court of
25 Appeals, 2001.

1 It says: We are reluctant to rely upon
2 either a dictionary or cases that have relied upon a
3 dictionary for a definitive answer as to the
4 definition.

5 Zoning ordinances mean what they say in the
6 zoning ordinance. A huge problem for the Board of
7 Zoning Appeals and the Town in this case is the
8 council didn't define what a guest room is. The Town
9 of Mount Pleasant had an extensive definition section
10 in their code. Guest room is an undefined term.

11 So that explains why the zoning
12 administrators had to go through this interpretive
13 common sense analysis that's outlined in the record on
14 appeal to get to the result.

15 You don't go to the dictionary to resolve an
16 issue that's undefined. And what I will say is this
17 to sort of put a bow on the guest room argument. We
18 don't think this is a close call.

19 We think it's clear that a guest room means a
20 keyed unit. It's the Town's opinion over multiple
21 administrations of zoning administrators.

22 But assuming for the sake of argument that
23 there are two reasonable interpretations, I don't
24 think it's reasonable. I think BOZA's interpretation
25 is absurd.

1 But let's assume it's reasonable and it's a
2 50/50, we still win. And here is why. There's a
3 special rule of construction in South Carolina that
4 applies to the interpretation of zoning ordinances,
5 and that's summed up in the *Helicopter Solutions, Inc.*
6 *v. Hinde* case. This comes out of Myrtle Beach. It's
7 a Court of Appeals case from 2015.

8 And if the Court will indulge me, I would
9 like to read this because I really think this case is
10 outcome dispositive in CKC's favor.

11 The Court says: It is a well-founded
12 principal of law that statutes or ordinances and
13 derogation of the natural rights of persons over their
14 property are to be strictly construed as they are in
15 derogation of the common law right to use private
16 property and so as to realize its highest utility and
17 should not be impliedly extended to cases not clearly
18 within their scope and purpose.

19 It follows that the terms limiting the use of
20 property must be liberally construed for the benefit
21 of the property owner.

22 The burden is on the Town of Mount Pleasant.
23 If they want a guest room to mean a bedroom, they have
24 to say so clearly in the definitions of the ordinance.
25 This can't be something that is just defined by the

1 Board of Zoning Appeals in an executive sessions.

2 It's not how it works.

3 But to the extent there is a reasonable
4 difference of opinion of what a guest room means here,
5 which we don't think there is, the tie goes to the
6 property owner. Because South Carolina's courts say
7 that if you want to regulate property in this state,
8 you have to do it clearly.

9 Because if not, you can find a situation
10 where a family business spends a year and half a
11 million dollars going through an administrative review
12 process only to have the rug pulled out from them on a
13 by right use based on a volunteer board's thought on
14 what a guest room means.

15 The other thing I will say on the guest room,
16 and this is the last point, is we ask the Court to
17 take judicial notice of Town of Mount Pleasant
18 ordinance number 21071.

19 After this case was decided, the Town of
20 Mount Pleasant finally got around to defining what a
21 guest room means. That law did not exist at the time
22 we submitted our application. It did not exist at the
23 time we went before the BOZA.

24 We think that's evidence that -- or legal
25 argument in support of the fact that guest room did

1 not mean what the BOZA said it meant in September
2 because it wasn't defined in September. It was only
3 defined in December.

4 THE COURT: So you would agree that the Town
5 has the right through council to define the term of
6 guest room, but you disagree that the Board of Zoning
7 Appeals would have that right?

8 MR. APPEL: Absolutely, Your Honor. I served
9 on the City of Charleston's Board of Zoning Appeals
10 for four years. Lenny Krawcheck, who we all know was
11 appointed by Mayor Gaillard. That's how long he had
12 been on the Board of Zoning Appeals.

13 And he admonished me once or twice, maybe
14 more, Mr. Appel, we don't legislate up here. And
15 that's exactly right. He's a hundred percent right.

16 The Board of Zoning Appeals, especially in a
17 zoning administrator appeal, is a quasi judicial body.
18 They are there to apply and interpret the laws as
19 written.

20 If they thought the zoning administrator's
21 interpretation of guest room wasn't the proper policy
22 or they didn't like this boutique hotel like Justin
23 doesn't like this boutique hotel, they're entitled to
24 their feelings, but they're not entitled to redefine
25 the term guest room. And that's what we think they

1 did.

2 They pre-empted, in this case, the
3 legislative determination by Town Council that
4 happened four months after the zoning decision was
5 made. And we think that that's just an indication
6 that -- let's put it this way. If guest room meant
7 what the BOZA said it meant, why amend the ordinance?
8 Why take neighborhood commercial -- why take the
9 boutique hotel use by right out of neighborhood
10 commercial after that?

11 This was an ordinance that was all geared at
12 this project, and I think that's just obvious. So
13 that sums up our argument on the guest room point.

14 Again, this Court can give a fresh legal
15 review. It's an interpretive issue as to what
16 ordinance means. It's not a policy issue. It's a
17 legal question, and we think that -- you know, it's
18 not every day I agree with the Town of Mount Pleasant
19 for crying out loud. But we strongly agree with the
20 Town of Mount Pleasant in this case.

21 THE COURT: You're talking about staff now?

22 MR. APPEL: The staff, absolutely. Got
23 nothing but love for the staff. So that's the guest
24 room point.

25 THE COURT: Let me stop there, and I'm going

1 to get a response. Mr. Quisenberry?

2 MR. QUISENBERRY: I appreciate the
3 opportunity, Your Honor. So first of all, I think --
4 I want to introduce my parties, you know.

5 The developer implies that there's something
6 improper by a Board of Zoning Appeals overruling a
7 town administrator.

8 THE COURT: I don't think that's a problem.

9 MR. QUISENBERRY: That's why they exist.
10 They are to review the decisions. The statute says
11 directly that they are empowered with the powers of
12 the zoning administrator himself and they can issue a
13 permit if they want to if they feel like it's
14 appropriate and called for.

15 They're there to interpret Town Council's
16 intent in the code. And if an appeal comes before
17 them, that the intent isn't there in the code with the
18 zoning administrator's decision, to reverse that.
19 That's their role.

20 They would have no other purpose if they
21 weren't there to interpret the zoning ordinances and
22 reverse the zoning administrator when appropriate.
23 Nothing improper with that.

24 Any implication that there's impropriety for
25 reversing the zoning administrator is wrong. Also,

1 these are unpaid volunteers, and I think that's
2 commendable. It's not something to look down upon.
3 These are public servants. They have no interest in
4 this fight. They're just trying to do the best job
5 they can to interpret the code as they think the Town
6 Council intended.

7 So, I mean, these people are -- they're doing
8 their best to try to -- they know that this case in
9 particular -- you have Mr. Lucey on one side that's an
10 attorney. You have a developer on the other side.
11 They know this is going to get appealed either way, so
12 they're just trying to get to the right answer.

13 THE COURT: Goes with the job. That's what
14 you get for volunteering.

15 MR. QUISENBERRY: They're trying to get to
16 the right answer so they can be upheld because this is
17 likely going up further, and they want to get to the
18 right answer just like you do. So that's how they
19 approach their job.

20 So if you look at the order -- because this
21 whole case is about the order. It's Exhibit A in the
22 record.

23 Does that order have errors of law in it or
24 not? When you read it, that's the question. That's
25 this whole thing. If you see there's no error of law,

1 then you have to deny this appeal.

2 THE COURT: The written order of the Board of
3 Zoning Appeals --

4 MR. QUISENBERRY: Right. And based on that,
5 if you look at it, it is a very well-reasoned order.
6 And I just -- there's no error of law in it. And
7 that's the ultimate question.

8 So, you know, there's a lot of talk about the
9 standard of review, so I want to touch on that first.
10 This is an appeal. There's no new evidence. We're
11 only limited to the record.

12 We said in our brief that there's all this
13 argument and citation to things outside the record.
14 There's a citation to a lot of things outside the
15 record and arguments made based on things that are
16 outside the record.

17 In our brief on page 5 and 6, we outline
18 point by point all the things that they referenced
19 that are not in the record.

20 So you can avoid those so that you don't run
21 afoul of that because I know that's hard to follow.

22 THE COURT: Tough being in appellate court.

23 MR. QUISENBERRY: So now the standard of
24 review, you know, it's basically -- like I said, does
25 Exhibit A, the order, contain an error of law or not?

1 So as an appellate court, you can't take new
2 evidence. You've got to give deference to BOZA. Even
3 in any issue, either an area of law or question of
4 fact, the case law is clear that there's deference
5 given by a review board to BOZA. They're the ones
6 that sit there and review the zoning code day by day,
7 month by month. They should get deference in their
8 interpretations.

9 And I cite to a bunch of cases in the brief
10 on that. I will read you one just because, you know,
11 Mr. Appel read you some case law on the standard.

12 This is a case, Restaurant Row Associates
13 from 1999 from the Supreme Court. It says: The
14 reviewing Court must refrain from substituting its own
15 judgement for that of the reviewing body even if it
16 disagrees with the decision.

17 So if you don't find an error of law, you
18 can't substitute your judgement, personal judgement.
19 It's just is there an error of law or not.

20 And there's a real good quote explaining this
21 in this case. It says: It's well-settled that a
22 proposition of a zoning law that a Court will not
23 substitute its judgement for the judgement of the
24 board. The Court may not feel the decision of the
25 board is the best that could have been rendered under

1 the circumstances. It may thoroughly disagree with
2 the reasoning by which the board reaches the decision.
3 It may feel the decision of the board was a
4 substandard piece of logic or thinking. Nonetheless,
5 the Court will not set aside the board's review of the
6 matter to inject its own ideas into the picture.

7 Again, it's not about your feelings about
8 what was right or wrong. It's was there an error of
9 law or not. So that's a pretty high deference you're
10 supposed to give to the board here. So keep that in
11 mind when you're reviewing the case.

12 And on the matters of law versus matter of
13 fact, on the issues of law, was there an error or not?
14 On matters of fact, you're supposed to treat them just
15 like the jury.

16 So was there no evidence in the record to
17 support their decision? It's a no-evidence standard.
18 And I know Your Honor can distinguish between what's a
19 fact issue and what's a legal issue, so I'm not going
20 to go into the details on that.

21 But there is fact issues involved in the
22 timeliness and the standing issue. There are also
23 legal issues.

24 Like with timeliness, when did Justin Lucey
25 receive notice? That's a fact issue. Standing, you

1 know, was there evidence of aggrievement? That's
2 evidence. So that's a fact issue.

3 And then what standard applies, that's a
4 legal issue. So there's fact and legal issues
5 involved.

6 And so just -- we want to make sure to apply
7 the right standard. But it's not as clear cut as all
8 this is legal issues.

9 Okay. On the BOZA's interpretation of the
10 ordinance, it's important to lay this out. I think
11 you have seen this grid. It's helpful to really look
12 at it because this is the ordinance at issue. It's
13 156-171, schedule of offstreet parking space
14 requirements.

15 That's what this whole case was about, that
16 one provision and what does it mean. And the way it's
17 set up is in a chart, and you have the broad use
18 category over to the left-hand side, the far left, and
19 it has the -- so here, the broad use category is
20 commercial.

21 Then you go over to the next category and
22 there's the column use, and that's the sub use within
23 the broad use commercial. And it has things like
24 shopping centers, restaurants and bars, and then here
25 the one at issue is accommodations and lodging. So

1 you look at that.

2 And then you go over another column, and it
3 tells you the spaces required. Here it says one to
4 two. And then you go to the unit of measurement, and
5 it says guest room.

6 So what does -- that's the whole case is in
7 this little box called unit of measurements under the
8 commercial and the sub category, accommodations and
9 lodging, what does guest room mean?

10 It's not defined. But, you know, they have
11 to define it. So what does it mean? Because here,
12 you know, in a standard hotel, it's pretty easy
13 because you have one room, per room, per hotel room,
14 or even a suite. You only have one bedroom in a
15 suite. It's a living area and then a bedroom. So the
16 issue just doesn't come up very often.

17 Who builds a hotel that has four bedroom
18 units, four bathrooms, a kitchen and a living room?
19 That's ten total rooms in one lodging unit.

20 So this is a unique situation that really
21 raised what does this definition mean? So, you know,
22 that's why this has come up.

23 When you look at the development, you really
24 understand. So it has four bedrooms, four baths, some
25 of those units. Some had three bedrooms, three baths.

1 Two bedroom, two bath and one bedroom, one bath. So
2 very large units where you could have multiple
3 different groups of people staying in the same unit,
4 likely lots of cars.

5 So BOZA got into interpreting this provision
6 guest room, and they found that it was synonymous with
7 bedroom rather than keyed lodging unit, and that's the
8 whole case.

9 The hotel has 64 total bedrooms and 35
10 offstreet parking spaces. So if you do it by bedroom,
11 they don't have enough. The math is simple. It's not
12 disputed. It's 64 bedrooms, 35 spaces. It's not
13 enough. They could have added 64 parking spaces for
14 64 bedrooms, but they didn't.

15 So let's look at whether they made the right
16 decision. What do you do to decide that? So the
17 first thing is usual and customary, meaning an
18 undefined term in a statute.

19 The courts instruct to look at the usual and
20 customary meaning. This is a case called *Liberty*
21 *Mutual v. South Carolina II Injury Fund*, and that's
22 2005 from Court of Appeals.

23 It says: When faced with an undefined
24 statutory term, the Court must interpret the term in
25 accordance with the usual and customary manner.

1 So the developer argues that we shouldn't
2 look at the dictionary, but I will note, Your Honor,
3 if you look at the developer's first brief, they cite
4 to the dictionary to argue about what a brief means.

5 So they make citations to the dictionary.
6 But now that they see it helps the Town, they've tried
7 to walk that back.

8 So, first, note that that they cite the
9 dictionary, too. But this case he cites to, *Heilker*
10 *v. Board of Zoning Appeals for Beaufort* --

11 THE COURT: How do you spell that?

12 MR. QUISENBERRY: H-E-I-L-K-E-R. And that is
13 the -- they're defining the term use. Very broad
14 word. What does the word use mean? And in that case,
15 it's a zoning case.

16 And they said, okay, what does use mean in
17 the context of a zoning ordinance? And the Court said
18 that using dictionaries is a good starting point but
19 it shouldn't be conclusive on the legislator's intent.

20 And they said especially when, as in that
21 case, there was a lot of case law defining the word
22 use already. So they said why do we need to look at
23 the dictionary when there's all this case law that
24 talks about what use means in the zoning context? So
25 that's why they said that.

1 Because there, there was a bunch of case law.
2 Here, neither party has cited any case where a Court
3 has defined the word guest room. So it's a different
4 situation.

5 And, also, I have cited to Your Honor a case
6 from 2023 involving the City of Charleston appeal from
7 BOZA where the Court of Appeals cited to the
8 dictionary.

9 And there, unlike what Mr. Appel just stated,
10 in that case, BOZA defined an undefined term to
11 restrict the use of the property. So the City of
12 Charleston's BOZA defined the undefined term monument
13 to say the owner couldn't do something, and that was
14 upheld by the Court of Appeals by citing to the
15 dictionary.

16 THE COURT: Wasn't that an unpublished
17 opinion?

18 MR. QUISENBERRY: *Abdo v. City of Charleston*.
19 It's a 2023 case, and my firm handled the case. We
20 were involved. We cited to the dictionary, and the
21 Court of Appeals cited in their opinion.

22 So it is instructive when you have an
23 undefined term and you're supposed to look at the
24 customary and ordinary use of a term as long as
25 there's not case law out there that defines it for

1 you.

2 So in that case, this guy wanted to put a
3 60-foot flag pole on his property. They said, oh,
4 monument -- the whole thing came down to whether it's
5 a monument or not.

6 The owner was arguing it was a monument.
7 They looked to the dictionary. Flag pole is not a
8 monument, so you can't do it.

9 MR. APPEL: Not only is that in my district
10 that it's -- I was on the BOZA when we ruled on that.

11 THE COURT: Y'all found it was not a
12 monument; is that right?

13 MR. QUISENBERRY: Yeah, the flag pole is not
14 a monument, and they looked to the dictionary.

15 THE COURT: I looked at it briefly this
16 morning. I do recall the monumental flag pole.

17 MR. QUISENBERRY: I think you should look to
18 the dictionary here because we don't have any cases
19 talking about what a guest room is.

20 THE COURT: Okay.

21 MR. QUISENBERRY: So let's do it.

22 THE COURT: I've got an idea of what a guest
23 room is.

24 MR. QUISENBERRY: Well, I've got four
25 different separate dictionary definitions for you in

1 my brief. So Merriam-Webster defines guest room as a
2 bedroom for a person who's invited to visit or stay in
3 someone's home. Collins is another dictionary that
4 says a guest room is a bedroom in a house or a hotel
5 for visitors to sleep in. Oxford's says guest room is
6 a bedroom that is kept for guests to use. And
7 Macmillan defines it as a bedroom for a visitor in
8 someone's home or hotel. So that's four dictionaries,
9 four uses of bedroom. And the word itself says room,
10 not unit.

11 So customary in normal use is in our favor.
12 So the next step after you have looked at customary
13 and normal usage, you look at the context of the
14 legislation. How was it used in the context of the
15 legislation? And BOZA did that in their order.

16 If you read the order, they did this. They
17 look at the language of the surrounding provisions and
18 the relevant provisions to see if guest room means
19 bedroom or lodging unit.

20 And, here, the number one rule of
21 construction is you're looking at what is the intent
22 of Town Council?

23 So we have two cases for you in the brief
24 where the Court has held that when you're interpreting
25 a statute, if one person is trying to -- one party is

1 implying a meaning of a word and the legislature uses
2 that implied term directly somewhere else, then you
3 can say, well, they would have used that directly here
4 if that's what they meant.

5 And I'll give you those two cases right now.
6 One is *Consumer Advocate v. South Carolina Department*
7 *of Insurance*, and that's a Court of Appeals case from
8 2012. And there, they were interpreting a code that
9 requires that the Department of Insurance issue rate
10 notice increases to people that have insurance
11 policies in workers' comp. If your rate is going up,
12 you get a notice. So that's what the statute said.

13 Well, the department didn't give the notice
14 because there was no overall increase. There was a
15 couple of employers that had increases, but overall,
16 the increases didn't exist. They actually went down.

17 The ALC held that the undefined term increase
18 meant overall increase in total rates and affirmed the
19 decision.

20 Well, the ALC was reversed by the Court of
21 Appeals because they said if the legislature meant
22 overall increase, they would have said the word
23 overall increase. And the way they held that was they
24 looked -- in a different provision in the same
25 statute, they had the word overall increase. And then

1 in the provision at issue, it just said increase.

2 So they said, well, if they used overall down
3 here, if they went it here, they would have used it
4 here. And that's going to be important in this case.

5 And there's another case that makes the same
6 point. It's called *South Carolina Coastal*
7 *Conservation League v. DHEC*. And there, the issue was
8 the time period, and the statute said to file an
9 appeal with the DHEC board, it had to be within 15
10 days of the decision being mailed to the applicant.

11 And there was a dispute about whether it was
12 receipt of the mailing or when it was placed in the
13 mail. And the original ruling by the lower court was
14 that it was when it was received. And the Court said,
15 no, we're reversing. It's when it was mailed.
16 Because in another provision in the statute, they used
17 the word receipt of the decision.

18 And the Court said if they meant receipt,
19 they would have said it because they say it later
20 down.

21 THE COURT: They relied on the mailbox rule?
22 Apparently a pre-COVID decision.

23 MR. QUISENBERRY: Yeah, it was. 2008. So
24 the same reasoning applies here. BOZA lays it out
25 beautifully in their order.

1 So Town Council uses the term guest room to
2 determine the number of parking spaces instead of
3 lodging unit.

4 Lodging unit, though, is used directly. That
5 term is used in the definition of boutique hotels,
6 which is what we're dealing with here. There, it says
7 a building or group attached or detached buildings
8 containing not more than 50 lodging units.

9 So that's how you define whether a hotel is a
10 boutique instead of a normal hotel. So you look at
11 the number of lodging units. That's Exhibit Q.

12 So Town Council has instructed staff that
13 when they're determining whether a hotel is boutique
14 or not, they need to count the lodging units. But
15 Town Council says when you're determining a number of
16 parking spaces for a hotel, you need to count the
17 number of guest rooms.

18 Why would they use different phrases if they
19 meant something different? If they're the same thing,
20 why would they use different phrases? Just like in
21 Consumer Advocate and the other case, the Court is
22 supposed to give significance to the fact that if they
23 used the same term somewhere else, why wouldn't the
24 legislature use lodging unit here also if that's what
25 they meant?

1 So that's how the order reasons the
2 interpretation. They say the Town Council could have
3 easily used this phrase lodging units for purposes of
4 the parking requirements within 156 and 171, but it
5 did not do so. Instead, the Town Council uses the
6 term guest room for calculation of parking.

7 So all that said, this is very similar to
8 that Consumer Advocate case. If you look at the use
9 of the term that's being argued as meaning the same
10 thing as guest room, they use it somewhere else, so
11 why wouldn't they have just used it there if that's
12 what they meant? They obviously know how to use the
13 phrase.

14 So all that said, BOZA correctly interpreted
15 the ordinance. There's no way that's an error of law,
16 Your Honor. It's not. I mean, they use lodging units
17 somewhere else. If they wanted guest room to be
18 lodging unit, they would have used the phrase lodging
19 units. And that's the reasoning that BOZA used.
20 That's not just an error of law, so the appeal should
21 be denied.

22 THE COURT: All right. Very good,
23 Mr. Quisenberry.

24 Mr. Lucey, you want to be heard on that?

25 MR. LUCEY: Yes, Your Honor. We keep hearing

1 from the appellant regarding their financial
2 investment and their reliance and their ownership.

3 While the Town did a good job of noting a
4 number of arguments by the appellant that are not in
5 the record or supported by the record on page 5 and 6
6 as they said, they didn't include that in the list.

7 The half a million dollar investment was in
8 their attempt to get a variance on a four-story hotel.
9 This was all an afterthought, one. Two, they
10 apparently now are briefing that they owned the thing,
11 the location, and that's part of their damages.

12 Well, the only evidence in the record is that
13 they had an option to buy the property. They
14 apparently proceeded to purchase the property after
15 their zoning was denied, so there can be no reliance.

16 It's not supported by the record, and the
17 only thing that is in the record shows there was no
18 reliance. I doubt the Court would go for the sympathy
19 plays, but just in case he considers them, they're
20 contradicted by the record.

21 I would ask the Court to accept my brief for
22 my arguments so I can keep it short. I'm not going to
23 touch on the same issues as the Town so-well covered
24 in their argument, and I'm really just here to answer
25 questions. Thank you, sir.

1 MR. QUISENBERRY: Could I add one more thing
2 on that? The purpose of the statute also is to --
3 Mr. Appel touched on this, the ordinance. And he
4 referenced the case that says that -- it's basic
5 zoning law that if it's not in the intent of the
6 legislature then you should uphold property rights,
7 and that's just basic.

8 But there's a law that says zoning
9 ordinances, when they're clear and the intent is
10 there, then they should be enforced. But the purpose
11 here of a parking restriction is to protect the
12 offstreet parking. It's very limited.

13 So we want to make sure these businesses that
14 are going to attract people have sufficient parking so
15 they don't overburden the onstreet parking. That's
16 the purpose of the provision. So the interpretation
17 is consistent with the purpose. That's important.

18 And then finally the fact -- the thing about
19 the ordinance that was passed after the fact, that
20 shouldn't be considered because that wasn't before
21 BOZA because it didn't exist at the time.

22 THE COURT: Didn't happen at the time.

23 MR. QUISENBERRY: You can't consider it. But
24 if you do, it's just a codification of a ruling. Just
25 like happens all the time with the U.S. Government.

1 The Supreme Court makes a ruling. They might codify
2 it or change it up a little bit. But here, they're
3 clarifying what their intent was. It was undefined.
4 So they said exactly what BOZA said. It's a bedroom,
5 not a lodging unit, in the definition.

6 THE COURT: Okay.

7 MR. APPEL: Real briefly in response to
8 Mr. Quisenberry, the two cases he cites, *Consumer*
9 *Advocates v. Department of Insurance* and the *CCL v.*
10 *DHEC* case, they both share a very important thing in
11 common. Neither of them are zoning cases.

12 There's a special rule in statutory
13 construction that applies in zoning cases. It's the
14 strict construction rule where, quote, "the terms
15 limiting the use of property must be liberally
16 construed for the benefit of the property owner." Not
17 the Town, not Justin Lucey, not Town Council, not
18 anybody else.

19 So all of this legal gymnastics that you just
20 heard from Mr. Quisenberry that apparently the BOZA
21 engaged in during a 30-minute executive session, there
22 is no public deliberation in the record in the
23 transcript of any discussion of guest room.

24 I invite the Court to look at Mr. Lucey's
25 presentation of the BOZA. He doesn't bring up this

1 issue once. Why? Because it's not about offstreet
2 parking. It's about the project. It's about that.

3 And I will tell you something that's
4 absolutely in the record. This is a letter we sent to
5 BOZA before the hearing. Justin Lucey was trying to
6 buy these very same properties. Justin Lucey is
7 trying to control this block. This is a coordinated
8 effort to kill this project at all costs.

9 There was this glimmer of guest room unit
10 that was seized upon, cooked up in an executive
11 session, and read out in a prepared script by the
12 BOZA. That's what is in the transcript.

13 THE COURT: Did your FOIA argument, was that
14 at all made part of the record? I don't think that's
15 part of the record.

16 MR. APPEL: I'm just referring to the
17 transcript. So part of what the Court is supposed to
18 do --

19 THE COURT: I'm with you.

20 MR. APPEL: -- is review the transcript.
21 What you will not find in this transcript, which they
22 resisted providing -- they resisted providing the
23 transcript. Every zoning appeal I have ever been
24 involved in has included the transcripts so the Court
25 can know what's in the hearing.

1 There is zero public deliberation about the
2 definition of guest room. 100 percent absent. To the
3 extent the dictionary is relevant in here, which it's
4 not, because the burden is on counsel to define the
5 terms they want to apply under that strict
6 construction rule, just like we talked about earlier
7 in another case, just like lawyers, dictionaries can
8 provide you with whatever results you want.

9 If you want to look at the definition of a
10 guest room and try to use the interpretation of a
11 guest room as it applies to somebody's house, yeah,
12 you can come away with that with a view that a guest
13 room is a sub unit of a use.

14 But in the context of an accommodations use,
15 not one but two zoning administrators determined that
16 a guest room is equivalent of a unit.

17 If Town Council wanted to ensure that a guest
18 room was the way they ultimately decided it was in
19 December -- which, Judge, let's talk about the record.
20 That's an ordinance of the Town of Mount Pleasant.

21 That's subject to judicial notice from the
22 Court. They could have made that distinction. That's
23 not what they did. And I think it's important, Your
24 Honor -- and this gets into timeliness and standing.

25 It's important to recognize how this all got

1 teed up. Under the State statutes, Town Council
2 members and staff actually have standing to appeal the
3 zoning administrator.

4 So if the Town of Mount Pleasant felt there
5 was some problem in the code or there was something
6 along those lines, that could have been teed up by the
7 Town for resolution by the BOZA. It's not a good way
8 to handle it. You ideally want to have counsel do the
9 legislating in a jurisdiction.

10 But this was all brought about by Justin
11 Lucey's appeal. That's how this all got brought
12 forward, and that's very important to factor in here
13 as it relates to this issues.

14 THE COURT: Why don't we talk about that,
15 then. You're not arguing that the Board of Zoning
16 Appeals does not have the authority to overrule the
17 administrator, right?

18 MR. APPEL: Not at all. I mean, the Board of
19 Zoning Appeals can do three things. They can hear
20 zoning administrator appeals, they can grant
21 variances, and they can grant special exceptions.

22 Part of what it involves in a zoning
23 administrator appeal is to review ordinances and issue
24 decisions. We're not challenging the fundamental
25 physics of this process. We are simply saying that

1 the Board of Zoning Appeals erred in delivering their
2 interpretation of guest room as it appears in the BZA
3 order in the record because it's an error of law.

4 And there's no factual findings that are
5 relevant to this question because it's purely a
6 question of what does a guest room mean as written.

7 And Your Honor has the ability -- I mean,
8 that's a de novo review. The cases that were
9 mentioned that talk about deference, that's in
10 connection with variance determinations, special
11 exceptions.

12 If the Town of Mount Pleasant Board of Zoning
13 Appeals finds in a variance case that the appellant
14 didn't suffer an unnecessary hardship, that's a
15 factual determination that the Court can't discern.

16 But this is just pure legal interpretation
17 and no deference is given to the BOZA. The BOZA sure
18 didn't give deference to the zoning administrator. So
19 what's good for the goose needs to be good for the
20 gander.

21 THE COURT: I would agree to the extent it's
22 a legal question, the Court has the right to interpret
23 that as it wants. To the extent it's a finding of
24 fact, the Court is bound by the record.

25 MR. APPEL: 100 percent. And I will never

1 disagree with that general principle. I would just
2 say in the zoning administrator appeals, unlike
3 variance appeals and special exceptions appeals,
4 zoning administrator appeals, by their very nature,
5 are chalk full of legal questions. That's just sort
6 of what they are.

7 They're challenging zoning administrator
8 interpretations of the ordinance. That's how all this
9 got teed up.

10 So, Your Honor, in terms of the other two
11 arguments, Your Honor can dispose of this case without
12 even reaching the guest room issue. Although we think
13 for the purposes of the record, we ought to have
14 rulings on all these issues.

15 As we briefed extensively, we don't believe
16 Justin Lucey's appeal with BOZA was timely and we
17 don't believe Mr. Lucey possessed statutory standing
18 to bring the appeal in the first instance.

19 If the Court finds either of those to be
20 correct, in our view, then that means that the BOZA
21 lacked jurisdiction from the outset to even get into
22 the guest room business at all.

23 And so let's talk a little bit on the
24 timeliness issue about findings of fact. If you look
25 at Justin Lucey's appeal letter in the record, which

1 is Exhibit N, there's some dispute about when it was
2 submitted and when it was perfected.

3 But if you look at his letter and you look at
4 his testimony at the hearing in the record in the
5 transcript, he never says anywhere when he purports to
6 have received actual notice of the project. He's the
7 appellant before the BOZA. It's his burden of proof
8 as the appellant under the Town of Mount Pleasant
9 zoning ordinances to make sure he establishes
10 timeliness, standing, and all those issues before
11 getting in the door.

12 So as we sit here today, there is actually no
13 evidence in the record at all where Mr. Lucey ever
14 obtained actual notice. There is an indication, and
15 this is part of the record. This is part of what we
16 brought before the BOZA.

17 He was writing letters opposing the project
18 in April of 2021. Because we did go to the BOZA for a
19 variance request back then. It was denied. Justin is
20 writing letters to the BOZA then complaining about
21 parking and things of that nature.

22 So to the extent there is any evidence in the
23 record, it's that Justin Lucey knew about this
24 project, knew it was going through the development
25 review process, and didn't file his appeal until

1 August 23 of 2021, which is way beyond the 30-day
2 period.

3 But if you look at the staff report, the only
4 date that's sort of in the record for the purposes of
5 establishing that Justin's appeal was timely is the
6 Town of Mount Pleasant just has this position that
7 says when a matter is published on a DRB agenda, that
8 is actual notice to the world that the project
9 complies with the zoning. Because if you don't comply
10 with zoning, you can't be on a DRB agenda.

11 So the Town's staff report in this case that
12 is part of the record that Michael Robertson prepared
13 says that Town of Mount Pleasant hosted the DRB agenda
14 notice on July 19th. Therefore, we're treating that
15 date as the date Justin had actual notice, although
16 there's no evidence in the record, zero, that that's
17 when he had notice. There's no evidence at all in the
18 record as to when he had actual notice.

19 So there's no basis upon which we could even
20 calculate the 30 days. But let's just assume for the
21 sake of argument --

22 THE COURT: Do we know when the zoning
23 administrator made the decision? Do we have a written
24 decision from him?

25 MR. APPEL: See, this is what's challenging

1 about zoning administrator appeals generally when
2 they're brought by third parties. The Town of Mount
3 Pleasant told our folks numerous times over the part
4 of the year, yeah, this is approved use. This is how
5 the parking goes, things of that nature.

6 We have references in the record that talk
7 about how the towns DRT team -- it's sort of like the
8 City of Charleston's TRC where they get all the
9 different departments together to rule on things.

10 This got final sign-off approval in June to
11 be able to go in to the DRB process that July. But
12 there were various points prior to June where -- they
13 wouldn't have proceeded down the path of this project
14 if the parking interpretation of the Town was not
15 correct because it's contingent upon how everything
16 else is set up onsite.

17 But if we just assume that Justin Lucey had
18 actual notice on July 19th -- he never says when he
19 had actual notice in his appeal and he never said
20 before the BOZA. There's nothing in the record upon
21 which the BOZA could base its decision that the appeal
22 was timely, which they did on page 2 of their order.

23 But let's just assume July 19th was the date.
24 Justin didn't submit the Town's official appeal
25 application until August 23rd, 2021, which was more

1 than 30 days after July 19. This is Exhibit N in the
2 record.

3 Now, the Town's response to that is they want
4 to do Justin a favor. The appeal -- the Town's
5 official appeal form is just a cover form. It's a
6 formality, just a technicality. Let's let Justin's
7 appeal in the door which has derailed a \$30,000,000
8 project for the past two years.

9 That position that the Town's attorney had at
10 the time just to kind of let it in and the staff's
11 decision to let it in flies in the face of the Town's
12 zoning ordinances and the BOZA's rules of procedure.

13 We've got all this cited in our brief. But
14 it says in section 156.413(d) that, quote, "A complete
15 application of forms and information is required."

16 Subsection 2, quote, says "Prior to
17 consideration by the board, incomplete applications
18 will be returned to the applicant."

19 The BOZA's rules of procedures in article 2,
20 section 3 state, quote, "Request to be heard from the
21 board shall be made by submitting the appropriate
22 application form to the Town."

23 It requires a fee. Failure to do so are
24 grounds for rejection of the application. There is no
25 dispute that Justin did not comply with all -- he

1 complied with the process at the earliest on August
2 23rd, 2021 which was 30 days past July 19th, which is
3 when the DRB agenda was posted.

4 We are being technical here. I want to admit
5 that. We are getting into the weeds, but this is
6 appellate procedure. You know, if you've got a case
7 where somebody doesn't file a notice of appeal with
8 the Court of Appeals until the 32nd day, that's
9 grounds for dismissal.

10 And it's incumbent upon the lawyers trying to
11 defend these positions to hold people's feet to the
12 fire. Justin is a lawyer. He's a neighbor. He's
13 trying to interject a by right use.

14 This has cost my client millions of dollars
15 at this point. He has to be held to the strict
16 requirements of the ordinance, and it wasn't.

17 What they're claiming to be the appeal is a
18 letter that Justin sent to David Pagliarini where
19 Justin just goes on for pages about all of his policy
20 disputes about the project. He raises aesthetic
21 concerns, things of that nature.

22 The Town's attorney returned that letter,
23 directed him to the website, said you have to pay a
24 fee. The Town's attorney did say we will treat the
25 date of your original letter as the date of your

1 appeal to lock in the 30 days, but the Town attorney
2 had no authority to do that.

3 Just like the BOZA, the Town attorney doesn't
4 have the ability to legislate. They can't waive these
5 clear provisions in the Town code and in the BOZA's
6 rules and procedures that I just read.

7 So to sum it all up, there's no evidence in
8 the record as to when he had actual notice. We have
9 indications in the record that he had notice of this
10 several months before he filed the appeal back in
11 April.

12 I think he figured once the variance request
13 was denied, the project was dead. His lack of
14 vigilance in pursuing information about where the
15 project stood in progress, whether it was approved,
16 when it was going do the DRT -- by the way, the Town's
17 DRT meetings are public. He could have participated
18 in that. That was published way before.

19 That was published April, May, June. There's
20 multiple trips to the DRT. He didn't do any of that.
21 He waited until August 23rd to perfect his appeal,
22 which was past the jurisdictional deadline.

23 And for that reason, the BOZA has no
24 jurisdiction to have heard this matter from the
25 outset. The appeal is technically and procedurally

1 invalid as a matter of law.

2 And the Town attorneys, the BOZA, and
3 respectfully, Your Honor, the Court just doesn't have
4 the ability to just say Justin came close enough
5 within the 30 days.

6 And it's not just a cover form. The Town's
7 online application, it says -- and this is Exhibit N
8 in the record. This is in the record. They filed
9 this.

10 It says at the top of the form: Board of
11 Zoning Appeals form decision of zoning official
12 application.

13 It then says in all red: A property owner
14 acknowledgment form must be submitted with the
15 application. A fee must be submitted.

16 He has to certify various other things as
17 part of this online formal application process that
18 the Town has implemented. He didn't do that until 30
19 days after the Town determined that the public had
20 actual notice of the decision, which I think is, you
21 know, questionable.

22 It's Justin's burden to establish when he had
23 actual notice, and he never even tried. There's
24 nothing from Justin Lucey in the record that says I
25 got official notice on July 13th. There's no date

1 whatsoever. It just launches right into the attacks.

2 So for those reasons, we think that the
3 appeal was jurisdictionally deficient. It's untimely.
4 It's a matter of law, and the BOZA lacked jurisdiction
5 to consider it, and it must be denied.

6 Your Honor, I can take a break there on
7 timeliness and --

8 THE COURT: Let's go ahead and go to
9 standing. I think those sort of fit together pretty
10 well.

11 MR. APPEL: Sounds great, Your Honor. This
12 is a statutory standing case. Constitutional standing
13 principals are not relevant.

14 South Carolina General Assembly establishes
15 what you have to have to be able to file one of these
16 zoning administrator appeals. And the way the
17 statutory language is set is an aggrieved party. It's
18 not a substantial interest, which is the standard on a
19 BAR appeal or a planning commission appeal.

20 The legislature here uses slightly different
21 terminology in the BOZA context as it relates to
22 zoning administrator appeals, and the word that's used
23 is aggrieved.

24 The Town's position is if you owned property
25 adjacent to the property at issue, you're

1 automatically aggrieved as a matter of law.

2 I'll say Justin owns commercial property.
3 It's not his home; it's commercial property next door.
4 But the big dispute here in terms of statutory
5 standing is we don't believe there's any basis in
6 South Carolina's case law that holds that adjacent is
7 ipso facto aggrieved.

8 Certainly, a lot of people that are aggrieved
9 are adjacent based on the facts and circumstances, but
10 it's not automatic. There's some more analysis that
11 has to happen.

12 The statutory frame work under the planning
13 acts supports this view. There's different statutory
14 standing requirements in different context. So if
15 you're challenging a rezoning, you're challenging a
16 legislative determination to rezone the property under
17 629-760(c), standing is provided to, quote, "An owner
18 of adjoining land or his representative," end quote.

19 If you want to enforce a zoning ordinance
20 under third party standing theory, under 629-950(a),
21 statutory standing is reserved, quote, "An adjacent or
22 neighboring property owner who would be especially
23 damaged."

24 So much like this reasoning that Brian was
25 talking about in the insurance context and in the

1 environmental permit appeal context where we try to,
2 you know, look at an overall legislative scheme to
3 understand the legislature knew how to use different
4 words in different places, which doesn't apply when
5 you're trying to interpret a zoning ordinance, but
6 maybe it does when you're trying to interpret zoning
7 legislation at the state level.

8 The legislature knew how to say statutory
9 standing is reserved for people that own adjoining
10 property. They used the term aggrieved in the context
11 of a zoning appeal, so it's just not the case that
12 Justin owns property next door, you're in. More has
13 to be told.

14 The leading case on defining what aggrieved
15 means under the planning act is *Beaufort Realty Co.,*
16 *Inc. v. Beaufort County*. It's a 2001 Court of Appeals
17 decision.

18 And it says: A party is aggrieved by a
19 judgement or decree when it operates on his or her
20 rights of property or bears directly on his or her
21 interests. The word aggrieved refers to a substantial
22 grievance, a denial of some personal or property right
23 or the imposition on a party of a burden or
24 obligation. A party cannot appeal from a decision
25 which does not affect his or her interest however,

1 erroneous and prejudicial it may be to some other
2 person's rights and interests.

3 First off, completely absent from that
4 articulation is anything having to with adjacency.
5 The Court of Appeals clarified that to be aggrieved,
6 you have to point to an actual injury that is not
7 purely conjectural or hypothetical. Something more
8 has to be shown beyond mere adjacency.

9 Now, Mr. Lucey points to in his letter, which
10 was not timely filed, and he says this at the hearing
11 that, oh, there's just terrible parking problems in
12 Shem Creek.

13 Well, that's nothing personal to him. He's
14 complaining about parking on the public right of way.
15 Justin doesn't own Shem Creek. He doesn't own the
16 public rights of way, even in front of his office and
17 in front of his huge assemblage of ownership that
18 envelopes our properties.

19 So the alleged injury that he's pointing to
20 is not personal and unique to him. It's a policy
21 concern. Hey, the parking is tough in Shem Creek.
22 It's not -- it doesn't make him aggrieved as a matter
23 of law.

24 There's a case that the Supreme Court
25 decided. It's the ATC South case. It talks about how

1 parties that are commercial competitors do not have
2 statutory standing to engage in the zoning appeals
3 process.

4 Now, that case arose out of disputes over
5 cell tower permitting. Because what was happening is
6 AT&T was appealing Verizon's permits and vice versa,
7 and the Court said you guys --

8 THE COURT: We're not playing that game.

9 MR. APPEL: And in response to ATC, the
10 Town's defense is, well, Justin Lucey is not in the
11 hotel business. He's not a competitor. We don't read
12 ATC to be so narrow that you have to be in the exact
13 same business in order to be a competitor.

14 Justin is absolutely a commercial competitor
15 because he wants control of that entire block on Shem
16 Creek. We've got e-mail in the records where he was
17 trying to buy the very same properties we had under
18 contract.

19 Torpedoing this deal and making this deal not
20 happen and making CKC Properties, LLC go away would
21 make it easier for Justin to fulfill his objective of
22 completing the total control and acquisition of this
23 block.

24 So he's very much a commercial competitor.
25 That's why he threw the kitchen sink at this. He

1 challenged the use. He challenged the height. He
2 challenged the curb cuts. He challenged the parking.

3 Everything that Kent Prouse did was wrong.
4 Everything that Mike Robertson did was wrong. It's
5 what a lawyer does when you're trying to take
6 something down. You fire the shotgun.

7 If it was a true concern about parking, maybe
8 that's the issue, the sole issue, that he raises.

9 I'll also mention by the way, Your Honor,
10 look at Justin Lucey's presentation to the BOZA on
11 September 27th, 2021. He got up to give his five
12 minutes. He doesn't mention parking once. He doesn't
13 mention guest room once.

14 It's all talk about the project generally,
15 because that's the real concern here. It's not about
16 the technical requirements. Justin says to the board,
17 and this is on page 8 of the transcript at the bottom
18 starting on line 25. Justin tells the Board of Zoning
19 Appeals, quote -- and he's talking about what the
20 staff did. "They confirmed that this board was here
21 to judge the suitability of this project for the
22 neighborhood. They said that is your job and you have
23 complete discretion on that. The suitability includes
24 the aesthetics, the scale, and the compatibility of
25 the other properties in the neighborhood," end quote.

1 Policy arguments. Justin doesn't like the
2 project. He doesn't like the fact that the district
3 allows it as a use by right. He doesn't like the fact
4 if this thing gets approve, he's not going to have
5 control over the same properties he tried to buy.

6 That doesn't make him aggrieved, that makes
7 him a competitor that knows how to use this legal
8 process to interdict and to stop projects he doesn't
9 like, and he did it at 515 Coleman as well, and we
10 submitted that order for the record.

11 It wasn't presented to the BOZA, but it's a
12 judicial order by a court of this state where Brian
13 and I were on the same side and succeeded in throwing
14 out his frivolous abuse of appeal over a by right use
15 at 515 Coleman.

16 Judge Kelly threw his complaint out on a
17 motion to dismiss that we joined in on. Now, granted,
18 he doesn't own property adjacent in that case, but the
19 Court also went through the actual injury, conjecture
20 or hypothetical, ATC South, all of these other kind of
21 things.

22 I would ask the Court to take judicial notice
23 that Justin's throwing around zoning appeals all over
24 the town of Mount Pleasant over a project he doesn't
25 like because he's a lawyer, and he knows how to use

1 this system to cause people millions of dollars of
2 damages.

3 MR. LUCEY: I think the personal attacks have
4 gone far enough, Your Honor.

5 THE COURT: I'm going to let you respond.
6 Okay.

7 MR. APPEL: So, Your Honor, it's very
8 important when we talk about standing and whether
9 there's actual injury. So, Your Honor, that's --

10 THE COURT: Something other than just the
11 general public, right?

12 MR. APPEL: Absolutely. And it has to effect
13 a personal right. The project is not interfering with
14 any of Justin's rights. He still has the right to use
15 the public resources.

16 Parking, he doesn't own the parking lot. He
17 doesn't own the streets. So this offstreet parking
18 issue is just something that was used to derail the
19 project, and I think the project speaks very clearly
20 to that.

21 And so, Your Honor, our argument on
22 timeliness and standing, we think both of those are
23 legal issues. Fundamentally, they do involve
24 questions of fact. There's nothing in the record that
25 establishes when Justin Lucey obtained actual notice.

1 It was his burden to provide that information to the
2 BOZA.

3 The staff just assumed he got notice on July
4 19th when it was posted on the website. Even if
5 that's when he got the notice, his appeal wasn't
6 perfected until August 23, 2021 according to the
7 Town's ordinances and the Town's rules of procedure
8 that Town Council doesn't have the authority to waive.

9 THE COURT: Y'all never found any letter
10 directly addressed to Mr. Lucey following his April
11 inquiry, correct?

12 MR. APPEL: No, although we thought we had
13 one. But we were ultimately convinced -- but we
14 certainly know that Justin Lucey had notice of this
15 project in April.

16 THE COURT: Okay, yeah.

17 MR. APPEL: And that's in the record, Your
18 Honor. And with that, I'll rest. And I appreciate
19 the time.

20 THE COURT: Very good.

21 MR. APPEL: Happy to answer any further
22 questions.

23 THE COURT: Mr. Quisenberry?

24 MR. QUISENBERRY: That's a lot. Let's go
25 into it. First, on this 515 case, Justin filed a

1 motion to reconsider and then the judge issued a new
2 order denying that but it's a little different on the
3 reasoning.

4 Here it is, and you'll see in here he uses a
5 map to rule on standing. All about adjacency. It's
6 about how close this is. You'll see it. Totally
7 different situation.

8 THE COURT: That adjacency impacted Judge
9 Kelly?

10 MR. QUISENBERRY: It did. That's the whole
11 reasoning.

12 THE COURT: Let me ask this question.
13 Probably not on a BZA, but on a zoning change, does
14 the Town have a criteria where they send out notice of
15 people within 200 feet, 300 feet, 500 feet?

16 MR. QUISENBERRY: No, but there is a case --
17 I'm going to cite to you a case when we get to it
18 later about a tower that was being built in the town
19 and they did send a notice out to proximate -- to
20 adjoining property owners just out of curtesy.

21 The Town just presumes you're impacted if
22 you're an adjoining property owner.

23 THE COURT: Right. I know the County does
24 that, and I think the City does it.

25 MR. QUISENBERRY: They did it out of curtesy.

1 And the Court said those people have standing.
2 Without any analysis, they just said, yeah, they have
3 standing.

4 Let's talk about standing. He touched on it,
5 but I think it's important. This hotel is on a parcel
6 on Mill Street. It's surrounded by Mill Street, Lucas
7 Street, and Live Oak Drive.

8 It's a small block, and it has -- these four
9 streets, there's only ten lots besides the hotel lots.
10 And Mr. Lucey owns eight of the ten, including some
11 that adjoin, that touch the hotel parcel. If he does
12 not have standing, no one has it.

13 THE COURT: Okay.

14 MR. QUISENBERRY: The developer claims that
15 because the statute uses the term "any aggrieved
16 party" that somehow adjacency isn't important. That
17 is wrong. Let me tell you why.

18 Close proximity and adjacency are the
19 cornerstones of standing and zoning cases. I have
20 cited to you -- which that makes sense. Who's most
21 impacted by a zoning violation than the person that
22 lives next door?

23 Now, I cited Hornbook Zoning Law. This is
24 basics. I have given you several provisions, but I'll
25 read one. An adjoining or nearby property owner on

1 the face of it has sufficient interest to enable him
2 to appeal determination of a board regarding the
3 zoning usage of an adjacent property without proof of
4 special injury or damage. That's Hornbook law.

5 Now let's go into the statutes that the
6 developer claims helps their case. It's actually the
7 reverse. So you look at these other statutes.

8 So our statute on a BOZA appeal, 800(b), that
9 talks about appeals to the board may be taken by any
10 aggrieved party.

11 That's the language. But then the developer
12 compares those to two different provisions, which are
13 much more limited. Those provisions are bringing
14 direct actions yourself, not going through the BZA
15 process, which is more open to people.

16 This limits who can bring a direct action to
17 challenge a rezoning or to enforce zoning yourself.
18 You become a pseudo cop. You bring your own action.

19 If you're going to have that power, you
20 better be an adjacent property owner and that's it.
21 If you're going to challenge the Town Council rezoning
22 a property on your own, you better live adjacent to it
23 if you're going to have that power.

24 But for a BOZA appeal, for someone to bring
25 that, you just have to be any aggrieved party. It's

1 broader, not more narrow. That of course includes
2 adjacent people but it includes other people, too.

3 So the language difference is more broad, not
4 narrow. So that's the point of that.

5 Aggrieved party always includes an adjacent
6 property owner because they're presumed to be injured
7 by a zoning violation because you're presuming there's
8 a zoning violation when you're analyzing standing.

9 So if someone is building a ten-foot tall
10 building next to you and it's only supposed to be
11 three, they shouldn't have to do anything besides show
12 that they live next door and that makes sense.

13 THE COURT: Mr. Lucey is not the Coastal
14 Conservation League complaining about a plat in
15 Beaufort County.

16 MR. QUISENBERRY: That's right. And I'm
17 going to talk about that case.

18 THE COURT: Well, let's move on. I don't
19 think there's a standing problem.

20 MR. QUISENBERRY: Okay. Because that case is
21 an association and not an individual. So that's
22 distinguishable.

23 All right. So let's talk about timeliness,
24 then. Mr. Lucey -- it's not just a letter complaining
25 about the zoning on this project. He sent a letter,

1 and it's at Exhibit H in the record. It says, the
2 first sentence, Your Honor, of this letter -- this is
3 very important. "Please accept this letter as an
4 appeal." It's the appeal, the letter, August 12th.

5 It's not -- it wasn't just a letter
6 complaining. It was his appeal. It was several pages
7 long. It had several grounds and arguments. It
8 listed his address, the address of the property. It
9 listed the zoning problems he had. It had his phone
10 number.

11 It had all the information that is going to
12 be in this processing form that is claimed to be
13 required to perfect the appeal, but that is putting
14 form over substance.

15 Now, if the letter, August 12th letter, is
16 the appeal then it's timely because at the earliest he
17 could have gotten notice was July 19th because that's
18 the first time the public was put on notice that the
19 staff had determined it's ready to go to DRB, which is
20 their determination that it meets zoning.

21 The staff had determined, and that wasn't
22 until July 19. So Lucey couldn't have gotten notice
23 before then. So that's the earliest point when he
24 could have gotten notice was July 19th.

25 So he submitted an August 12th letter saying

1 please accept this letter as my appeal, so that's
2 within 30 days, so it's timely.

3 Now let's go into the technicalities that the
4 developer brings up. So after getting that letter, he
5 sent it to the Town attorney who obviously is the
6 agent of BOZA and the Town and can accept the appeal
7 on their behalf.

8 He did so. He sent him a letter back saying:
9 I accept this letter as your appeal, but there's also
10 this also this form and a fee that we request you
11 submit, which Lucey turned around and did on August
12 23rd, and the hearing wasn't until September 27th.

13 Now, I think it's important for you to know
14 that this is the Town's -- the developer argued that
15 they were doing Justin a favor by doing this. Well,
16 that's ridiculous.

17 This is the Town's practice, long-standing
18 practice, to accept appeals via correspondence and ask
19 that the form and fee be paid before the hearing.

20 There has never been a BOZA hearing where
21 they held it was untimely because they didn't give the
22 form within the 30 days. You have to give it before
23 the hearing. You have to pay the fee before the
24 hearing.

25 But you just have to file correspondence

1 saying this is my appeal within the 30 days. That's
2 not putting form over substance. That's substance
3 over form, and that's what justice requires.

4 So let's talk about some of these cases and
5 provisions. So our argument is essentially that you
6 can't put -- you don't want to put form over
7 substance, and we cited about half a dozen cases where
8 courts have been reversed for doing it. We don't want
9 to be reversed. We want this to be a bill.

10 The one case I'll talk to you about --
11 they're all in my brief -- is *Chapman v. South*
12 *Carolina Department of Social Services*.

13 There, the statute created a grievance
14 procedure for employees of DSS. So DSS, there was a
15 statute that says under the statute, if you're an
16 employee, you can file a grievance if you do X, Y and
17 Z.

18 So the DSS procedure manual, which is their
19 rules that they issued, said that a grievance has to
20 be filed on a DSS form 1449 grievance appeal form with
21 human resources.

22 This employee had their attorney send a
23 letter in that said this is my grievance, and the ALC
24 said, well, that wasn't on the form so I'm kicking it
25 out.

1 Court of Appeals reversed, said you're
2 putting form over substance. The letter said it was
3 the grievance, so the letter was the grievance.

4 Same thing here. It's a Court of Appeals
5 case. I've got others. I cite about half a dozen in
6 the brief. I won't go over all of them.

7 THE COURT: What you're telling me is the
8 practice of the Town is if a timely appeal is
9 accepted, we'll take the form and you need the
10 information that --

11 MR. QUISENBERRY: The information is the
12 appeal.

13 THE COURT: -- and little processing fee.

14 MR. QUISENBERRY: The form has your name,
15 your address, phone number, and grounds for your
16 appeal. All of that was in the letter.

17 So, now, the provisions also have been
18 mischaracterized. The statute 800(b) that imposes the
19 30 day actual notice requirement says nothing about a
20 fee, nothing about a form. So that's not in the
21 statute at all.

22 The ordinance -- the Town's own ordinance
23 does not say anything about the fee or the form within
24 the 30 days either.

25 What the developer is relying on is this

1 provision in the rules of procedure. But that --
2 actually, it's another ordinance but you have to put
3 three or four sentences together and drop some words
4 to get to the way they're characterizing it.

5 So this is 156-413(d) and that says that --
6 the provision says incomplete applications will be
7 returned if they're not submitted before the hearing.
8 It says before the hearing, prior to the hearing, not
9 that they'll be returned within the 30 days and be
10 thrown out if it's incomplete.

11 So you have to add that important part,
12 "prior to the hearing." So that's their practice. So
13 we don't want to put form over substance, and there's
14 no requirement in the statute or the ordinance that
15 the form and fee be required within the 30 days.

16 And then finally the April 26th letter that
17 the developer references, that letter was submitted in
18 opposition to the variance here. And the variance --
19 this was still in the early stages of this project.
20 They didn't even know if it was going to be three
21 stories or four stories at that point.

22 There was no calculation of parking done,
23 number of bedrooms, number of units, number of parking
24 spaces. None of that had been done yet. None of that
25 had been determined to comply, so there was nothing to

1 appeal at that point.

2 Yeah, he sent in a letter with all of his
3 problems with it and he had a couple sentences about,
4 hey, parking is an issue in this area. But that isn't
5 notice that the staff had made a determination that
6 their parking comply with zoning. That hadn't been
7 done until July.

8 So if he had tried to file an appeal in
9 April, they would have said there's nothing to appeal.
10 We haven't made a determination yet, so you don't have
11 to worry.

12 THE COURT: You have to have a decision
13 before you have an appeal.

14 MR. QUISENBERRY: Yes. All right. So that's
15 timeliness and standing, Your Honor. Do you have any
16 questions?

17 THE COURT: No.

18 Mr. Lucey, with the caveat that any personal
19 interjections are not going to influence the Court, is
20 there anything you'd like to add?

21 MR. LUCEY: Yes, on the issues only, Your
22 Honor. But I should note that this is only one of two
23 zoning matters I think I've ever been involved in in
24 my life. Maybe 30 or 40 years ago, I'm forgetting
25 one. It's why I don't know what I'm doing.

1 THE COURT: Well, you're a competent
2 attorney. You can figure it out.

3 MR. LUCEY: So, Your Honor, my first contact
4 with Town of Mount Pleasant on this issue was appended
5 to my e-mail to the Town when they gave notice, and it
6 should have been a part of the Town record, and it
7 would have been in Town counsel's file when he
8 determined that my appeal was timely, and I have filed
9 that e-mail in this court in my reply.

10 And what happened, Your Honor -- and let's
11 back up to April. The variance request got denied.
12 There was not a signal to anybody in the world that
13 they were going to go forward, that they could justify
14 this alleged \$30,000,000 project. They only got
15 three-fourths. Nobody knew they were going forward.

16 It's a basic tenant of appellate law. The
17 loser need not -- excuse me, the winner need not
18 appeal. There's nothing for me to appeal. We beat
19 it. It's gone.

20 So we go on in time. There's no notice.
21 There's no sign on the property. On July 25th, the
22 Post & Courier ran an article that this thing was back
23 up on for consideration for the Town of Mount
24 Pleasant.

25 That article, this Court can take judicial

1 notice of it. It's in the e-mail I sent the Town on
2 July 25th saying, what's going on? This got defeated
3 a while back. It looks like you're reviewing it again
4 this week. How can that possibly be?

5 So it's in your file. You can take judicial
6 notice of the Post & Courier. So as to timeliness,
7 that would have been in the file and it got missed out
8 on the record of appeal. I hereby move it be added to
9 the record of appeal because it was in the Town file
10 because that's how this all started, which was my
11 e-mail on July 25th.

12 So any way you count the days, no matter in
13 which -- the day of my check, the date of my filling
14 out their form, anything you want to count, it's
15 within 30 days, period.

16 I think you pretty much said that the Court
17 gives adjacency as giving one standing. Allow me to
18 correct what seems to be assumed misinterpretation in
19 discussion with the Court.

20 Parking is not the only relevant issue for
21 purposes of having standing for the appeal. Please
22 keep in mind I appealed on 30 grounds. Every one of
23 those grounds -- if I'm aggrieved on any of those
24 grounds, even if I eventually lose them, I have
25 standing based on those grounds.

1 I am not only next to the property, I'm on
2 both sides of this property. You don't get any more
3 adjacent than I am.

4 With regards to whether or not we argued
5 parking, sometimes the appellant says I don't argue
6 parking, other times he reads the Court my letters
7 where I'm arguing parking.

8 Parking was a focal issue. It was a focal
9 issue of the appeal. Page 19 of my submission to the
10 Town and on appeal, page 19 -- that was part of the
11 record. It's part of the record on appeal -- is, in
12 fact, addressed to parking.

13 Now, the Town cut me off before I got to page
14 19 of my presentation. They gave me three minutes.
15 They gave the developer about 30 minutes when you
16 count all his engineers. That's not fair. They shut
17 me down.

18 Page 19 in my submission in the record on
19 appeal is the comments from the Town planners where
20 they had looked at the eight townhouses.

21 Your Honor, you never seen anything so ugly
22 in your life. They put together a block building on
23 the corner to put 19 hotel rooms in, suites in, and
24 then they're going to add to it two rows of townhouses
25 and try to squeeze some parking in the middle like one

1 of the Town Council members said, it looks to us like
2 you're the one trying to put ten pounds of flour in a
3 five-pound sack, not Mr. Lucey.

4 So anyway, they got the ugliest building in
5 the world and they're calling this 27 hotel rooms,
6 which of course is nonsense. They're hotel rooms.
7 Eight of those hotel rooms are four-unit townhouses
8 with triple bathrooms and kitchens and all this other
9 stuff.

10 The Town in page 19 at least flagged that
11 those eight townhouses could not be considered one
12 unit apiece. And the notes I submitted on page 19
13 showed that the Town had concluded that those had to
14 be taxed as at least two units apiece.

15 So now the Town planning board, whose
16 activities have been argued here, they have already
17 concluded it's not 27 hotel rooms. At the minimum,
18 we're now up to at least 35 hotel rooms that we're
19 providing parking for. Because why would you define
20 the nature of the rooms for the parking any
21 differently than you did for the taxation? The impact
22 fees.

23 They recognize you can't bring four bedrooms
24 in as one hotel room. The Town did, although they
25 were still going to give them a break and count them

1 as two.

2 Why does all that matter? Because that is
3 the original factor upon which the parking issue
4 springs. How many units are actually going into these
5 buildings? You're calling this a boutique hotel, but
6 what is it? It's eight townhouses.

7 So anyway, Your Honor, we did submit parking
8 information to them. I was an aggrieved party. I am
9 in that neighborhood. If in fact they don't have
10 enough parking, they're blocking our driveways, our
11 access, our fair share of other onstreet parking. And
12 it's an extensive problem in the neighborhood.

13 And, yes, I did attack the suitability of the
14 structure and, yes, I would continue to advocate that
15 I'm aggrieved based upon it's an unsuitable structure.
16 It's one of those structures that if they build on the
17 property line, it shuts off the visibility. It shuts
18 off the open space. It shuts off all the sunlight.
19 And, yes, I will continue to litigate that those
20 boards have authority to consider the suitability and
21 the compatibility of this project.

22 I have lost on that for the time being. It
23 is an additional standing ground on appeal if the
24 Court were to not sustain our parking, but as I
25 understand, the Court is not taking up additional

1 standing grounds in this hearing. Thank you.

2 THE COURT: Thank you, Mr. Lucey.

3 Mr. Appel, you want to wrap it up?

4 MR. APPEL: I'm going to bring it home, Your
5 Honor. I appreciate the time.

6 First, I have to object to Mr. Lucey
7 testifying today. A lot of which you just heard is
8 testimony that's not in the record.

9 He's referring to Post & Courier articles.
10 He's referring to e-mails when he claims he had notice
11 that are not part of the record. But since he brought
12 up newspaper articles and e-mails, I'd like to refer
13 Your Honor to Exhibit 1 of our trial brief.

14 We have a newspaper article where it talks
15 about the mayor's opposition to the project. This was
16 a day before the project was pulled off the DRB
17 agenda. This is evidence that there was political --

18 THE COURT: All right. You know, I'm going
19 to limit my decision to the record.

20 MR. APPEL: Sure. I just wanted to say to
21 the extent Mr. Lucey has opened the door, we just --
22 you know, what's good for the goose is good for the
23 gander.

24 As far as -- and I understand, Your Honor,
25 you have indicated how you feel on standing. I have

1 never said adjacency is irrelevant. It's a huge
2 factor. Most of the time when you're adjacent, you've
3 got standing. But you don't have standing when you're
4 a commercial competitor and you're doing it for --

5 THE COURT: Let's talk about specifically --
6 because I want you to wrap it. I have already given
7 you my indication on standing. But let's talk about
8 timeliness.

9 MR. APPEL: Sure.

10 THE COURT: Mr. Lucey has now said that he
11 got the notice I think the 25th of July. Still
12 relying on the 19th of July. Let me hear from you on
13 the response Mr. Quisenberry had about the completion
14 of the application.

15 MR. APPEL: Yeah, okay.

16 THE COURT: His letter, as I read Justin
17 Lucey's August 12th letter, it's fairly detailed and
18 it starts right in on parking. So I don't think
19 there's any question he was starting in on that issue.

20 MR. APPEL: So there's no question that
21 Justin Lucey sent a letter to the Town's attorney on
22 August 12th, 2021. But Justin Lucey doesn't have the
23 ability to deem that a complete appeal. That's
24 determined by the Town ordinances in the BOZA's rule
25 of procedure.

1 The talk that Mr. Quisenberry had about being
2 able to supplement before the hearing, that pertains
3 to variances, special exceptions.

4 Appeals, zoning administrator appeals, are
5 jurisdictionally constrained to that 30-day period.
6 That's what makes this different. So we're not saying
7 that the content of the August 12th letter is somehow
8 not -- inappropriate.

9 But Justin Lucey doesn't have the ability to
10 deem that compliant with the Town's ordinances and the
11 rules of procedure, neither does the Town's attorney,
12 neither does the BOZA, neither does Mr. Quisenberry,
13 and neither respectfully does this Court.

14 The cases we cite about appellate procedure
15 means that appeals procedure has to be strictly
16 followed. This isn't an employee grievance matter
17 where courts need to bend over backwards to do the
18 right thing for the little guy.

19 Justin is an attorney. He's very
20 sophisticated, very successful, and knows how to read
21 statutes and ordinances and things of that nature.

22 I will also say when we sent our FOIA request
23 to the Town for all the communications and all these
24 things, one of the key words we used was "Lucey"
25 because we wanted to see what we turned up.

1 This man submits an enormous amount of FOIAs
2 to the Town of Mount Pleasant for his construction
3 defects practice. So Justin Lucey, when he was on
4 notice of this project in April of 2021, he knew the
5 project was happening. He submitted a FOIA for zoning
6 determinations.

7 Like that matter we brought before you in the
8 last hearing, there are countless times in the town of
9 Mount Pleasant and other jurisdictions where people
10 say, hey, I'm a neighboring property owner. I would
11 like to be advised of any final determinations. None
12 of that is in the record.

13 All this stuff about he got a newspaper
14 article, that's all not part of the record as well.
15 The Town's DRT that actually renders these final
16 determinations are public meetings. They're noticed.
17 It's like the TRC. You can log on WebEx and all this
18 stuff.

19 Justin Lucey, by his own testimony today,
20 knew about the project in April and just kind of sat
21 back. And there's no evidence in the record as to
22 when he claims he had actual notice. But the fact of
23 the matter is there's no substantial compliance or
24 giving an applicant the benefit of the doubt in zoning
25 appellate practice.

1 None of the cases that Mr. Quisenberry cites
2 in his response to our timeliness arguments are zoning
3 appeals. They're all employee appeals and things of
4 that nature.

5 And if we want to talk about the practice of
6 the Town being relevant here, that it's the practice
7 of the Town to cut people some slack, the practice of
8 the Town is to interpret guest room as a keyed unit.
9 That's what we're here about. That's the practice of
10 the Town that's gone on for years that's been upended
11 by this appeal.

12 So, Your Honor, our first argument, I want to
13 be very clear, is on guest room. We have these
14 additional technical arguments we feel we had to
15 raise, but we're happy to hang our hat on the
16 definition of guest room and really, really focus in
17 on that special rule of statutory construction and
18 strict construction, liberal construing of these
19 ordinances in favor of the property owner when, as
20 here, a key term in the zoning ordinance is undefined.

21 Thank you, Your Honor.

22 THE COURT: All right.

23 MR. QUISENBERRY: Two quick things, Your
24 Honor. Notice of the project is not notice of the
25 decision and determination as to parking. So just

1 knowing that the project is going on is not the same
2 thing as notice of the determination.

3 And then also on this practice of the Town is
4 to, you know, interpret guest room one way, that's the
5 zoning administrator. It's never been before BOZA
6 before.

7 This is BOZA's first opportunity to decide
8 what guest room means. It's just never been brought
9 up to them before, so this was their first time.
10 There's no inconsistency in the Town's position. And
11 the treatment of other hotels is not relevant, so you
12 shouldn't even consider that.

13 THE COURT: All right. Very good. All
14 right. So, folks, I am not prepared to give my final
15 ruling today, but I have given you my position on
16 standing. I'm going to deny the standing argument.

17 What I'm going to do is look a little further
18 into the record based on what you have given to me
19 today.

20 What I would be willing to accept, and just
21 so you know, I like to get all these cases out of here
22 in a certain time period.

23 If y'all would like to submit proposed orders
24 based on your position based on the record that you
25 think the Court -- what is in the records, I'm happy

1 to have those from you.

2 Mr. Lucey, if you would like to submit one,
3 you may. But I'm going to base it based on what's in
4 the record, go back in to review this record one more
5 time and those ordinances as well.

6 So that's what I need to do. If y'all could
7 do that within 30 days. End of June would be perfect.
8 Give you some time on that.

9 And I have kept Mr. Appel busy. This is his
10 third day in a row in this courtroom. But if y'all
11 could do that then I'll get you an answer within 30
12 days of that.

13 Thank you. All right.

14 (Off the record at 12:04 p.m. on May 26th,
15 2023.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 22nd DAY OF NOVEMBER 2023.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

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

BACKGROUND

CKC Properties, LLC (“Appellant”) appeals the Town of Mount Pleasant Board of Zoning Appeal’s (the “BOZA”) reversal of the Zoning Administrator approved off-street parking plan for the “Shem Creek Boutique Hotel.”¹ The Shem Creek Boutique Hotel will be located along Mill Street at TMS Nos. 517-16-00-058, -057, -034, and -035 (the “Properties”). As described in further detail below, the Zoning Administrator approved the site-specific development plans presented by Appellant for the Shem Creek Boutique Hotel, concluding the plans satisfied all applicable requirements of the Town of Mount Pleasant Zoning Code (the “Zoning Code”).

Justin O’Toole Lucey, Esq. (“Lucey”), 415 Mill St., Inc., and 69 Scott Street, LLC (collectively, the “Commercial Neighbors”)² appealed to the BOZA the Zoning Administrator’s approval of the site-specific development plans for the Shem Creek Boutique Hotel. The Commercial Neighbors claim the Zoning Administrator’s final approval was inconsistent with the

¹ The project is also sometimes referred to as the “Mill Street Hotel.” In this Appeal Petition the project will be referred to as the “Shem Creek Boutique Hotel” only.

² 415 Mill St., Inc. and 69 Scott Street, LLC are Lucey controlled and affiliated entities.

Town's Zoning Code. The Commercial Neighbors' appeal challenges, among other things, the Zoning Administrator's final determination that the project complied with the applicable use classification, off-street parking, height, and curb cut regulations.

The BOZA heard the Commercial Neighbors' appeal on September 27, 2021. After hearing arguments from the Zoning Administrator, the Commercial Neighbors' representative, CKC and its representatives, and the Properties' owners and representative, the BOZA immediately moved to go into executive session to receive "legal advice." After spending approximately thirty minutes behind closed doors, a BOZA member made a motion to reverse the Zoning Administrator's determination regarding compliance with the off-street parking requirements *only* and to uphold all the other Zoning Administrator final determinations on zoning compliance. The basis of the BOZA's motion was that the Zoning Administrator erred in his interpretation of the phrase "Guest Room" as it appears in the off-street parking table. The motion unanimously carried. The BOZA conducted no public deliberation whatsoever on the off-street parking issue.

The final order of the BOZA, memorializing its September 27, 2021 decision, was signed on October 25, 2021 (the "BOZA Order"). The BOZA Order was mailed to the parties in interest on October 26, 2021. A copy of the BOZA Order is attached as **Exhibit A**.

The Appellant is under contract to purchase the Properties. The Properties' owners granted Appellant authority to seek all necessary development entitlement approvals to facilitate the Shem Creek Boutique Hotel. The Properties' owners support the Appellant's position in the instant appeal. Appellant possesses a substantial interest in the BOZA's decision and standing to appeal the BOZA Order pursuant to S.C. Code Ann. § 6-29-820.

Appellant hereby appeals the BOZA Order *only* with respect to the reversal of the Zoning Administrator's approval of the Shem Creek Boutique Hotel's off-street parking plan. Appellant agrees with the BOZA Order insofar as it upheld the Zoning Administrator's final determination that the Shem Creek Boutique Hotel satisfies all other applicable provisions of the Zoning Code.

This Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition is filed pursuant to S.C. Code Ann. § 6-29-820 and the Town of Mount Pleasant Zoning Code. Pre-Litigation Mediation must be granted pursuant to S.C. Code Ann. § 6-29-825(A).

FACTS IN THE RECORD ON APPEAL³

The Shem Creek Boutique Hotel and the Zoning Administrator's Final Zoning Approval

The Appellant has been under contract to purchase the Properties since October 2020. The Appellant intends to develop the twenty-seven (27) unit Shem Creek Boutique Hotel on the Properties. The Appellant and its design and engineering team have worked closely and collaboratively with Town staff on plans for the Shem Creek Boutique Hotel since November 2020. In fact, Town staff suggested the Appellant pursue the "Boutique Hotel or Inn" option for

³ S.C. Code Ann. § 6-29-820(A) states as follows: "Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions."

The Appellant demands the Town include in the certified record the entire development review file for the Shem Creek Boutique Hotel, dating back to November of 2020. This is appropriate because the Zoning Administrator Appeal disputes essentially all the Zoning Administrator's final determinations regarding the site-specific development plan that was approved by the DRT. This must include, but ought not be limited to, documents and communications associated with all staff level reviews of the project, including the DRT review process. The certified record must also include all files associated following quasi-judicial hearings involving the project: the April 26, 2021 BOZA hearing, the July 28, 2021 DRB hearing, the August 25, DRB hearing, and the September 27, 2021 BOZA hearing. The certified record should also include the entirety of all FOIA responses provided by the Town of Mount Pleasant in response to Appellant's August 13, 2021 FOIA request, as amended. Finally, the certified record must include all applicable provisions of the Zoning Code regarding this appeal both procedural and substantive as well as the 2019 Comprehensive Plan.

The Appellant reserves the right to review the certified record filed by the Town of Mount Pleasant and petition this Court to include anything missing from the above list.

the Properties. “Boutique Hotel” is a permitted use, by-right, on the Properties. To date, the Appellant has spent **\$381,893.33** in consultant fees, non-refundable earnest money, legal fees, and other expenses related to this project and in reliance on the Town’s representations and approvals to date.

The Properties are all base zoned Neighborhood Commercial (NC) and located in the Boulevard Overlay District (BOD). The Properties are not located in the Shem Creek Waterfront Overlay District. A “Boutique Hotel or Inn” is a use permitted by-right in the NC District and nothing in the BOD alters this analysis. Hotels have been permitted in the NC District for decades.

The 2019 Comprehensive Plan does not recommend the elimination of “Boutique Hotel” as a permitted use in the NC District. In fact, the 2019 Comprehensive Plan calls for continuing this use, which has been allowed in the NC District for decades. The Plan identifies several distinct planning areas in the “Hubs, Activity Centers and Corridors” discussion in Chapter 7 (“Land Use and Community Design”). The “Community Scale Commercial” area, which encompasses the NC District, specifically acknowledges the appropriateness of boutique hotels, stating “[t]his is the predominant commercial classification within the town, including retail, office, services, grocery stores, **boutique hotels** and restaurant uses.” (Emphasis added). Table 7-2 (“Classification Criteria for Hubs and Redevelopment Centers”) specifically identifies “boutique hotels” as a “typical non-residential use” in the Community Scale Commercial area.

The Appellant and its experienced team of consultants formulated detailed site-specific development plans for the Shem Creek Boutique Hotel. These plans were carefully crafted, in close collaboration with the Zoning Administrator and his staff, to satisfy all applicable zoning regulations. The plans, as approved by the Zoning Administrator, required no variances, special exceptions, rezoning, or any other discretionary zoning entitlement – other than Design Review

Board (“DRB”) approval. Everything submitted and ultimately approved by the Zoning Administrator was allowed, by-right, on the Properties.

On or about June 9, 2021, the Town’s Design Review Team (“DRT”), which includes the Zoning Administrator, confirmed the site-specific development plans for the Shem Creek Boutique Hotel fully complied with the Zoning Code in terms of use, off-street parking, and otherwise. The Town’s website explains the DRT process, provides a flow chart, and confirms that DRT final approval, including confirmation of zoning compliance, is a prerequisite to appearing on a DRB agenda for preliminary approval. *See*, DRT Website and Flowchart attached as **Exhibit B**. After obtaining DRT approval, on or about June 9, 2021, the Appellant was able to move forward with a request for “Preliminary Approval of Site, Landscape, and Architecture.” DRB approval was the only thing standing in Appellant’s way from applying for a building permit.

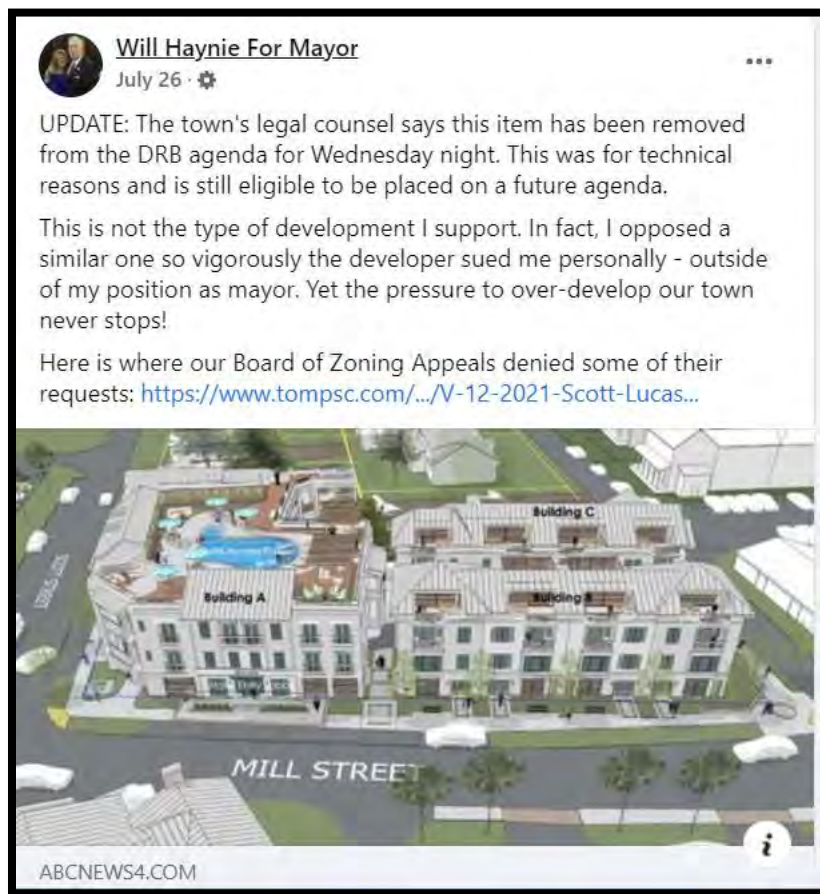
Political Interference and DRB Delay

The Shem Creek Boutique Hotel was placed on the DRB’s July 28, 2021 agenda for Preliminary Approval of Site, Landscape, and Architecture. On July 19, 2021, the Town posted the DRB agenda online. The Town also posted the Properties and ran public notice in the newspaper, as they are required to do by statute and the Zoning Code.

However, less than twenty-four (24) hours before the DRB hearing, the Town staff informed the Appellant that the project would be removed from the agenda due to alleged, minor technical deficiencies. These minor issues never justify agenda removal under normal circumstances, especially when the staff had previously determined all zoning requirements had been satisfied. The Appellant and its design and engineering professionals attempted to reason with the Town to no avail.

Contemporaneously, Town of Mount Pleasant Mayor Will Haynie gave the following statement to Live 5 News: “I have a history of not supporting this type of development.” *See, **Exhibit C***. Upon information and belief, behind-the-scenes political interference caused the Shem Creek Boutique Hotel to be removed from the July 28, 2021 agenda.

Confirming the Appellant’s suspicions, Mayor Haynie posted the following on his official, campaign Facebook Page:



The next day, on July 27, 2021, Michelle Reed, the Director of Planning, Land Use and Neighborhoods, sent an e-mail update on the Shem Creek Boutique Hotel to the Mayor and Town Council. *See, **Exhibit D***. Clearly, the media coverage of the Shem Creek Boutique Hotel had turned this project into the latest development “controversy” in the Town. Ms. Reed’s e-mail

confirms, among other things, that the Shem Creek Boutique Hotel “is a permitted use by right” and “the applicant has gone through DRT.” *Id.*

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

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

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

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

Thankful for you all!!

Id. This e-mail reflects Ms. Reed’s concerns about political meddling and interference in the development review process. In other words, her staff was clearly feeling the heat from elected officials to impede this project, which had already been approved by the DRT. Town Administrator Eric DeMoura responded to Ms. Reed’s e-mail stating “[y]ou’re doing good. Keep your team doing their jobs, stick to the ordinances, stay professional, then stand strong.” *See, Exhibit E.*

Some context is in order. Over the last few years, the Town of Mount Pleasant has been embroiled in several well-publicized lawsuits over perceived “controversial” development projects. *See, e.g.*, “Mount Pleasant ordered to pay more than \$2.6 million in Shem Creek garage lawsuit,” POST AND COURIER (July 10, 2020); “Settlement reached with Mount Pleasant over contested plans for hotel,” POST AND COURIER (August 19, 2019); “\$2.6M payout reduces Mount Pleasant subdivision development plan by more than 2,000 homes,” POST AND COURIER (May 14,

2019); “The ‘Year of No’ costs Mt. Pleasant a lot of dough: The lawsuits,” POST AND COURIER (Feb. 6, 2016), each attached hereto as **Exhibit F**.⁴

These lawsuits share a common theme. They all involve projects permitted by zoning and approved by the Town, which were nevertheless targeted and derailed by undue political interference. Ms. Reed’s and Mr. DeMoura’s e-mails acknowledge a “here we go again” mentality – this time for the Shem Creek Boutique Hotel. It is very uncommon for local government staff to send each other these kinds of pep talk e-mails over routine, by-right development projects. However, when politics gets involved where it has no place, namely the administrative or quasi-judicial review of fully entitled development projects, the professional staff gets placed in stressful, untenable situations. This is exactly what Ms. Reed and Mr. DeMoura feared was happening again – this time with the Shem Creek Boutique Hotel. As discussed below, the chronology from here confirms their suspicions.

Zoning Ordinance Amendments Aimed at Killing the Project

Less than a week after the Shem Creek Boutique Hotel was unjustly removed from the July 28, 2021 DRB agenda due to overt political pressure, the Town set into motion zoning amendments that would prohibit boutique hotels on the Properties.

Just days after being removed from the DRB agenda, on August 2, 2021, the Planning and Development Committee met to consider several proposed zoning text amendments that would, among other things, eliminate “Boutique Hotel or Inn” as a by-right, permitted use in the NC District, alter the definition of “unit” and “Guest Room,” adjust the parking requirements for this use, and alter the lot consolidation process for projects of this kind. These proposed zoning text

⁴ The Appellant respectfully requests this Court take judicial notice of these newspaper articles published in the Post and Courier – the State’s largest newspaper. *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976); Rule 201, SCRE.

amendments are clearly aimed at defeating the Shem Creek Boutique Hotel. These zoning text amendments have not been adopted by Town Council, as of this filing. However, Ordinance No. 21071, attached as **Exhibit G**, reflects these proposed changes and received first reading by Town Council on November 9, 2021.

DRB Deferral and Unlawful Executive Session

The Shem Creek Boutique Hotel appeared before the DRB at its August 25, 2021 hearing, again for Preliminary Approval of Site, Landscape, and Architecture. The Town staff provided to the DRB a thorough report and PowerPoint presentation concerning the project. Town staff clearly and unequivocally recommended the DRB grant preliminary approval. These recommendations are incorporated herein by reference.

During the public comment period, a handful of nearby property owners and businesses – including the Commercial Neighbors – raised a series of non-germane objections to the Shem Creek Boutique Hotel. The DRB’s scope of review is limited to aesthetic matters – not zoning issues, which had already been resolved with finality during the DRT process. For instance, these objections were aimed at use, off-street parking, and other zoning related issues. None of these issues are relevant to the DRB’s Preliminary Approval of Site, Landscape, and Architecture. Appellant and its counsel reminded the DRB about the narrow scope of review and the irrelevance of the zoning issues, which had long been administratively reviewed and approved by the Zoning Administrator.

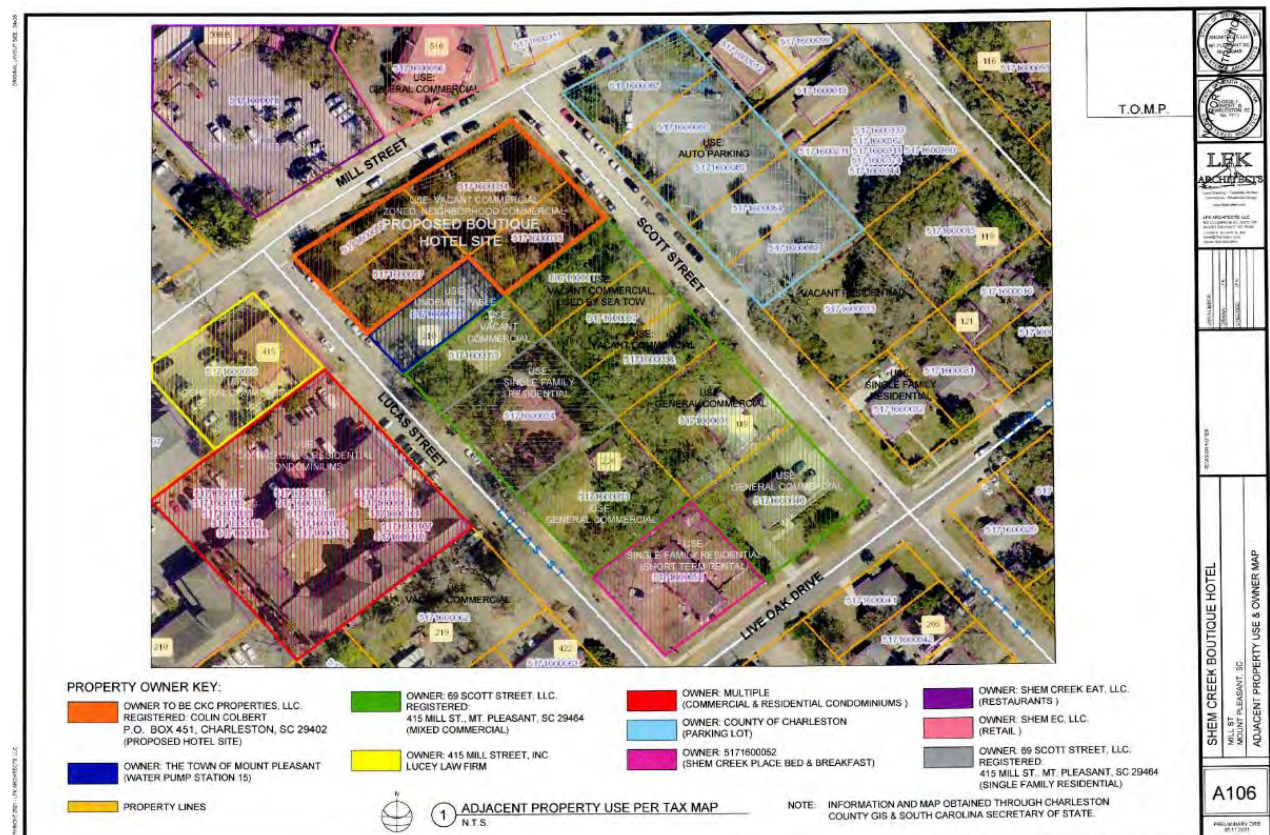
After the close of public comment, the DRB voted to go into executive session. The motion to move into executive session did not specify a purpose in violation of the Freedom of Information Act (“FOIA”). After returning from executive session, the DRB moved to defer action on the Appellant’s request for Preliminary Approval of Site, Landscape, and Architecture. The motion

carried unanimously. The DRB did not specify on the record any rationale for this deferral in violation of the rules governing the DRB, namely the “Explanation of Design Review Process” attached as **Exhibit H**.

On September 24, 2021, the Appellant filed a Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition over the DRB’s August 25, 2021 “deferral” (C/A No. 2021-CP-10-04416). Mediation has not yet been conducted in that appeal.

Commercial Neighbors’ Motivations and Their Zoning Administrator Appeal

The Commercial Neighbors (415 Mill St., Inc. and 69 Scott Street, LLC are Lucey controlled and affiliated entities) own several parcels of commercial property in the vicinity of the Properties. The location of the Commercial Neighbors’ properties, relative to the Properties, is depicted in the following visual included in the Appellant’s site-specific development plans and the Zoning Administrator Appeal:



See, Adjacent Property Use & Ownership Map attached as **Exhibit I**.

The Commercial Neighbors are major commercial property owners in this portion of the Shem Creek business district. Among other things, Lucey's law office is located next door to the Properties.

In 2018, the Commercial Neighbors rezoned TMS Nos. 517-16-00-055 and 517-16-00-036 (owned by 69 Scott Street, LLC) from Conservation-Open Space to Areawide Business. *See*, Rezoning Application attached as **Exhibit J**. These parcels are to the immediate southeast of the Properties. Also, in 2018, *the Commercial Neighbors sought to purchase the Properties themselves*. *See*, E-mails attached as **Exhibit K**. It is clear the Commercial Neighbors' seek to consolidate and control this portion of the Shem Creek business district for their own interests.

The Commercial Neighbors have long been aware of the plans for the Shem Creek Boutique Hotel. The Commercial Neighbors were first made aware of the specific plans for the Shem Creek Boutique Hotel on March 26, 2021 when Appellant's principal e-mailed him the formal design package for review, which had already undergone substantial Town staff review. *See*, E-mails attached as **Exhibit L**.

On April 26, 2021, the Appellant and its engineering and design team appeared before the BOZA to seek a height variance for the Shem Creek Boutique Hotel. The agenda for the April 26, 2021 BOZA hearing was posted on the Town's website on April 13, 2021. This online posting included the Appellant's variance application package along with the Town staff's analysis of the proposal. These postings include a detailed visual and narrative depiction of the Shem Creek Boutique Hotel with regards to its proposed use, off-street parking configuration, and other features. The Properties were also physically posted on-site to provide notice of the BOZA hearing to nearby property owners.

The Commercial Neighbors submitted a letter in opposition to the variance and spoke in opposition at the April 26, 2021 BOZA hearing. *See*, Commercial Neighbors' letter dated April 26, 2021 attached as **Exhibit M**. The Commercial Neighbors' letter objects not only to the proposed height variance, but the overall concept of the Shem Creek Boutique Hotel. Specifically, *the Commercial Neighbors' letter challenges the project's off-street parking arrangement*. The letter notes the existing parking challenges in the area caused by surrounding businesses for their employee parking. The BOZA ultimately voted to deny the Appellant's height variance request on April 26, 2021.

Several months later, on August 23, 2021, the Commercial Neighbors appealed the Zoning Administrator's final determination that the Shem Creek Boutique Hotel complied with the Zoning Code (the "Zoning Administrator Appeal"). *See*, Zoning Administrator Appeal attached as **Exhibit N**. The Zoning Administrator Appeal claims the Zoning Administrator erred when he concluded that the specific plans for the Shem Creek Boutique Hotel met the applicable use, off-street parking, height, and curb-cut regulations.

The BOZA Hearing on the Zoning Administrator Appeal

Prior to the BOZA hearing on the Zoning Administrator Appeal, the Zoning Administrator authored two memos supporting his final zoning determinations regarding the Shem Creek Boutique Hotel. *See*, Zoning Administrator Memos attached as **Exhibit O**. The Zoning Administrator summarized the rationale behind his approval of the Shem Creek Boutique Hotel's off-street parking plan as follows:

The boutique hotel project is comprised of three buildings: Building A, Building B, and Building C. Building A contains 19 guest rooms or lodging units as defined above. Buildings B and C contain 4 guest rooms or lodging units each. The total number of guest rooms in all three buildings is 27. Using the standards established in §156.171 [Table], the minimum off-street parking space requirement for the boutique hotel is a range of 27 to 54 parking spaces. Plans for the boutique hotel

indicate that the project provides 35 total parking spaces: 1 parking space for each guest room or lodging unit in Building A (19) and two parking spaces for each guest room or lodging unit in Buildings B and C (16). The 35 parking spaces are in the range of 27-54 minimum parking spaces established in 156.171 [Table]. **The parking standards meet the minimum parking off-street parking standards established by Town Council in the ordinance.**

(Emphasis added).

Counsel for the Appellant supplied a letter in advance of the hearing, dated September 24, 2021, arguing that the Zoning Administrator Appeal should be dismissed, without reaching the merits of the appeal, because it was untimely filed and the Commercial Neighbors lacked standing. *See*, Letter from Appellant's Counsel attached as **Exhibit P**.

At the September 27, 2021 BOZA hearing, the Zoning Administrator gave a spirited defense of his and his predecessor's final zoning determinations regarding the Shem Creek Boutique Hotel. Lucey then made his arguments, many of which did not correspond to the grounds for appeal contained in his August 23, 2021 filing. Notably, Lucey spent essentially no time arguing against the Zoning Administrator's position regarding off-street parking requirements. This was clearly an indication that he did not dispute the applicable minimum off-street parking requirements were satisfied.

Then, the BOZA opened the floor to public hearing. The undersigned counsel for the Appellant spoke and argued that the Zoning Administrator Appeal should be dismissed on timeliness and standing grounds. Counsel for the owner of the Properties commented further on standing and mentioned prior attempts by the Commercial Neighbors to purchase the Properties. Finally, the Appellant's engineering and design team provided testimony about their close collaboration with Town staff for nearly a year on the project and offered further support to the Zoning Administrator's application of the Zoning Code, specifically the off-street parking calculations.

After the close of public comment, as mentioned above, the BOZA immediately moved to go into executive session to obtain “legal advice.”⁵ The BOZA remained behind closed doors for approximately thirty minutes. When the BOZA returned, one member – reading from a prepared script – moved to reverse the Zoning Administrator on the off-street parking issue only and affirm the Zoning Administrator on all other matters.

The basis of the BOZA’s motion was that the Zoning Administrator erred by interpreting the phrase “Guest Room,” as used in the off-street parking calculations table. Since the units in the Shem Creek Boutique Hotel consist of suites (with more than one bedroom), the BOZA concluded the parking calculations should be based on the number of rooms within each suite (or beds) as opposed to individually keyed, rented rooms. The motion unanimously carried.

The BOZA Order, further clarifying the BOZA’s action on September 27, 2021, was signed on October 25, 2021 and mailed to the parties in interest on October 26, 2021. This timely appeal follows. S.C. Code Ann. § 6-29-820(A) (“The appeal must be filed within thirty days after the decision of the board is mailed.”).

STANDARD OF REVIEW

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

⁵ Appellant has challenged the lawfulness of this executive session in *CKC Properties, LLC v. The Town of Mount Pleasant, et al.* (C/A No. 2021-CP-10-04761) and those arguments are incorporated herein by reference.

“However, a decision of a municipal [Z]oning 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.* (alteration in original) (quoting *Wyndham Enters*, 401 S.C. at 148, 735 S.E.2d at 661). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

“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.” *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters.*, 401 S.C. at 14748, 735 S.E.2d at 661).

“Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). “The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.” *Id.* “When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.” *Id.* “An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Id.* “The statutory language must be construed in light of the intended purpose of the statute.” *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). The appellate court “will not construe a statute in a way which leads to an absurd result or renders it meaningless.” *Id.* “[I]t is well-settled that statutes dealing with the same subject matter are in *pari*

materia and must be construed together, if possible, to produce a single, harmonious result.”
Beaufort County v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

ARGUMENT

I. The Zoning Administrator Appeal was untimely and the BOZA lacked jurisdiction to consider same.

Section 156.411(A)(5)(a) of the Zoning Code establishes the deadline to file a zoning administrator appeal. Specifically, “[t]he appeal must be taken within 30 days from the date the appealing party has received actual notice of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal.” *Id.*

The Zoning Code provides that “[t]he burden of proof for the relief sought is upon the applicant [and] a complete application of forms and information is required.” Section 156.413(D)(1). “Incomplete applications will be returned to the applicant.” Section 156.413(D)(2).

The BOZA’s Rules of Procedure, attached hereto as **Exhibit Q**, provide that “[r]equests to be heard before a Board shall be made by submitting the appropriate application form(s) approved by the Department of Planning and Development in accordance with the submittal deadline published on the annual schedule of meetings.” Section II(3)(A).

“Compliance with statutory time periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction to hear an appeal.” *See Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 586-87 (1988), overruled on other grounds by *Woodard v. Westvaco*, 319 S.C. 240, 460 S.E.2d 392 (1995); *see also, Sadisco of Greenville, Inc. v. Greenville Cnty Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000); *S.C. Coastal Conservation League v. S.C. Dep’t of Health and Env’tl. Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008).

The Commercial Neighbors waited until August 23, 2021 to file the Zoning Administrator Appeal. This was the date the Commercial Neighbors submitted the required filings through the Town's online application portal. Submission through the online application portal constitutes submission of "a complete application" on "the appropriate application form(s)" according to Section 156.413(D) and the BOZA's Rules of Procedure.

August 23, 2021, however, was several months after the Commercial Neighbors first obtained actual notice of the site-specific development plans for the Shem Creek Boutique Hotel, which showed the proposed use, unit configuration, off-street parking arrangements, and otherwise. As noted above, on March 26, 2021 the Appellant's principal e-mailed the Commercial Neighbors the project's plans in advance of the April 26, 2021 BOZA height variance hearing. On April 13, 2021, the Town posted the online the agenda for the April 26, 2021 BOZA hearing, which included the plans themselves. Notice was also physically posted on site and published in the newspaper, as required by statute and the Zoning Code.

If the proposed use, off-street parking, or other features of Appellant's design program deviated – in any respect – from the Zoning Code, *the Zoning Administrator would have required the Appellant to seek additional variances from the BOZA*. The Zoning Administrator did not do this, thus demonstrating that the project, as presented, satisfied all requirements of the Zoning Code other than height, which was the only reason the Appellant had to appear before the BOZA. In other words, by not requiring variances on the off-street parking configuration, the Zoning Administrator acknowledged that the Appellant's proposed off-street parking plan satisfied the Zoning Code.

The Commercial Neighbors were well aware of the Shem Creek Boutique Hotel, and the staff's approvals of the overall concept several months prior to August 23, 2021 when the Zoning

Administrator Appeal was filed. The Commercial Neighbors submitted a letter of opposition prior to the April 26, 2021 BOZA hearing. Lucey himself attended the April 26, 2021 hearing to speak against the variance request, specifically, and the project, generally. Notably, he voiced concerns over what he believed to be the Shem Creek Boutique Hotel's off-street parking demands, which had nothing to do with the height variance, and how they would impact his business and real estate holdings in the area. Clearly, the Commercial Neighbors possessed actual notice of the off-street parking plans for the Shem Creek Boutique Hotel and the Zoning Administrator's approval of same.

There can be no doubt that the Commercial Neighbors possessed actual knowledge of the Zoning Administrator's opinions regarding the Shem Creek Boutique Hotel, generally, and its off-street parking requirements, specifically, all the way back in April 2021. The fact that the Zoning Administrator did not require the Appellant seek a parking variance at the April 26, 2021 hearing, demonstrates his approval of the Appellant's proposed off-street parking plan. More to the point, the plans provided to the Commercial Neighbors by the Appellant and posted online by the Town weeks before the April 26, 2021 hearing put the Commercial Neighbors on actual notice that the Zoning Administrator was following the Town's longstanding practice of treating a "Guest Room," for parking purposes, as synonymous with "lodging unit," as the term is used to define the "Boutique Hotel" use itself.

Finally, it bears noting that Lucey is a highly sophisticated individual. He is a successful litigation attorney with decades of experience. He is also a savvy commercial real estate investor who owns at least eight (8) separate parcels in the immediate vicinity of the Properties. He understands the law. He understands the development process, including how the zoning process

works. Clearly, he possessed actual notice of the Zoning Administrator's position regarding the Shem Creek Boutique Hotel's off-street parking requirements in April of 2021.

The Commercial Neighbors obtained actual notice that the Zoning Administrator approved of the Appellant's off-street parking plan on April 26, 2021 at the earliest. Therefore, the Zoning Administrator Appeal filed on August 23, 2021 was many months after the expiration of the thirty day jurisdictional time period to appeal the Zoning Administrator's decisions established by Section 156.411(A)(5)(a) of the Zoning Code. As such, the Zoning Administrator Appeal was untimely filed, the BOZA lacked jurisdiction to consider it, and this Court should reverse and vacate the BOZA Order with respect to off-street parking only.

Alternatively, even if it is determined that the events surrounding the April 26, 2021 BOZA hearing did not provide the Commercial Neighbors with actual notice, which is denied, the Zoning Administrator Appeal still must be deemed untimely.

On July 19, 2021, the Town published the July 28, 2021 DRB Agenda. *See*, E-mails attached as **Exhibit R**. This agenda included the Shem Creek Boutique Hotel for Preliminary Approval of Site, Landscape, and Architecture. Under the Town's policies and procedures, a project cannot appear before the DRB, even for preliminary approval, unless it satisfies all applicable zoning regulations, including off-street parking. As mentioned above the Shem Creek Boutique Hotel obtained DRT approval on or about June 9, 2021. Therefore, on July 19, 2021, when the DRB Agenda was published, the Commercial Neighbors – who clearly have been following this project closely – possessed actual notice that the Shem Creek Boutique Hotel obtained all necessary zoning approvals.⁶ This means, at the latest, the Commercial Neighbors

⁶ Appellant craves reference to the Town's record of all public notice and outreach efforts with respect to the Shem Creek Boutique Hotel, generally, and the July 28, 2021 DRB hearing, specifically, and incorporates same by reference herein. These public notice records constitute part of the "certified record" in this appeal.

had thirty days from July 19, 2021 to file a zoning administrator appeal. Thirty days from July 19, 2021 is August 18, 2021. The Zoning Administrator Appeal was submitted through the Town's online portal on August 23, 2021, which was five days past the deadline. This means the Zoning Administrator Appeal was untimely and the BOZA lacked jurisdiction to consider it, as a matter of law.

The jurisdictional time limits for appealing zoning administrator decisions are not idle recommendations. These time limits have been ordained by both the General Assembly and the Town Council of Mount Pleasant. If there were no such limitations, an adverse party could sit back and wait for a development project to be near final permitting before springing an appeal. Or, an opponent could wait until a project was actually built before contesting a zoning interpretation. Obviously, this would produce adverse and prejudicial results for property owners, the local government, and other interested parties. The law is clear that those seeking to challenge the rulings of zoning administrators must be vigilant in doing so or lose the right to proceed with an appeal.

Whether the Commercial Neighbors obtained actual notice of the Shem Creek Boutique Hotel on or about April 26, 2021 or July 19, 2021, the result is the same. They untimely filed the Zoning Administrator Appeal as a matter of law, the BOZA lacked jurisdiction to consider it, and this Court should reverse and vacate the BOZA Order with respect to off-street parking only.

II. The Commercial Neighbors lack standing to appeal the Zoning Administrator's decisions regarding the Shem Creek Boutique Hotel.

S.C. Code Ann. § 6-29-800(B) and Section 156.411(A)(5) both provide that “[a]ppeals to the Board may be taken by any person aggrieved . . .” (Emphasis added). The Commercial Neighbors are not “aggrieved” parties under South Carolina case law because (1) their alleged

impacts are purely “conjectural and hypothetical” and (2) their interests are motivated solely by commercial, competitive concerns.

The South Carolina Court of Appeals has held as follows:

A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest. The word “aggrieved” refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation. A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and interests.

Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2001) (internal citations omitted). This case involved a non-profit organization’s appeal from the staff’s decision to approve a subdivision plat. The appeal was filed with the board of zoning appeals, and the board reversed the staff decision. The circuit court, however, reversed on the grounds that the appellant non-profit lacked standing to appeal the staff decision to the board. The Court of Appeals affirmed the circuit court, observing there is “no evidence in the record that either the League or its members have suffered any actual injury by the filing of the subdivision plats.” *Id.* at 302. (Emphasis added). As such, the Court of Appeals concluded, “although the League alleges its members will suffer injury if the islands are developed, the injury is purely conjectural and hypothetical.” *Id.* (Emphasis added).

Here, the Commercial Neighbors have pointed to no *actual* injury associated with the Zoning Administrator’s decisions. The Commercial Neighbors, at best, have pointed only to conjectural and hypothetical adverse impacts associated with the Shem Creek Boutique Hotel. These concerns do not specifically or uniquely impact the Commercial Neighbors in a manner different than other nearby commercial property owners and the public at large. Moreover, much like the residential subdivision at issue in *Beaufort Realty Co., Inc. v. Beaufort County*, the Shem Creek Boutique Hotel has yet to be constructed. The Commercial Neighbors have therefore

suffered no actual impacts whatsoever – be it from use, parking, or otherwise. Everything alleged by the Commercial Neighbors is conjectural and hypothetical. For these reasons, the Commercial Neighbors are not “aggrieved” parties under South Carolina law, and they lack standing to maintain the Zoning Administrator Appeal.

Additionally, the Commercial Neighbors lack standing because the nature of their alleged impacts redounds only to their commercial and competitive interests. The South Carolina Supreme Court has held that where “the potential injury or prejudice is only an increase in business competition, such injury or prejudice is insufficient to confer standing.” *ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 340 (2008). By their own admission, the Commercial Neighbors object to the Shem Creek Boutique Hotel due to perceived parking and other impacts to their businesses and significant real estate holdings in the area. None of the Commercial Neighbors’ properties are residential properties. This area of Shem Creek is already highly commercialized due, in significant measure, to the Commercial Neighbors’ own investments, developments, and rezoning efforts. As noted above, the Commercial Neighbors have acquired an assemblage of eight (8) parcels directly adjacent to the Properties and has successfully rezoned two (2) of these from Conservation Open Space to Areawide Business. The Commercial Neighbors have in recent years attempted to purchase the Properties themselves. These factors cannot be ignored in the standing analysis.

The Commercial Neighbors are not “aggrieved” parties under South Carolina case law. Their alleged harm is entirely “conjectural and hypothetical,” which is insufficient to confer statutory standing in zoning appeals under *Beaufort Realty Co., Inc. v. Beaufort County*. Moreover, the Commercial Neighbors’ commercial and competitive motivations disqualify them from passing the standing test under *ATC South, Inc. v. Charleston Cty.*

No matter how one slices it, the Commercial Neighbors lack statutory standing to prosecute the Zoning Administrator Appeal as a matter of law, the BOZA lacked jurisdiction to consider it, and this Court should reverse and vacate the BOZA Order with respect to off-street parking only.

III. The BOZA erred by reversing the Zoning Administrator’s well-reasoned interpretation of the Shem Creek Boutique Hotel’s off-street parking requirements.

If this Court agrees with the Appellant on either the timeliness or statutory standing arguments, the Court need not delve into the substantive merits of the Zoning Administrator Appeal. However, in the event the Court decides to do so, it should find that the BOZA erred in reversing the Zoning Administrator’s final decision regarding the Shem Creek Boutique Hotel’s compliance with the Zoning Code’s off-street parking requirements and reinstate the Zoning Administrator’s interpretation on this issue.

As a starting point, the BOZA should have – but did not – grant deference to the Zoning Administrator’s well-reasoned and longstanding interpretation of the Zoning Code’s rules governing hotel parking. *Gurganiou v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995) (review bodies must “give great deference to the decisions of those charged with interpreting and applying local zoning ordinances.”). Appellant respectfully requests this Court grant the Zoning Administrator the deference due under the law, which the BOZA rejected without any public discussion whatsoever.

The off-street parking rules for “accommodations and lodging” uses, like the Shem Creek Boutique Hotel, are found in Section 156.171(A) of the Zoning Code, attached as **Exhibit S**. Specifically, the rules read as follows:

Use	Spaces Required	Unit Of Measure	Notes
Accommodations and lodging	1 to 2	Guest Room	

The range of one to two spaces per “unit of measure” is an established feature of the Zoning Code. The intent is to provide flexibility to accommodate more – or less – parking based on the specific characteristics of the site. The phrase “Guest Room” is *undefined* in Section 156.007 of the Zoning Code (“Definitions”), attached as **Exhibit T**.

Before turning to an analysis of the competing interpretations of “Guest Room,” the Appellant respectfully calls this Court’s attention to an important rule of statutory construction in the zoning and land use context. This rule is of particular importance regarding undefined terms such as “Guest Room.” The South Carolina Court of Appeals recently noted:

It is a well-founded principle of law that “statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.”

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753 (Ct. App. 2015) (citing *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)); *Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987) (holding that while “[l]ocal governments have wide latitude to enact ordinances regulating what people can do with their property,” they “must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.”)

“Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). “The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.” *Id.* “When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the

language used.” *Id.* “An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Id.* “The statutory language must be construed in light of the intended purpose of the statute.” *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). The appellate court “will not construe a statute in a way which leads to an absurd result or renders it meaningless.” *Id.* “[I]t is well-settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.” *Beaufort County v. S.C. State Election Comm’n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

The Zoning Administrator determined, during the development review process for the Shem Creek Boutique Hotel, that the site-specific plans submitted by the Appellant satisfied the Section 156.171(A) off-street parking requirements. In so doing, and as set forth in greater detail in the Zoning Administrator’s memorandum on the subject attached hereto, the Zoning Administrator determined that the term “Guest Room” refers to an individually keyed lodging unit. The Zoning Administrator’s interpretation harmonizes the Zoning Code’s treatment of the boutique hotel use both with respect to the definition of the use and the off-street parking table. This approach is consistent with the *in pari materia* statutory rule of construction discussed in *Beaufort County v. S.C. State Election Comm’n*, *supra*. This Zoning Administrator’s memos, which the Appellant fully supports, reflects the Town’s longstanding interpretation for other hotels and suite-style hotels that have been approved over the years. Both the Zoning Administrator and the Appellant’s team testified about the Town’s historic interpretation of “Guest Room,” in the hotel context, at the BOZA hearing.

The Shem Creek Boutique Hotel contains twenty-seven (27), individually keyed “Guest Rooms.” The plans, approved by the Town, depict thirty-five (35) off-street parking spots – eight

(8) more than required by Section 156.171(A). This clearly meets the requirements of the Zoning Code, and the Zoning Administrator agreed. The parking spots depicted on the plans approved by the Town satisfy all technical requirements.

The Commercial Neighbors’ competing interpretation, which was ultimately accepted by the BOZA, turns the Zoning Administrator’s interpretation on its head by reading “Guest Room” to refer to a bedroom within a lodging unit. This interpretation finds no support in the text of the Zoning Code and produces absurd results, which our appellate courts abhor. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party, supra*. Requiring one or two spots per bedroom would necessitate excessive amounts of off-street parking non-responsive to actual demand or consumer habits. Moreover, it deviates substantially from the Town’s historic practice of interpreting and applying Section 156.171(A) in the context of hotels and suites.

The Commercial Neighbors’ interpretation would also be wildly inconsistent with how the Shem Creek Boutique Hotel’s off-street parking calculations would work if the proposed use was an actual townhouse rather than townhouse-style hotel suites. Section 156.171(A) provides the following off-street parking calculations for townhomes:

Use	Spaces Required	Unit Of Measure	Notes
Duplex, Big House, or Multi-Family Dwelling	1.5 - 3	Dwelling Unit	For multi-family dwellings, private garage spaces shall not count toward the requirement.
Single-Family Dwelling	1	Dwelling Unit	Private garage spaces shall count toward the requirement.
Townhouse Dwelling	2	Dwelling Unit	Private garage spaces shall count toward the requirement. Tandem parking is permitted.

The off-street parking calculations for townhouses are calculated based on the number of “dwelling units” – not rooms. The same logic should apply for townhouse-style hotel suites offered by the

Shem Creek Boutique Hotel. In the age of Uber and Lyft, the off-street parking calculations should actually be less than those for primary residence townhomes. The Commercial Neighbors' interpretation is an unreasonable one that produces absurd results. The BOZA erred by accepting this interpretation.

The BOZA's newfangled interpretation of "Guest Room" in the hotel context not only materially prejudices the Shem Creek Boutique Hotel, by requiring far more off-street parking spots that can be provided on the Properties, but it also signals that many other hotels and suites throughout the Town are no longer in compliance with the Town's off-street parking rules. By changing the Town's longstanding off-street parking rules, the BOZA engaged in legislating – not interpreting the Zoning Code, as written. This, the BOZA clearly lacks the authority to do. These wide-ranging implications of the BOZA's decision in this case must be acknowledged and factored into this Court's analysis over whether the BOZA Order's treatment of the off-street parking issue ought to withstand the instant appeal.

IV. Vested Rights and FOIA Violations

The Appellant claims that its site-specific plans for the Shem Creek Boutique Hotel obtained vested rights prior to the Zoning Administrator Appeal's filing. The Appellant requested a vested rights determination from the Town, but the Town refused to make a determination. Therefore, the Appellant asserted a claim for a declaratory judgment on the issue of vested rights in *CKC Properties, LLC v. The Town of Mount Pleasant, et al.* (C/A No. 2021-CP-10-04761). The Appellant incorporates and restates by reference these vested rights arguments and reserves all rights with respect to the vested rights issue.

The Appellant has also alleged certain violations of the FOIA in *CKC Properties, LLC v. The Town of Mount Pleasant, et al.* (C/A No. 2021-CP-10-04761). These FOIA violations address

the DRB's conduct at its August 25, 2021 hearing and the BOZA's conduct at its September 27, 2021 hearing. The Appellant incorporates and restates by reference these FOIA violations and reserves all rights with respect to the FOIA issue.

CONCLUSION

The Appellant respectfully requests this Court vacate and reverse the BOZA Order *only* with respect to its findings and conclusions regarding the Shem Creek Boutique Hotel's compliance with the Town's off-street parking regulations.

The Appellant seeks an Order from this Court affirming that the Shem Creek Boutique Hotel, as depicted in site-specific development plans approved by the DRT prior to the project's appearance before the DRB, satisfies all applicable requirements of the Zoning Code, as originally deemed so by the Zoning Administrator.

The Appellant also respectfully requests an order awarding attorney's fees and costs under Code Ann. § 6-29-840(A) and S.C. Code Ann. § 15-77-300. The Appellant also seeks attorneys' fees, costs, and other relief, under S.C. Code Ann. § 30-4-100 due to the aforementioned FOIA violations.

The Appellant reserves all rights, including its right to assert civil causes of action against the Town and others for violation of its property rights, constitutional rights, and other rights. S.C. Code Ann. § 6-29-840(B) ("Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.")

Respectfully Submitted,

s/Ross A. Appel
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November 16, 2021
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2021-CP-10-5211
CKC Properties, LLC,	)	
	)	
Appellant,	)	
	)	
vs.	)	APPEAL PETITION
	)	
The Town of Mount Pleasant, South	)	
Carolina; The Town of Mount Pleasant	)	
Board of Zoning Appeals; Michael	)	
Robertson, in his official capacity as Zoning	)	
Administrator; Justin O'Toole Lucey; 415	)	
Mill St., Inc.; and 69 Scott Street, LLC,	)	
	)	
Respondents.	)	

BACKGROUND

This matter concerns CKC Properties, LLC's ("Appellant") appeal of the Town of Mount Pleasant Board of Zoning Appeal's (the "BOZA") reversal of the Town of Mount Pleasant Zoning Administrator's approval of the off-street parking plan for the "Shem Creek Boutique Hotel."¹ The off-street parking plan for the Shem Creek Boutique Hotel is part and parcel of a detailed, site-specific development plan for the project approved by the Zoning Administrator and the Town's Design Review Team ("DRT").

The Shem Creek Boutique Hotel will be located along Mill Street at TMS Nos. 517-16-00-058, -057, -034, and -035 (the "Properties"). As further described below, the Zoning Administrator and the DRT approved the site-specific development plans presented by Appellant for the Shem Creek Boutique Hotel, concluding the plans satisfied all applicable requirements of the Town of Mount Pleasant Zoning Code (the "Zoning Code").

¹ The project is also sometimes referred to as the "Mill Street Hotel." In this Appeal Petition the project will be referred to as the "Shem Creek Boutique Hotel" only.

Justin O'Toole Lucey, Esq. ("Lucey"), 415 Mill St., Inc., and 69 Scott Street, LLC (collectively, the "Commercial Neighbors")² appealed the Zoning Administrator's approval of the site-specific development plans for the Shem Creek Boutique Hotel to the BOZA. The Commercial Neighbors claim the Zoning Administrator's final approval was inconsistent with the Town's Zoning Code. The Commercial Neighbors' appeal challenges, among other things, the Zoning Administrator's final determination that the project complied with the applicable use classification, off-street parking, height, and curb cut regulations.

The BOZA heard the Commercial Neighbors' appeal on September 27, 2021. After hearing arguments from the Zoning Administrator, the Commercial Neighbors' representative, Appellant and its representatives, and the Properties' owners and representative, the BOZA immediately moved to go into executive session to receive "legal advice." After spending approximately thirty minutes behind closed doors, a BOZA member made a motion to reverse the Zoning Administrator's determination regarding compliance with the off-street parking requirements *only* and to uphold all the other Zoning Administrator final determinations on zoning compliance. The BOZA member who made the motion read the motion from a prepared "scrip," which presumably was prepared in executive session. The basis of the BOZA's motion was that the Zoning Administrator erred in his interpretation of the phrase "Guest Room" as it appears in the off-street parking table; therefore, the Shem Creek Boutique Hotel's plans did not depict the necessary amount of off-street parking spots. The motion unanimously carried. The BOZA conducted no public deliberation whatsoever on the off-street parking issue.

² 415 Mill St., Inc. and 69 Scott Street, LLC are Lucey controlled and affiliated entities.

The final order of the BOZA, memorializing its September 27, 2021 decision, was signed on October 25, 2021 (the “BOZA Order”). The BOZA Order was mailed to the parties in interest on October 26, 2021. A copy of the BOZA Order is attached as **Exhibit A**.

Appellant owns the Properties and possesses a substantial interest in the BOZA’s decision and standing to appeal the BOZA Order pursuant to S.C. Code Ann. § 6-29-820.

Appellant hereby appeals the BOZA Order **only** with respect to the reversal of the Shem Creek Boutique Hotel’s off-street parking plan. Appellant agrees with the BOZA Order insofar as it upheld the Zoning Administrator’s final determination that the Shem Creek Boutique Hotel satisfies all other applicable provisions of the Zoning Code.

On November 16, 2021, Appellant filed a “Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition” in the above captioned matter pursuant to S.C. Code Ann. §§ 6-29-820, -825(A). The parties participated in a mediation session on January 27, 2022. The mediation was kept open after that date and the parties continued settlement discussions. On June 24, 2022, the mediator filed an ADR Report declaring an impasse.

S.C. Code Ann. § 6-29-825(F) provides that “[i]f mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law.” The instant “Appeal Petition” constitutes the filing of Appellant’s “petition.”

FACTS IN THE RECORD ON APPEAL³

The Shem Creek Boutique Hotel and the Zoning Administrator’s Final Zoning Approval

Appellant contracted to purchase the Properties on or about October 2020. Appellant plans to develop the twenty-seven (27) unit Shem Creek Boutique Hotel on the Properties. Appellant

³ S.C. Code Ann. § 6-29-820(A) states as follows: “Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the

and its design and engineering team have worked closely and collaboratively with Town staff on plans for the Shem Creek Boutique Hotel since November 2020. In fact, Town staff suggested Appellant pursue the “Boutique Hotel or Inn” option for the Properties. “Boutique Hotel” is a permitted use, by-right, on the Properties. To date, Appellant has spent approximately \$500,000.00 in consultant fees, non-refundable earnest money, legal fees, and other expenses related to this project and in reliance on the Town’s representations and approvals to date.

The Properties are all base zoned Neighborhood Commercial (NC) and located in the Boulevard Overlay District (BOD). The Properties are not located in the Shem Creek Waterfront Overlay District. A “Boutique Hotel or Inn” is a use permitted by-right in the NC District and nothing in the BOD alters this analysis. Hotels have been permitted in the NC District for decades.

The 2019 Comprehensive Plan does not recommend the elimination of “Boutique Hotel” as a permitted use in the NC District. In fact, the 2019 Comprehensive Plan calls for continuing

secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.”

The Appellant demands the Town include in the certified record the entire development review file for the Shem Creek Boutique Hotel, dating back to November of 2020. This is appropriate because the Zoning Administrator Appeal disputes essentially all the Zoning Administrator’s final determinations regarding the site-specific development plan that was approved by the DRT. This must include, but ought not be limited to, documents and communications associated with all staff level reviews of the project, including the DRT review process. This includes communications involving elected officials and members of the public, including the Commercial Neighbors and their members, agents, and other representatives. The certified record should also include prior interpretations of the term “Guest Room” as it pertains to the off-street parking requirements for accommodations uses, generally, and boutique hotels, specifically. These examples were referenced by the Zoning Administrator during the BOZA hearing as well as in the Zoning Administrator’s memoranda prepared for the BOZA hearing.

The certified record must also include all files associated following quasi-judicial hearings involving the project: the April 26, 2021 BOZA hearing, the July 28, 2021 DRB hearing, the August 25, DRB hearing, and the September 27, 2021 BOZA hearing. The certified record should also include the entirety of all FOIA responses provided by the Town of Mount Pleasant in response to Appellant’s August 13, 2021 FOIA request, as amended, and subsequent FOIA requests. Finally, the certified record must include all applicable provisions of the Zoning Code regarding this appeal both procedural and substantive as well as the 2019 Comprehensive Plan.

The Appellant reserves the right to review the certified record filed by the Town of Mount Pleasant and petition this Court to include anything missing from the above list.

this use, which has been allowed in the NC District for decades. The Plan identifies several distinct planning areas in the “Hubs, Activity Centers and Corridors” discussion in Chapter 7 (“Land Use and Community Design”). The “Community Scale Commercial” area, which encompasses the NC District, specifically acknowledges the appropriateness of boutique hotels, stating “[t]his is the predominant commercial classification within the town, including retail, office, services, grocery stores, **boutique hotels** and restaurant uses.” (Emphasis added). Table 7-2 (“Classification Criteria for Hubs and Redevelopment Centers”) specifically identifies “boutique hotels” as a “typical non-residential use” in the Community Scale Commercial area.

Appellant and its experienced team of engineering and design consultants formulated detailed site-specific development plans for the Shem Creek Boutique Hotel. These plans were carefully crafted, in close collaboration with the Zoning Administrator and his staff, to satisfy all applicable zoning regulations. The plans, as approved by the Zoning Administrator, required no variances, special exceptions, rezoning, or any other discretionary zoning entitlement – other than Design Review Board (“DRB”) approval. Everything submitted and ultimately approved by the Zoning Administrator was allowed, by-right, on the Properties.

On or about June 9, 2021, the DRT, which includes the Zoning Administrator, confirmed the site-specific development plans for the Shem Creek Boutique Hotel fully complied with the Zoning Code in terms of use, off-street parking, and otherwise. Under the Town’s Zoning Code, a development cannot appear before the DRB without having received zoning approval from the DRT and the Zoning Administrator.

The Town’s website explains the DRT process, provides a flow chart, and confirms that DRT final approval, including confirmation of zoning compliance, is a prerequisite to appearing on a DRB agenda for preliminary approval. *See*, DRT Website and Flowchart attached as **Exhibit**

B. After obtaining DRT approval, on or about June 9, 2021, Appellant was able to move forward with a request for “Preliminary Approval of Site, Landscape, and Architecture.” DRB approval was the only thing standing in Appellant’s way from applying for a building permit.

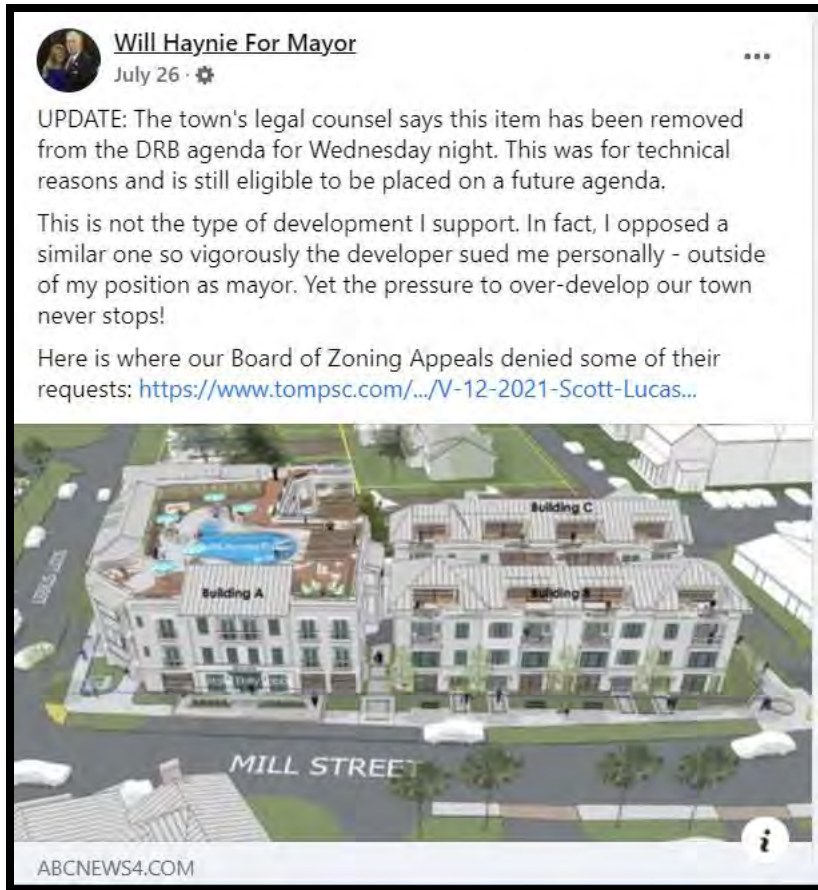
Political Interference and DRB Delay

The Shem Creek Boutique Hotel was placed on the DRB’s July 28, 2021 agenda for Preliminary Approval of Site, Landscape, and Architecture. On July 19, 2021, the Town posted the DRB agenda online. The Town also posted the Properties and ran public notice in the newspaper, as they are required to do by statute and the Zoning Code.

However, less than twenty-four (24) hours before the DRB hearing, the Town staff informed Appellant that the Shem Creek Boutique Hotel would be removed from the agenda due to alleged, minor technical deficiencies. These minor issues never justify agenda removal under normal circumstances, especially when the staff had previously determined all zoning requirements had been satisfied. Appellant and its design and engineering professionals attempted to reason with the Town to no avail.

Contemporaneously, Town of Mount Pleasant Mayor Will Haynie gave the following statement to Live 5 News: “I have a history of not supporting this type of development.” See, **Exhibit C**. Upon information and belief, behind-the-scenes political interference caused the Shem Creek Boutique Hotel to be removed from the July 28, 2021 agenda.

Confirming Appellant’s suspicions, Mayor Haynie posted the following on his official, campaign Facebook Page:



The next day, on July 27, 2021, Michelle Reed, the Director of Planning, Land Use and Neighborhoods, sent an e-mail update on the Shem Creek Boutique Hotel to the Mayor and Town Council. See, **Exhibit D**. Clearly, the media coverage of the Shem Creek Boutique Hotel had turned this project into the latest development “controversy” in the Town. Ms. Reed’s e-mail confirms, among other things, that the Shem Creek Boutique Hotel “is a permitted use by right” and “the applicant has gone through DRT.” *Id.*

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

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

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

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

Thankful for you all!!

Id. This e-mail reflects Ms. Reed’s concerns about political meddling and interference in the development review process. In other words, her staff was clearly feeling the heat from elected officials to impede this project, which had already been approved by the DRT. Town Administrator Eric DeMoura responded to Ms. Reed’s e-mail stating “[y]ou’re doing good. Keep your team doing their jobs, stick to the ordinances, stay professional, then stand strong.” *See, Exhibit E.*

Some context is in order. Over the last few years, the Town of Mount Pleasant has been embroiled in several well-publicized lawsuits over perceived “controversial” development projects. *See, e.g.*, “Mount Pleasant ordered to pay more than \$2.6 million in Shem Creek garage lawsuit,” POST AND COURIER (July 10, 2020); “Settlement reached with Mount Pleasant over contested plans for hotel,” POST AND COURIER (August 19, 2019); “\$2.6M payout reduces Mount Pleasant subdivision development plan by more than 2,000 homes,” POST AND COURIER (May 14, 2019); “The ‘Year of No’ costs Mt. Pleasant a lot of dough: The lawsuits,” POST AND COURIER (Feb. 6, 2016), each attached hereto as **Exhibit F.**⁴

These lawsuits share a common theme. They all involve projects permitted by zoning and approved by the Town, which were nevertheless targeted and derailed at the eleventh hour by inappropriate political interference. Ms. Reed’s and Mr. DeMoura’s e-mails acknowledge a “here we go again” mentality – this time for the Shem Creek Boutique Hotel. It is very uncommon for local government staff to send each other these kinds of “pep talk” e-mails over routine, by-right

⁴ Appellant respectfully requests this Court take judicial notice of these newspaper articles published in the Post and Courier – the State’s largest newspaper. *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976); Rule 201, SCRE.

development projects. However, when politics gets involved where it has no place, namely the administrative or quasi-judicial review of fully entitled development projects, the professional staff gets placed in stressful, untenable situations. This is exactly what Ms. Reed and Mr. DeMoura feared was happening again – this time with the Shem Creek Boutique Hotel. As discussed below, the chronology from here confirms their suspicions.

Zoning Ordinance Amendments Aimed at Killing the Project

Less than a week after the Shem Creek Boutique Hotel was unjustly removed from the July 28, 2021 DRB agenda due to explicit political pressure, the Town set into motion zoning amendments that would prohibit boutique hotels on the Properties.

On August 2, 2021, the Planning and Development Committee met to consider several proposed zoning text amendments that would, among other things, eliminate “Boutique Hotel or Inn” as a by-right, permitted use in the NC District, alter the definition of “unit” and “Guess Room,” adjust the parking requirements for this use, and alter the lot consolidation process for projects of this kind. These proposed amendments were clearly aimed at defeating the Shem Creek Boutique Hotel.

On December 15, 2021, Town Council gave final reading to Ordinance No. 21071, attached as **Exhibit G**. Among other things, Ordinance No. 21071 eliminates boutique hotels as an allowed use in the NC District and substantially increased the off-street parking requirements.

As Ordinance No. 21071 was winding its way through the multi-month approval process, the Town took several actions designed to impede and frustrate the project including, but not limited to, participating in a coordinated scheme to delay the project at the DRB and encourage the Commercial Neighbors to appeal the Zoning Administrator’s approval of the project.

DRB Deferral and Unlawful Executive Session

The Shem Creek Boutique Hotel appeared before the DRB at its August 25, 2021 hearing, again for Preliminary Approval of Site, Landscape, and Architecture. The Town staff provided to the DRB a thorough report and PowerPoint presentation concerning the project. Town staff clearly and unequivocally recommended the DRB grant preliminary approval. These recommendations are incorporated herein by reference.

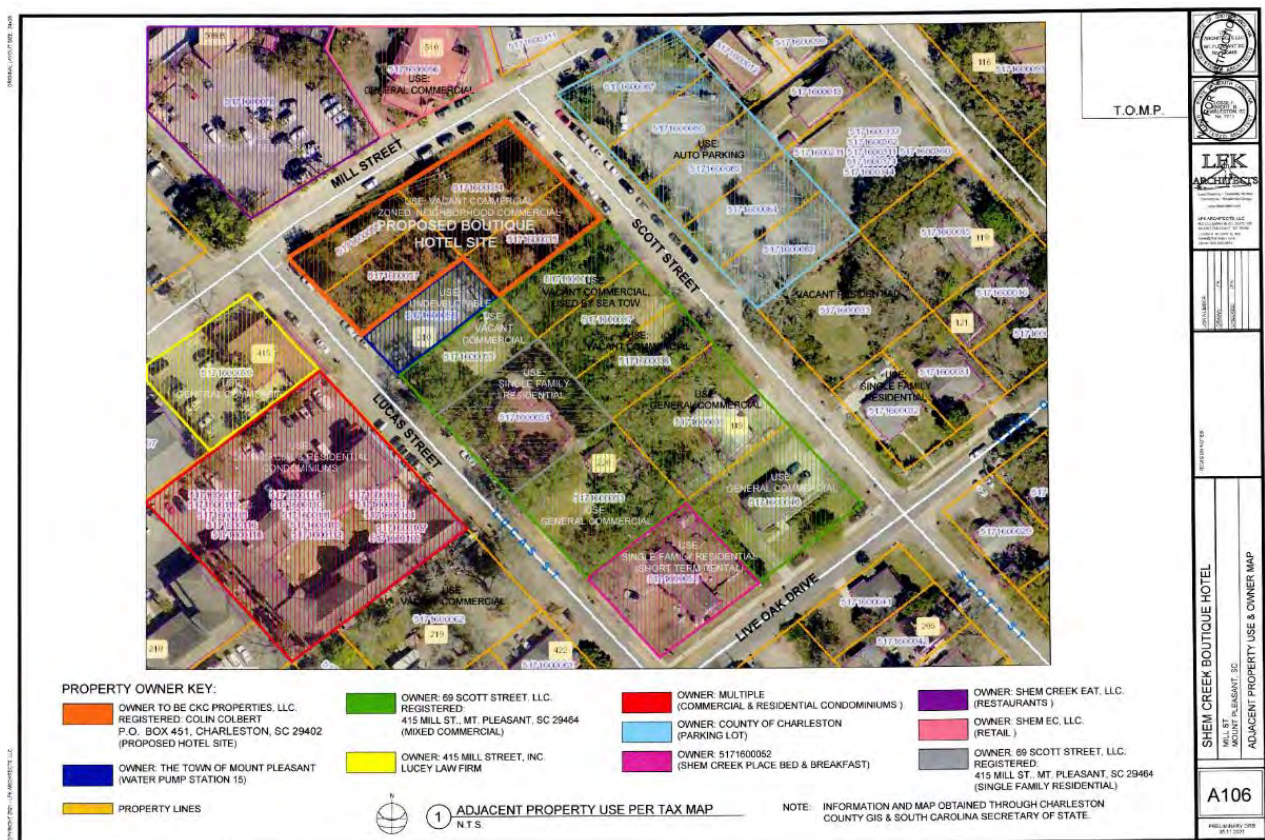
During the public comment period, a handful of nearby property owners and businesses – including the Commercial Neighbors – raised a series of non-germane objections to the Shem Creek Boutique Hotel. The DRB’s scope of review is limited to aesthetic matters – not zoning issues, which had already been resolved with finality during the DRT process. For instance, these objections were aimed at use, off-street parking, quality of life, and other zoning related issues. None of these issues are relevant to the DRB’s Preliminary Approval of Site, Landscape, and Architecture. Appellant and its counsel reminded the DRB about the narrow scope of review and the irrelevance of the zoning issues, which had long been administratively reviewed and approved by the Zoning Administrator.

After the close of public comment, the DRB voted to go into executive session. The motion to move into executive session did not specify a purpose in violation of the Freedom of Information Act (“FOIA”). After returning from executive session, the DRB moved to defer action on Appellant’s request for Preliminary Approval of Site, Landscape, and Architecture. The motion carried unanimously. The DRB did not specify on the record any rationale for this deferral in violation of the rules governing the DRB, namely the “Explanation of Design Review Process” attached as **Exhibit H**.

On September 24, 2021, Appellant filed a Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition over the DRB's August 25, 2021 "deferral" (C/A No. 2021-CP-10-04416). Appellant has or will soon file an Appeal Petition in that case.

Commercial Neighbors' Motivations and Their Zoning Administrator Appeal

The Commercial Neighbors (415 Mill St., Inc. and 69 Scott Street, LLC are Lucey controlled and affiliated entities) own several parcels of commercial property in the vicinity of the Properties. The location of the Commercial Neighbors' properties, relative to the Properties, is depicted in the following visual included in Appellant's site-specific development plans and the Zoning Administrator Appeal:



See, Adjacent Property Use & Ownership Map attached as **Exhibit I**.

The Commercial Neighbors are major commercial property owners in this portion of the Shem Creek business district. Among other things, Lucey's law office is located next door to the Properties.

In 2018, the Commercial Neighbors rezoned TMS Nos. 517-16-00-055 and 517-16-00-036 (owned by 69 Scott Street, LLC) from Conservation-Open Space to Areawide Business. *See*, Rezoning Application attached as **Exhibit J**. These parcels are to the immediate southeast of the Properties. Also, in 2018, *the Commercial Neighbors sought to purchase the Properties themselves*. *See*, E-mails attached as **Exhibit K**. It is clear the Commercial Neighbors seek to consolidate and control this portion of the Shem Creek business district for their own interests.

The Commercial Neighbors have long been aware of the plans for the Shem Creek Boutique Hotel. The Commercial Neighbors were first made aware of the specific plans for the Shem Creek Boutique Hotel on March 26, 2021 when Appellant's principal e-mailed him the formal design package for review, which had already undergone substantial Town staff review. *See*, E-mails attached as **Exhibit L**.

On April 26, 2021, Appellant and its engineering and design team appeared before the BOZA to seek a height variance for the Shem Creek Boutique Hotel. The agenda for the April 26, 2021 BOZA hearing was posted on the Town's website on April 13, 2021. This online posting included Appellant's variance application package along with the Town staff's analysis of the proposal. These postings include a detailed visual and narrative depiction of the Shem Creek Boutique Hotel with regards to its proposed use, off-street parking configuration, and other features. The Properties were also physically posted on-site to provide notice of the BOZA hearing to nearby property owners.

The Commercial Neighbors submitted a letter in opposition to the variance and spoke in opposition at the April 26, 2021 BOZA hearing. *See*, Commercial Neighbors’ letter dated April 26, 2021 attached as **Exhibit M**. The Commercial Neighbors’ letter objects not only to the proposed height variance, but the overall concept of the Shem Creek Boutique Hotel. Specifically, the Commercial Neighbors’ letter challenges the project’s off-street parking plan. The letter notes the existing parking challenges in the area caused by surrounding businesses for their employee parking. The BOZA ultimately voted to deny Appellant’s height variance request on April 26, 2021.

Several months later, on August 23, 2021, the Commercial Neighbors appealed the Zoning Administrator’s final determination that the Shem Creek Boutique Hotel complied with the Zoning Code (the “Zoning Administrator Appeal”). *See*, Zoning Administrator Appeal attached as **Exhibit N**. Upon information and belief, the Commercial Neighbors were “coached up” by Town elected officials and staff to file this appeal. By August 23, 2021, several elected officials had given public statements (as set forth above) objecting to the project.

The Zoning Administrator Appeal claims the Zoning Administrator erred when he concluded that the specific plans for the Shem Creek Boutique Hotel met the applicable use, off-street parking, height, and curb-cut regulations. Essentially, the Zoning Administrator Appeal’s “kitchen sink approach” maintains that every decision made by the Zoning Administrator was in error.

The BOZA Hearing on the Zoning Administrator Appeal

Prior to the BOZA hearing on the Zoning Administrator Appeal, the Zoning Administrator authored two memos supporting his final zoning determinations regarding the Shem Creek Boutique Hotel. *See*, Zoning Administrator Memos attached as **Exhibit O**. The Zoning

Administrator summarized the rationale behind his approval of the Shem Creek Boutique Hotel's off-street parking plan as follows:

The boutique hotel project is comprised of three buildings: Building A, Building B, and Building C. Building A contains 19 guest rooms or lodging units as defined above. Buildings B and C contain 4 guest rooms or lodging units each. The total number of guest rooms in all three buildings is 27. Using the standards established in §156.171 [Table], the minimum off-street parking space requirement for the boutique hotel is a range of 27 to 54 parking spaces. Plans for the boutique hotel indicate that the project provides 35 total parking spaces: 1 parking space for each guest room or lodging unit in Building A (19) and two parking spaces for each guest room or lodging unit in Buildings B and C (16). The 35 parking spaces are in the range of 27-54 minimum parking spaces established in 156.171 [Table]. **The parking standards meet the minimum parking off-street parking standards established by Town Council in the ordinance.**

(Emphasis added).

Counsel for Appellant supplied a letter in advance of the hearing, dated September 24, 2021, arguing that the Zoning Administrator Appeal should be dismissed, without reaching the merits of the appeal, because the filing was untimely and the Commercial Neighbors lacked standing. *See*, Letter from Appellant's Counsel attached as **Exhibit P**.

At the September 27, 2021 BOZA hearing, the Zoning Administrator gave a spirited defense of his and his predecessor's final zoning determinations regarding the Shem Creek Boutique Hotel. Lucey then made his arguments, many of which did not correspond to the grounds for appeal contained in his August 23, 2021 filing. Notably, Lucey spent essentially no time arguing against the Zoning Administrator's position regarding off-street parking requirements. This was clearly an indication that he did not dispute the applicable minimum off-street parking requirements were satisfied.

Then, the BOZA opened the floor to public hearing. The undersigned counsel for Appellant spoke and argued that the Zoning Administrator Appeal should be dismissed on timeliness and standing grounds. Counsel for the owner of the Properties commented further on

standing and mentioned prior attempts by the Commercial Neighbors to purchase the Properties. Finally, Appellant's engineering and design team provided testimony about their close collaboration with Town staff for nearly a year on the project and offered further support to the Zoning Administrator's application of the Zoning Code, specifically the off-street parking calculations.

After the close of public comment, as mentioned above, the BOZA immediately moved to go into executive session to obtain "legal advice."⁵ The BOZA remained behind closed doors for approximately thirty minutes. When the BOZA returned, one member – reading from a prepared script – moved to reverse the Zoning Administrator on the off-street parking issue only and affirm the Zoning Administrator on all other matters.

The basis of the BOZA's motion was that the Zoning Administrator erred by interpreting the phrase "Guest Room," as used in the off-street parking calculations table. Since the units in the Shem Creek Boutique Hotel consist of suites (with more than one bedroom), the BOZA concluded the parking calculations should be based on the number of rooms within each suite (or beds) as opposed to individually keyed, rented rooms. The motion unanimously carried.

This timely appeal follows.

STANDARD OF REVIEW

"On appeal, the findings of fact by the [Zoning] Board shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code Ann. § 6-29-840(A) ("The findings of fact by the board of appeals

⁵ Appellant has challenged the lawfulness of this executive session in *CKC Properties, LLC v. The Town of Mount Pleasant, et al.* (C/A No. 2021-CP-10-04761) and those arguments are incorporated herein by reference.

must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.”).

“However, a decision of a municipal [Z]oning 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.* (alteration in original) (quoting *Wyndham Enters*, 401 S.C. at 148, 735 S.E.2d at 661). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

“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.” *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters.*, 401 S.C. at 14748, 735 S.E.2d at 661).

“Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). “The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.” *Id.* “When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.” *Id.* “An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Id.* “The statutory language must be construed in light of the intended purpose of the statute.” *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). The appellate court “will not construe a statute in a way which leads to an absurd result or renders it

meaningless.” *Id.* “[I]t is well-settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” *Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

ARGUMENT

I. The Zoning Administrator Appeal was untimely and the BOZA lacked jurisdiction to consider same.

Section 156.411(A)(5)(a) of the Zoning Code establishes the deadline to file a zoning administrator appeal. Specifically, “[t]he appeal must be taken within 30 days from the date the appealing party has received actual notice of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal.” *Id.*

The Zoning Code provides that “[t]he burden of proof for the relief sought is upon the applicant [and] a complete application of forms and information is required.” Section 156.413(D)(1). “Incomplete applications will be returned to the applicant.” Section 156.413(D)(2).

The BOZA’s Rules of Procedure, attached hereto as **Exhibit Q**, provide that “[r]equests to be heard before a Board shall be made by submitting the appropriate application form(s) approved by the Department of Planning and Development in accordance with the submittal deadline published on the annual schedule of meetings.” Section II(3)(A).

“Compliance with statutory time periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction to hear an appeal.” *See Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 586-87 (1988), overruled on other grounds by *Woodard v. Westvaco*, 319 S.C. 240, 460 S.E.2d 392 (1995); *see also, Sadisco of Greenville, Inc. v. Greenville Cnty Bd.*

of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000); *S.C. Coastal Conservation League v. S.C. Dep't of Health and Env'tl. Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008).

The Commercial Neighbors waited until August 23, 2021 to file the Zoning Administrator Appeal. This was the date the Commercial Neighbors submitted the required filings through the Town's online application portal. Submission through the online application portal constitutes submission of "a complete application" on "the appropriate application form(s)" according to Section 156.413(D) and the BOZA's Rules of Procedure.

August 23, 2021, however, was **several months** after the Commercial Neighbors first obtained "actual notice" of the site-specific development plans for the Shem Creek Boutique Hotel, which showed the proposed use, unit configuration, *off-street parking arrangements*, and otherwise.

As noted above, on March 26, 2021 Appellant's principal e-mailed the Commercial Neighbors the project's plans in advance of the April 26, 2021 BOZA height variance hearing. On April 13, 2021, the Town posted the online the agenda for the April 26, 2021 BOZA hearing, which included the specific plans themselves. Notice was also physically posted on site and published in the newspaper, as required by statute and the Zoning Code.

If the proposed use, off-street parking, or other features of Appellant's design program deviated – in any respect – from the Zoning Code, *the Zoning Administrator would have required Appellant to seek additional variances from the BOZA*. The Zoning Administrator did not do this, thus demonstrating that the project, as presented, satisfied all requirements of the Zoning Code other than height, which was the only reason Appellant had to appear before the BOZA. In other words, by not requiring variances on the off-street parking configuration, the Zoning Administrator acknowledged that Appellant's proposed off-street parking plan satisfied the Zoning Code.

The Commercial Neighbors were well aware of the Shem Creek Boutique Hotel, and the staff's approvals of the overall concept several months prior to August 23, 2021 when the Zoning Administrator Appeal was filed. In fact, the Commercial Neighbors submitted a letter of opposition prior to the April 26, 2021 BOZA hearing. Lucey himself attended the April 26, 2021 hearing to speak against the variance request, specifically, and the project, generally. Notably, he voiced concerns over what he believed to be the Shem Creek Boutique Hotel's off-street parking demands, which had nothing to do with the height variance, and how they would impact his business and real estate holdings in the area. Clearly, the Commercial Neighbors possessed actual notice of the off-street parking plans for the Shem Creek Boutique Hotel and the Zoning Administrator's approval of same.

There can be no doubt that the Commercial Neighbors possessed actual notice of the Zoning Administrator's opinions regarding the Shem Creek Boutique Hotel, generally, and its off-street parking requirements, specifically, all the way back in April 2021. The fact that the Zoning Administrator did not require Appellant seek a parking variance at the April 26, 2021 hearing, demonstrates his approval of Appellant's proposed off-street parking plan. More to the point, the plans provided to the Commercial Neighbors by Appellant and posted online by the Town weeks before the April 26, 2021 hearing put the Commercial Neighbors on actual notice that the Zoning Administrator was following the Town's longstanding practice of treating a "Guest Room," for parking purposes, as synonymous with "lodging unit," as the term is used to define the "Boutique Hotel" use itself.

Finally, it bears noting that Lucey is a highly sophisticated individual. He is a successful litigation attorney with decades of experience. He is also a savvy commercial real estate investor who owns at least eight (8) separate parcels in the immediate vicinity of the Properties. He

understands the law. He understands the development process, including how the zoning process works. Clearly, he possessed actual notice of the Zoning Administrator's position regarding the Shem Creek Boutique Hotel's off-street parking requirements in April of 2021.

The Commercial Neighbors obtained actual notice that the Zoning Administrator approved of Appellant's off-street parking plan on April 26, 2021 at the earliest. Therefore, the Zoning Administrator Appeal filed on August 23, 2021 was many months after the expiration of the thirty day jurisdictional time period to appeal the Zoning Administrator's decisions established by Section 156.411(A)(5)(a) of the Zoning Code. As such, the Zoning Administrator Appeal was untimely filed, the BOZA lacked jurisdiction to consider it, and this Court should reverse and vacate the BOZA Order with respect to off-street parking only.

Alternatively, even if the April 26, 2021 BOZA hearing did not provide the Commercial Neighbors with actual notice, which is denied, the Zoning Administrator Appeal still must be deemed untimely.

On July 19, 2021, the Town published the July 28, 2021 DRB Agenda. *See*, E-mails attached as **Exhibit R**. This agenda included the Shem Creek Boutique Hotel for Preliminary Approval of Site, Landscape, and Architecture. Under the Town's policies and procedures, a project cannot appear before the DRB, even for preliminary approval, unless it satisfies all applicable zoning regulations, including off-street parking. As mentioned above the Shem Creek Boutique Hotel obtained DRT approval on or about June 9, 2021. Therefore, on July 19, 2021, when the DRB Agenda was published online and made publicly available, the Commercial Neighbors – who clearly have been following this project closely since March of 2021 at the latest – possessed actual notice that the Shem Creek Boutique Hotel obtained all necessary zoning

approvals.⁶ This means, at the latest, the Commercial Neighbors had thirty days from July 19, 2021 to file a zoning administrator appeal. Thirty days from July 19, 2021 is August 18, 2021. The Zoning Administrator Appeal was submitted through the Town’s online portal on August 23, 2021, which was five days past the deadline. This means the Zoning Administrator Appeal was untimely and the BOZA lacked jurisdiction to consider it, as a matter of law.

The jurisdictional time limits for appealing zoning administrator decisions are not idle recommendations. These time limits have been ordained by both the General Assembly and the Town Council of Mount Pleasant. If there were no such limitations, an adverse party could sit back and wait for a development project to be near final permitting before springing an appeal. Or, an opponent could wait until a project was actually built before contesting a zoning interpretation. Obviously, this would produce adverse and prejudicial results for property owners, the local government, and other interested parties. The law is clear that those seeking to challenge the rulings of zoning administrators must be vigilant in doing so or lose the right to proceed with an appeal.

Whether the Commercial Neighbors obtained actual notice of the Shem Creek Boutique Hotel on or about April 26, 2021 or July 19, 2021, the result is the same. They untimely filed the Zoning Administrator Appeal as a matter of law, the BOZA lacked jurisdiction to consider it, and this Court should reverse and vacate the BOZA Order with respect to off-street parking only.

II. The Commercial Neighbors lack standing to appeal the Zoning Administrator’s decisions regarding the Shem Creek Boutique Hotel.

S.C. Code Ann. § 6-29-800(B) and Section 156.411(A)(5) both provide that “[a]ppeals to the Board may be taken by any person aggrieved . . .” (Emphasis added). The Commercial

⁶ Appellant craves reference to the Town’s record of all public notice and outreach efforts with respect to the Shem Creek Boutique Hotel, generally, and the July 28, 2021 DRB hearing, specifically, and incorporates same by reference herein. These public notice records constitute part of the “certified record” in this appeal.

Neighbors are not “aggrieved” parties under South Carolina case law because (1) their alleged impacts are purely “conjectural and hypothetical” and (2) their interests are motivated solely by commercial, competitive concerns.

The South Carolina Court of Appeals has held as follows:

A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest. The word “aggrieved” refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation. A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and interests.

Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2001) (internal citations omitted). This case involved a non-profit organization’s appeal from the staff’s decision to approve a subdivision plat. The appeal was filed with the board of zoning appeals, and the board reversed the staff decision. The circuit court, however, reversed on the grounds that the appellant non-profit lacked standing to appeal the staff decision to the board. The Court of Appeals affirmed the circuit court, observing there is “no evidence in the record that either the League or its members have suffered any **actual injury** by the filing of the subdivision plats.” *Id.* at 302. (Emphasis added). As such, the Court of Appeals concluded, “although the League alleges its members will suffer injury if the islands are developed, the injury is **purely conjectural and hypothetical**.” *Id.* (Emphasis added).

Here, the Commercial Neighbors have pointed to no *actual* injury associated with the Zoning Administrator’s decisions. The Commercial Neighbors, at best, have pointed only to conjectural and hypothetical adverse impacts associated with the Shem Creek Boutique Hotel. These concerns do not specifically or uniquely impact the Commercial Neighbors in a manner different than other nearby commercial property owners and the public at large. Moreover, much like the residential subdivision at issue in *Beaufort Realty Co., Inc. v. Beaufort County*, the Shem

Creek Boutique Hotel has yet to be constructed. The Commercial Neighbors have therefore suffered no actual impacts whatsoever – be it from use, parking, or otherwise. The harms alleged by the Commercial Neighbors are purely conjectural and hypothetical. For these reasons, the Commercial Neighbors are not “aggrieved” parties under South Carolina law, and they lack standing to maintain the Zoning Administrator Appeal.

Additionally, the Commercial Neighbors lack standing because the nature of their alleged impacts redounds only to their commercial and competitive interests. The South Carolina Supreme Court has held that where “the potential injury or prejudice is only an increase in business competition, such injury or prejudice is insufficient to confer standing.” *ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 340 (2008). By their own admission, the Commercial Neighbors object to the Shem Creek Boutique Hotel due to perceived parking and other impacts to their businesses and significant real estate holdings in the area. None of the Commercial Neighbors’ properties are residential properties. This area of Shem Creek is already highly commercialized due, in significant measure, to the Commercial Neighbors’ own investments, developments, and rezoning efforts. As noted above, the Commercial Neighbors have acquired an assemblage of eight (8) parcels directly adjacent to the Properties and has successfully rezoned two (2) of these from Conservation Open Space to Areawide Business. The Commercial Neighbors have in recent years attempted to purchase the Properties themselves. These business competition factors cannot be ignored in the standing analysis.

The Commercial Neighbors are not “aggrieved” parties under South Carolina case law. Their alleged harm is entirely “conjectural and hypothetical,” which is insufficient to confer statutory standing in zoning appeals under *Beaufort Realty Co., Inc. v. Beaufort County*. Moreover, the Commercial Neighbors’ commercial and competitive motivations disqualify them

from passing the standing test under *ATC South, Inc. v. Charleston Cty.*

No matter how one slices it, the Commercial Neighbors lack statutory standing to prosecute the Zoning Administrator Appeal as a matter of law, the BOZA lacked jurisdiction to consider it, and this Court should reverse and vacate the BOZA Order with respect to off-street parking only.

III. The BOZA erred by reversing the Zoning Administrator's well-reasoned interpretation of the Shem Creek Boutique Hotel's off-street parking requirements.

If this Court agrees with Appellant on either the timeliness or statutory standing arguments, the Court need not delve into the substantive merits of the Zoning Administrator Appeal. However, in the event the Court decides to do so, it should find that the BOZA erred in reversing the Zoning Administrator's final decision regarding the Shem Creek Boutique Hotel's compliance with the Zoning Code's off-street parking requirements and reinstate the Zoning Administrator's interpretation on this issue.

As a starting point, the BOZA should have – but did not – grant deference to the Zoning Administrator's well-reasoned and longstanding interpretation of the Zoning Code's rules governing hotel parking. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995) (review bodies must “give great deference to the decisions of those charged with interpreting and applying local zoning ordinances.”). Appellant respectfully requests this Court grant the Zoning Administrator the deference due under the law, which the BOZA rejected without any public discussion whatsoever.

The off-street parking rules for “accommodations and lodging” uses, like the Shem Creek Boutique Hotel, are found in Section 156.171(A) of the Zoning Code, attached as **Exhibit S**. Specifically, the rules read as follows:

Use	Spaces Required	Unit Of Measure	Notes
Accommodations and lodging	1 to 2	Guest Room	

The range of one to two spaces per “unit of measure” is an established feature of the Zoning Code. The intent is to provide flexibility to accommodate more – or less – parking based on the specific characteristics of the site. The phrase “Guest Room” is *undefined* in Section 156.007 of the Zoning Code (“Definitions”), attached as **Exhibit T**.

Before turning to an analysis of the competing interpretations of “Guest Room,” Appellant respectfully calls this Court’s attention to an important rule of statutory construction in the zoning and land use context. This rule is of particular importance regarding undefined terms such as “Guest Room.” The South Carolina Court of Appeals recently noted:

It is a well-founded principle of law that “statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.”

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753 (Ct. App. 2015) (citing *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)); *Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987) (holding that while “[l]ocal governments have wide latitude to enact ordinances regulating what people can do with their property,” they “must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.”)

“Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Mitchell v. City of*

Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). “The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.” *Id.* “When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.” *Id.* “An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Id.* “The statutory language must be construed in light of the intended purpose of the statute.” *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). The appellate court “will not construe a statute in a way which leads to an absurd result or renders it meaningless.” *Id.* “[I]t is well-settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.” *Beaufort County v. S.C. State Election Comm’n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

The Zoning Administrator determined, during the development review process for the Shem Creek Boutique Hotel, that the site-specific development plan submitted by Appellant satisfied the Section 156.171(A) off-street parking requirements. In so doing, and as set forth in greater detail in the Zoning Administrator’s memorandum presented to the BOZA, the Zoning Administrator determined that the term “Guest Room” refers to an individually keyed lodging unit. The Zoning Administrator’s interpretation harmonizes the Zoning Code’s treatment of the boutique hotel use both with respect to the definition of the use and the off-street parking table. This approach is consistent with the *in pari materia* statutory rule of construction discussed in *Beaufort County v. S.C. State Election Comm’n*, *supra*.

The Zoning Administrator’s memos, which Appellant fully supports, reflects the Town’s longstanding interpretation for other hotels and suite-style hotels that have been approved over the

years. Both the Zoning Administrator and Appellant’s team testified extensively about the Town’s historic interpretation of “Guest Room,” in the hotel context, at the BOZA hearing.

The Shem Creek Boutique Hotel contains twenty-seven (27), individually keyed “Guest Rooms.” The plans, approved by the Town, depict thirty-five (35) off-street parking spots – eight (8) more than required by Section 156.171(A). This clearly meets the requirements of the Zoning Code, and the Zoning Administrator agreed. The parking spots depicted on the plans approved by the Town satisfy all technical requirements.

The Commercial Neighbors’ competing interpretation, which was ultimately accepted by the BOZA, turns the Zoning Administrator’s interpretation on its head by reading “Guest Room” to refer to a bedroom within a lodging unit. This interpretation finds no support in the text of the Zoning Code and produces absurd results, which our appellate courts abhor. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party, supra*. Requiring one or two spots per bedroom would necessitate excessive amounts of off-street parking non-responsive to actual demand or consumer habits. Moreover, it deviates substantially from the Town’s historic practice of interpreting and applying Section 156.171(A) in the context of hotels and suites.

The Commercial Neighbors’ interpretation would also be wildly inconsistent with how the Shem Creek Boutique Hotel’s off-street parking calculations would work if the proposed use was an actual townhouse rather than townhouse-style hotel suites. Section 156.171(A) provides the following off-street parking calculations for townhomes:

Use	Spaces Required	Unit Of Measure	Notes
Duplex, Big House, or Multi-Family Dwelling	1.5 - 3	Dwelling Unit	For multi-family dwellings, private garage spaces shall not count toward the requirement.
Single-Family Dwelling	1	Dwelling Unit	Private garage spaces shall count toward the requirement.

Townhouse Dwelling	2	Dwelling Unit	Private garage spaces shall count toward the requirement. Tandem parking is permitted.

The off-street parking calculations for townhouses are calculated based on the number of “dwelling units” – not rooms. The same logic should apply for townhouse-style hotel suites offered by the Shem Creek Boutique Hotel. In the age of Uber and Lyft, the off-street parking calculations should actually be less than those for primary residence townhomes. The Commercial Neighbors’ interpretation is an unreasonable one that produces absurd results. The BOZA erred by accepting this interpretation.

Finally, Town Council’s adoption of Ordinance No. 21071, attached as **Exhibit G**, reveals the error of the BOZA’s off-street parking analysis. This ordinance, among other things, changes the Section 156.171 off-street parking regulations associated with accommodations and lodging uses, including boutique hotels. When the Zoning Administrator approved Appellant’s off-street parking plans, several months prior to the adoption of Ordinance No. 21071, Section 156.171 required “1-2” parking spaces per “Guest Room.” Ordinance No. 21071 changes the off-street parking table so that a “Guest Room” requires only one (1) space – not an option of one (1) or two (2). Furthermore, the ordinance amendment goes on to create a new use term called “Guest Suite,” which requires two (2) spaces, as well as provides a definition to “Guest Room,” which did not exist at the time of the BOZA hearing. Essentially, Ordinance No. 21071 legislatively adopts the off-street parking analysis (and policy) contained the BOZA Order.

This change in the law supports both the Zoning Administrator’s and Appellant’s position on the off-street parking question at issue in this appeal. *Proctor v. Dep’t of Health and Env’tl. Control*, 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct. App. 2006) (When interpreting a statute, courts must presume the legislature did not intend to do a futile act.). The reason is simple. If the

BOZA's reversal of the Zoning Administrator found legal support in Section 156.171, as it existed at the time of the BOZA hearing, there would have been no reason to change the off-street parking rules to reflect the result reached by the BOZA.

The BOZA's newfangled interpretation of "Guest Room" in the hotel context not only materially prejudices the Shem Creek Boutique Hotel, by requiring far more off-street parking spots that can be provided on the Properties, but it also signals that many other hotels and suites throughout the Town are no longer in compliance with the Town's off-street parking rules. By changing the Town's longstanding off-street parking rules, the BOZA engaged in legislating – not interpreting the Zoning Code, as written. This, the BOZA clearly lacks the authority to do. These wide-ranging implications of the BOZA's decision in this case must be acknowledged and factored into this Court's analysis over whether the BOZA Order's treatment of the off-street parking issue ought to withstand the instant appeal.

IV. Vested Rights and FOIA Violations

Appellant claims that its site-specific development plan for the Shem Creek Boutique Hotel obtained vested rights prior to the Zoning Administrator Appeal's filing. This specifically includes being vested against the applicability of Ordinance No. 21071 and any other subsequently enacted ordinance that contains substantive, material changes to the zoning ordinances relevant to the project. As previously stated, Appellant alleges that Ordinance No. 21071 was specifically aimed at preventing the development of the Shem Creek Boutique Hotel.

On August 3, 2021, Appellant requested a vested rights determination from the Town, but the Town refused to make a determination. Therefore, Appellant asserted a claim for a declaratory judgment on the issue of vested rights in *CKC Properties, LLC v. The Town of Mount Pleasant, et al.* (C/A No. 2021-CP-10-04761). Appellant incorporates and restates by reference its vested

rights arguments under the South Carolina Vested Rights Act, the Town's Vested Rights Ordinance (attached hereto as **Exhibit U**) and reserves all rights with respect to the vested rights issue.

Appellant has also alleged certain violations of the FOIA in *CKC Properties, LLC v. The Town of Mount Pleasant, et al.* (C/A No. 2021-CP-10-04761). These FOIA violations address the DRB's conduct at its August 25, 2021 hearing and the BOZA's conduct at its September 27, 2021 hearing. Appellant incorporates and restates by reference these FOIA violations and reserves all rights with respect to the FOIA issue.

CONCLUSION

Appellant respectfully requests this Court vacate and reverse the BOZA Order *only* with respect to its findings and conclusions regarding the Shem Creek Boutique Hotel's compliance with the Town's off-street parking regulations.

Appellant seeks an order from this Court affirming that the Shem Creek Boutique Hotel, as depicted in site-specific development plans approved by the DRT prior to the project's appearance before the DRB, satisfies all applicable requirements of the Zoning Code, as originally deemed so by the Zoning Administrator, and the project may continue to proceed through the development review process under the ordinances and regulations that existed at the time of the Zoning Administrator Appeal. Furthermore, Appellant seeks an Order confirming the Shem Creek Boutique Hotel is vested against the application of Ordinance No. 21071 and any other ordinance enacted after Appellant's applications and the BOZA hearing at issue in this appeal.

Appellant also respectfully requests an order awarding attorney's fees and costs under Code Ann. § 6-29-840(A) and S.C. Code Ann. § 15-77-300. Appellant also seeks attorneys' fees,

costs, and other relief, under S.C. Code Ann. § 30-4-100 due to the aforementioned FOIA violations.

Appellant reserves all rights, including its right to assert civil causes of action against the Town and others for violation of its property rights, constitutional rights, and other rights. S.C. Code Ann. § 6-29-840(B) (“Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.”).

Respectfully Submitted,

s/Ross A. Appel

Ross A. Appel, Esq. (SC Bar #79149)

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June 28, 2022

Mount Pleasant, South Carolina

§ 156.049 VESTED RIGHTS.

(A) *Purpose.* This section is intended to clarify the rights of property owners regarding the time frame for which the town's land use decisions can be considered to confer vested rights. This section is written to bring the town into compliance with the Vested Rights Act, Article 11, of Chapter 29, Title 6, of the Code of Laws of South Carolina, 1976 (S.C. Code §§ 6-29-1510 et seq.).

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING PERMIT. A written warrant or license issued by a local building official that authorizes the construction or renovation of a building or structure at a specified location.

LAND DEVELOPMENT ORDINANCES OR REGULATIONS. Any ordinances or regulations that establish permitted uses or development standards for the improvement of property.

LOCAL GOVERNING BODY.

(a) The governing body of a county or municipality; or

(b) A county or municipal body authorized by statute or by the governing body of the county or municipality to make land use decisions. For the purposes of this section, this would include Town Council, Planning Commission, Board of Zoning Appeals, Design Review Board, and Old Village Historic District Commission, as is applicable.

SITE SPECIFIC DEVELOPMENT PLAN. A development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties.

VESTED RIGHT. The right to undertake and complete the development of property under the terms and conditions of a site specific development plan.

(C) *Vesting periods.*

(1) Approved site specific development plans shall be vested for an initial period of two years from the date of final approval by the local governing body.

(2) Within the vesting period, the property owner may make application and be granted a building permit from the Town Building Official in accordance with all other applicable town regulations.

(D) *Extensions of vesting periods and limitations thereto.*

(1) Subsequent modifications or amendments to an approved site specific development plan shall not re-establish or extend the initial two- year vesting period if the underlying land development ordinances or regulations have been amended in a manner that would prohibit the execution of the site specific development plan.

(2) After the initial two-year vesting period, a site specific development plan is eligible for at least five annual extensions of the vested right, which must be approved unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval.

(a) Any change or amendment to the land development ordinances or regulations that would no longer allow execution of the site specific development plan constitutes a prohibition of the approval of the extension.

(b) The property owner must submit a written request for the extension to the local governing body, as defined in this section, prior to the expiration of the initial two-year vesting period and each successive annual vesting period; failure to make a timely request shall void the request.

(E) *Conditions and limitations.*

(1) Site specific development plan provisions apply to projects that require the investment in grading; installation of utilities, streets and other infrastructure; and other significant expenditures necessary to apply for a building permit. For purposes of this section, the following are considered site specific development plans:

- (a) Town Council-approved Planned Development Districts;
- (b) Town Council-approved Impact Assessments;
- (c) Planning Commission-approved Sketch Plans or Preliminary Plats;
- (d) Board of Zoning Appeals-approved Variances and Special Exception Uses;
- (e) Final Planning staff approvals and Design Review Board final approvals regarding Commercial Design Review Overlay District applications;
- (f) Old Village Historic District Commission-approved Certificates of Appropriateness;
- (g) Conditional Uses and sign permits approved by the Zoning Administrator, or his or her designee; and
- (h) Staff-approved Preliminary Plats.

(2) A site specific development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained.

(3) A vested site specific development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses.

(4) Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations.

(5) A vested right to a site specific development plan may be revoked by the local governing body upon its determination, after notice and a public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.

(Ord. 05035, passed 6-14-05; Am. Ord. 07071, passed 11-13-07; Am. Ord. 14047, passed 8-12-14; Am. Ord. 16082, passed 10-11-16; Am. Ord. 18101, passed 1-8-19)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2021-CP-10-5211
CKC Properties, LLC,	)	
	)	
Appellant,	)	
	)	
vs.	)	Return and Answer to CKC's Petition
	)	And Appeal
The Town of Mount Pleasant, South	)	
Carolina; The Town of Mount Pleasant	)	
Board of Zoning Appeals; Michael	)	
Robertson, in his official capacity as Zoning	)	
Administrator; Justin O'Toole Lucey; 415	)	
Mill St., Inc.; and 69 Scott Street, LLC,	)	
	)	
Respondents.	)	

Comes now, Defendants/Respondents Justin O'Toole Lucey, 415 Mill St., Inc., and 69 Scott Street, LLC, and file this Return/Answer to CKC's "Petition"/Appeal/Complaint:

1. Any allegation in the Petition, Appeal, and or Complaint not expressly admitted herein is denied.
2. The Petition is incapable of an organized response as it's allegations are not numbered. Therefore, the Petition should be dismissed until or unless CKC complies with proper protocol.
3. It is admitted that these defendants had standing and were aggrieved by the prior Town of Mount Pleasant (the "TOMP") decisions addressed by the Town of Mount Pleasant Board of Zoning Appeal's (the "BOZA").
4. It is admitted that these Defendants and others appealed prior TOMP decisions in favor of the Mill Street Hotel and that BOZA reversed the prior TOMP decisions.
5. It is admitted that the BOZA reversal was properly performed and that these defendants oppose this appeal for good reason.

6. It is denied that Petitioner complied with Mt. Pleasant Ordinances or good taste.
7. To the extent that the November 16th, 2021 Appeal/Complaint remains relevant after the filing of the Petition addressed herein, any matter therein not expressly admitted herein is denied.
8. It is admitted that the BOZA decision can be affirmed upon the parking grounds enunciated by BOZA or upon any other valid reason appearing in the record. The law does not require the prevailing party to file an appeal of the rejection of other grounds.

WHEREFORE, these Defendants pray that this Petition and Appeal be overruled and denied, and for any other relief to which these Defendants may be entitled.

s/Justin O. Lucey
Justin O. Lucey, Esq.
Justin O'Toole Lucey, P.A.
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Aug. 16, 2022
Mt. Pleasant, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
CKC PROPERTIES, LLC,	)	CASE NO. 2021-CP-10-05211
	)	
	)	
APPELLANT,	)	
	)	
vs.	)	
	)	NOTICE OF OPPOSITION TO APPEAL
THE TOWN OF MOUNT PLEASANT,	)	AND SUBMISSION OF THE RECORD
SOUTH CAROLINA, MICHAEL	)	BEFORE THE BOARD OF ZONING
ROBERTSON IN HIS OFFICIAL	)	APPEALS
CAPACOTY AS ZONING	)	
ADMINISTRATOR; JUSTIN O'TOOLE	)	
LUCEY; 415 MILL ST., INC.; AND 69	)	
SCOTT STREET, LLC	)	
	)	
RESPONDENTS.	)	
	)	

TO: ROSS APPEL, ESQ., MCCULLOUGH KHAN APPEL, ATTORNEY FOR APPELLANT
CKC PROPERTIES, LLC:

YOU WILL PLEASE TAKE NOTICE that the Respondents, the Town of Mount Pleasant (“Town”) and Michael Robertson in his capacity as Zoning Administrator (“Zoning Administrator”), by and through their undersigned counsel, will respond in opposition to this appeal at the next term of court or as soon as counsel may be heard, and will request that this Court uphold the decision of the Town’s Board of Zoning Appeals (“BOZA”) on the ground that the decision is correct as a matter of law.¹ Respondents, pursuant to S.C. Code Ann. § 6-29-

¹ Respondents Notice of Opposition to Appeal and Submission of the Record is timely in this matter. On November 17, 2021, Appellant served a Notice of Appeal and Demand for Pre-litigation Mediation on Respondents in this matter. On January 27, 2022, the parties mediated the matter. Following the mediation, the parties collectively agreed to keep the mediation open for further discussion. After officially declaring an impasse, and upon the Court’s June 24, 2022 filing of Proof of ADR, Appellant notified Respondents of plans to file an updated Petition. Appellant served that updated Petition on Respondents on July 25, 2022. Respondents now respond with this filing within the thirty days allotted by statute.

830(A), hereby submit a copy of BOZA's full record in this matter: (Exhibit A, BOZA's Final Order); (Exhibit B, September 27, 2021 Revised BOZA Meeting Agenda); (Exhibit C, September 27, 2021 Staff Report); (Exhibit D, September 27, 2021 BOZA Meeting Minutes); Exhibit E, September 27, 2021 Staff Brief 1); (Exhibit F, September 27, 2021 Staff Brief 2); (Exhibit G, September 27, 2021 BOZA Meeting Correspondence); (Exhibit H, August 12, 2021 Letter from Mr. Lucey appealing to BOZA); (Exhibit I, Town's August 23, 2021 response letter confirming receipt of Mr. Lucey's August 12, 2021 appeal).

Petitioner incorrectly argues that numerous extraneous documents belong in the record on appeal in this case, including documents from other Town entity meetings, separate BOZA meetings that did not concern the appeal at issue, and documents/communications between Town Council members and other elected officials. Under South Carolina law, the record on appeal is narrow in scope. The record is limited to only those documents that were (1) introduced at the BOZA hearing at issue, and (2) relied upon by the Board in issuing its decision. *See Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 39, 606 S.E.2d 209, 214 (Ct. App. 2004). Those extraneous documents requested for inclusion by Petitioner were neither introduced at the September 27, 2021 BOZA hearing nor relied upon by BOZA in its ruling and therefore are properly excluded from the record.

Summary of Argument in Opposition

Appellant CKC Properties, LLC (hereinafter "Appellant") is the developer of the proposed Shem Creek Boutique Hotel (hereinafter "Hotel") along Mill Street in Mt. Pleasant. Appellant seeks a building permit for the proposed Hotel, but the proposal must first fully comply with the Town's Zoning Code. Appellant's proposed development is noncompliant with the Code due to insufficient off-street parking.

As currently designed, the Hotel provides only thirty-five (35) off-street parking spots. These parking spots are designed to serve the Hotel's three buildings, which contain sixty-four (64) bedrooms within twenty-seven (27) keyed lodging units. The applicable Town Ordinance, §156.171, required 1-2 parking spaces per "Guest Room", which was unfortunately an undefined term.²

The Town Administrator originally applied the undefined term "Guest **Room**" as meaning that a hotel development only needed one parking spot per each "lodging unit" (i.e. multiple bedrooms within one "unit"). Using this misinterpretation, the Town Administrator incorrectly found that the developments' thirty-five (35) parking spaces for twenty seven (27) "lodging units" met the 1-2 space requirement, even though the development includes a total of sixty four (64) separate bed rooms.

An adjacent property owner, Justin Lucey (hereinafter "Mr. Lucey"), challenged the Town Administrator's approval of the development on numerous grounds, including the off-street parking determination. The Town's BOZA denied the appeal on most all grounds except BOZA reversed the Zoning Administrator and granted the appeal as to the parking requirement determination. BOZA, applying South Carolina rules of statutory interpretation, found that "Guest **Room**" was akin to "individual bedroom", and not "lodging unit". As such, BOZA found the Hotel's thirty-five (35) parking spaces insufficient to meet the 1-2 spaces required for each of its proposed sixty-four (64) bedrooms. Appellant now asks this Court to overrule BOZA's decision.

² The Town repealed and replaced §156.171 with Ordinance 21071. The new Ordinance clarifies the Town's intent concerning calculating off-street parking, but was not at issue in BOZA's decision here.

Appellant incorrectly cites to the “Residential Uses” section of the Town’s code, which uses the term “dwelling units” for calculating off-street parking for duplexes, townhouses, and single-family homes.³ Appellant contends that this requires BOZA to interpret “Guest Room” as synonymous with “lodging unit” and not “bedroom”.

Appellant is wrong. A hotel is a “Commercial Use” and thus the “Residential Use” section of the code is inapplicable. Further, the Commercial Use section of the code uses the phrase “lodging unit” in other contexts showing the phrase is not synonymous with “Guest Room.” Under the then-applicable Ordinance’s definition of “Boutique Hotel”, if the Hotel had “*not more than 50 lodging units*” then it qualified as a “Boutique Hotel” (as distinguished from a regular Hotel). If Town Council intended to count parking by “lodging unit” it could have used that phrase. It did not. Rather, Town Council chose the term “Guest Room” for parking requirement calculations. In utilizing an entirely different unit of measurement for parking, Town Council’s intent is clear that “lodging unit” and “Guest Room” are not synonymous. As such, BOZA properly determined that “Guest Room” meant “individual bedroom” and reversed the Town Administrator’s determination that Appellant met off-street parking requirements. This Court should uphold BOZA’s decision.⁴

Respondents’ opposition to this appeal will be further supported by a Memorandum in Opposition containing citation to applicable case law and statutory authorities, which the Court may receive or require in advance of a hearing on this matter.

³ Mt. Pleasant Code of Ordinances, §156.171 (since overruled).

⁴ Appellant also appeals BOZA’s decision concerning Mr. Lucey’s standing to appeal and the timeliness of that appeal. Mr. Lucey appealed the Town Administrator on August 12, 2021, which was within the time allotted by law. *See* Exhibit H. Appellant’s attempt to use August 23, 2021, as the date of the appeal is wrong, and the timeliness argument, meritless. Similarly, Mr. Lucey had standing as an aggrieved adjacent property owner under the law. This Court should uphold BOZA’s determinations on timeliness and standing.

CLEMENT RIVERS, LLP

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Attorneys for Respondents The Town of Mount Pleasant, South Carolina, Michael Robertson in his capacity as Zoning Administrator for The Town of Mount Pleasant, South Carolina

Charleston, South Carolina

Dated: August 24, 2022

EXHIBIT A

(October 26, 2021 Final Order)



BOARD OF ZONING APPEALS
FINAL ORDER

CASE A-10-2021

Mr. Justin O'Toole Lucey
415 Mill Street
Mount Pleasant, SC 29464
Appellant

TMS# 517-16-00-058, 057, 034, 035

Appeal from Zoning Administrator's determination asserting the following: The project plans provide for insufficient parking spaces (only 34 spaces), violating §156.171 "Accommodations and Lodging," which requires "1-2" parking spaces per "Guest Room," and the nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 Guest Rooms; That the project is not a permissible use under the current zoning of these parcels (§156.325) and violates §156.101; That the project violates the recent BOZA decision not to permit residential uses above three stories; and that the project violates §156.108 Curb Cuts, Visibility at Intersection, and Pedestrian Access (A)(1)(3)(4) and (B) .

The Town of Mount Pleasant (hereafter “Town”) Board of Zoning Appeals (hereafter “Board”) held a public meeting on September 27, 2021. This Appeal arises from the planned development of the Shem Creek Boutique Hotel (hereafter “Hotel”) on Mill Street located immediately adjacent to Appellant’s property (Appellant’s parcel and the proposed development are adjoining properties located along Mill Street with Lucas Street separating them). Appellant challenges a number of the Town staff determinations approving the proposed development plans for the Hotel.

The Board finds that the Appeal is timely filed and that Appellant has standing as an aggrieved party. This Appeal concerns an argument that the proposed Hotel plans offer insufficient parking for the Hotel development and do not meet the minimum required under Town ordinances. Appellant asserts he will suffer injury to his adjoining property caused by the excessive parking burdens from the development in an area. During the meeting we received a number of public comments supporting the finding that this area already suffers insufficient parking. We find the parking concerns, among other concerns stated in the Appeal, constitute sufficient particularized injury to Appellant’s adjoining property and Appellant constitutes an “aggrieved party” with standing for this Appeal.

Appellant challenges the Zoning Administrator’s determination in the following matters:

- A. Appellant argues the project plans provide for insufficient parking spaces (only 34 spaces), violating §156.171 “Accommodations and Lodging,” which requires “1-2” parking spaces per “Guest Room,” and the nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 “Guest Rooms”.
- B. Appellant contends that the project is not a permissible use under the current zoning of these parcels (§156.325), and violates §156.101;
- C. Appellant argues that the project violates the recent BOZA decision not to permit residential uses above three stories.
- D. Appellant contends the project violates §156.108 Curb Cuts, Visibility at Intersection, and Pedestrian Access (A)(1)(3)(4) and (B).

At the September 27, 2021 meeting, the Board heard from the Town Administrator, the Appellant and the Applicant for the proposed development along with comments from the public. The Board entered into executive session to receive legal advice from counsel on the legal issues involved in this appeal, and thereafter, unanimously approved a motion to grant the appeal in part and deny the appeal in part as follows:

A. The Appeal is granted with respect to insufficient parking under §156.171.

The Board grants the Appeal with respect to insufficient parking. The proposed plans for the Hotel do not contain a sufficient number of off-street parking spaces and therefore violate applicable Town Zoning Ordinances.

Section 156.171 requires “1-2” parking spaces per “Guest Room” for “Accommodations and Lodging” developments. This Appeal turns on whether the phrase “Guest Room” in the Ordinance references the number of bed rooms proposed for the Hotel development or number of keyed lodging units (regardless of the number of bed rooms for each keyed lodging unit).

The Town Administrator calculated the minimum number of required parking spaces for the proposed Hotel development under §156.171 based on an interpretation of the phrase “Guest Room” is synonymous with the phrase “keyed lodging unit.” The Town Administrator therefore only requires a minimum of 1 parking space per keyed lodging unit for the Hotel development regardless of the number of bed rooms in each keyed lodging unit. The Hotel development at issue proposes multiple bedrooms for each keyed lodging unit. Specifically, the proposed Hotel development contains twenty seven (27) individually keyed lodging units. The nineteen (19) units in Building A contain thirty two (32) or more bed rooms; the eight (8) townhouse units contain an additional 32 or more bed rooms, for a total of sixty four (64) bed rooms within the proposed Hotel development. The plans for the proposed Hotel development provide for thirty five (35) off-street parking spaces, which the Town Administrator found complied with §156.171 because it exceeded the twenty seven (27) keyed lodging units proposed for the development.

We disagree with the Town Administrator’s interpretation of §156.171. The phrase “Guest Room” is undefined in the Town ordinances. The Board, however, finds it significant that Town Council uses the term “Guest Room” to determine the number of parking spaces required for a “Boutique Hotel” rather than using the term “Lodging Unit,” which is used in other parts of the Town Ordinances. Specifically, Town Council uses the term “Lodging Unit” in the Town Ordinance defining what constitutes a “Boutique Hotel”:

Hotel, Boutique (includes INN). A building or group of attached or detached buildings *containing not more than 50 lodging units* intended primarily for rental or lease to transients by the day, week, or month. Such uses may provide additional services such as daily maid service, restaurants, meeting rooms, and/or recreation facilities.

See, §156.007.

To determine whether an accommodation or lodging business constitutes a “Boutique Hotel” as opposed to a standard “Hotel”, Town council asks Town staff to count the number of “Lodging Units”. But for parking requirements, Town Council asks Town staff to count the number of “Guest Rooms”. Town Council could have easily used the phrase Lodging Unit for purposes of the parking requirements with in §156.171 as well but did not do so. Instead, Town Council uses a different phrase - “Guest Room” within §156.171.

We find the difference in phrasing by Town Council for purposes of parking requirements contained within §156.171 to have significance. We thus find that it was an error for the Town Administrator to find that “Guest Room” and “Lodging Unit” are identical. We find that Town Council’s use of the phrase “Guest Room” references the number of bed rooms in a proposed accommodation and lodging development, rather than simply the number of keyed

lodging units. This is logical given a townhouse unit with 4 bedrooms is likely to have more parking needs than a single one room hotel unit. Thus, the plans for this proposed development do not provide for sufficient parking spaces to satisfy the requirement under §156.171. Accordingly, we grant the appeal on this basis.

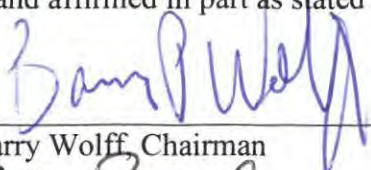
B. The Appeal is denied in all other respects.

We reject the Appellant's additional grounds for the Appeal and deny the Appeal in all other respects. We find that the proposed development of a Boutique Hotel is generally a permissible use for these parcels, and we find that the proposed development satisfies the definition of "Boutique Hotel". We reject Appellant's argument that an accommodation business must offer restaurant, maid and/or recreation services to constitute a "Boutique Hotel". In the applicable definition provision (quoted above), Town Council uses the term "may" rather than "shall" when describing the services Appellant references, and we find the phrasing is significant and shows these services are permitted but not required.

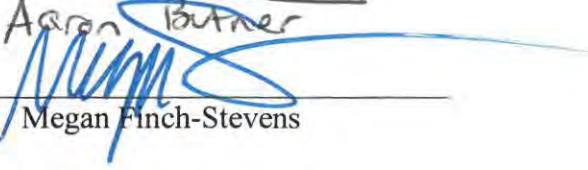
We further reject the Appellant's argument that the proposed development violates the height requirements in the applicable Zoning Ordinances, and reject the Appellant's arguments regarding the curb cut requirements.

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THE BOARD, THEREFORE, ORDERS that the Appeal is granted in part and denied in part, and the Zoning Administrator's decision is reversed in part and affirmed in part as stated herein.



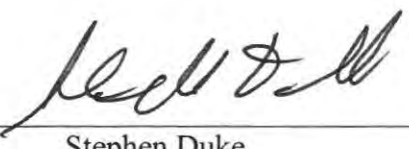
Barry Wolff, Chairman


Aaron Butler


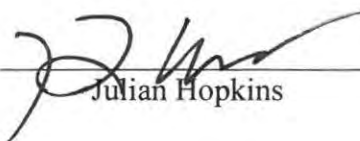
Megan Finch-Stevens



Stephen Wood



Stephen Duke

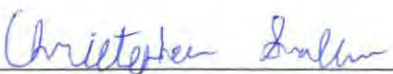


Julian Hopkins

(Recused: Elliott Barrow)

Date Final Order Signed: 10/25/2021.

Date mailed to parties in interest: 10/26/2021.



Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

EXHIBIT B

(September 27, 2021 Revised Meeting Agenda)



**BOARD OF ZONING APPEALS
REVISED MEETING NOTICE (9-17-21)
Mount Pleasant Town Hall Council Chambers
100 Ann Edwards Lane
September 27, 2021
6:00 PM**

*NOTE: Items in [blue](#) are hyperlinks to submittals and additional information.
Some documents are large and may take a few moments to load.
[Green arrows >](#) in Minutes are hyperlinks to the recording.*

- A. Roll Call
- B. Approval of Agenda
- C. Approval of [Minutes](#)
- D. Public Comment
- E. General Correspondence
- F. Explanation of Procedures
- G. Administration of Oath
- H. Business

STAFF REPORT

1. [Case V-40-21](#), Faison Road, TMS# 596-15-00-700. Request for relief from the strict application of §156.173 (B) to allow gravel pervious parking for commercial boat storage. The ordinance requires all parking spaces shall be surfaced with a suitable paving material such as asphalt, concrete or specialty pavers but not gravel or similar material.
2. **WITHDRAWN BY STAFF** [Case V-41-21](#), 336 Coinbow Drive, TMS# 514-03-00-062. Request for relief from the strict application of §156.225 (C) to allow removal of one (1) historic 40-inch Laurel Oak tree.
3. [Case A-10-21](#), Mill Street Boutique Hotel, TMS# 517-16-00-058, 057, 034, and 035. Appeal of the Zoning Administrator's determination in the following matters: §156.171 "Accommodations and Lodging," requires that the application provide "1-2" parking spaces per "Guest Room." The nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 Guest Rooms. The project plans provide for 34 parking spaces, violating the Ordinance. Applicant contends that the project is not a permissible use under the current zoning of these parcels (§156.325); That the project violates both paragraphs of §156.101 (A) and (C); That the project violates the recent BOZA decision not to permit residential uses above three stories. The plan continues to set forth residential balconies on the top floor and other unexplained structures. The shed-like areas on roof facing the pool at 6 and 9 o'clock (p 35 and 57) appear to be future roof top food and beverage structures. Finally, applicant contends the project violates §156.108 Curb Cuts, Visibility at Intersection, and Pedestrian Access (A)(1)(3)(4) and (B).

[ZONING RECORD](#)

[CORRESPONDENCE](#)

[STAFF BRIEF 1](#)

[STAFF BRIEF 2](#)

4. [Case V-42-21](#), 806 Milldenhall Road, TMS# 559-03-00-026. Request relief from the strict application of §156.303 (C) to allow a 5-foot 6-inch front yard encroachment. The ordinance requires a 25-foot front yard setback.
5. [Case V-43-21](#), 520 King Street, TMS# 532-01-00-227. Request for relief from the strict application of §156.119 (G)(2) to allow utilization of a Telecommunications Carrier on Wheels (COW) for a period not to exceed 120 days from October 31, 2021. The ordinance limits the use of COWs for a period not to exceed 120 days following a natural disaster or local emergency declaration. A variance, Case V-16-2021, was approved on May 24, 2021, and the applicants are now requesting an additional 120 days.
6. **STREET NAME TYPO** [Case V-44-21](#), 114 ~~Freedom~~ Freeman Street, TMS# 532-05-00-171. Request for relief from the strict application of §156.225 (C) to allow removal of one (1) historic 31.5-inch Laurel Oak tree and one (1) historic 14.5-inch and 15-inch double trunk Live Oak tree.

CORRESPONDENCE

- I. Approval of Final Orders
- J. Adjournment

Title VI Notice: The Town of Mount Pleasant fully complies with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and related statutes and regulations in all programs and activities. Town meetings are conducted in accessible locations, materials can be provided in accessible formats, and provided in languages other than English. If you would like accessibility or language accommodation, please contact the Title VI Coordinator one week in advance of the meeting, at the Town of Mount Pleasant at 843-884-8517.

RESOURCE LINKS		
Explanation of BOZA Process	Case Law Notes	Comprehensive Plan
Future Land Use Map	Online Document Library	Projects and Applications Map
Use Table	Zoning Code (PDF)	Zoning Map (interactive)

NOTE: Correspondence must be received no later than 4:30 PM, Wednesday, September 22, 2021

EXHIBIT C

(September 27, 2021 Staff Report)



BOARD OF ZONING APPEALS
Staff Report
September 27, 2021

1. **Case V-40-21, Faison Road, TMS# 596-15-00-700.** Request for relief from the strict application of §156.173 (B) to allow gravel pervious parking for commercial boat storage. The ordinance requires all parking spaces shall be surfaced with a suitable paving material such as asphalt, concrete or specialty pavers but not gravel or similar material.

Applicable Case Law Notes: 6.A Variance applicant bears the burden of proving its entitlement to a variance from terms of a zoning regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 199) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

Applicable Case Law Notes: 6.B Variance applicant bears burden of establishing existence of four statutory criteria for variance to be granted. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. App. 1997).

Applicable Case Law Notes: 3.D Profitability. The fact that a property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955).

1. *Staff Comment: Please see the applicant's submittal for justification of the relief sought.*
2. *Staff Comment: The applicant is requesting to use gravel pervious parking in lieu of asphalt, concrete or specialty pavers.*
3. Law 1: Section 156.173 (B) Area and Paving Requirements
(B) All parking spaces shall be surfaced with a suitable paving material such as asphalt, concrete or specialty pavers (but not gravel or similar material), except those serving one- and two-family dwelling units, and other uses requiring or providing six or fewer parking spaces, which may instead be surfaced with other suitable material, as determined by the Zoning Administrator.
4. *Staff Comment: The applicant will also need relief from providing landscaped areas at ends of parking rows. Although not formally requested in the application, the request can be decided as part of the overall request.*
5. Law 2: Section 156.173 (F)(1) Area and Paving Requirements
(F) Landscaped areas at ends of parking rows.
(1) The ends of parking rows shall be terminated in a landscaped area, outlined by curb and gutter or concrete wheel stops.
6. *Staff Comment: If the variance is approved, staff recommends the Board condition the variance for the pervious material to be approved by the Town Engineer.*
7. Law 3: Section 156.411 POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.
(A) *Powers.* The Board of Zoning Appeals shall have all the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:

- (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.
 - (a) A variance may be granted in an individual case of unnecessary hardship, if the Board makes and explains, in writing, the following findings:

Applicant Submittal Responses:

We would like to add a Permeable Parking Lot to our Boat Storage on Faison Road. We have been approved for a Paved Parking Lot. The Paved Parking Lot will cause a drainage issue for the area.

8. Law 2(a): "There are extraordinary and exceptional circumstances pertaining to the particular piece of property;"

This area needs to be permeable as adding a paved parking lot will cause a drainage issue.

9. Law 2(b) "These conditions do not generally apply to other properties in the vicinity."

There is property on Highway 17, Fender Mender that was allowed a permeable parking lot.

10. Law 2(c): "Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;"

Creating a drainage issue, where permeable parking lot will allow for constant water flow.

11. Law 2(d): "Authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:"

The permeable parking lot will allow for water flow and proper drainage. The paved parking will cause drainage issues.

[Applicable Case Law Note: 2.E](#) In determining whether to grant a variation in the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. *Rush v. City of Greenville* (S.C. 1965) 246 S.C. 268, 143 S.E. 2d 527.

[Applicable Case Law Note: 1.A](#) In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston* (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456.

[Applicable Case Law Note: 1.B](#) Granting a variance from the terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 1999) 335 S.C. 209, 516 S.E.d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

2. WITHDRAWN BY STAFF [Case V-41-21](#), 336 Coinbow Drive, TMS# 514-03-00-062.

Request for relief from the strict application of §156.225 (C) to allow removal of one (1) historic 40-inch Laurel Oak tree.

[Applicable Case Law Notes: 6.A](#) Variance applicant bears the burden of proving its entitlement to a variance from terms of a zoning regulation. Decided under former law.

Restaurant Row Associates v. Horry County (S.C. 199) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

Applicable Case Law Notes: 6.B Variance applicant bears burden of establishing existence of four statutory criteria for variance to be granted. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. App. 1997).

Applicable Case Law Notes: 3.D Profitability. The fact that a property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955).

1. *Staff Comment: Please see the applicant's submittal for justification of the relief sought.*
2. *Staff Comment: The applicant is requesting to remove a 40-inch Laurel Oak.*
3. *Staff Comment: The Town Arborist provided a report on the tree proposed for removal which can be found [here](#).*
4. *Staff Comment: The home builder compiled information from the home site positioning meetings held with Homeowner's Association which can be found [here](#).*
5. Law 1: Section 156.225(C) PROVISIONS FOR TREE REMOVAL
(C) On individually platted, single-family residential lots, the following criteria shall be used to determine the removal of historic and significant trees.
 - (1) Tree location in relation to property boundaries, infrastructure, existing physical features.
 - (2) The condition of the canopy, overall health, and species.
 - (3) The nature of the request, justification, and reason for removing the tree.
 - (4) Whether practical alternatives have been vetted to preserve the tree.
6. Law 2: Section 156.411 POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.
 - (1) *Powers.* The Board of Zoning Appeals shall have all the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:
 - (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.
 - (a) A variance may be granted in an individual case of unnecessary hardship, if the Board makes and explains, in writing, the following findings:

Applicant Submittal Responses:

We are requesting a permit to remove to trees of which the arborist reaching maximum age and potential hazard.

7. Law 2(a): "There are extraordinary and exceptional circumstances pertaining to the particular piece of property;"

These trees impede the construction as described in the site/architect plans attached to this request.

8. Law 2(b) "These conditions do not generally apply to other properties in the vicinity."

There are other mature and healthy trees on the property.

9. Law 2(c): "Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;"

Large equipment would be required to add fill dirt for the foundation if the site plan had to be adjusted for these two trees. The expense would be profoundly increased if the house had to be built nearer the water's edge. It seems unreasonable for trees that are described as reaching their maximum age and potential hazard.

10. Law 2(d): "Authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:"

There was no answer provided on the application regarding Law2(d).

Applicable Case Law Note: 2.E In determining whether to grant a variation in the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. *Rush v. City of Greenville* (S.C. 1965) 246 S.C. 268, 143 S.E. 2d 527.

Applicable Case Law Note: 1.A In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston* (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456.

Applicable Case Law Note: 1.B Granting a variance from the terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 1999) 335 S.C. 209, 516 S.E.d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

3. **Case A-10-21, Mill Street Boutique Hotel, TMS# 517-16-00-058, 057, 034, and 035.**

Appeal of the Zoning Administrator's determination in the following matters: §156.171 "Accommodations and Lodging," requires that the application provide "1-2" parking spaces per "Guest Room." The nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 Guest Rooms. The project plans provide for 34 parking spaces, violating the Ordinance. Applicant contends that the project is not a permissible use under the current zoning of these parcels (§156.325); That the project violates both paragraphs of §156.101 (A) and (C); That the project violates the recent BOZA decision not to permit residential uses above three stories. The plan continues to set forth residential balconies on the top floor and other unexplained structures. The shed-like areas on roof facing the pool at 6 and 9 o'clock (p 35 and 57) appear to be future roof top food and beverage structures. Finally, applicant contends the project violates §156.108 Curb Cuts, Visibility at Intersection, and Pedestrian Access (A)(1)(3)(4) and (B).

Applicable Case Law Notes: 1.A Board must follow statutory standards. In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston* (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456.

Applicable Case Law Notes: 5.A There is a presumption in favor of the validity of municipal zoning ordinances. The power of zoning is reserved to the legislative branch under the police power, and when exercised reasonably it will not be disturbed by the courts. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. *Momeier v. John McAlister, Inc.* (S.C. 1957) 231 S.C. 526, 99 S.E.2d 177.

Applicable Case Law Notes: 5.E Legislative judgment must be allowed to control. If the validity of a classification made for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. *Bob Jones University, Inc. v. Greenville*, 243 SC 351, 133 S.E.2d 843, appeal dismissed 84 S.Ct. 1913, 378 U.S. 581, 12 L.Ed.2d 1036.

1. *Staff Comment: Please see the applicant's submittal for justification of the relief sought.*
2. Law 1: [Section 156.411](#) POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.
 - (A) Powers. The Board of Zoning Appeals shall have all the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:
 - (1) To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;
 - (5) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.
 - (a) The appeal must be taken within 30 days from the date the appealing party has received actual notice of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal.
3. *Staff Comment: The Zoning Administrator discussed off-street parking requirements with the developer of the Shem Creek Boutique Hotel on or around February and March 2021.*
4. *Staff Comment: The developer proceeded with project design and site-specific development plans based on the determination made by the Zoning Administrator.*
5. Fact 1: The developer submitted plans to determine feasibility of the project on March 19, 2021.
6. Fact 2: The developer filed an application and submitted plans for pre-application review (Conceptual Design Review Team) of the project on May 13, 2021. Conceptual DRT reviews projects for zoning compliance.
7. Fact 3: The applicant filed an application and submittal for Preliminary Design Review Board review on July 15, 2021. The submittal was hyperlinked to the Commercial Design Review Board July 29, 2021, meeting agenda.
8. Fact 4: The agenda was posted to the Town website on July 19th, 2021, at 11:35 am.
9. Fact 5: Mr. Lucey filed an appeal with the Town Legal Department, as described in the agenda, on August 12, 2021.
10. *Staff Comment: Based on the dates of the email correspondence from the Mr. Lucey, the appeal appears to have been filed within 30 days from the date the appealing party received actual notice of the action from which the appeal is taken by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for the appeal.*
11. Law 2: [Section 156.411](#) POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.
 - (D) Exercise of powers and duties.
 - (1) In exercising the above power, the Board of Zoning Appeals may:
 - i. In conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or modify the order, requirements, decision, determination, and to that end shall have all the powers of the officer from whom the appeal is taken;
12. *Staff Comment: Staff will be present at the meeting to provide testimony and may provide additional written information for the board.*

4. [Case V-42-21](#), 806 Milldenhall Road, TMS# 559-03-00-026. Request relief from the strict application of §156.303 (C) to allow a 5-foot 6-inch front yard encroachment. The ordinance requires a 25-foot front yard setback.

[Applicable Case Law Notes: 6.A](#) Variance applicant bears the burden of proving its entitlement to a variance from terms of a zoning regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 199) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

[Applicable Case Law Notes: 6.B](#) Variance applicant bears burden of establishing existence of four statutory criteria for variance to be granted. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. App. 1997).

1. *Staff Comment: Please see the applicant's submittal for justification of the relief sought.*
2. *Staff Comment: The applicant is requesting a 5-foot 6-inch encroachment into the front yard setback.*
3. Fact: The property is zoned R2-Low-Density Residential District.
4. Law 2: Section [156.303](#) Residential Use Districts. (C) *Lot, yard, height, and coverage requirements*. [TABLE] states that the minimum yard requirements for R-2 District are:

Front: 25 feet
Rear: 25 feet
Side, Combined: 20 feet
Side, Individual: 10 feet

5. Law 3: [Section 156.411](#) POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.
 - (A) *Powers*. The Board of Zoning Appeals shall have all the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:
 - (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.
 - (a) A variance may be granted in an individual case of unnecessary hardship, if the Board makes and explains, in writing, the following findings:

Applicant Submittal Responses:

We are requesting a Variance of Zoning Code 156.303(C) to allow a 5-foot encroachment on the street side easement line of our residential property. We would like to build a usable size front porch (8 feet depth, approximately 30 feet in length). Based on the drawing attached the encroachment would be less than 5 feet at the two corners of the porch.

6. Law 2(a): "There are extraordinary and exceptional circumstances pertaining to the particular piece of property;"

Our home is located on a cul-de-sac and therefore has a curved front yard easement. Due to the curvature of the easement, we have varying setback measurements from approximately 43 feet to 27.6 feet. The location of the porch corners would be 31 feet and 30 feet from the easement.

7. Law 2(b) "These conditions do not generally apply to other properties in the vicinity."

In the Point Pleasant neighborhood there are 5 cul-de-sac street areas. There are several houses, not all, located on those cul-de-sac areas with functional front porches.

8. Law 2(c): "Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;"

At the current time we have only a 28-foot set back from the easement line for the middle part of the porch design. We would need a variance, otherwise the porch is not functional at any depth less than 8 feet.

9. Law 2(d): "Authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:"

We have received letters in favor of our request from both of our neighbors as well as the President of the Homeowners Association. The building of an 8-foot depth porch would not infringe on our neighbors in any way. On our street alone out of the approximately 38 houses, 23 of them have functional front porches. The addition of a porch to our home would most certainly be in keeping with the overall design of the neighborhood.

[Applicable Case Law Note: 2.E](#) In determining whether to grant a variation in the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. *Rush v. City of Greenville* (S.C. 1965) 246 S.C. 268, 143 S.E. 2d 527.

[Applicable Case Law Note: 1.A](#) In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston* (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456.

[Applicable Case Law Note: 1.B](#) Granting a variance from the terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 1999) 335 S.C. 209, 516 S.E.d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

5. [Case V-43-21, 520 King Street, TMS# 532-01-00-227](#). Request for relief from the strict application of §156.119 (G)(2) to allow utilization of a Telecommunications Carrier on Wheels (COW) for a period not to exceed 120 days from October 31, 2021. The ordinance limits the use of COWs for a period not to exceed 120 days following a natural disaster or local emergency declaration. A variance, Case V-16-2021, was approved on May 24, 2021, and the applicants are now requesting an additional 120 days.

[Applicable Case Law Notes: 6.A](#) Variance applicant bears the burden of proving its entitlement to a variance from terms of a zoning regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 199) 335 S.C. 209, 516.S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

[Applicable Case Law Notes: 6.B](#) Variance applicant bears burden of establishing existence of four statutory criteria for variance to be granted. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. App. 1997).

1. *Staff Comment: Please see the applicant's submittal for justification of the relief sought.*
2. Fact: A variance request (V-16-2021) to allow a temporary Carrier On Wheels (COW) to be located at the site was approved on May 24, 2021.

3. Fact: The Board placed the following conditions on the V-16-2021:
 1. The 120-day timeframe for the temporary telecommunications tower shall commence on July 1, 2021, and end October 31, 2021;
 2. The temporary telecommunications tower will be removed no later than November 15, 2021, to remove the temporary telecommunications tower;
 3. If the permanent facility is completed and begins operation before October 31, 2021, the temporary telecommunications tower will be removed within two weeks of the operational date of the permanent facility located at Pherigo Street.
4. *Staff comment: The applicant is requesting an additional extension beyond November 15, 2021.*
5. Fact: The property is zoned PI-2, Public Institutional 2.
6. Law 1: [Section 156.119 ADDITIONAL PROVISIONS.](#)
 - (G) The use of COWs and CALFs are allowed in any zoning district as follows:
 - (2) For a period not to exceed 120 days following a natural disaster or local emergency as declared by competent official authority.
7. *Staff Comment: The applicant is requesting relief from the provision limiting the use of COWs for a period not to exceed 120 days **following a natural disaster or local emergency as declared by a competent official authority** (emphasis added). The applicant is requesting to allow the COW for a period not to exceed 120 days to provide uninterrupted service during construction of a permanent facility nearby.*
8. Law 2: [Section 156.411 POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.](#)
 - (A) *Powers.* The Board of Zoning Appeals shall have all the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:
 - (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.
 - (a) A variance may be granted in an individual case of unnecessary hardship, if the Board makes and explains, in writing, the following findings:

Applicant Submittal Responses:

Placement of a COW (ballast pole) for a period not to exceed 120 days from October 31, 2021.

9. Law 2(a): "There are extraordinary and exceptional circumstances pertaining to the particular piece of property;"

The property has been the location for a water tank since 1934. The water tank has been utilized for decades as a support structure for wireless carriers to provide coverage for both wireless voice and broadband to the surrounding area. The water tank has been removed from the property.

10. Law 2(b) "These conditions do not generally apply to other properties in the vicinity."

No other properties in the vicinity contain a water tank that has been utilized as a support structure for wireless carriers to provide coverage for both wireless voice and broadband to the surrounding area.

11. Law 2(c): "Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;"
- The water tank has been removed by Mount Pleasant Waterworks. While not a declared natural disaster or local emergency, this will result in the citizens of Mount Pleasant being unable to use their wireless devices in the area to reach 911 first responders: fire; police; and EMS.
12. Law 2(d): "Authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:"
- Authorization of the temporary 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. The authorization of the temporary variance will simply allow AT&T and T-Mobile to continue to provide essential wireless infrastructure to the surrounding area until their relocation site at 1227 Pherigo Street is able to commence broadcasting.

[Applicable Case Law Note: 2.E](#) In determining whether to grant a variation in the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. *Rush v. City of Greenville* (S.C. 1965) 246 S.C. 268, 143 S.E. 2d 527.

[Applicable Case Law Note: 1.A](#) In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston* (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456.

[Applicable Case Law Note: 1.B](#) Granting a variance from the terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 1999) 335 S.C. 209, 516 S.E.d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

6. [Case V-44-21](#), 114 Freeman Street, TMS# 532-05-00-171. Request for relief from the strict application of §156.225 (C) to allow removal of one (1) historic 31.5-inch Laurel Oak tree and one (1) historic 14.5-inch and 15-inch double trunk Live Oak tree.

[Applicable Case Law Notes: 6.A](#) Variance applicant bears the burden of proving its entitlement to a variance from terms of a zoning regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 199) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

[Applicable Case Law Notes: 6.B](#) Variance applicant bears burden of establishing existence of four statutory criteria for variance to be granted. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. App. 1997).

[Applicable Case Law Notes: 3.D](#) Profitability. The fact that a property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955).

1. *Staff Comment: Please see the applicant's submittal for justification of the relief sought.*
2. *Staff Comment: The applicant is requesting to remove one (1) historic 31.5-inch Laurel Oak tree and one (1) historic 14.5-inch and 15-inch double trunk Live Oak tree.*
3. *Staff Comment: The applicant provided a report on the 31. 5-inch Laurel Oak tree which can be found [here](#).*
4. *Staff Comment: A Town arborist provided a report on both of the trees proposed for removal which can be found [here](#).*

5. Law 1: [Section 156.225](#) PROVISIONS FOR TREE REMOVAL
(C) On individually platted, single-family residential lots, the following criteria shall be used to determine the removal of historic and significant trees.
 - (1) Tree location in relation to property boundaries, infrastructure, existing physical features.
 - (2) The condition of the canopy, overall health, and species.
 - (3) The nature of the request, justification, and reason for removing the tree.
 - (4) Whether practical alternatives have been vetted to preserve the tree.
6. Law 2: [Section 156.411](#) POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.
 - (A) *Powers.* The Board of Zoning Appeals shall have all the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:
 - (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.
 - (a) A variance may be granted in an individual case of unnecessary hardship, if the Board makes and explains, in writing, the following findings:

Applicant Submittal Responses:

We are requesting a permit to remove two trees of which the arborist reaching maximum age and potential hazard.

7. Law 2(a): "There are extraordinary and exceptional circumstances pertaining to the particular piece of property;"

This particular piece of property has abnormally low topography compared to the immediate surrounding lots, as well as compared to a larger 14-acre section of Old Village. Due to this, there is an extensive amount of water which drains towards our lot. This is also why the lot has a pump station in the right of way at the front of the property (see attachments). The conditions above require a large amount of on-site underground detention to assist with this. In addition, the town has acknowledged this problem and is planning a large infrastructure project to install catch basins down the street. I must also add, that at one point, I was informed the town looked at purchasing the property to create a retention pond. All this information shows that 114 Freeman is not only an issue for the owner(s) but for the surrounding areas as well. The requirement for the underground detention cannot be satisfied with the existing trees conflicting with the tanks, which proves to be a problem for multiple homeowners, not just us (see attachments).

8. Law 2(b) "These conditions do not generally apply to other properties in the vicinity."

The surrounding properties as shown on the attached topographical map sit substantially higher than 114 Freeman Street. These properties were also developed prior to the implementation of the Old Village Builders Guide and studies done by Thomas & Hutton. Therefore, the same accommodations were not required for their sites during development.

9. Law 2(c): "Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;"

The existing conditions have made the existing structure uninhabitable and unsalvageable. The redevelopment requirements per the Builder's Guide will require excessive detention to prevent runoff due to the location and topography of the

site. Reducing the runoff on others' property would be more viable if we can mitigate the trees with new plantings as shown on our landscape plans.

10. Law 2(d): "Authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:"

The variance will not be of detriment to any adjacent property, since the request to remove the trees in question is to account for stormwater detention. This will benefit the adjacent properties and help ensure the redevelopment does not impact them. Furthermore, not only the trees in question, but all trees will be replanted through the town's mitigation requirements as show on the attached landscape plan. The plan has been completed by a local landscape architect, Josh Dunn, who also lives in the Old Village. This plan will embrace the character of the district and remove the eye sore which is 114 Freeman, that has been unmaintained for years. Thus, our plan will be not only beneficial to us, the property owner, but other surrounding owners, and the Old Village as a whole.

[Applicable Case Law Note: 2.E](#) In determining whether to grant a variation in the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. *Rush v. City of Greenville* (S.C. 1965) 246 S.C. 268, 143 S.E. 2d 527.

[Applicable Case Law Note: 1.A](#) In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston* (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456.

[Applicable Case Law Note: 1.B](#) Granting a variance from the terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 1999) 335 S.C. 209, 516 S.E.d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

EXHIBIT D

(September 27, 2021 Meeting Minutes)

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
BOARD OF ZONING APPEALS
September 27, 2021
MINUTES**

STAFF REPORT

Present: Barry Wolff, Chair, Stephen Duke, Stephen Wood, Aaron Butner, Elliott Barrow, Megan Stevens, Julian Hopkins
Staff: Michael Robertson, Kara Browder, David Pagliarini, Jane Yager-Baumrind
Also: Stephanie Ramia, attorney for Board

Barry Wolff called the meeting to order at 6:00pm

A. Approval of Agenda

▶ *Mr. Hopkins moved for approval of the agenda. Ms. Stevens seconded the motion. All in favor.*

B. Approval of Minutes

▶ *Mr. Hopkins moved for approval of the minutes. Ms. Stevens seconded the motion. All in favor.*

C. Public Comment

▶ There being no comments, Mr. Wolff continued with the agenda.

D. General Correspondence

▶ There was no correspondence.

E. Explanation of Procedures

▶ Mr. Wolff reviewed the procedures with the public.

F. Administration of Oath

▶ Mr. Wolff administered the Oath to those speaking.

G. Business

1. **Case V-40-21, Faison Road, TMS# 596-15-00-700. Request for relief from the strict application of §156.173 (B) to allow gravel pervious parking for commercial boat storage. The ordinance requires all parking spaces shall be surfaced with a suitable paving material such as asphalt, concrete or specialty pavers but not gravel or similar material.**

▶ Ms. Browder reviewed staff comments with the Board.

▶ Mr. Brad Mann and Ms. Kimberly Mann reviewed the request with the Board.

There being no comments, Mr. Wolff closed public comment.

▶ *Mr. Wood moved for approval of the variance to approve with the following conditions:*

- *The Town Engineer must approve permeable materials and complete an inspection post-installation to ensure they have been appropriately installed.*
- *Landscaping to be installed at the end of each parking row and approved by the Town*
- *If a boat washing area is added, the applicant must receive approval from the Town Engineer to ensure off-flow water is appropriately directed.*

Mr. Hopkins seconded the motion. All in favor.

2. **Case V-41-21, 336 Coinbow Drive, TMS# 514-03-00-062. Request for relief from the strict application of §156.225 (C) to allow removal of one (1) historic 40-inch Laurel Oak tree.**

This item was withdrawn by staff.

3. **Case A-10-21, Mill Street Boutique Hotel, TMS# 517-16-00-058, 057, 034, and 035. Appeal of the Zoning Administrator's determination in the following matters:**

- **§156.171 “Accommodations and Lodging,” requires that the application provide “1-2” parking spaces per “Guest Room.” The nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 Guest Rooms. The project plans provide for 34 parking spaces, violating the Ordinance. Applicant contends that the project is not a permissible use under the current zoning of these parcels (§156.325);**
- **That the project violates both paragraphs of §156.101 (A) and (C); That the project violates the recent BOZA decision not to permit residential uses above three stories. The plan continues to set forth residential balconies on the top floor and other unexplained structures. The shed-like areas on roof facing the pool at 6 and 9 o’clock (p 35 and 57) appear to be future roof top food and beverage structures.**
- **Finally, applicant contends the project violates §156.108 Curb Cuts, Visibility at Intersection, and Pedestrian Access (A)(1)(3)(4) and (B).**
ZONING RECORD CORRESPONDENCE STAFF BRIEF 1
STAFF BRIEF 2

▶ Mr. Pagliarini, Corporation Counsel, stated that he is representing staff in this matter, so Ms. Ramia will be Counsel for the Board.

▶ Mr. Barrow recused himself due to a conflict of interest.

▶ Justin Lucey, 415 Mill Street, reviewed the request with the Board. He stated that he is representing three interested parties in this matter. He asked that he be afforded additional time to review his request.

▶ Mr. Wolff stated that Mr. Lucey would be limited to five minutes presentation time.

▶ Mr. Lucey asked for additional time. Mr. Wolff denied the request and noted that he would be afforded a rebuttal time.

▶ Mr. Robertson presented staff comments with the Board.

▶ Ms. Christine Reilly, 304 Lucas Street, suggested that the proposed design does not meet the character of the area. She expressed concern with drainage and that the project would affect the wetlands. She stated that it is a small roadway and expressed concern with additional traffic. She expressed concern parking as well. She suggested that the building is too massive and there is “too much concrete”. She suggested that the building should be more in keeping with the “local look” of the Shem Creek area.

▶ Ms. Ashley Woody, 110 Friend Street, expressed concern with the parking in the area and that this project would exacerbate an already constrained area. She suggested that there is not sufficient parking for the project. She also expressed concern that the required landscaping is encroaching into the right-of-way. She asked that the project should not be able to move forward until they can provide sufficient off-street parking.

▶ Mr. Charles Lucey, 109 Simmons Street, expressed concern that the project does not fit the character of the neighborhood. He expressed concern with the number of trees that would be removed and that it would negatively affect the ecosystem. He expressed concern with the amount of traffic in the area and that it would exacerbate the traffic. He suggested that the on-street parking for the project would not be in the best interest of the neighborhood and would negatively affect the quality of life.

▶ Mr. Ross Appel, attorney for CKC Properties, distributed a copy of a letter for the Board to review. He reminded the Board that their role is to determine if the Zoning Administrator’s decision was erroneous. He suggested that the Zoning Administrator made an appropriate determination. He suggested that the appeal should be dismissed as it was not submitted in a timely manner and was filed after the 30 day notice requirement. He suggested that Mr. Lucey was in attendance at the April 2021 meeting and filed in August 2021, which is outside of the 30 day requirement. He also suggested that Mr. Lucey lacks standing as an aggrieved party.

▶ Mr. Collin Colbert, representative for CKC Properties, suggested that the parking requirements were reviewed and approved by Town staff according to the Code of Ordinances. He suggested that the number of rooms was also reviewed and based on the definition, the parking requirements were

determined. He suggested that this is not a short-term rental project as it does not meet the definition of a short-term rental. He suggested that the project is proposed to meet the marketing demands for additional housing. He suggested that the Zoning Administrator decision should be upheld and the appeal denied.

▶ Mr. Gabe Joseph, representative for the property owners, agreed with Mr. Appel regarding the aggrieved parties. He stated that this property has been zoned for several years to allow a boutique hotel use. He agreed with Mr. Appel that Mr. Lucey does not have standing to appeal the decision and read a portion of the S.C. Supreme Court ruling regarding standing for the Board. He suggested that Mr. Lucey's interest is in his desire to purchase the same property. He asked that the staff decision be upheld and the appeal denied.

▶ Mr. Kevin Berry, Earthsource Engineering, clarified some points regarding the parking. He stated that they have been working with staff on this project for the past year. He stated that the current parking requirements is 1-2 spaces per room. He stated that there are 2 spaces per room for building B and C, with 1 space per room for building A. He stated that there are 27 keyed entry rooms and 35 on-sight parking spaces. He stated that the overlay district allows for a 20% reduction in parking that they are not utilizing. He stated that they are also proposing to pave seven on-street parking spaces that does not count toward their parking requirement and is being proposed to help alleviate some of the parking issues. He stated that the Town's ordinances are compatible other municipality requirements except for the City of North Charleston that requires one space for every three rooms. He stated that regarding the curb cut separation, the proposed project is compliant with all of the requirements.

▶ Mr. Losse Knight, 802 Coleman Blvd, stated that he is the architect for the project. He reviewed the proposed building with the Board including that the ground level only has parking due to flood requirements. He stated that the rooftop provides a balcony with a private pool for building A. He stated that building B and C include family units that have open air private stair to a rooftop private balcony. He stated that the attic space would not be occupied.

▶ Mr. Wolff administered the oath to Mr. Filippo Ravalico. Mr. Ravalico, 1044 Wharf Indigo, commended the Board on their difficult task as members of the Board. He suggested that the Board should proceed carefully and follow their procedure to ensure a fair ruling. He stated that Shem Creek is a unique area and suggested that a special committee could be considered to review development requirements for this unique area.

▶ Mr. Mike Washburn, principal for 305 Brown Zac, LLC, and owner of one of the properties for the proposed project, stated that while there are some trees being proposed for removal, there are no significant oak trees being removed. He stated that Mr. Lucey owns the remainder of the property in this area. He suggested that this is an appropriate project for this area and asked that the project be allowed to go forward.

▶ There being no further comments, Mr. Wolff moved to rebuttals.

▶ Mr. Justin Lucey, 415 Mill Street, suggested that allowing the architect, developer, and engineer to speak during public comment has allowed them additional time, and asked that he be allowed to complete his initial presentation and continued with his presentation.

▶ Mr. Lucey asked for additional time since the engineer, developer, and architect were allowed to speak. Mr. Wolff answered that they spoke during public comment, which is allowed under the ordinance and bylaws. He stated that no additional time is allowed under the Board's bylaws.

▶ Mr. Robertson reiterated the issues that are before the Board are outlined on the agenda and as advertised. He suggested that many of the issues outlined by Mr. Lucey are not under the Board's consideration for this issue. He stated that staff provided additional information regarding the exact measurements of the right-of-way and further stated that landscaping is required along the right-of-way in the Boulevard Overlay District. He stated that while provided by staff, these issues were not appealed and are not under consideration by the Board. He stated that he is available to answer any questions.

▶ There being no further comments, Mr. Wolff closed public comment.

▶ *Mr. Stephen Wood moved to enter into executive session to receive legal advice. Mr. Hopkins seconded the motion. All in favor with Mr. Barrow abstaining.*

The Board convened into executive session at 7:20 pm and reconvened at 7:50 pm. No action was taken during executive session.

▶ *Mr. Wood moved to grant the appeal of the Zoning Administrator's determination regarding §156.171 "Accommodations and Lodging," based on the findings that the Town ordinances define a boutique hotel as having 50 or fewer lodging units, but when defining the parking requirements, the term guest rooms was used; therefore, staff misinterpreted the term "guest room" and the number of parking spaces would be insufficient for this particular property. The other matters before the Board included in this appeal are denied. Mr. Hopkins seconded the motion. All in favor with Mr. Barrow abstaining.*

▶ Mr. Wood left at this time (7:52 pm).

4. Case V-42-21, 806 Milldenhall Road, TMS# 559-03-00-026. Request relief from the strict application of §156.303 (C) to allow a 5-foot 6-inch front yard encroachment. The ordinance requires a 25-foot front yard setback.

▶ Ms. Browder reviewed staff comments with the Board.

▶ Ms. Caroline Anderson and Mr. Andy Anderson, owners, reviewed the request with the Board.

▶ There being no comments, Mr. Wolff closed public comment.

▶ *Mr. Hopkins moved to approve the variance for the front porch encroachment based on the findings that they have approval from the HOA and neighboring property owners and considering the odd shape of the lot. Mr. Butner seconded the motion. All in favor.*

5. **Case V-43-21, 520 King Street, TMS# 532-01-00-227. Request for relief from the strict application of §156.119 (G)(2) to allow utilization of a Telecommunications Carrier on Wheels (COW) for a period not to exceed 120 days from October 31, 2021. The ordinance limits the use of COWs for a period not to exceed 120 days following a natural disaster or local emergency declaration. A variance, Case V-16-2021, was approved on May 24, 2021, and the applicants are now requesting an additional 120 days.**

- ▶ Ms. Browder reviewed staff comments with the Board.
- ▶ Mr. Jonathan Yates, attorney for the applicant, reviewed the request with the Board.
- ▶ Mr. Jason Waldon, 705 Simmons Street, expressed concern with the continued utilization of a COW. He suggested that if approved, there should be a strict timeframe put in place, a deadline clearly determined, and that no other extensions be allowed. He stated that another consideration is the Mount Pleasant Waterworks beautification project that cannot be accomplished until the COW is removed.
- ▶ There being no further comments, Mr. Wolff closed public comment.
- ▶ *Ms. Stevens moved for approval to allow the COW not to exceed 120 days from October 31, 2021 with no other extensions allowed. Mr. Duke seconded the motion. All in favor.*

6. **Case V-44-21, 114 Freeman Street, TMS# 532-05-00-171. Request for relief from the strict application of §156.225 (C) to allow removal of one (1) historic 31.5-inch Laurel Oak tree and one (1) historic 14.5-inch and 15-inch double trunk Live Oak tree. CORRESPONDENCE**

- ▶ Ms. Browder reviewed staff comments with the Board.
- ▶ Mr. Brandon London, 1835 Omni Blvd, reviewed the request with the Board.
- ▶ There being no comments, Mr. Wolff closed public comment.

▶ *Ms. Stevens moved for approval of 31.5" Laurel Oak Tree and double live oak tree based on the findings that in order to receive the best drainage for the lot and based on the location of the lot between the higher lots, the removal is required for the best location of the house on the lot, subject to mitigation for all trees removed. Mr. Butner seconded the motion. Motion passed on a 5 to 1 vote with Mr. Wolff, Mr. Duke, Mr. Butner, Ms. Stevens, and Mr. Hopkins in favor; Mr. Barrow opposed.*

H. Approval of Final Orders

The Board signed final orders.

There being no further business, the meeting adjourned 8:53 pm.

Submitted by,
L. Lynes
BOZA09272021

EXHIBIT E

(September 27, 2021 Staff Brief 1)

STAFF POSITION

1. *Claim: The project violates the MP Code of Ordinances minimum parking requirements. Sec. 157.171 requires that for "Accommodations and Lodging," that the application provide "1-2" parking spaces per "Guest Room." The nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 "Guest Rooms." The project plans only provide for 34 parking spaces, violating the Ordinance*

When interpreting the zoning code, a term that is defined in the zoning code must be used for the purposes of interpreting and applying the code. If a term is not defined in the zoning code, one must follow the rules of statutory construction.

Rules of Construction

First, words are given their ordinary meaning. The plain language, general usage, or common understanding is applied to a word. A standard dictionary is often referenced for common usage. This first rule is applied with the other rules of interpretation, especially when the common usage meaning does not present a clear resolution of the question.

Second, statutes should be internally consistent. Legislatures, in this case, Town Council, are presumed to have acted with purpose. One part of a statute should not be inconsistent with the other parts of the statute.

Third, one must follow the plain language of the statute applying the ordinary meaning of the words used in the statute and the intent of the legislature so as not to reach an absurd result. The legislature acted with purpose to create an internally consistent statute which, when applied, yields consistent results.

Rules of Construction - Analysis

- I. **Guest Room – Ordinary Meaning.** The Mount Pleasant Code of Ordinances specifies a minimum number of parking spaces to be provided based on the use of the land (156.170 *et seq.*) at the time of the initial construction of any principal building, or when a structural alteration or other addition to a principal building produces an increase in parking demand.

Section 156.171 (A) SCHEDULE OF OFF-STREET PARKING REQUIREMENTS. [Table] specifies Commercial Uses, Accommodation and lodging, 1-2 parking spaces per "guest room". The term *guest room* is not defined in the zoning ordinance §156.007 DEFINITIONS; therefore, one must first apply its ordinary meaning.

The ordinary meaning of *guest room* is a room for guests in a house. The ordinary meaning definition clearly does not apply to a hotel or lodging. However, in the zoning ordinance, *guest*

room is being applied to a hotel or lodging. The term in common usage most closely associated with a *guest room* in a hotel or lodging is the term *hotel room*. No common dictionaries consulted cite a definition for *hotel room*.

Based on common usage, a suite is ordinarily understood to be a group of rooms occupied as a single unit. A hotel room is generally understood to be a single room or a suite, which is defined as a group of rooms, occupied as a single unit.

Hotel Tech Report, an industry trade publication, defines another room type by layout as apartment-style:

Apartment-style: apart-hotels are offering these types of rooms, but they can also be found at other traditional hotel chains. These rooms target long stay guests with full kitchens, laundry, and other amenities that make it possible to live comfortably. Housekeeping services are limited to once or twice a week.

The apartment-style room type is most similar to the layout of the rooms in the proposed Shem Creek Boutique Hotel. The room type meets the definition of suite above which is a series of connected rooms used as a single unit.

The definitions of Hotel and Boutique Hotel in §156.007 DEFINITIONS are:

HOTEL (includes **MOTEL** and **EXTENDED STAY**). A building or group of attached or detached buildings containing *lodging units* (emphasis added) intended primarily for rental or lease to transients by the day, week, or month. Such uses generally provide additional services such as daily maid service, restaurants, meeting rooms, conference space, and/or recreation facilities.

HOTEL, BOUTIQUE (includes **INN**). A building or group of attached or detached buildings containing not more than 50 *lodging units* (emphasis added) intended primarily for rental or lease to transients by the day, week, or month. Such uses may provide additional services such as daily maid service, restaurants, meeting rooms, and/or recreation facilities.

Both definitions use the term *lodging unit*. The term lodging unit treats all room types, regardless of the number of sleeping or bedrooms, as single units.

- II. **Intent and Internal Consistency.** Second, statutes should be internally consistent. Legislatures, in this case, Town Council, are presumed to have acted with purpose. One part of a statute should not be inconsistent with the other parts of the statute. The legislature is presumed to act with thoughtful intent in crafting ordinances and one section cannot be inconsistent with other sections.

The Schedule of Off-Street Parking Requirements (Parking Schedule) was adopted in 1979 with amendments in 1984, 1985, 1992, 1994, 2002, 2004, 2010, 2014.

In 1979, the Parking Schedule consisted of four (4) Use Categories with thirty-four (34) Uses specified. Parking calculations within each category were based on a number of factors including units, bedrooms, square footage, fixed seats, tables, and employees.

The entry for Motel, hotel, and tourist court required one space per sleeping room or suite plus one space per each three employees on shift of greatest employment. The ordinance treated both a sleeping room and a suite as a single unit.

Subsequent revisions to the Parking Schedule have reduced the number of Uses and method by which parking requirements were determined.

The 2014 Parking Schedule revision changed the method of calculating parking for hotels and lodging from *sleeping room* to *guest room*. Following the rules of statutory construction, one must presume that the change in terminology by Town Council was intentional. One must also presume that Town Council acted with thoughtful intent to craft an ordinance that was consistent with the other sections and categories in the ordinance section.

The current Parking Schedule identifies six categories of commercial uses. The Parking Schedule for five of the uses: commercial and retail; office and retail, including medical office; personal and business support services, including personal improvement education; Restaurant, bar, nightclub, lounge, including associated decks or plazas; and shopping centers are calculated using the unit of measure of square feet. Only hotels and lodging have a different unit of measure for calculating parking—*guest rooms*.

Although the hotels and lodging are considered Commercial Uses by the Parking Schedule, their function as overnight accommodations is most consistent with residential uses. The unit of measure for calculating residential parking is based on a residential unit. Single-family dwelling, Townhouse dwelling, Duplex dwelling, and multi-family (apartment) dwellings are calculated per unit. All residential uses listed in the code are based on a single unit not the number of rooms in the unit.

- III. **Consistency of Results.** The method of calculation, that a guest room is a single unit, is consistent with the other provisions of the code, specifically the method for calculating residential parking based on a single unit regardless of the number of bedrooms or sleeping rooms and the term lodging unit used in the definitions of hotel and boutique hotel. A guest room as a single unit is consistent with these other code provisions.

The rules of statutory construction apply to the interpretation of zoning ordinances. Those rules require that ordinances “dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result” Beaufort County v. South Carolina State Electric Commission, 395 S.C. 366, 371 178 S.E.2d 432, 435 (2011). When the applicable ordinances are read in their entirety, parking should be calculated on each group of rooms occupied as a lodging unit. The unit of measure for each lodging unit, regardless of the number of bedrooms, is one to two parking spaces.

Application and Analysis

IV. Applying the parking standards established by the zoning code (§156.170 et seq.)

Section 156.171 SCHEDULE OF OFF-STREET PARKING SPACE REQUIREMENTS. (A) The minimum number of required parking spaces shall be calculated on the basis of the land or principal building on a lot, according to the requirements indicated in the following table, unless otherwise specified in this chapter.

[Table]

Use Category: Commercial

Use: Accommodations and lodging

Spaces Required¹: 1 to 2

Unit of Measure: Guest room

Notes: [none]

Footnote 1: Unless otherwise specified in this chapter.

The boutique hotel project is comprised of three buildings: Building A, Building B, and Building C. Building A contains 19 guest rooms or lodging units as defined above. Buildings B and C contain 4 guest rooms or lodging units each. The total number of guest rooms in all three buildings is 27. Using the standards established in §156.171 [Table], the minimum off-street parking space requirement for the boutique hotel is a range of 27 to 54 parking spaces. Plans for the boutique hotel indicate that the project provides 35 total parking spaces: 1 parking space for each guest room or lodging unit in Building A (19) and two parking spaces for each guest room or lodging unit in Buildings B and C (16). The 35 parking spaces are in the range of 27-54 minimum parking spaces established in 156.171 [Table]. The parking standards meet the minimum parking off-street parking standards established by Town Council in the ordinance.

V. Staff is granted no authority by Town Council to set the minimum ratio.

Town Council established the minimum number of off-street parking spaces required in §156.171 SCHEDULE OF OFF-STREET PARKING SPACES. Town Council further established criteria for the APPLICATION OF PARKING REQUIREMENTS; AREA AND PAVING REQUIREMENTS; and DESIGN REGULATIONS FOR COMMERCIAL, INSTITUTIONAL, AND MULTI-FAMILY USE PARKING LOTS (156.172, 156.173, and 156.174 respectively). Town Council does not grant any authority to staff to use discretion in determining a different ratio from that provided in the Schedule of Off-Street Parking Spaces table nor does Town Council establish any standards or provisions for staff discretion in applying the unit of measure in the application of parking requirements (156.172), area and paving requirements (156.173), nor in the design regulations for commercial, institutional, and multi-family use parking lots (156.174). Town Council has clearly determined the method for determining the appropriate number of parking spaces and staff has no authority to require additional parking spaces beyond the minimum required. Staff can only apply those standards imposed by the legislative body creating it and cannot apply standards that it has

adopted internally that have not been approved by the legislative body. Captain's Quarters Motor Inn v. S.C. Coastal Council, 306 S.C. 488, 491, 413 S.E.2d. 13, 14 (1991) ("We hold Coastal Council overstepped its statutory authority in formulating and applying this test [its own test for determining if a seawall was less than fifty percent damaged] for purposes of permit evaluations without formalizing it by regulation.")

EXHIBIT F

(September 27, 2021 Staff Brief 2)

STAFF POSITION

2. ***Claim: This project is not a permissible use under the current zoning of these parcels. Despite the name, the plans reflect that this project is not a hotel, or even a boutique hotel. This project is a short-term rental facility; it is an apartment building and eight townhouses which are being pitched, in name only, as a boutique hotel to disguise its violation of the cap of 400 short term rental unit permits and its violation of the current moratorium on multifamily housing.***

The property was zoned NC, Neighborhood-Commercial in 1983 (R-4-83).

Section 156.325 Principal Use Table.

§ 156.325 PRINCIPAL USE TABLE.

(A) *Principal uses.* Principal uses shall be allowed within the base zoning districts in accordance with the Use Table in this section. Where multiple principal uses are proposed to be located on a single parcel, all applicable conditions must be met for each proposed use. For example, if the proposed use is a gas station with a convenience store and a car wash, all requirements and conditions for gas station, car wash, and retail sales uses must be met.

(B) *Explanation of Use Table.* The top of the Use Table contains the zoning districts and left side of the table contains various uses. The uses listed in the Use Table are permitted or not permitted in each zoning district according to the letter coding described below.

(1) *Permitted uses.* A "P" indicates that a use is allowed by right in the respective zoning district, provided the use complies with all other applicable provisions of this chapter.

(C) Use Table.

Commercial Uses. Overnight Guest Accommodation. Hotel and Boutique Hotel as "P" permitted uses.

In accordance with the Explanation of Use Table (1) permitted uses, a Boutique Hotel is allowed by right in the NC, Neighborhood Commercial zoning district.

Section 156.007 DEFINITIONS defines a boutique hotel:

HOTEL, BOUTIQUE (includes ***INN***). A building or group of attached or detached buildings containing not more than 50 lodging units intended primarily for rental or lease to transients by the day, week, or month. Such uses may provide additional services such as daily maid service, restaurants, meeting rooms, and/or recreation facilities.

The definition is clear that a building or group of attached or detached buildings containing not more than 50 lodging units intended for rental or lease to transients by the day, week, or month is a boutique hotel. Fifty (50) lodging units or less is considered a boutique hotel. In defining a boutique hotel, Town Council placed no stipulations or conditions beyond the number of lodging units required in order to be a boutique hotel. While additional services which may be provided are noted, they are permissive, not restrictive.

Section 156.006 RULES OF INTERPRETATION. "Where uncertainty exists, the following rules shall apply: (D) The term **SHALL** is always mandatory, and the word **MAY** is permissive." The only requirement to be considered a boutique hotel in the NC, Neighborhood Commercial zoning district is 50 lodging units or less.

A boutique hotel is not a short-term rental. The Short-Term Rental ordinance §156.340 PURPOSE, DEFINITIONS AND APPLICABILITY. (B) Definitions. "For the purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. SHORT-TERM RENTAL. (b) Home-based businesses and tourist accommodations, including hotels (includes motel and extended stay), boutique hotels (includes inn), and similar accommodations located on property in a commercial zoning district are not considered **SHORT-TERM RENTALS**."

The property is commercially zoned NC, Neighborhood Commercial. A boutique hotel is a use of right in the zoning district. Town Council defined a boutique hotel as 50 lodging units or less. The proposed use meets the definition of boutique hotel. Town Council did not, in any way, specify any conditions, requirements, nor the manner or method in which the business must be conducted. In fact, the definition of boutique hotel adopted by Town Council anticipates many different types of hotels—some of which may offer restaurants or not, some of which may offer daily maid service or not, some of which may offer meeting rooms or not, and some of which may offer recreational services or not. The only requirement to be a boutique hotel is 50 rooms or less intended primarily for rental or lease to transients by the day, week, or month. Staff can only apply the standards imposed by the legislative body creating it and cannot apply standards that have not been approved by the legislative body.

In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. Stevenson v. Board of Adjustments of City of Charleston (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456. B.

A local zoning board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

“We hold Coastal Council overstepped its statutory authority in formulating and applying this test [its own test for determining if a seawall was less than fifty percent damaged] for purposes of permit evaluations without formalizing it by regulation.” Captain’s Quarters Motor Inn v. S.C. Coastal Council, 306 S.C. 488, 491, 413 S.E.2d. 13, 14 (1991)

3. Claim: This project violates both paragraphs of the following ordinance:

§156.101 USE OF LAND OR BUILDINGS.

(A) *No land or building shall hereafter be used or occupied, and no building or part thereof shall hereafter be constructed, erected, altered, or moved, unless in conformity with all of the regulations herein specified for the zoning district in which it is, or will be, located.*

(C) *When an area proposed for development forms an integral part of, or is immediately adjacent to, or otherwise clearly affects the future of any established section of the town, the design, scale, and location on the site shall enhance, rather than detract from, the character, value, and attractiveness of the surroundings.*

As noted above, the property complies with S156.101 USE OF LAND OR BUILDINGS (A) as demonstrated by the following facts: The property is zoned NC, Neighborhood Commercial (R-4-83). The property is also subject to the Boulevard Overlay District which allows all commercial uses, special exceptions, and conditional uses in the AB-Areawide Business commercial zoning standards. The proposed use of the property as a boutique hotel is a use of right in the Neighborhood Commercial zoning district. The parking, 35 spaces, complies with the standards established by Town Council for a boutique hotel.

Section 156.101 (C) discusses the aesthetics of the proposed development. The Commercial Design Review Board was established by Town Council to review all commercial construction in the NC zoning district and Boulevard Overlay District for compliance with the specific standards established in §156.310 Commercial Design Review Overlay District. The Commercial Design Review Overlay District architectural and site design guidelines address the design, scale, and location on the site. The authority to interpret and apply the guidelines is thoroughly posited in the Commercial Design Review Board (DRB). Concerns with the aesthetics related to design, scale, and location on the site, should be directed to the DRB during their review of the project.

4. Claim: This plan violates the recent BOZA decision not to permit residential use above three stories. The plan continues to set forth residential balconies on the top floor and other unexplained structures. The shed like areas on roof facing the pool at 6 and 9 o’clock (p 35 and 57) appear to be future roof top food and beverage structures.

The Board of Zoning Appeals denied a request for a variance to allow four-story buildings on this site (Case V-12-21) in April 2021. The proposal that the Board denied consisted of first floor

parking, two stories of lodging units above the parking, and additional lodging space in the pitched roof elements of the proposed structure.

The current proposal has two floors of lodging units above parking. The gabled roof elements do not show lodging units which complies with the decision of the Board of Zoning Appeals decision in Case V-12-21. Further, no access to the spaces is shown in the plans and the architect stated that there was not access to the gable roof elements at the August 25, Commercial Design Review Board meeting.

The height requirements for the Coleman Boulevard Overlay District state:

Section 156.318 BOULEVARD OVERLAY DISTRICT (P) CB-OD Boulevard Overlay District (4) *Site development and design elements.* (b) Building height. (2) Where indicated on the Development Guidelines Table and corresponding map, the maximum building height limit shall be 45 feet. (b) All structures shall have a minimum of two floors, with a maximum of three floors allowed. The two floor minimum shall only apply to buildings fronting the boulevard.

Section 156.007 DEFINITIONS defines a floor as ***STORY (including BUILDING FLOOR)***. An articulated, distinct level of separation in a building or structure located between the finished surface upon which one may stand and the finished ceiling, having a minimum vertical distance of seven feet at its apex, specifically including a ground level component used for parking or storage, and excluding the following: unfinished attic space without permanent stair access, located within a roof structure, and used exclusively for storage or building support components such as water heaters, HVAC components and the like, and a basement, or crawl-space area.

According to the definition of “building floor” the parking counts as a story because the height from the finished surface upon which one may stand and the ceiling or apex of the space is 7 feet or greater. The first-floor parking has two stories of lodging units above for a total of three stories. The unfinished attic space within the roof structures is specifically excluded by the definition of building floor.

The overall height of the building from grade to the ridgeline of the roof is 45 feet which meets the allowed height of the building stated in 156.318 P.4.b.2 above.

Section 156.318 P.4.b.4 Utilization of area above the maximum height (a) and (b) state:

- a. No area above the maximum height or maximum number of stories may be used to create an extra floor of living area or enclosed commercial space. However, this area may be used for storage and such uses as open decks or rooftop restaurants.
- b. Multilevel decks above the maximum height are expressly prohibited.

The roof top decks, both the pool deck and the multi-level decks on some third-floor guest rooms, are located below the maximum height of 45-feet; therefore, decks are allowed by ordinance.

5. Claim: *The proposed project violates the following ordinances:*

§156.108 CURB CUTS, VISIBILITY AT INTERSECTIONS, AND PEDESTRIAN ACCESS.

(A) *Access drives.*

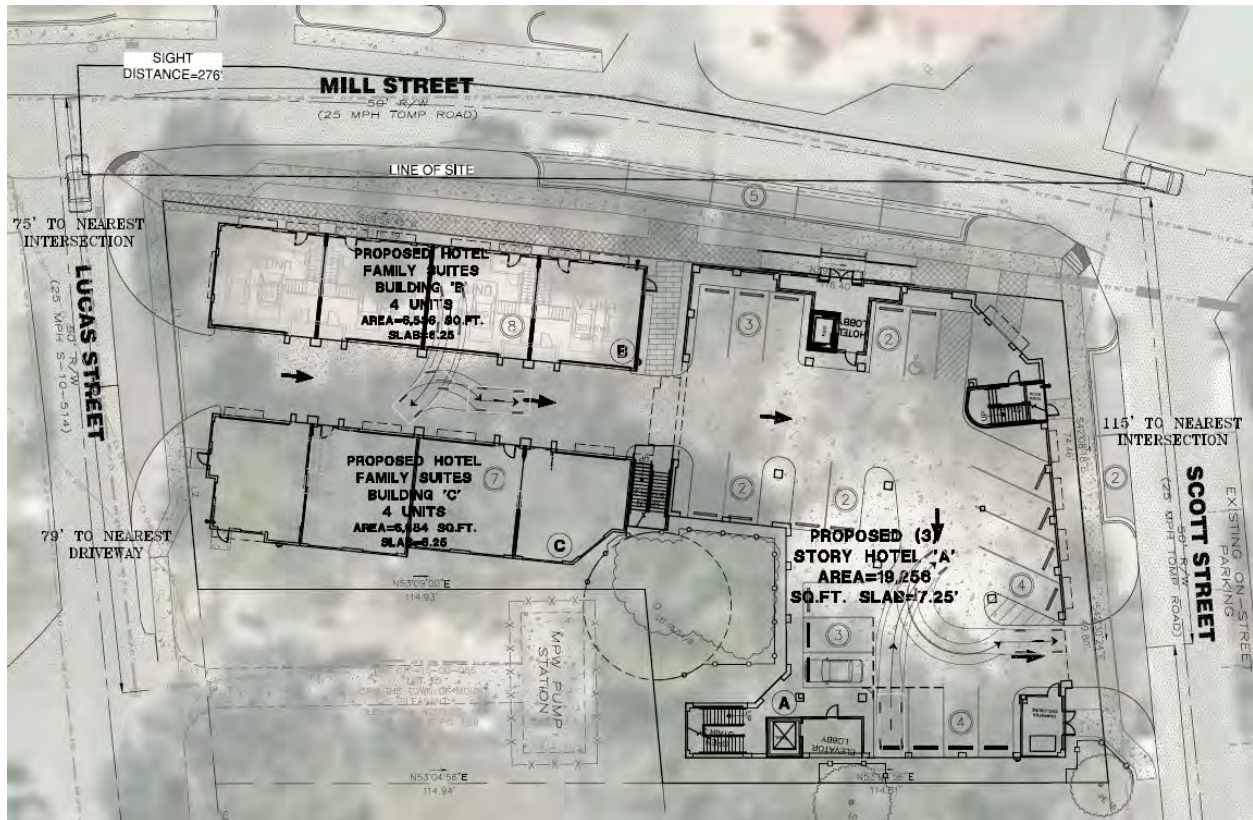
(1) Except in residential zones, one-way access drives shall not be closer than 75 feet to another access drive, as measured from the centerline of each access drive intersection with a street right-of-way line.

(3) The above provisions shall also apply to private streets, access ways and portions of parking lots that function as streets or thoroughfares.

(4) Access drives in any zone shall generally be located at least 50 feet from any street intersection, as measured from the point of tangent of the street intersection to the centerline of the access drive.

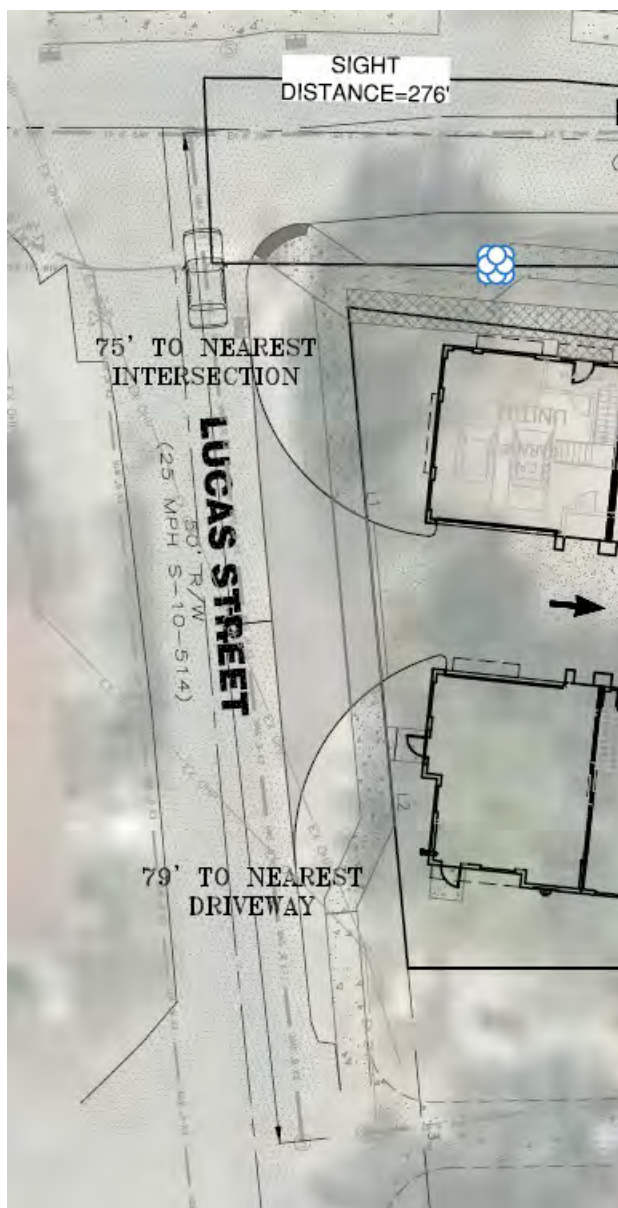
(B) No fence, wall, shrubbery, or other obstruction to travel vision shall be permitted.

The site plan below demonstrates that the access drives meet all applicable ordinances.



The one-way access drive from Lucas Street into the property is 79 feet from the adjacent access drive, as measured from the centerline of each access drive intersection with a street right-of-way line as required by §156.108 (A) *Access Drives*. (1) and (3). (See Detail A below)

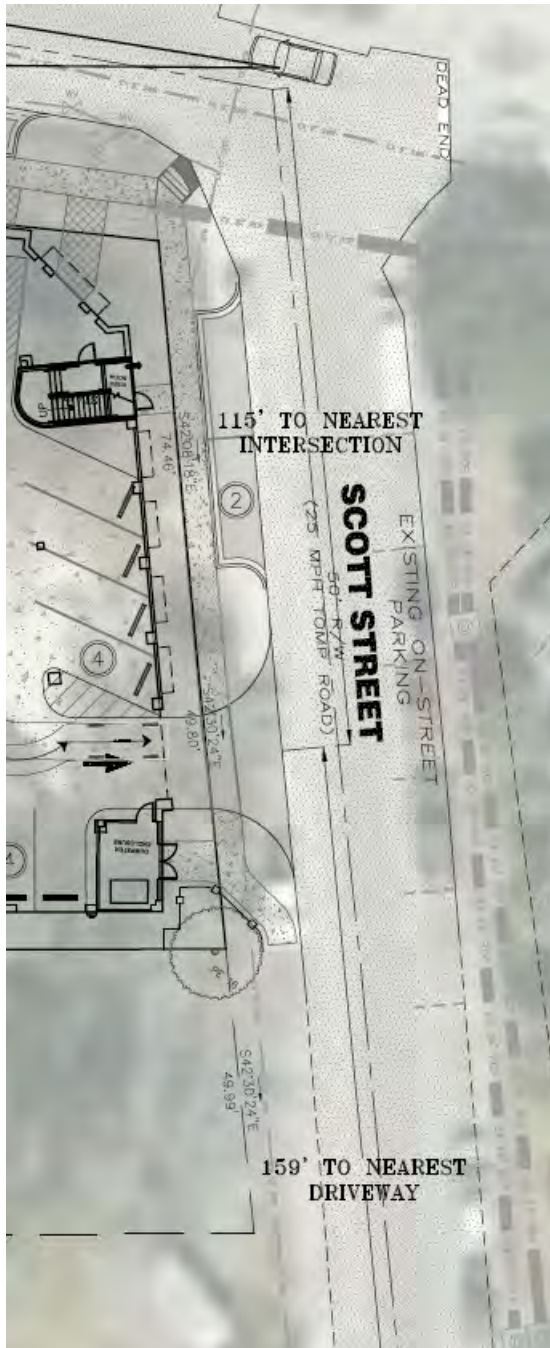
The one-way access drive from Lucas Street is 75 feet to the intersection with Mill Street, as measured from the point of tangent of the street intersection to the centerline of the access drive. Section 156.108 (A) *Access drives*. (4) requires only a 50 feet separation from the street intersection to the centerline of the access drive. (See Detail A below).



(Detail A—Lucas Street Curb Cut Separation)

The one-way access drive on Scott Street exiting the property is 159 feet from the adjacent access drive, as measured from the centerline of each access drive intersection with a street right-of- way line as required by §156.108 (A) *Access Drives*. (1) and (3). (See Detail B below)

The one-way access drive from Scott Street is 115 feet to the intersection with Mill Street, as measured from the point of tangent of the street intersection to the centerline of the access drive. Section 156.108 (A) *Access drives*. (4) requires only a 50 feet separation from the street intersection to the centerline of the access drive. (See Detail B below).



(Detail B—Scott Street Curb Cut Separation)

Further, the site plan demonstrates compliance with §156.108 (B) No fence, wall, shrubbery, or other obstruction to travel vision shall be permitted. This item is customarily reviewed during the Encroachment Permit application process with the Transportation Department.

EXHIBIT G

(September 27, 2021 Meeting Correspondence)

From: [Lynnette Lynes](#)
To: [Kara Browder](#)
Subject: FW: Shem Creek Botique Hotel
Date: Tuesday, September 21, 2021 10:33:09 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)



Lynnette Lynes

Executive Office Manager

100 Ann Edwards Lane

Mount Pleasant, SC 29464

Office (843)884-1229 **ext.** 3534



How are we doing? Please take our brief survey below.

[Planning Department Customer Survey](#)

From: Rene Stauffer <renemariestauffer@gmail.com>

Sent: Tuesday, September 21, 2021 6:37 AM

To: Planning <P@tompsc.com>

Subject: Shem Creek Botique Hotel

This message originated outside our organization. Use caution when clicking links or opening attachments.

To Whom it May Concern:

My name is Rene' Stauffer and I own the property at 529 Live Oak Drive at the corner of Live Oak and Simmons St. I am writing to put on the record that I oppose the Shem Creek Botique Hotel. I have researched CK Properties, LLC, and it appears to me that this is going to be like the other properties they own downtown Charleston marketed through Charlestonvacays.com where it is more of a short-term rental situation than an actual "hotel" that the public can go into to use a bar, restaurant or pool. I Airbnb in a back room of my home legally and was wondering how they would be permitted to offer less-than-30-day rentals if the owner does not live on the property and also that the town only permits so many STR licenses that are being distributed before it is capped off and there were not many left when I last spoke to the town.

I have been informed that the property across the street from my home on the corner of Live Oak and Simmons is currently be negotiated to sell with a plan for the investor to build 4 townhomes. I was provided this information by the daughter of the lady who is selling the property. I was told this was being worked out with the investor of the house next to that (which is a STR on VRBO) who also owns 2 empty lots behind the home. (This was formally George Stroman's garden).

If this corner is going to end up being 4 townhomes and there is a disguised "botique hotel" which seems really to just be a short-term rental buildings being planned across from it, it will cause an extreme amount of traffic and parking problems to what is currently an existing issue to those of us who live here. There is currently a huge problem with parking around this neighborhood, especially on the weekends with the all the boaters and their trailers. Of note, I had to call over the weekend as a very long truck with a very long trailer parked on the side street with half his trailer on the road blocking 2 cars from being able to pass each other on Live Oak Drive causing them to drive into my yard to be able to pass each other. Additionally, the other half of his truck/trailer was on the street causing all the pedestrians to walk on the road as there is no sidewalk on the other side. I called and reported this hazard; however, nobody ever showed up to issue a ticket. This traffic congestion is an issue daily around this Shem Creek block and this is before what seems to be potentially 8 new buildings that will most likely come before you. (4 now and 4 in the future).

Please do not allow the Sheck Creek area to turn into a townhome development or buildings for many STRs disguised as a Botique Hotel (not accessible to the public unless booking rooms there). The LOCAL boaters/fishermen/women should be able to utilize and enjoy the boat landing without the massive proposed upcoming traffic congestion added to the traffic congestion that already exists in this neighborhood. If any of you drive around this area on the weekends, you will definitely see what I am talking about.

Thank you for your time in reading this.

Sincerely,

Rene' Stauffer

EXHIBIT H

**(August 12, 2021 Letter from Mr. Lucey Appealing to
BOZA)**

Justin O'Toole Lucey

415 Mill Street, Mt. Pleasant, SC 29464

843-849-8400

August 12, 2021

David Pagliarini, General Counsel

Town of Mt. Pleasant, SC

Via email: DPagliarini@tompsec.com

Cc: Planning Department via email:

Town Counsel via clerk: cbarrett@tompsec.com

Re: DRB Appeal, Boza Appeal, Appeal of Planning Staff Decisions relating the alleged Mill Street "Boutique Hotel"

Mr. Pagliarini:

Please accept this letter as an appeal of the following errors relating to the Mill Street Boutique Hotel project currently pending before the Design Review Committee.¹ This is not an exhaustive list, but just the most obvious current violations.

1. The project violates the MP Code of Ordinances minimum parking requirements. Sec. 157.171 requires that for "Accommodations and Lodging," that the application provide "1-2" parking spaces per "Guest Room." The nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 "Guest Rooms." The project plans only provide for 34 parking spaces, violating the Ordinance. Additional parking related violations include the following:

A, Seven of the fifteen "garage" parking below the town houses (Buildings B & C) are not truly functional, and should not be counted towards the plan. The garages are not truly double car garages in light of the width of the alley and width of garages and turning ratios.

B. Sec. 157.171 provides for 1-2 spaces per guest room, implicitly mandating that TOMP use proper discretion in setting the minimum ratio at 1 per or 2 per or somewhere in between. Common sense dictates that both the probable project usage and the nature of the location the project is located is to be considered in setting this minimum. As this location is one of the worst parking nightmares in this town, with completely inadequate parking for the

¹ As you may be aware, my main office building is located at the corner of Mill and Lucas (and has been since 1999), which is directly across the street from this project. My company also owns the lot immediately adjacent to the backside of Building A on Scott Street, and the lot next to the pump station on Lucas Street behind Building C. My residence is on the edge of this neighborhood on Rue de Muckle.

hundreds of people who visit the immediately near by food and beverage businesses, and Shem Creek recreational activities, and completely inadequate parking and trailer parking for the public boat landing next door (which is scheduled to get worse when the parking arrangements at Moultrie Plaza expire), it is evident that TOMP failed to exercise any discretion in allowing the applicant to set and avail itself of the minimum parking requirement of 1 per guest room.

C. Further, its evident that TOMP failed to consider the presence of this parking in a flood zone in setting the minimum parking requirements. This area floods regularly, as often or more as downtown Charleston, and more than monthly on average, and portions or more of this parking will be regularly unavailable to the applicant and its guests.

D. So the project has inadequate parking in an extremely inadequate parking area of town.

2. This project is not a permissible use under the current zoning of these parcels. Despite the name, the plans reflect that this project is not a hotel, or even a boutique hotel. This project is a short-term rental facility; it is an apartment building and eight townhouses which are being pitched, in name only, as a boutique hotel to disguise its violation of the cap of 400 short term rental unit permits and its violation of the current moratorium on multifamily housing.

3. This project violates applicable storm water ordinances and regulations. The building and alleyway lot coverage makes it obvious that this project will not be able to have adequate retention ponds on site for its own storm water; and will be attempting to dump its extra storm water into the already flooded streets and onto my property in the rear.

4. This project violates both paragraphs of the following ordinance:

§ 156.101 USE OF LAND OR BUILDINGS.

(A) No land or building shall hereafter be used or occupied, and no building or part thereof shall hereafter be constructed, erected, altered, or moved, unless in conformity with all of the regulations herein specified for the zoning district in which it is, or will be, located.

(C) When an area proposed for development forms an integral part of, or is immediately adjacent to, or otherwise clearly affects the future of any established section of the town, the design, scale, and location on the site shall enhance, rather than detract from, the character, value, and attractiveness of the surroundings.

5. This plan violates the recent BOZA decision not to permit residential use above three stories. The plan continues to set forth residential balconies on the top floor and other unexplained structures. The shed like areas on roof facing the pool at 6 and 9 o'clock (p 35 and 57) appear to be future roof top food and beverage structures.

6. This project violates the new, ten year comprehensive plan, that eliminates hotels in "NC" zoning. It is also not compatible with the immediately adjacent Shem Creek Overlay district, which does not permit hotels.

7. The proposed project site has been documented wetlands for years; there is no evidence that the fill placed several years ago was approved by the Army Corps of Engineers, or that the future fill is approved.

8. The proposed project violates the following ordinance:

§ 156.108 CURB CUTS, VISIBILITY AT INTERSECTION, AND PEDESTRIAN ACCESS.

(A) *Access drives.*

(1) Except in residential zones, one-way access drives shall not be closer than 75 feet to another access drive, as measured from the centerline of each access drive intersection with a street right-of-way line.

(3) The above provisions shall also apply to private streets, access ways and portions of parking lots that function as streets or thoroughfares.

(4) Access drives in any zone shall generally be located at least 50 feet from any street intersection, as measured from the point of tangent of the street intersection to the centerline of the access drive.

(B) No fence, wall, shrubbery, or other obstruction to travel vision shall be permitted.

Further Discussion of Hotel/Boutique Hotel

There is no reception area, gathering room(s), hotel office, staff rooms, or onsite services, other than possibly linens. This is not a hotel, or even a boutique hotel. It's a short-term rental complex with complete offsite management. Unlike typical hotels, every suite and townhouse has a kitchenette. The only staffing area is the 6' high ceiling rooms on the third floor under the pool. There is no delivery location or entrance.

The terms "hotel" and "boutique hotel" do not appear to be clearly defined in the TOMP Ordinances, and thus must be given the ordinary meaning for these terms. *See Branch v. City of Myrtle Beach*, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000) ("When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning."). See also, Mt. Pleasant, S.C. Code of Ordinances:

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(A) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

The first three responses to a Google search for the "definition of Hotel" are as follows:

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ho·tel /hō'tel/ *noun*

an establishment providing accommodations, meals, and other services for travelers and tourists.

Merriam-Webster:

Definition of *hotel*

an establishment that provides lodging and usually meals, entertainment, and various personal services for the public

Dictionary.com:

Hotel [hoh-tel] *noun*

a commercial establishment offering lodging to travelers and sometimes to permanent residents, and often having restaurants, meeting rooms, stores, etc., that are available to the general public.

Several explanations of what a “boutique hotel” is are set forth below:

US News & World Report:

Today's brand of boutique hotel is largely characterized by its smaller size, *personalized service* and local personality, which can vary dramatically depending on where the property is located. "Boutique hotels always cater to the individual, *providing very personalized, intimate service*," says Moskal, explaining that these properties are designed to *blend into the community and reflect the neighborhoods and cultures around them*.

"They tend to be smaller in size, which results in a more intimate vibe, *allowing hotel teams to deliver customized guest services and experiences*," says Jenna Hackett, global head for the Tapestry Collection by Hilton, one of [Hilton's](#) boutique brands.

<https://travel.usnews.com/features/what-is-a-boutique-hotel> (emphasis added)

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What Makes Boutique Hotels Unique?

You may be wondering: what is the difference between a hotel and a boutique hotel? It's not only size that sets a boutique hotel apart, but also design, decor, *staff, common areas*, and in-room amenities.

Characteristics of a boutique hotel:

- **Small size:** Boutique hotels [typically](#) have fewer than 100 rooms. Boutique hotels *usually have small restaurants or bars (if any), few recreational facilities, and limited meeting space....*

- **Theme:** Each boutique hotel has a unique theme; some are historic, some are culinary-focused, and some focus on specific elements like a book, a color, or a famous figure. The theme is present not only in the hotel's aesthetic, but perhaps also in its name, staff uniforms, *amenities*, and more.
- **Style:** A hotel can't truly embody a theme if it doesn't have the decor and design to match. ... Boutique hotels carefully curate everything from [hotel website design](#) through [hotel amenities](#) to align with their brand ethos.
- **Service:** Due to a boutique hotel's intimate size, its *staff can focus on delivering extraordinary guest service*.

<https://hoteltechreport.com/news/boutique-hotel> (emphasis added)

As can be seen by the foregoing exemplars, there is little or nothing about the design of this project that qualifies as a hotel or as a "boutique hotel." The building design makes it clear that there will be minimum services provided, if any. There is no reception area, no common use areas except the pool area and weight room, no offices, meeting rooms, or general customer food and beverage (just private kitchenettes), no kitchen for room service. The only staff, storage, and laundry rooms are in the reduced ceiling height area under the pool

Please feel free to call or email me with any questions you may have.

Sincerely,

/s/

Justin Lucey

EXHIBIT I

**(Town's August 23, 2021 Response Letter Confirming
Receipt of Mr. Lucey's August 12, 2021 Appeal)**

TOWN OF MOUNT PLEASANT

Legal Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464



TELEPHONE
(843) 884-8517

SOUTH CAROLINA

August 23, 2021

Via Email Only

Justin O. Lucey
415 Mill Street
Mount Pleasant, SC 29464

**Re: *Design Review Board (DRB) and Board of Zoning Appeals (BOZA) Appeal
 Shem Creek Boutique Hotel, Mill Street***

Dear Mr. Lucey:

I write in response to your August 12, 2021, letter (Exhibit A) concerning your appeal to BOZA and DRB. This letter informs you which items in Exhibit A are appealable, as well as the appropriate Board that can hear your appeal.

Please be aware that DRB does not function as an appeals board, nor is it empowered to act as one.¹ Accordingly, only specific items identified in Exhibit A are appealable to BOZA, and none are appealable to DRB. Items appropriate for BOZA are highlighted in green, and items not appropriate for BOZA are highlighted in red.

While the Town acknowledges August 12, 2021, as the date of your appeal to BOZA for the applicable issues highlighted in green in Exhibit A, we ask that you complete the BOZA appeal application found on our website at www.tompsc.com/157/Applications-Forms. A \$200 fee is required for all BOZA appeals.

Please let me know if you have any questions or would like to discuss further.

Sincerely,

Mac Deford
Staff Attorney

¹ See Chapter 156.421 of the Mount Pleasant Code of Ordinance for DRB's duties and powers.

Justin O'Toole Lucey

415 Mill Street, Mt. Pleasant, SC 29464

843-849-8400

August 12, 2021

David Pagliarini, General Counsel

Town of Mt. Pleasant, SC

Via email: DPagliarini@tompsec.com

Cc: Planning Department via email:

Town Counsel via clerk: cbarrett@tompsec.com

Re: DRB Appeal, Boza Appeal, Appeal of Planning Staff Decisions relating the alleged Mill Street "Boutique Hotel"

Mr. Pagliarini:

Please accept this letter as an appeal of the following errors relating to the Mill Street Boutique Hotel project currently pending before the Design Review Committee.¹ This is not an exhaustive list, but just the most obvious current violations.

1. The project violates the MP Code of Ordinances minimum parking requirements. Sec. 157.171 requires that for "Accommodations and Lodging," that the application provide "1-2" parking spaces per "Guest Room." The nineteen units in Building A contain 32 or more guest rooms; the 8 townhouse units contain 32 or more guest rooms, for a total of 64 "Guest Rooms." The project plans only provide for 34 parking spaces, violating the Ordinance. Additional parking related violations include the following:

A, Seven of the fifteen "garage" parking below the town houses (Buildings B & C) are not truly functional, and should not be counted towards the plan. The garages are not truly double car garages in light of the width of the alley and width of garages and turning ratios.

B. Sec. 157.171 provides for 1-2 spaces per guest room, implicitly mandating that TOMP use proper discretion in setting the minimum ratio at 1 per or 2 per or somewhere in between. Common sense dictates that both the probable project usage and the nature of the location the project is located is to be considered in setting this minimum. As this location is one of the worst parking nightmares in this town, with completely inadequate parking for the

¹ As you may be aware, my main office building is located at the corner of Mill and Lucas (and has been since 1999), which is directly across the street from this project. My company also owns the lot immediately adjacent to the backside of Building A on Scott Street, and the lot next to the pump station on Lucas Street behind Building C. My residence is on the edge of this neighborhood on Rue de Muckle.

hundreds of people who visit the immediately near by food and beverage businesses, and Shem Creek recreational activities, and completely inadequate parking and trailer parking for the public boat landing next door (which is scheduled to get worse when the parking arrangements at Moultrie Plaza expire), it is evident that TOMP failed to exercise any discretion in allowing the applicant to set and avail itself of the minimum parking requirement of 1 per guest room.

C. Further, it is evident that TOMP failed to consider the presence of this parking in a flood zone in setting the minimum parking requirements. This area floods regularly, as often or more as downtown Charleston, and more than monthly on average, and portions or more of this parking will be regularly unavailable to the applicant and its guests.

D. So the project has inadequate parking in an extremely inadequate parking area of town.

2. This project is not a permissible use under the current zoning of these parcels. Despite the name, the plans reflect that this project is not a hotel, or even a boutique hotel. This project is a short-term rental facility; it is an apartment building and eight townhouses which are being pitched, in name only, as a boutique hotel to disguise its violation of the cap of 400 short term rental unit permits and its violation of the current moratorium on multifamily housing.

3. This project violates applicable storm water ordinances and regulations. The building and alleyway lot coverage makes it obvious that this project will not be able to have adequate retention ponds on site for its own storm water; and will be attempting to dump its extra storm water into the already flooded streets and onto my property in the rear.

4. This project violates both paragraphs of the following ordinance:

§ 156.101 USE OF LAND OR BUILDINGS.

(A) No land or building shall hereafter be used or occupied, and no building or part thereof shall hereafter be constructed, erected, altered, or moved, unless in conformity with all of the regulations herein specified for the zoning district in which it is, or will be, located.

(C) When an area proposed for development forms an integral part of, or is immediately adjacent to, or otherwise clearly affects the future of any established section of the town, the design, scale, and location on the site shall enhance, rather than detract from, the character, value, and attractiveness of the surroundings.

5. This plan violates the recent BOZA decision not to permit residential use above three stories. The plan continues to set forth residential balconies on the top floor and other unexplained structures. The shed like areas on roof facing the pool at 6 and 9 o'clock (p 35 and 57) appear to be future roof top food and beverage structures.

6. This project violates the new, ten year comprehensive plan, that eliminates hotels in "NC" zoning. It is also not compatible with the immediately adjacent Shem Creek Overlay district, which does not permit hotels.

7. The proposed project site has been documented wetlands for years; there is no evidence that the fill placed several years ago was approved by the Army Corps of Engineers, or that the future fill is approved.

8. The proposed project violates the following ordinance:

§ 156.108 CURB CUTS, VISIBILITY AT INTERSECTION, AND PEDESTRIAN ACCESS.

(A) *Access drives.*

(1) Except in residential zones, one-way access drives shall not be closer than 75 feet to another access drive, as measured from the centerline of each access drive intersection with a street right-of-way line.

(3) The above provisions shall also apply to private streets, access ways and portions of parking lots that function as streets or thoroughfares.

(4) Access drives in any zone shall generally be located at least 50 feet from any street intersection, as measured from the point of tangent of the street intersection to the centerline of the access drive.

(B) No fence, wall, shrubbery, or other obstruction to travel vision shall be permitted.

Further Discussion of Hotel/Boutique Hotel

There is no reception area, gathering room(s), hotel office, staff rooms, or onsite services, other than possibly linens. This is not a hotel, or even a boutique hotel. It's a short-term rental complex with complete offsite management. Unlike typical hotels, every suite and townhouse has a kitchenette. The only staffing area is the 6' high ceiling rooms on the third floor under the pool. There is no delivery location or entrance.

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Please feel free to call or email me with any questions you may have.

Sincerely,

/s/

Justin Lucey

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2021-CP-10-5211
CKC Properties, LLC,	)	
	)	
Appellant,	)	
	)	
vs.	)	APPELLANT’S NOTICE OF MOTION
	)	AND MOTION TO SUPPLEMENT
	)	THE RECORD ON APPEAL
The Town of Mount Pleasant, South	)	
Carolina; The Town of Mount Pleasant	)	
Board of Zoning Appeals; Michael	)	
Robertson, in his official capacity as Zoning	)	
Administrator; Justin O’Toole Lucey; 415	)	
Mill St., Inc.; and 69 Scott Street, LLC,	)	
	)	
Respondents.	)	

Appellant CKC Properties, LLC (“Appellant”) respectfully moves for an Order directing Respondents the Town of Mount Pleasant, South Carolina (the “Town”); the Town of Mount Pleasant Board of Zoning Appeals (the “BOZA”); and Michael Robertson, in his official capacity as Zoning Administrator (the “Zoning Administrator”) to supplement the certified record in this zoning appeal with the documents and communications required by law.

This case involves the “Shem Creek Boutique Hotel” that will be located along Mill Street at TMS Nos. 517-16-00-058, -057, -034, and -035 (the “Properties”). Appellant is the owner of the Properties and the developer of the Shem Creek Boutique Hotel.

On August 23, 2021, neighboring commercial property owners Respondents Justin O’Toole Lucey, 415 Mill St., Inc. and 69 Scott Street, LLC (collectively, the “Commercial Neighbors”)¹ appealed the Town Zoning Administrator’s approval of the site-specific development plans for the Shem Creek Boutique Hotel. On September 27, 2021, the BOZA heard

¹ 415 Mill St., Inc. and 69 Scott Street, LLC are Lucey controlled and affiliated entities.

the Commercial Neighbors' appeal. The BOZA voted to affirm the Zoning Administrator on all matters except for the off-street parking calculations. On November 16, 2021, Appellant timely appealed the BOZA's decision with respect to the off-street parking only and demanded statutory pre-litigation mediation. The mediation was conducted on January 27, 2022. On June 24, 2022, the mediation was declared at an impasse. On June 28, 2022, Appellant filed its Appeal Petition, which has yet to be scheduled for a hearing.

On August 24, 2022, the Town and the BOZA filed a Notice of Opposition to Appeal and Submission of the Record Before the Board of Zoning Appeals. The record was filed pursuant to S.C. Code Ann. § 6-29-830(A). According to the Town and the BOZA, the "BOZA's full record in this matter" included nine (9) items, namely, Exhibit A: BOZA's Final Order; Exhibit B: September 27, 2021 Revised BOZA Meeting Agenda; Exhibit C: September 27, 2021 Staff Report; Exhibit D: September 27, 2021 BOZA Meeting Minutes; Exhibit E: September 27, 2021 Staff Brief 1; Exhibit F: September 27, 2021 Staff Brief 2; Exhibit G: September 27, 2021 BOZA Meeting Correspondence; Exhibit H: August 12, 2021 Letter from Mr. Lucey appealing to BOZA; and Exhibit I: Town's August 23, 2021 response letter confirming receipt of Mr. Lucey's August 12, 2021 appeal. These materials were included in the Town's filing.

On September 12, 2022, Appellant sent a letter to counsel for the Town and the BOZA outlining several missing items from the filed record. They are as follows:

- (1) The verbatim transcript from the September 27, 2021 BOZA hearing. S.C. Code Ann. § 6-29-830(A) provides, in relevant part, that upon the filing of an appeal to circuit court "the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a **transcript** of the evidence heard before the board, if any, and the decision of the board including its

findings of fact and conclusions.” (Emphasis added). There is no verbatim transcript appearing in the record filed on August 24, 2022. Without this transcript, the Court will be unable to review – and Appellant will be unable to reference – precisely what transpired at the September 27, 2021 BOZA hearing.

- (2) Letters and exhibits submitted by the Appellant and its supporters prior to and during the September 27, 2021 BOZA hearing. The BOZA’s Rules of Procedure (Article III, Sections 3 and 6) allow evidence to be submitted to the BOZA prior to and during the hearing. S.C. Code Ann. § 6-29-830(A), and *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 39, 606 S.E.2d 209, 214 (Ct. App. 2004) provides that all material submitted to and considered by the BOZA are considered part of the official record. On September 24, 2021, Appellant’s counsel submitted a letter along with six (6) exhibits opposing the Commercial Neighbors’ appeal. This letter was also presented at the hearing. Appellant’s principal Colin Colbert also submitted a letter, and so did the prior owners of the Properties. These letters and exhibits opposing the Commercial Neighbors’ appeal are absent from the record filed on August 24, 2022. The record contains only correspondence from those supporting the Commercial Neighbors’ appeal.
- (3) The documents and communications upon which the zoning administrator appeal was based. S.C. Code Ann. § 6-29-800(B) provides that upon the filing of a zoning administrator appeal, “[t]he officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.” These materials include, but are not limited to, the items identified in Footnote 3 of Appellant’s Appeal Petition, namely, the entire

development review file for the Shem Creek Boutique Hotel. This also include prior examples of the Town Zoning Administrator's interpretations the off-street parking requirements for accommodations uses, generally, and boutique hotels, specifically. These examples are referenced in the Zoning Administrator's memorandum provided to the BOZA and discussed at the hearing. None of these materials are included in the record filed on August 24, 2022.

- (4) Any other documents and communications regarding the Commercial Neighbors' appeal and the Shem Creek Boutique Hotel that were considered by the BOZA members. On September 29, 2021, a mere two days after the BOZA hearing on appeal, counsel for Appellant sent a FOIA request to the Town. This request, which is incorporated herein, seeks a variety of documents pertaining to the subject matter of this appeal. The FOIA has not been fulfilled. Any materials considered by the BOZA members must be included in the record on appeal. *See, Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 39, 606 S.E.2d 209, 214 (Ct. App. 2004).

Appellant's September 12, 2022 letter requested a response from the Town and the BOZA regarding these items by close of business on September 26, 2022. No substantive response has been received. Appellant certifies compliance with Rule 11, SCRCF.

Appellant respectfully requests the Court issue an Order directing the Town and the BOZA to supplement the record on appeal with the items outlined above. Appellant further requests that the record be supplemented prior to the hearing on its Appeal Petition.

This motion may be further supported by, among other things, a memorandum of law and the arguments of counsel before or at the hearing on this motion.

Respectfully Submitted,

s/Ross A. Appel
Ross A. Appel, Esq. (SC Bar #79149)
McCULLOUGH ▪ KHAN ▪ APPEL
2036 eWall Street
Mount Pleasant, SC 29464
(843) 937-0400
(843) 937-0706 (fax)
ross@mklawsc.com

Counsel for Appellant

September 27, 2022
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2021-CP-10-5211
CKC Properties, LLC,	)	
	)	
Appellant,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	APPELLANT'S MOTION TO
The Town of Mount Pleasant, South	)	SUPPLEMENT THE RECORD ON
Carolina; The Town of Mount Pleasant	)	APPEAL
Board of Zoning Appeals; Michael	)	
Robertson, in his official capacity as Zoning	)	
Administrator; Justin O'Toole Lucey; 415	)	
Mill St., Inc.; and 69 Scott Street, LLC,	)	
	)	
Respondents.	)	

Appellant CKC Properties, LLC ("CKC") hereby files this memorandum in support of its Motion to Supplement the Record on Appeal. For the reasons outlined below, CKC respectfully requests the Court issue an Order directing Respondents The Town of Mount Pleasant (the "Town") and The Town of Mount Pleasant Board of Zoning Appeals (the "BOZA") to supplement the record in this zoning appeal with the following materially significant documents required by law:

- (1) Justin Lucey's request for notification of any zoning determinations regarding the Shem Creek Boutique Hotel.
- (2) All correspondence between the Town's Zoning Administrator and Justin Lucey outlining the former's final zoning determination regarding the Shem Creek Boutique Hotel including, but not limited to, the determination regarding off-street parking.
- (3) Copies of all materials in the Zoning Administrator's file regarding the off-street parking determination including, but not limited to, examples of

prior “suite-style” accommodations uses approved by the Town, such as the Staybridge Suites, Residence Inn on the Isle of Palms Connector, and the Homewood Suites.

- (4) The verbatim transcript from the September 27, 2021 BOZA hearing.
- (5) CKC’s letters opposing the Lucey Appeal, with exhibits, that were provided to the BOZA prior to and during the September 27, 2021 BOZA hearing.

Background

This zoning appeal involves the “Shem Creek Boutique Hotel” that will be located along Mill Street in Mt. Pleasant at TMS Nos. 517-16-00-058, -057, -034, and -035 (the “Properties”). Shem Creek Boutique, LLC, an affiliate of CKC, is the owner of the Properties, and CKC is the developer of the Shem Creek Boutique Hotel (the “Project”). The twenty-seven (27) room Project complied with all applicable provisions of the Town’s Zoning Ordinance, as determined by the Town’ Zoning Administrator.¹

On August 23, 2021, neighboring commercial property owners Respondents Justin O’Toole Lucey, 415 Mill St., Inc., and 69 Scott Street, LLC (collectively, the “Commercial Neighbors”) appealed the Town Zoning Administrator’s approval of the site-specific development plan for the Shem Creek Boutique Hotel (the “Lucey Appeal”). Lucey and the Commercial Neighbors own several parcels near the Properties.

The Lucey Appeal was filed with the BOZA. S.C. Code Ann. § 6-29-800(A)(1) (empowering the board of zoning appeals “to hear and decide appeals where it is alleged there is

¹ The project appeared on the Commercial Design Review Board’s (“DRB”) July 28, 2021 agenda. A project cannot go before the DRB without the Zoning Administrator first certifying zoning compliance through the Design Review Team approval process.

error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.”). The Lucey Appeal challenged numerous final determinations made by the Zoning Administrator regarding the Project including, but not limited to, its use, off-street parking requirements, height, and curb-cuts/visibility.

On September 27, 2021, the BOZA heard the Lucey Appeal. After hearing from the Zoning Administrator, Lucey, and CKC’s principals and representatives, the BOZA immediately moved to go into executive session to receive legal advice. After an approximately thirty-minute executive session and zero public deliberation by the BOZA whatsoever, the BOZA voted unanimously (1) *to reverse* the Zoning Administrator’s off-street parking calculations, and (2) *to affirm* the Zoning Administrator’s final determinations regarding use, height, and curb-cuts/visibility.

On November 16, 2021, Appellant timely appealed the BOZA Order with respect to the off-street parking only and demanded statutory pre-litigation mediation. The mediation was conducted on January 27, 2022. On June 24, 2022, the mediation was declared at an impasse. On June 28, 2022, Appellant filed its Appeal Petition. The hearing on the Appeal Petition is scheduled for April 20, 2023 before the Master-in-Equity.

On August 24, 2022, the Town and the BOZA filed a Notice of Opposition to Appeal and Submission of the Record Before the Board of Zoning Appeals pursuant to S.C. Code Ann. § 6-29-830(A) (“[T]he board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.”).

According to the Town and the BOZA, the “BOZA’s full record in this matter” included the following nine (9) items:

1. Exhibit A: BOZA's Final Order;
2. Exhibit B: September 27, 2021 Revised BOZA Meeting Agenda;
3. Exhibit C: September 27, 2021 Staff Report;
4. Exhibit D: September 27, 2021 BOZA Meeting Minutes;
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9. Exhibit I: Town's August 23, 2021 response letter confirming receipt of Mr. Lucey's August 12, 2021 appeal.

On September 12, 2022, Appellant sent a letter to counsel for the Town and the BOZA outlining several missing items from the filed record. **Exhibit A.**

These include the following:

1. The verbatim transcript from the September 27, 2021 BOZA hearing;
2. Letters and exhibits submitted by the Appellant and its supporters prior to and during the September 27, 2021 BOZA hearing;
3. The documents and communications upon which the zoning administrator appeal was based; and
4. Any other documents and communications regarding the Commercial Neighbors' appeal and the Shem Creek Boutique Hotel that were considered by the BOZA members.

The Town and the BOZA have refused to supplement the record as requested by Appellant.

On September 27, 2022, Appellant filed the instant Motion to Supplement the Record on Appeal.

Argument

1. The Court has the authority to order the record be supplemented to comply with state law.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Act”) mandates the board of zoning appeals file the record of appeal with the circuit court after an appeal with the circuit court is filed. S.C. Code Ann. § 6-29-830(A) (“[T]he board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.”). South Carolina appellate courts recognize that an appellant in a zoning appeal may move to supplement the record if the record required by Section 6-29-830(A) is incomplete. *See, Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 39, 606 S.E.2d 209, 214 (Ct. App. 2004).

Given the foregoing, this Court has the authority to consider CKC’s motion to supplement the record to ensure that the record filed with this Court complies fully with the Act and South Carolina law, generally.

2. The record must be supplemented to comply with S.C. Code Ann. §§ 6-29-800(B), -830(A) and the BOZA’s Rules of Procedure.

a. S.C. Code Ann. § 6-29-800(B) requires both the zoning administrator’s entire file and the Lucey Appeal documents, including the grounds establishing the appeal’s timeliness, to be included in the record.

S.C. Code Ann. § 6-29-800(B) provides that upon the filing of a zoning administrator appeal, “[t]he officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.” This includes

not only the zoning administrator's file upon which the appeal is based, but also the appeal documents themselves. The former is necessary for the BOZA to review the substantive issues on appeal. The latter is required to evaluate for this Court's review the jurisdictional matters such as the appeal's timeliness.

i. Documents related to the timeliness of the Lucey Appeal.

The record includes as Exhibit C the September 27, 2021 "Staff Report" prepared by the Zoning Administrator and provided to the BOZA at the September 27, 2021 hearing (the "Staff Report"). The Staff Report concludes that the Lucey Appeal was timely filed. Zoning administrator appeals must be filed within 30 days of the appealing party receiving actual notice of the decision. S.C. Code Ann. § 6-29-800(B); Section 156.411(A)(5)(a), Town Zoning Code. Specifically, the Staff Report found as follows:

Staff Comment: The developer proceeding with project design and site-specific development plans based on the determination made by the Zoning Administrator.

Fact 1: The developer submitted plans to determine feasibility of the project on March 19, 2021.

Fact 2: The developer filed an application and submitted plans for pre-application review (Conceptual Design Review Team) of the project on May 13, 2021. Conceptual DRT reviews projects for zoning compliance.

Fact 3: The applicant filed an application and submittal for Preliminary Design Review Board review on July 15, 2021. The submittal was hyperlinked to the Commercial Design Review Board July 29, 2021 meeting agenda.

Fact 4: The agenda was posted to the Town website on July 19, 2021 at 11:35 a.m.

Fact 5: Mr. Lucey filed an appeal with the Town Legal Department, as described in the agenda, on August 3, 2021.

Staff Comment: Based on the dates of the email correspondence from Mr. Lucey, the appeal was filed within 30 days from the date the appealing party received actual notice of the action from which the appeal is taken by filing

with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for the appeal.

CKC has recently come into possession of materially significant evidence relevant to the issue of whether the Lucey Appeal was timely. This evidence was not part of the original record filed with the Court.

On January 31, 2023, the Town responded to CKC's Freedom of Information Act request dated October 13, 2022 (the "FOIA Response"). The FOIA Response included an earlier draft of the Staff Report to be provided to the BOZA at the September 27, 2021 hearing (the "Staff Report Draft"). **Exhibit B**. The Staff Report Draft included completely different findings and conclusions regarding the timeliness of the Lucey Appeal. It reads, in relevant part, as follows:

Fact 1: Mr. Justin Lucey requested notification of any zoning determinations related to the Mill Street Boutique Hotel on **March 26, 2021**.

Fact 2: **The Zoning Administrator sent a letter to Ms. Carmen Scott on April 21, 2021, which included a zoning determination related to parking.**

Fact 3: As requested, Mr. Justin Lucey was provided a copy of the determination letter on **April 26, 2021**.

Fact 4: The applicant filed an appeal of the decision of the Zoning Official on August 12, 2021.

(Highlights in Original).

Upon information and belief, the Town intends to take the position that the Staff Report Draft was merely a cut and paste template based on a prior staff report on an entirely different property that went before the BOZA. However, this does not explain why only some of the above-quoted language is highlighted. CKC can reasonably infer from the Staff Report Draft that – just as with the prior case – Justin Lucey, too, requested to be notified of all final zoning decisions regarding the project.

Prior to the receiving the FOIA Response, CKC was unaware Justin Lucey requested to be notified of all zoning determinations related to the project. CKC was further unaware that, at some undisclosed time, the Zoning Administrator provided Justin Lucey with his written determination that the project complied with the off-street parking regulations. Neither correspondence was included in the FOIA Response or included in the record filed with the Court.

CKC's Appeal Petition argues, among other things, that the Lucey Appeal was untimely and the BOZA, therefore, never had jurisdiction to hear it in the first place. Therefore, in order for these issues to be properly before the Court on appeal, the documents referenced in the Staff Report Draft must be included in the record. CKC submits these materials to prove Justin Lucey had actual knowledge of the Zoning Administrator's off-street parking determination with respect to the project several months before his appeal was filed in August of 2021, rendering it clearly untimely as a matter of law.

ii. Zoning Administrator File and Prior Approvals of Suite-Style Accommodations Uses.

The Lucey Appeal's scope was extremely broad. It challenged, essentially, each and every decision made by the Zoning Administrator with respect to the project. The issues covered everything from the project's use, height, curb-cuts/visibility, and – of course – off-street parking calculations.

Given the broad scope of the Lucey Appeal, the materials required to comply fully with S.C. Code Ann. § 6-29-800(B) are broad as well. They include all the documents and communications in the Zoning Administrator's file providing the basis for each of the decisions on appeal. However, since CKC's appeal deals only with the BOZA's determination regarding the off-street parking issue, only those materials in the Zoning Administrator's file relevant to off-street parking need be supplemented at this stage.

The record filed with this Court contains a memorandum, found at Exhibit E, prepared by the Zoning Administrator for the September 27, 2021. This memorandum defends the Zoning Administrator's off-street parking decision by affirming that "Guest Room," in the context of an accommodations use, pertains to an individually keyed unit – not individual sleeping quarters. However, this memorandum is not sufficient in and of itself. The actual documents in the Zoning Administrator's file referenced in the memorandum must be included to ensure a complete record and comply with S.C. Code Ann. § 6-29-800(B).

Missing from the record filed with the Court are specific examples of other accommodations uses approved by the Town consistent with the Zoning Administrator's interpretation of the off-street parking rules. The FOIA Response referenced above contains numerous examples of other suite-style accommodations uses approved with the one-unit, one-parking space rule. This includes, among other things, the 2016 approvals for the Staybridge Suites located at 250 Johnnie Dodds Blvd. **Exhibit C**. This project contains 108 keyed units, eight (8) of which are two-bedroom suites, for a total of 108 off-street parking spaces.² This approval is consistent with the Zoning Administrator's determination with respect to the Shem Creek Boutique Hotel. The FOIA Response also contains documents indicating that both the Residence Inn on the Isle of Palms Connector (1116 Isle of Palms Connector) and the Homewood Suites (1998 Riviera Drive) contain "suite style" rooms requiring only a single off-street parking spot. As case in point, a November 28, 2005 letter from the Town of Mount Pleasant states, in regards to Residence Inn on the Isle of Palms Connector, that "the parking requirements for a hotel are **one space per each sleeping room or suite**, plus one space per each three employees." (Emphasis added). **Exhibit D**.

² Sheet A101 indicates that there are 108 rooms (keyed entries) and 108 parking spaces. Sheet A202 includes a chart showing the unit mix, which includes a total of eight (8) two-bedroom suites.

CKC respectfully submits that the off-street parking plan approvals for the Staybridge Suites, Residence Inn on the Isle of Palms Connector, and the Homewood Suites be included in the record to comply with S.C. Code Ann. § 6-29-800(B). Similarly, the Town should be ordered to supplement the record with all other accommodations uses, containing suite-style units, approved since 2014 to support the Zoning Administrator's determination at issue in this appeal. These materials are core to the Zoning Administrator's file required by S.C. Code Ann. § 6-29-800(B).

b. S.C. Code Ann. § 6-29-830(A) requires a verbatim transcript of the BOZA hearing to be filed with the Court.

S.C. Code Ann. § 6-29-830(A) provides, in relevant part, that upon the filing of an appeal to circuit court "the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions." There is no verbatim transcript appearing in the record filed on August 24, 2022.

Without the transcript, the Court will be unable to review – and Appellant will be unable to reference – what testimony and evidence was considered by the BOZA and what precisely transpired at the September 27, 2021 BOZA hearing. Upon information and belief, the BOZA's meetings are recorded and capable of transcription. It is common practice in Charleston County for municipalities to file verbatim transcripts in zoning appeals pursuant to S.C. Code Ann. § 6-29-830(A).

c. Under the BOZA's Rules of Procedure, CKC's Letter In Opposition to the Lucey Appeal is Part of the Record.

The BOZA's Rules of Procedure (Article III, Sections 3 and 6) allow evidence to be submitted to the BOZA prior to and during the hearing. **Exhibit E**. Both S.C. Code Ann. § 6-29-

830(A) and *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 39, 606 S.E.2d 209, 214 (Ct. App. 2004) confirm that all material submitted to, and considered by, the BOZA are considered part of the official record.

On September 24, 2021, Appellant's counsel submitted a letter along with six (6) exhibits opposing the Commercial Neighbors' appeal. This letter was also presented at the hearing. Appellant's principal, Colin Colbert, also submitted a letter, and so did the prior owners of the Properties. These letters and exhibits opposing the Commercial Neighbors' appeal are absent from the record filed on August 24, 2022. The record contains only correspondence from those supporting the Commercial Neighbors' appeal.

Given the foregoing, Appellant respectfully requests the record be supplemented with the aforementioned letters of support that were submitted pursuant to the BOZA's Rules of Procedure and provided to the BOZA members in advance of and during the September 27, 2021 hearing.

Conclusion

CKC respectfully requests this Court grant its Motion to Supplement the Record and direct the Town to file the materials identified above at least thirty (30) days in advance of the hearing on the Appeal Petition.

Respectfully Submitted,

s/Ross A. Appel
Ross A. Appel, Esq. (SC Bar #79149)
McCULLOUGH ▪ KHAN ▪ APPEL
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Mount Pleasant, SC 29464
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Counsel for Appellant

February 24, 2023
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
CKC PROPERTIES, LLC,	)	CASE NO. 2021-CP-10-05211
	)	
	)	
APPELLANT,	)	
	)	
vs.	)	
	)	
THE TOWN OF MOUNT PLEASANT,	)	
SOUTH CAROLINA; THE TOWN OF	)	RESPONDENTS' SUPPLEMENT OF THE
MOUNT PLEASANT BOARD OF	)	RECORD
ZONING APPEALS; MICHAEL	)	
ROBERTSON, IN HIS OFFICIAL	)	
CAPACITY AS ZONING	)	
ADMINISTRATOR; JUSTIN O'TOOLE	)	
LICEY; 415 MILL ST., INC.; AND 69	)	
SCOTT STREET, LLC	)	
	)	
RESPONDENTS.	)	
	)	

TO: ROSS APPEL, ESQ., MCCULLOUGH KHAN APPEL, ATTORNEY FOR APPELLANT
CKC PROPERTIES, LLC:

Respondents, the Town of Mount Pleasant and the Town of Mount Pleasant Board of Zoning Appeals (hereinafter "Respondents"), by and through the undersigned counsel, hereby supplement the Record on Appeal in this matter pursuant to S.C. Code Ann. § 6-29-830(A): (Exhibit J, September 24, 2021 Letter from Ross Appel); (Exhibit K, September 27, 2021 Letter/Outline from Justin Lucey); (Exhibit L, September 27, 2021 Letter/Memorandum from Colin Colbert); (Exhibit M, September 27, 2021 Letter from Gabe Joseph).¹

[SIGNATURE ON FOLLOWING PAGE]

¹ Counsel for Appellant and Counsel for Respondent Justin Lucey certified that the documents listed above were presented into evidence at the September 27, 2021 BOZA hearing.

CLEMENT RIVERS, LLP

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*Attorneys for Respondents The Town of Mount
Pleasant, South Carolina, The Town of Mount
Pleasant Board of Zoning Appeals*

Charleston, South Carolina

Dated: March 3, 2023

EXHIBIT J

(September 24, 2021 Letter from Ross Appel)



Ross A. Appel
Direct: (843) 937-9798
Fax: (843) 937-0706
ross@mklawsc.com

September 24, 2021

VIA E-MAIL ONLY

David Pagliarini, Esq.
Town Attorney
Town of Mount Pleasant
100 Ann Edwards Lane
Mount Pleasant, SC 29464
DPagliarini@tompsc.com

**RE: Shem Creek Boutique Hotel
Letter in Opposition | Zoning Administrator Appeal Case A-10-21
Board of Zoning Appeals, September 27, 2021**

Dear David:

I hope this letter finds you well. This firm represents CKC Properties, LLC (“CKC”), the developer of the twenty-seven (27) room Shem Creek Boutique Hotel. CKC and its experienced design and engineering team have worked closely and collaboratively with Town staff on plans for the Shem Creek Boutique Hotel since November 2020.

CKC opposes the zoning administrator appeal filed on August 23, 2021 (the “Appeal”) by Justin Lucey, 415 Mill St., Inc., and 69 Scott Street, LLC (collectively, the “Appellants”).

The Appeal should be dismissed for two reasons. First, the Appellants untimely filed the Appeal. Second, the Appellants lack standing under South Carolina law to maintain the Appeal. If the Town and the BOZA agree with us on either point, the Appeal must be dismissed as a matter of law *without reaching the merits of the Appeal*. These procedural defects deprive the BOZA of jurisdiction.

If, however, the BOZA determines it possesses jurisdiction to consider the merits of the Appeal both the facts in the record and the applicable law overwhelmingly support **affirming** the Town’s zoning administrator’s decisions. The Town staff correctly interpreted and applied the applicable ordinances, as written. Moreover, the Town’s application of these rules to the Shem Creek Boutique Hotel are consistent with the Town’s treatment of several, substantially similar hotel projects over the years.

I. The Appellants failed to timely file the Appeal.

Section 156.411(A)(5)(a) of the Town's Zoning Code establishes the deadline to file a zoning administrator appeal. Specifically, "[t]he appeal must be taken within 30 days from the date the appealing party has received actual notice of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal."

The Appeal was filed on August 23, 2021 – several months after the Appellants first obtained actual notice of the Shem Creek Boutique Hotel, generally, and the use and parking issues they take issue with, specifically.

On April 26, 2021, CKC and its design team appeared before the BOZA to seek a height variance for the Shem Creek Boutique Hotel. The agenda for the April 26, 2021 BOZA hearing was posted on the Town's website on April 13, 2021. The BOZA voted to deny the height variance. *See*, April 26, 2021 BOZA Order and Application Package attached as **Exhibit A**.

The Appellants were fully aware of not just the April variance request, but the specific details regarding the proposed Shem Creek Boutique Hotel. The Appellants submitted a letter in opposition to the variance and spoke in opposition at the April 26, 2021 meeting. *See*, Appellants' letter dated April 26, 2021 attached as **Exhibit B**. The Appellants' letter conclusively establishes that the Appellants possessed actual notice, on April 26, 2021 at the latest, of each and every one of the zoning issues presently on appeal. The Appellants' letter specifically objects to use, parking, and various other non-zoning related issues pertaining to the Shem Creek Boutique Hotel. Moreover, representatives from CKC communicated, via e-mail, with Justin Lucey, and these e-mails confirm that the project's "design package" shared on March 26, 2021. *See*, E-mails attached as **Exhibit C**. Clearly, it cannot be seriously maintained that the Appellants first obtained actual notice of the Shem Creek Boutique hotel within thirty days of August 23, 2021 when the appeal was filed. They were on actual notice several months earlier.

CKC's variance application package included a detailed description of the Shem Creek Boutique Hotel in terms of both use and parking. The application, which was posted online and made available to public at the time, included detailed site plans and drawings depicting the use and parking plan approved by Town staff. The Appellants possessed actual knowledge of all of this information because it was specifically referenced in their April 26, 2021 letter.

There is no question the Appellants possessed actual knowledge of the use, parking, and other zoning issues presently on appeal on April 26, 2021, at the latest. The Appeal, filed on August 23, 2021, is therefore several months untimely. Assuming the Appellants first obtained actual knowledge on April 26, 2021, the deadline for filing the zoning administrator appeal would have been May 26, 2021. The Appellants filed the instant appeal eighty-nine (89) days late on August 23, 2021. This deprives the BOZA of jurisdiction to even consider the appeal pursuant to Section 156.411(A)(5)(a) of the Town's Zoning Code.

Finally, even if it is determined that the events surrounding the April 26, 2021 BOZA hearing did not provide the Appellants with actual notice, which is denied, the Appeal must still be deemed untimely.

On July 19, 2021, the Town published the July 28, 2021 Design Review Board (“DRB”) Agenda. *See*, E-mails attached as **Exhibit D**. This agenda included the Shem Creek Boutique Hotel for Preliminary Approval of Site, Landscape, and Architecture. Under the Town’s policies and procedures, a project cannot appear before the DRB unless it satisfies all applicable zoning regulations including, but not limited to, use and parking. Therefore, on July 19, 2021, when the DRB Agenda was published, the Appellants – who clearly have been following this project closely – received actual notice that the Shem Creek Boutique Hotel had obtained all necessary zoning approvals. This means, the Appellants had thirty (30) days from July 19, 2021 to initiate a zoning administrator appeal. Thirty (30) days from July 19, 2021 is August 18, 2021. The Appellants’ filed the Appeal through the Town’s online portal on August 23, 2021, which was five (5) days past the deadline. This means the Appeal was untimely and the BOZA lacks jurisdiction to consider it, as a matter of law.

Whether the Appellants obtained actual notice of the Shem Creek Boutique Hotel on or about April 26, 2021 or July 19, 2021, the result is the same. The Appeal is untimely, the BOZA lacks jurisdiction to consider it, and the Appeal must be dismissed with prejudice.

II. The Appellants lack standing to prosecute the Appeal.

Section 156.411(A)(5) provides “[a]ppeals to the Board may be taken by any person **aggrieved**” (Emphasis added). The Appellants are not “aggrieved” parties under South Carolina case law because (1) the alleged impacts are purely “conjectural and hypothetical” and (2) the Appellants’ interests are motivated solely by commercial and competitive interests.

The South Carolina Court of Appeals has held as follows:

A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest. The word “aggrieved” refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation. A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and interests.

Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2001) (internal citations omitted). In this zoning appeal, the Court of Appeals confirmed that allegations of mere “conjectural and hypothetical” harm does not make one an “aggrieved” party for standing purposes. *Id.*

Here, the Appellants have only pointed to conjectural and hypothetical harms regarding parking and other issues. These concerns do not specifically or uniquely impact the Appellants in a manner different than other nearby property owners and the public at large. The Shem Creek Boutique Hotel has yet to be constructed. The Appellants have therefore suffered no impacts

whatsoever – be it from use, parking, or otherwise. Mere philosophical or policy objections are irrelevant for standing purposes, according to the Court of Appeals’ holding in *Beaufort Realty Co., Inc. v. Beaufort County*. For these reasons, the Appellants are not “aggrieved” parties under South Carolina law, and they lack standing to maintain the Appeal.

Moreover, the Appellants lack standing because the nature of their alleged harms redound solely to their own commercial and competitive interests. The South Carolina Supreme Court has held that where “the potential injury or prejudice is only an increase in business competition, such injury or prejudice is insufficient to confer standing.” *ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 340 (2008). By their own admission, Appellants object to the Shem Creek Boutique Hotel due to perceived parking and other impacts to their businesses. None of the Appellants’ properties are residential properties. The Appellants’ properties identified in the Appeal are all commercial and the alleged impacts are to the Appellants’ businesses. What else could be impacted under these circumstances?

The Appellants are no small player in the Shem Creek area. The Appellants have acquired, consolidated, rezoned, and developed several commercial properties in the Shem Creek area. In 2018, the Appellants rezoned TMS Nos. 517-16-00-055 and 517-16-000-36 (owned by 69 Scott Street, LLC) from Conservation-Open Space to Areawide Business. *See*, Rezoning Application attached hereto as **Exhibit E**. That very same year, the Appellants actively sought to acquire the same parcels CKC now has under contract and where the Shem Creek Boutique Hotel will be located. *See*, E-mails attached hereto as **Exhibit F**. One wonders about the Appellants’ true motivations behind the Appeal. The Appellants’ alleged harms are precisely what the Supreme Court railed against in *ATC S., Inc. v. Charleston Cty.* Appellants lack standing because their true motivations are commercial and competitive in nature.

The Appellants are not “aggrieved” parties under South Carolina law, and their commercial and competitive motivations animating the Appeal disqualify them from passing the standing test. The Appeal must be dismissed, as a matter of law.

III. The zoning administrator’s interpretations should be affirmed.

Before turning to the substantive arguments in the Appeal, the BOZA must grant deference to the zoning administrator’s interpretation of the Zoning Code. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995) (review bodies must “give great deference to the decisions of those charged with interpreting and applying local zoning ordinances.”). With that critically important guiding principle in mind, we address the Appellants’ alleged interpretive errors below.

a. The Shem Creek Boutique Hotel is a “Boutique Hotel” and a use allowed by-right.

The Appellants would have the BOZA believe that the Shem Creek Boutique Hotel is not, in fact, a “Boutique Hotel.” This argument strains credulity.

The properties are zoned Neighborhood Commercial (NC). “Boutique Hotel” is a use allowed by right. In 2014 the Town Council replaced “Hotel” with “Boutique Hotel” in the NC District. Section 156.007 of the Zoning Code defines “Boutique Hotel” as follows:

HOTEL, BOUTIQUE (includes **INN**). A building or group of attached or detached buildings containing not more than 50 lodging units intended primarily for rental or lease to transients by the day, week, or month. Such uses may provide additional services such as daily maid service, restaurants, meeting rooms, and/or recreation facilities.

The Shem Creek Boutique Hotel clearly satisfies this definition. The Appellants make a series of unfounded allegations regarding the level and nature of services provided by the Shem Creek Boutique Hotel. These are all red herrings. The definition of the “Boutique Hotel” speaks only to the number of lodging units and term of the stay. The Shem Creek Boutique Hotel has been designed far below the maximum fifty (50) units, and the accommodations will be offered for daily, weekly, or monthly stays. Far from *requiring* “additional services” such as “maid service, restaurants, meeting rooms, and/or recreation facilities,” the above-quoted definition clearly states that these *may* be offered. They are not required.

Given the foregoing, there can be no question that the Shem Creek Boutique Hotel is a “Boutique Hotel” under the express, unambiguous terms of the Zoning Code. The BOZA need not consult dictionary definitions or any other extrinsic, irrelevant evidence offered by the Appellants. The text of the Zoning Code clearly supports the zoning administrator’s determination that the Shem Creek Boutique Hotel is use allowed by right.

b. The zoning administrator correctly calculated the required number of off-street parking spaces.

Appellants next argue that the zoning administrator failed to properly calculate the number of required off-street parking spots for the Shem Creek Boutique Hotel. This argument finds no support in the text of the Zoning Code, and the zoning administrator correctly applied the regulations.

Section 156.171(A) of the Zoning Code sets forth the Towns off-street parking requirements and formula. The parking table calls for “1 to 2” parking spaces per “Guest Room.” The range of parking spaces is an established feature of the Zoning Code. It is neither unique to Boutique Hotels or this project, specifically. The intent is to provide flexibility to accommodate more – or less – parking based on the specific characteristics of the site.

The Shem Creek Boutique Hotel contains twenty-seven (27), individually keyed “Guest Rooms.” The plans, approved by the Town, depict thirty-five (35) off-street parking spots – eight (8) more than required by Section 156.171(A). This clearly meets the requirements of the Zoning Code. The parking spots depicted on the plans approved by the Town satisfy all technical requirements.

The Appellants argue, without any basis in the text of the Zoning Code, that the term “Guest Room” applies to each bedroom located in an individually keyed unit – not the

individually keyed unit itself. This is not how the zoning administrator and the Town of Mount Pleasant have applied these parking regulations in the past on substantially similar hotel projects.

To the extent the term “Guest Room” is ambiguous, which CKC denies, the term must be interpreted liberally in favor of the free and unrestricted use of the property. According to the South Carolina Court of Appeals:

[S]tatutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.

Helicopter Sols., Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015) (citing *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)). This means, in the absence of clear text to the contrary, the term “Guest Room” must be interpreted according to its ordinary use in the hotel context, namely that of an individually keyed unit.

The zoning administrator correctly interpreted the Zoning Code’s minimum off-street parking requirements for the Shem Creek Boutique Hotel. CKC has provided more off-street parking spots than those required. The Appellants’ parking objections have no merit and should be rejected outright.

Conclusion

For the above reasons, CKC respectfully requests the BOZA vote to DENY the Appeal. The Appeal was both untimely filed and the Appellants lack standing. If the BOZA agrees with us on either point, the Appeal must be denied and the BOZA need not reach the merits of Appellants’ technical arguments.

Assuming the BOZA believes it has jurisdiction to consider the Appeal, which CKC disputes, we respectfully submit that the Town’s zoning administrator decisions, which must be given due deference by the BOZA, are fully supported by the text of the Zoning Code and should be affirmed by the BOZA.

I would appreciate your including this letter and the referenced exhibits into the record at the September 27, 2021 meeting. I would also appreciate your sharing this letter with each BOZA member in advance of the hearing. CKC reserves all rights. If you have any questions, please do not hesitate to contact me.

With kind regards,

MCCULLOUGH KHAN, LLC



Ross A. Appel

Enclosures – as stated

Cc: Town of Mount Pleasant Mayor and Town Council (via E-mail only)
Mac Deford, Esq. (via E-mail only)
Trisha Hughey (via E-mail only)
Eric DeMoura (via E-mail only)
Michael Robertson (via E-mail only)
Michelle Reed (via E-mail only)
Gabriel Joseph, Esq. (via E-mail only)
Client (via E-mail only)

EXHIBIT A



BOARD OF ZONING APPEALS FINAL ORDER

CKC Properties, LLC
c/o Mr. William R. Stroud
Finkel Law Firm
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405
Applicant

CKC Properties, LLC
124 Spring Street, Suite 101
Charleston, SC 29403
Owner

CASE V-12-2021

Scott & Lucas Streets

TMS# 517-16-00-034, 157-16-00-035, 517-16-00-057, 517-16-00-058

Request for relief from the strict application of §156.318 (P)(4)(b)(2)(b) to allow an additional building story. The CB-OD Boulevard Overlay District (156.318 (P)(4)(b)(2)(b)) limits buildings to three-stories.

The Town of Mount Pleasant Board of Zoning Appeals held a public meeting on April 26, 2021.

After consideration of the evidence and arguments presented, the board makes the following findings of fact and conclusions of law:

APPLICABLE CASE LAW NOTES: 6.A Variance applicant bears the burden of proving its entitlement to a variance from terms of a zoning regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 199) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

APPLICABLE CASE LAW NOTES: 6.B Variance applicant bears burden of establishing existence of four statutory criteria for variance to be granted. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. App. 1997).

APPLICABLE CASE LAW NOTES: 3.D Profitability. The fact that a property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955).

APPLICABLE CASE LAW NOTES: 4.B Since a property owner, in seeking a variance, may not complain of the hardship which he has created, a property owner was not entitled to have a variance, where he knew, or should have known, when he purchased the property that 50 feet of frontage on the public street was required by the law in the county, and he obviously knew that the entire tract had only 50 feet of frontage on a public street and, thus, could not be subdivided. *Decided under former law. Georgetown County Bldg. Official v. Lewis* (S.C. App. 1986) 290 S.C. 513, 351 S.E.2d 584.

1. *Staff Comment: Please see the applicant's submittal for justification of the relief sought.*
2. *Staff Comment: The applicant is requesting an additional story in the proposed building.*
3. Fact: The property is zoned NC-Neighborhood Commercial.
4. Fact: The property is located in the CB-OD Boulevard Overlay District.
5. Fact: The property is located in AE-10 Flood Zone.
6. Law 1: 156.318 BOULEVARD OVERLAY DISTRICT (P) *CB-OD Boulevard Overlay District* (4) *Site development and design elements* (b) *Building height* (2) (b) All structures shall have a minimum of two floors, with a maximum of three floors allowed. The two floor minimum shall only apply to buildings fronting the boulevard.
7. Law 2: 156.318 BOULEVARD OVERLAY DISTRICT (P) *CB-OD Boulevard Overlay District* (4) *Site development and design elements* (a) (a) Maximum height, setbacks and build-to lines, and bufferyard requirements. Maximum height, setbacks and build-to lines, and bufferyard requirements shall be as depicted in the following Development Guidelines Table and corresponding Figure 6.,

Coleman Boulevard Overlay District Development Guidelines Map, and as further described herein, except civic uses, which shall be in accordance with division (N)(6) herein. [Table] limits the maximum height of the building to 45 feet.

8. Law 3: [156.007 Definitions](#). **STORY (including BUILDING FLOOR)**. An articulated, distinct level of separation in a building or structure located between the finished surface upon which one may stand and the finished veiling, having a minimum vertical distance of seven feet at its apex, specifically including a ground level component used for parking or storage, and excluding the following: unfinished attic space without permanent stair access, located within a rood structure, and used exclusively for storage or building support components such as water heaters, HVAC components and the like, and a basement, or crawl-space area.
9. Staff Comment: As designed, the parking beneath the building counts as a story in accordance with Law 3 above.
10. LAW 4: § [156.411](#) POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.
 - (A) *Powers*. The Board of Zoning Appeals shall have all of the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:
 - (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.
 - (a) A variance may be granted in an individual case of unnecessary hardship, if the Board makes and explains, in writing, the following findings:

Applicant Submittal Responses:

11. LAW 4(a): "There are extraordinary and exceptional circumstances pertaining to the particular piece of property;"

See attached formal letter and Exhibits.

COMMENT: There are two prominent extraordinary and exceptional conditions: (1) the Property is located within the AE-10 Flood Zone; and (2) the current grade of the Property is between 3.5-5.75' MSL throughout. These conditions require that the Applicant make significant investments to raise the buildings a full story in order to meet current flood code. The only

alternative to raising the buildings would be to provide an elaborate flood proofing system on the ground level—a concept still unproven that would be overly burdensome and result in constant flooding of a finished ground level. Such a system would only serve to overwhelm the FEMA Flood Insurance program with repeated claims.

The ground level of the Property is located within the AE-10 Flood Zone, and despite being only reasonably usable for parking and storage functions, it is nonetheless counted towards the Applicant's three-story height restriction under the CB-OD's requirements set forth in Section 156.318(P)(4)(b)(2)(b). Additionally, the Property is lower than other properties within CB-OD, creating an increased likelihood of flood events. This directs prudent design practices to restrict the ground floor areas of the Proposed Development to parking and storage purposes only. This, in turn, makes the Ordinance's three-story height component more restrictive than it was originally intended to be when applied to this particular Property, creating unnecessary hardship for the Applicant.

10. LAW 4(b) "These conditions do not generally apply to other properties in the vicinity."

See attached formal letter and Exhibits.

COMMENT: The overwhelming majority, if not nearly all, of other properties within the CB-OD do not have such low-grade as this Property. The CB-OD's zoning requirements emphasize the parcels along Coleman Boulevard, which are not subject to the low grade levels found on this Property.

To illustrate, the elevation of Coleman Boulevard at the Live Oak Street intersection is 10' higher than the subject site, and the elevation of Coleman Boulevard at the Mill Street intersection is 4' higher than the subject site. Please reference Exhibit C (Data pulled from survey files of other recent reference surveys along Coleman Boulevard, which the overlay was specifically intended for).

Furthermore, neighboring properties (also within CB-OD) are nonetheless able to utilize their first-floor levels for productive purposes and as conditioned spaces. This is not possible for the Proposed Development without a variance due to the Property's lower existing grade and flooding characteristics, creating an unnecessary hardship by reducing the amount of usable space within the three-story limitation. Section 156.318(P)(4)(b)(4)(a) states areas above the maximum height or maximum number of stories may be used for storage and such uses as open decks or rooftop restaurants, but not for living area or commercial space. The Applicant's design includes living areas within the roof structures, as well as

exterior spaces beyond the living areas at the top levels—elements which, when taken with the exceptional conditions, would be squarely within the spirit of the Ordinance and not contravene or frustrate CB-OD's purpose of "fostering an active, pedestrian-oriented commercial environment with a variety of uses, activities, and scales."

- 11. LAW 4(c):** "Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;"

See attached formal letter and Exhibits.

COMMENT: The application of the Ordinance to the Property unreasonably restricts the Applicant's utilization of the Property because the low elevation and flooding characteristics of the

Property renders any permissible first-story uninhabitable and inappropriate for commercial use. Although the design of the Proposed Development is in compliance with the overall height limitation of 45', a strict interpretation of the definition of a "story" prevents the Applicant's ability to comply with the three-story zoning limitation without severely and unreasonably restricting the utilization of the Property. For this reason, the current design includes utilization of the areas within the roof structures as conditioned spaces, in compensation for the unusable spaces at the ground level. The Applicant believes that its design, which incorporates (i) a lounge area/deck above the third floor as to the Boutique Hotel; and

(ii) bonus rooms with decks as to the Family Unit falls within the spirit, intent, and purpose of the Ordinance. But for the flood zone and the low-grade characteristics of the Property (extraordinary and exceptional conditions), the Applicant's Proposed Development would not run counter to the letter of the Ordinance.

Additionally, it is the Applicant's belief that the abeyant relief granted through operation of Section 156.318(P)(4)(b)(4)(a) is impossible to practically achieve. This section states in part that areas above the maximum number of stories may be used for storage and such uses as open decks or rooftop restaurants, but not for living area or commercial space. The Applicant is unable to imagine any design of the Proposed Development which would adhere to this requirement and believes the section to be overly ambiguous and vague for this reason.

Because of the flood zone and grade characteristics, the application of the Ordinance to the Property would unreasonably restrict the utilization of the Property and run counter to the CB-OD's spirit, intent, and purpose.

- 12. LAW 4(d):** "Authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:"

See attached formal letter and Exhibits.

COMMENT: Not only will the requested variance not be of substantial detriment to adjacent property or to the public good and not harm the character of the district, to the contrary, the Proposed Development will enhance and improve the public good, enhance the character of the district and benefit adjacent properties by furthering the CB-OD's purpose of "fostering an active, pedestrian-oriented commercial environment with a variety of uses, activities, and scales."

The Property is directly adjacent to boat dry-stack storage facility functionally 50' in height, commercial restaurant/bar establishments facing Shem Creek, and other assorted commercial/recreational businesses. Please reference Exhibit B for adjacent property height comparisons. The adjoining property to the south is a pumping station facility owned by the Town of Mount Pleasant. There are no single-family residential homes directly adjacent to the Property, with the single-family residential homes in the vicinity being significantly buffered from the subject site. The character of the area is one of dense and various commercial uses, with an emphasis on recreational and social activities. In addition to the numerous restaurants and bars nearby, other businesses include watercraft/paddleboard rentals, the dry-stack boat storage facility, Shem Creek Boat Landing and launch ramp, and other businesses catering to locals and tourists alike. The Proposed Development would contribute substantively to the community by adding residential options to a popular area while also contributing to the vibrancy of CB-OD's commercial environment.

The additional story proposed for the Townhouse elements of the Proposed Development will simply make the area within the roof structure usable space to complete the architectural program, in compensation for the uninhabitable ground floor space. The Boutique Hotel's design includes a section of the uppermost story with a 4' parapet wall, rather than 12' gable-end facing Shem Creek. The Boutique Hotel's proposed lounge area/rooftop deck access will not be visible from the street, as it is centered on the interior portion of the building.

From an aesthetic standpoint, Applicant believes the utilization of the uppermost level may actually reduce the scale of the Townhouse elements of the Proposed Development by reducing the visual mass of the roofs as illustrated in Exhibit D, enclosed herewith. The Boutique Hotel's variations in roof configuration will assist in punctuating the main entry/lobby location and reduce vehicular and pedestrian traffic confusion, furthering CB-OD's purpose of allowing development "where form is as important as use, with buildings and primary entrances located near the public realm and high-quality pedestrian streetscapes in front."

In summary, no substantial detriment will be realized by any adjacent properties, while the character of the district will be positively reinforced by the granting of the variance.

APPLICABLE CASE LAW NOTE: 2.E In determining whether to grant a variation in the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. *Rush v. City of Greenville* (S.C. 1965) 246 S.C. 268, 143 S.E. 2d 527.

APPLICABLE CASE LAW NOTE: 1.A In exercising its discretion, the board of adjustments is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston* (S.C. 1957) 230 S.C. 440, 96 S.E. 2d 456.

APPLICABLE CASE LAW NOTE: 1.B Granting a variance from the terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Decided under former law. *Restaurant Row Associates v. Horry County* (S.C. 1999) 335 S.C. 209, 516 S.E.d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409.

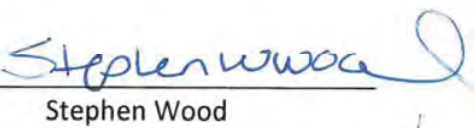
MOTION: Mr. Wood moved for denial based on the findings that all of the criteria for a variance outlined in §156.411 must be met and items C and D have not been met. While it is the preference of the applicant to have four stories, the application of the existing ordinances would not unreasonably restrict the use of the property. Likewise, as testified by the neighbors and adjacent property owners there would be detriment to adjacent properties, to the public good, and the character of the neighborhood would be harmed. Mr. Duke seconded the motion. All in favor, with Mr. Barrow abstaining.

THE BOARD, THEREFORE, ORDERS that the variance is denied.


Barry Wolff, Chairman

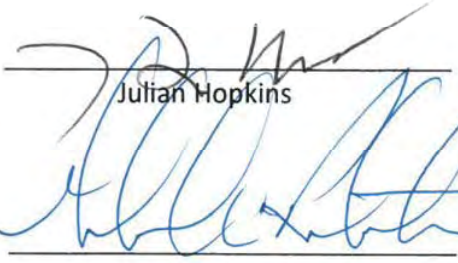
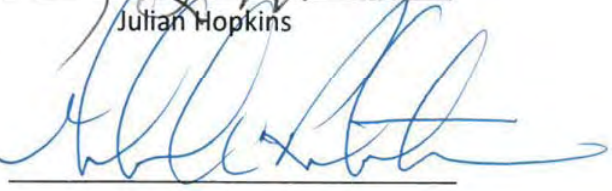

Megan Finch-Stevens

Beth Santilli


Stephen Wood


Elliott Barrow


Stephen Duke


Julian Hopkins

Secretary

Date Final Order Signed: April 26, 2021

Date mailed to parties in interest: 4.27.21

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

Board of Zoning Appeals - Variance Application

A [Property Owner Acknowledgement Form](#) must be submitted with the application.

ALL ONLINE APPLICATIONS ARE DUE BY 11:59 p.m. ON THE DEADLINE DATES. *It is highly recommended that the property owner and/or a representative meet with staff prior to submitting an application.*

Nature of Request & Fees

Notice of Appeal for a Variance
\$200.00

Requirements

All supplemental information must be submitted in a single PDF file with this application.

An accurate, legible plot plan showing property dimensions and locations of structures and improvements must be attached to an application for variance or special exception.

The following supplemental information is included with this application (please list):

Formal Letter
Property Acknowledgement Forms
Exhibits:
Exhibit A Site Overview Map
Exhibit B Allowable Zoning; FFE; Adjacent

Please attach supplemental information outlined above:*

[Complete Package 4.5.21 FLF CKC Variance Request Letter to BOZA 2.pdf](#)

Applicant Information

Applicant(s)* CKC Properties LLC
Address* 124 Spring Street, Suite 101, Charleston, SC 29403
Daytime Phone* 607-227-8070 Email: colin@ckcpropertiesllc.com ; wstroud@

Owner Information (if other than applicant)

Owner(s): See attached Form
Address:
Daytime Phone: Email:

Property Information

Street Address* Lots on Scott and Lucas Street
Lot & Block: (-034 = Lot 67) (-035 = Lot 68) (-057 = Lot 69) TMS #* 517-16-00-034, 517-16-00-035, 517-16-00-036
Subdivision:
Acreage* .6
Zoning District* Boulevard Overlay District

Designation Information (complete only if owner is not applicant)

I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date:
Owner: Owner:

1. Applicant hereby appeals to the Board of Zoning Appeals for a variance from the strict application to the property described in the Notice of Appeal of the following provisions of the Zoning Code (cite Zoning Code section(s) from which relief is sought):

156.318(P)(4)(b)(2)(b)

so that a zoning permit may be issued to allow use of the property in a manner shown on the attached plot plan, described as

follows:

See attached formal letter and Exhibits.

2. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by State law and Town ordinance are met by the following facts:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property as follows:

See attached formal letter and Exhibits.

COMMENT: There are two prominent extraordinary and exceptional conditions: (1) the Property is located within the AE-10 Flood Zone; and (2) the current grade of the Property is between 3.5-5.75' MSL throughout. These conditions require that the Applicant make significant investments to raise the buildings a full story in order to meet current flood code. The only alternative to raising the buildings would be to provide an elaborate flood proofing system on the ground level—a concept still unproven that would be overly burdensome and result in constant flooding of a finished ground level. Such a system would only serve to overwhelm the FEMA Flood Insurance program with repeated claims.

The ground level of the Property is located within the AE-10 Flood Zone, and despite being only reasonably usable for parking and storage functions, it is nonetheless counted towards the Applicant's three-story height restriction under the CB-OD's requirements set forth in Section 156.318(P)(4)(b)(2)(b). Additionally, the Property is lower than other properties within CB-OD, creating an increased likelihood of flood events. This directs prudent design practices to restrict the ground floor areas of the Proposed Development to parking and storage purposes only. This, in turn, makes the Ordinance's three-story height component more restrictive than it was originally intended to be when applied to this particular Property, creating unnecessary hardship for the Applicant.

b. These conditions do not generally apply to other property in the vicinity as shown by:

See attached formal letter and Exhibits.

COMMENT: The overwhelming majority, if not nearly all, of other properties within the CB-OD do not have such low-grade as this Property. The CB-OD's zoning requirements emphasize the parcels along Coleman Boulevard, which are not subject to the low grade levels found on this Property. To illustrate, the elevation of Coleman Boulevard at the Live Oak Street intersection is 10' higher than the subject site, and the elevation of Coleman Boulevard at the Mill Street intersection is 4' higher than the subject site. Please reference Exhibit C (Data pulled from survey files of other recent reference surveys along Coleman Boulevard, which the overlay was specifically intended for).

Furthermore, neighboring properties (also within CB-OD) are nonetheless able to utilize their first-floor levels for productive purposes and as conditioned spaces. This is not possible for the Proposed Development without a variance due to the Property's lower existing grade and flooding characteristics, creating an unnecessary hardship by reducing the amount of usable space within the three-story limitation. Section 156.318(P)(4)(b)(4)(a) states areas above the maximum height or maximum number of stories may be used for storage and such uses as open decks or rooftop restaurants, but not for living area or commercial space. The Applicant's design includes living areas within the roof structures, as well as exterior spaces beyond the living areas at the top levels—elements which, when taken with the exceptional conditions, would be squarely within the spirit of the Ordinance and not contravene or frustrate CB-OD's purpose of "fostering an active, pedestrian-oriented commercial environment with a variety of uses, activities, and scales."

c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows:

See attached formal letter and Exhibits.

COMMENT: The application of the Ordinance to the Property unreasonably restricts the Applicant's utilization of the Property because the low elevation and flooding characteristics of the Property renders any permissible first-story uninhabitable and inappropriate for commercial use. Although the design of the Proposed Development is in compliance with the overall height limitation of 45', a strict interpretation of the definition of a "story" prevents the Applicant's ability to comply with the three-story zoning limitation without severely and unreasonably restricting the utilization of the Property. For this reason, the current design includes utilization of the areas within the roof structures as conditioned spaces, in compensation for the unusable spaces at the ground level. The Applicant believes that its design, which incorporates (i) a lounge area/deck above the third floor as to the Boutique Hotel; and (ii) bonus rooms with decks as to the Family Unit falls within the spirit, intent, and purpose of the Ordinance. But for the flood zone and the low-grade characteristics of the Property (extraordinary and exceptional conditions), the Applicant's Proposed Development would not run counter to the letter of the Ordinance.

Additionally, it is the Applicant's belief that the abeyant relief granted through operation of Section 156.318(P)(4)(b)(4)(a) is impossible to practically achieve. This section states in part that areas above the maximum number of stories may be used for storage and such uses as open decks or rooftop restaurants, but not for living area or commercial space. The Applicant is unable to imagine any design of the Proposed Development which would adhere to this requirement and believes the section to be overly ambiguous and vague for this reason.

Because of the flood zone and grade characteristics, the application of the Ordinance to the Property would unreasonably restrict the utilization of the Property and run counter to the CB-OD's spirit, intent, and purpose.

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

See attached formal letter and Exhibits.

COMMENT: Not only will the requested variance not be of substantial detriment to adjacent property or to the public good and not harm the character of the district, to the contrary, the Proposed Development will enhance and improve the public good, enhance the character of the district and benefit adjacent properties by furthering the CB-OD's purpose of "fostering an active, pedestrian-oriented commercial environment with a variety of uses, activities, and scales."

The Property is directly adjacent to boat dry-stack storage facility functionally 50' in height, commercial restaurant/bar establishments facing Shem Creek, and other assorted commercial/recreational businesses. Please reference Exhibit B for adjacent property height comparisons. The adjoining property to the south is a pumping station facility owned by the Town of Mount Pleasant. There are no single-family residential homes directly adjacent to the Property, with the single-family residential homes in the vicinity being significantly buffered from the subject site. The character of the area is one of dense and various commercial uses, with an emphasis on recreational and social activities. In addition to the numerous restaurants and bars nearby, other businesses include watercraft/paddleboard rentals, the dry-stack boat storage facility, Shem Creek Boat Landing and launch ramp, and other businesses catering to locals and tourists alike. The Proposed Development would contribute substantively to the community by adding residential options to a popular area while also contributing to the vibrancy of CB-OD's commercial environment.

The additional story proposed for the Townhouse elements of the Proposed Development will simply make the area within the roof structure usable space to complete the architectural program, in compensation for the uninhabitable ground floor space. The Boutique Hotel's design includes a section of the upper-most story with a 4' parapet wall, rather than 12' gable-end facing Shem Creek. The Boutique Hotel's proposed lounge area/rooftop deck access will not be visible from the street, as it is centered on the interior portion of the building. From an aesthetic standpoint, Applicant believes the utilization of the uppermost level may actually reduce the scale of the Townhouse elements of the Proposed Development by reducing the visual mass of the roofs as illustrated in Exhibit D, enclosed herewith. The Boutique Hotel's variations in roof configuration will assist in punctuating the main entry/lobby location and reduce vehicular and pedestrian traffic confusion, furthering CB-OD's purpose of allowing development "where form is as important as use, with buildings and primary entrances located near the public realm and high-quality pedestrian streetscapes in front."

In summary, no substantial detriment will be realized by any adjacent properties, while the character of the district will be positively reinforced by the granting of the variance.

Development Approval Application (Permit) Recorded Covenant Affidavit

I, the undersigned, serve as the owner and/or owner's representative and certify that the information contained herein to be true and accurate. I further certify that the tract(s) or parcel(s) of land to which this approval request pertains:*

☐ Is Restricted

☒ Is Not Restricted

by any recorded covenant that is contrary to, conflicts with, or prohibits the activity for which approval is sought as provided in SC Code of Laws Section [6-29-1145](#), and the Town of Mount Pleasant Code of Ordinances [§155.084](#) and [§156.048](#).

Electronic Signature

I certify that I am the owner or serve as the owner's representative and am duly authorized to complete this application. I certify that all information required for review of this submittal is included. If an application is found to be incomplete, the primary contact will be notified and the application removed from the agenda.* I understand that selecting the box below will serve as my electronic signature.*

☒ I agree

Information of person completing electronic signature

Name:*	William R. Stroud	Date:	04/05/2021
Address (if different from above):	4000 Faber Place Drive, Suite 450		
Email:*	wstroud@finkellaw.com	Phone:*	8435766318

PROPERTY OWNER ACKNOWLEDGEMENT FORM Please upload this form containing the original signature of the property owner, which verifies the applicant is acting with the owner's permission.

*

[Property Owner Acknowledgements_2.pdf](#)

* indicates required fields.

ELECTRONICALLY FILED - 2023 Mar 03 1:33 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005211



WILLIAM R. STROUD, ESQ.
WSTROUD@FINKELLLAW.COM

REPLY TO:
CHARLESTON REAL ESTATE

April 5, 2021

Mount Pleasant Board of Zoning Appeals
Planning and Land Use Division
100 Ann Edwards Lane
Mount Pleasant, SC 29464

RE: PARTIAL STORY VARIANCE REQUEST
Property on Mill Street between Lucas and Scott Street
TMS Nos.: 517-16-00-058, 517-15-00-057, 517-16-00-034, 517-16-00-035

Proposed Development: Boutique Hotel

Nature of Variance Request: The Applicant respectfully requests relief from the three-story limitation within the Coleman Boulevard Overlay District.

Dear Members of the Board of Zoning Appeals:

This law firm represents CKC Properties LLC (the "Applicant"). This letter supplements the application form that I am submitting on behalf of the Applicant seeking a variance for the Proposed Development, which would be located on the properties listed above, at the block along Mill between Lucas and Mill Street (collectively, the "Property"). The Property is located in the C6 Node of the Boulevard Overlay District (CB-OD), as set forth in Section 156.318, *et seq.* of the Mount Pleasant Zoning Code (the "Ordinance"). The Proposed Development's design incorporates a Boutique Hotel that includes a larger hotel building and eight (8) Family Units, as more particularly shown in the Site Drawings (attached hereto as **Exhibit A**) and Civil Drawings (attached hereto as **Exhibit C**).

The Proposed Development adheres to the definitions of Boutique Hotel as set forth in Section 156.007 of the Ordinance and would further the purpose of the CB-OD, which is "to implement the recommendations of the Town Comprehensive Plan 2009-2019 by fostering an active, pedestrian-oriented commercial environment with a variety of uses, activities, and scales; where form is as important as use, with buildings and primary entrances located near the public realm and high-quality pedestrian streetscapes in front."

The Applicant is an experienced preservationist and historic property developer with many successful projects located on the peninsula in Charleston. It can be said with near certainty that the Proposed Development would further the intent of the CB-OD by fostering the desired pedestrian driven commercial environment while placing an emphasis upon a high degree of design quality for the Proposed Development's façades, in turn encouraging a strong interaction between the development and the public realm.

COLUMBIA REAL ESTATE
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (843) 577-5460
Fax: (866) 800-7947
Email: realestate@finkellaw.com

CHARLESTON REAL ESTATE
4000 Faber Place Drive, Suite 450
Post Office Box 41469 (29423)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (866) 800-7947
Email: realestate@finkellaw.com

MOUNT PLEASANT REAL ESTATE
1041 Johnnie Dodds Boulevard
Suite 13-B
Mount Pleasant, SC 29464
Tel: (843) 577-5460
Fax: (866) 800-7947
Email: realestate@finkellaw.com

The CB-OD Development Guidelines Table specifies that the height any structure within the C6 node shall not be greater than forty-five feet (45'). The Proposed Development complies with the 45' height requirement and other conditions set forth in Section 156.318(P)(4)(b) *et seq.* Section 156.318(P)(4)(b)(2)(b) states that "a maximum of three floors [are] allowed" within the CB-OD. Section 156.318(P)(4)(b)(4)(a) states areas above the maximum height *or* maximum number of stories may be used for storage and such uses as open decks or rooftop restaurants, but not for living area or commercial space. The Property is located within an AE-10 Flood Zone, and the Property's current grade is between 3.5-5.75' MSL throughout the site. These conditions and the application of the Ordinance creates unnecessary hardship unique to this Property and would require the Applicant to either (1) raise the ground levels of the Proposed Development a full floor (~7') to meet the 2' free board requirements set by the building department (as shown in *Exhibit B*, enclosed herewith) allowing only parking or storage below; or (2) in the alternative, attempt flood proofing of the ground level, which would result in the constant installation and removal of flood panels, awkward spaces with limited natural light, and a high probability for constant water intrusion issues into the ground level rendering the spaces unusable. Either option deprives the Applicant of its ability to reasonably utilize a large portion of the Property, creating an unnecessary hardship that other properties within CB-OD do not have to shoulder.

The Applicant is therefore requesting that it be allowed to incorporate a partial/additional story of conditioned space into the structures of the Proposed Development while remaining in compliance with the 45' overall building height requirement. If granted, the Townhouse structures will include an additional story of conditioned space/roof decks overlooking Shem Creek. In addition to these Townhouse style structures, the Applicant's request includes a portion of the Boutique Hotel's main building, which will provide access to the roof deck through a conditioned corridor/lounge area instead of through the use of a roof hatch. The Proposed Development substantially furthers the CB-OD's purpose and intent by offsetting the adjacent Shem Creek Boat Landing, which is punctuated by a 40' high dry stacked boat storage facility, which when occupied by boats is approximately 46' in height. Please reference *Exhibit B*, showing height comparisons of adjacent property to the dry-stack storage facility.

The Applicant *must* be granted this variance request because it is able to demonstrate *unnecessary hardship* on account of the fact that the Property suffers significant disadvantages through operation of the Ordinance as demonstrated below. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953); *Colbert v. Krawcheck*, 299 S.C. 299, 384 S.E.2d 710 (1989); *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999), certiorari denied, 528 U.S. 1020, 120 S.Ct. 528, 145 L.Ed 2d 409 (1999).

Pursuant to Section 156.411 of the Ordinance, a variance may be granted in an individual case of unnecessary hardship, if the Board makes and explains, in writing, the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;

COMMENT: There are two prominent extraordinary and exceptional conditions: (1) the Property is located within the AE-10 Flood Zone; and (2) the current grade of the Property is between 3.5-5.75' MSL throughout. These conditions require that the Applicant make significant investments to raise the buildings a full story in order to meet current flood code. The only alternative to raising the buildings would be to provide an elaborate flood proofing system on the ground level—a concept still unproven that would be overly burdensome and result in constant flooding of a finished ground level. Such a system would only serve to overwhelm the FEMA Flood Insurance program with repeated claims.

The ground level of the Property is located within the AE-10 Flood Zone, and despite being only reasonably usable for parking and storage functions, it is nonetheless counted towards the Applicant's three-story height restriction under the CB-OD's requirements set forth in Section 156.318(P)(4)(b)(2)(b). Additionally, the Property is lower than other properties within CB-OD, creating an increased likelihood of flood events. This directs prudent design practices to restrict the ground floor areas of the Proposed Development to parking and storage purposes only. This, in turn, makes the Ordinance's three-story height component more restrictive than it was originally intended to be when applied to this particular Property, creating unnecessary hardship for the Applicant.

2. These conditions do not generally apply to other property in the vicinity;

COMMENT: The overwhelming majority, if not nearly all, of other properties within the CB-OD do not have such low-grade as this Property. The CB-OD's zoning requirements emphasize the parcels along Coleman Boulevard, which are not subject to the low grade levels found on this Property. To illustrate, the elevation of Coleman Boulevard at the Live Oak Street intersection is 10' higher than the subject site, and the elevation of Coleman Boulevard at the Mill Street intersection is 4' higher than the subject site. Please reference *Exhibit C* (Data pulled from survey files of other recent reference surveys along Coleman Boulevard, which the overlay was specifically intended for).

Furthermore, neighboring properties (also within CB-OD) are nonetheless able to utilize their first-floor levels for productive purposes and as conditioned spaces. This is not possible for the Proposed Development without a variance due to the Property's lower existing grade and flooding characteristics, creating an unnecessary hardship by reducing the amount of usable space within the three-story limitation. Section 156.318(P)(4)(b)(4)(a) states areas above the maximum height or maximum number of stories may be used for storage and such uses as open decks or rooftop restaurants, but not for living area or commercial space. The Applicant's design includes living areas within the roof structures, as well as exterior spaces beyond the living areas at the top levels—elements which, when taken with the exceptional conditions, would be squarely within the spirit of the Ordinance and not contravene or frustrate CB-OD's purpose of "fostering an active, pedestrian-oriented commercial environment with a variety of uses, activities, and scales."

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

COMMENT: The application of the Ordinance to the Property unreasonably restricts the Applicant's utilization of the Property because the low elevation and flooding characteristics of the Property renders any permissible first-story uninhabitable and inappropriate for commercial use. Although the design of the Proposed Development is in compliance with the overall height limitation of 45', a strict interpretation of the definition of a "story" prevents the Applicant's ability to comply with the three-story zoning limitation without severely and unreasonably restricting the utilization of the Property. For this reason, the current design includes utilization of the areas within the roof structures as conditioned spaces, in compensation for the unusable spaces at the ground level. The Applicant believes that its design, which incorporates (i) a lounge area/deck above the third floor as to the Boutique Hotel; and (ii) bonus rooms with decks as to the Family Unit falls within the *spirit, intent, and purpose* of the Ordinance. But for the flood zone and the low-grade characteristics of the Property (extraordinary and exceptional conditions), the Applicant's Proposed Development would not run counter to the *letter* of the Ordinance.

Additionally, it is the Applicant's belief that the abeyant relief granted through operation of Section 156.318(P)(4)(b)(4)(a) is impossible to practically achieve. This section states in part that areas above the maximum number of stories may be used for storage and such uses as open decks or rooftop restaurants, *but not for living area or commercial space*. The Applicant is unable to imagine any design of the Proposed Development which would adhere to this requirement and believes the section to be overly ambiguous and vague for this reason.

Because of the flood zone and grade characteristics, the application of the Ordinance to the Property would unreasonably restrict the utilization of the Property and run counter to the CB-OD's spirit, intent, and purpose.

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

COMMENT: Not only will the requested variance not be of substantial detriment to adjacent property or to the public good and not harm the character of the district, to the contrary, the Proposed Development will enhance and improve the public good, enhance the character of the district and benefit adjacent properties by furthering the CB-OD's purpose of "fostering an active, pedestrian-oriented commercial environment with a variety of uses, activities, and scales."

The Property is directly adjacent to boat dry-stack storage facility functionally 50' in height, commercial restaurant/bar establishments facing Shem Creek, and other assorted commercial/recreational businesses. Please reference *Exhibit B* for adjacent property height comparisons. The adjoining property to the south is a pumping station facility owned by the Town of Mount Pleasant. There are no single-family residential homes directly adjacent to the Property, with the single-family residential homes in the vicinity being significantly buffered from the subject site. The character of the area is one of dense and various commercial uses, with an emphasis on recreational and social activities. In addition to the numerous restaurants and bars nearby, other businesses include watercraft/paddleboard rentals, the dry-stack boat storage facility, Shem Creek Boat Landing and launch ramp, and other businesses catering to locals and tourists alike. The Proposed Development would contribute substantively to the community by adding residential options to a popular area while also contributing to the vibrancy of CB-OD's commercial environment.

The additional story proposed for the Townhouse elements of the Proposed Development will simply make the area within the roof structure usable space to complete the architectural program, in compensation for the uninhabitable ground floor space. The Boutique Hotel's design includes a section of the upper-most story with a 4' parapet wall, rather than 12' gable-end facing Shem Creek. The Boutique Hotel's proposed lounge area/rooftop deck access will not be visible from the street, as it is centered on the interior portion of the building. From an aesthetic standpoint, Applicant believes the utilization of the uppermost level may actually reduce the scale of the Townhouse elements of the Proposed Development by reducing the visual mass of the roofs as illustrated in *Exhibit D*, enclosed herewith. The Boutique Hotel's variations in roof configuration will assist in punctuating the main entry/lobby location and reduce vehicular and pedestrian traffic confusion, furthering CB-OD's purpose of allowing development "where form is as important as use, with buildings and primary entrances located near the public realm and high-quality pedestrian streetscapes in front."

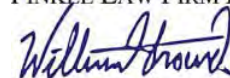
In summary, no substantial detriment will be realized by any adjacent properties, while the character of the district will be positively reinforced by the granting of the variance.

I appreciate your consideration for this variance request. It is the Applicant's hope the Board considers the topographic and flood plain qualities of this particular property, which create unnecessary hardships for the Applicant and frustrate the Ordinance's intent and spirit while evaluating this request.

With kind personal regards, we are

Sincerely,

FINKEL LAW FIRM LLC



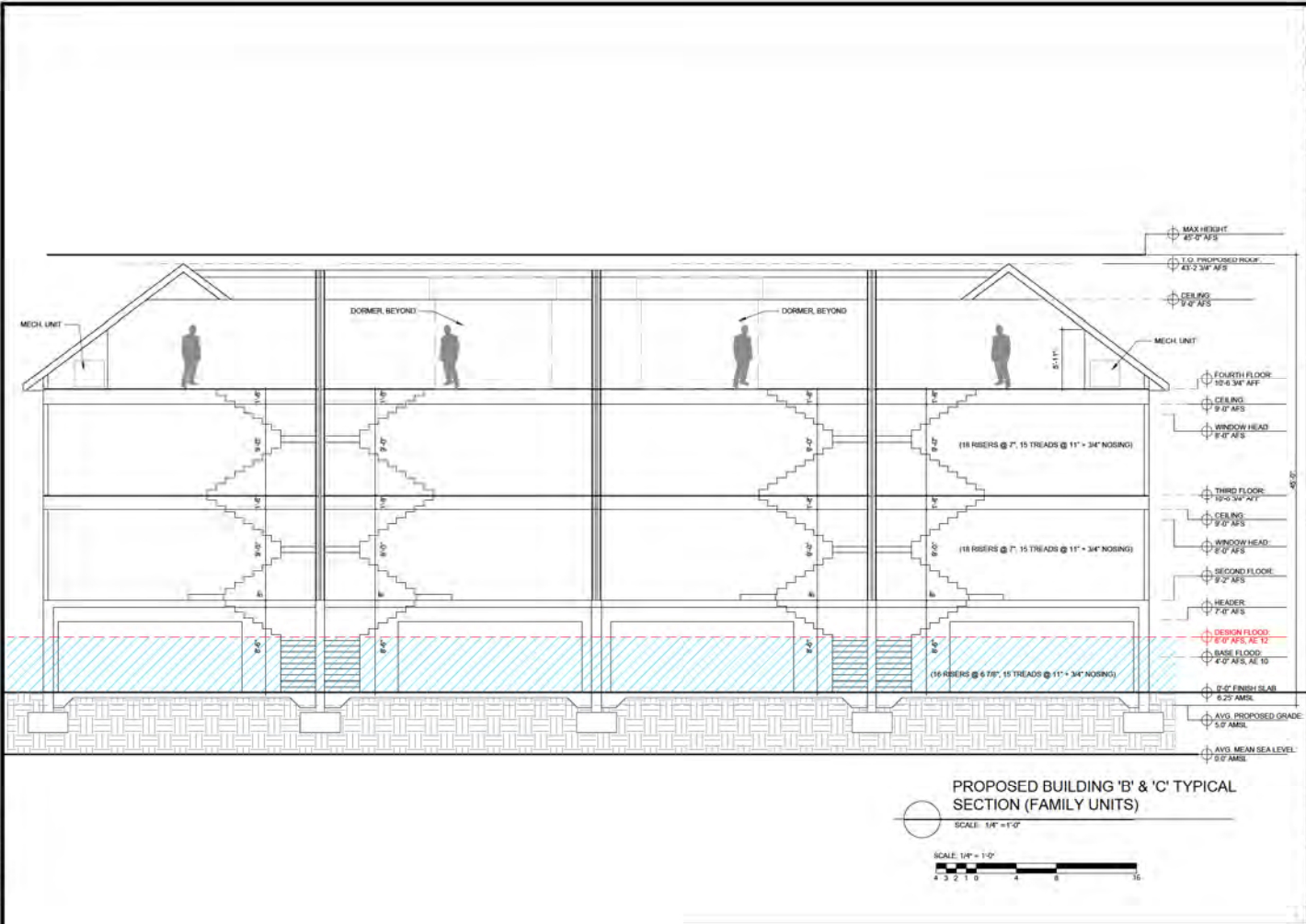
William R. Stroud

WRS/CBT
Enclosures

Exhibits:

Exhibit A	Site Overview Map
Exhibit B	Allowable Zoning; FFE; Adjacent Property Context
Exhibit C	Grade Elevation
Exhibit D	Three Dimensional Comparison Models





SHEN CREEK BOULIQUE HOTEL

ARCHITECTS

1000 10TH STREET, SUITE 100
CHARLESTON, SC 29401
TEL: 771-1234
WWW.ARCHITECTS.COM

DATE: 03/01/2023
DRAWN BY: J. SMITH
CHECKED BY: M. JONES





	
	
L. J. McCreary ARCHITECTS 12345 Main Street Charleston, SC 29401 TEL: 803.123.4567 FAX: 803.123.4568 WWW.LJMCCREARY.COM	
PROJECT NAME: SHEM CREEK BOUTIQUE HOTEL	
PROJECT ADDRESS: MILL STREET, CHARLESTON, SC	
SHEET NUMBER & TITLE: 1001 - ROOF LINE COMPARATIVE STUDIES	
DATE: 02/28/2023	

EXHIBIT D
2/2/2023

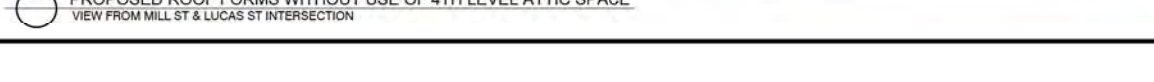


PROPOSED ROOF FORMS WITH 4TH LEVEL CONDITIONED SPACE & DECKS
BIRD'S EYE SOUTH EAST (MILL ST FACADE)

NOTE: USE OF 4TH FLOOR LIMITED TO LESS THAN 1/3 OF TOTAL ROOF LINE



PROPOSED ROOF FORMS WITHOUT USE OF 4TH LEVEL ATTIC SPACE
BIRD'S EYE SOUTH EAST (MILL ST FACADE)





LPA ARCHITECTS, INC.

LPA ARCHITECTS, INC.
1000 N. GAVIN AVENUE
SUITE 100
DENVER, CO 80202
(303) 733-1100
www.lpaarchitects.com

PROJECT: SHEN CREEK BOUTIQUE HOTEL
ARCHITECT: LPA ARCHITECTS, INC.

DATE: 02/28/2023
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS
SCALE: AS SHOWN

PROJECT: SHEN CREEK BOUTIQUE HOTEL
ARCHITECT: LPA ARCHITECTS, INC.

DATE: 02/28/2023
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS
SCALE: AS SHOWN

PROJECT: SHEN CREEK BOUTIQUE HOTEL
ARCHITECT: LPA ARCHITECTS, INC.

DATE: 02/28/2023
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS
SCALE: AS SHOWN

PROJECT: SHEN CREEK BOUTIQUE HOTEL
ARCHITECT: LPA ARCHITECTS, INC.

DATE: 02/28/2023
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS
SCALE: AS SHOWN

PROJECT: SHEN CREEK BOUTIQUE HOTEL
ARCHITECT: LPA ARCHITECTS, INC.

DATE: 02/28/2023
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS
SCALE: AS SHOWN



PROPOSED ROOF FORMS WITH 4TH LEVEL CONDITIONED SPACE & DECKS
VIEW FROM SCOTT ST & MILL ST INTERSECTION

NOTE: USE OF 4TH FLOOR LIMITED TO LESS THAN 1/3 OF TOTAL ROOF LINE



PROPOSED ROOF FORMS WITHOUT USE OF 4TH LEVEL ATTIC SPACE
VIEW FROM SCOTT ST & MILL ST INTERSECTION

PROPERTY OWNER ACKNOWLEDGEMENT FORM
FOR APPLICATIONS TO BOARDS & COMMISSIONS

Board/Commission:	Board of Zoning Appeals
Nature of Approval Requested (e.g. rezoning, variance, etc.):	Story Variance
Parcel ID (TMS No.):	517-16-00-035 ~~517-16-00-058~~
Property Address:	0 Scott Street
Property Owner:	Brown Zach LLC
Property Owner Phone:	843 343 3947
Property Owner Email:	cm.washburn@gmail.com
Applicant:	CRC Properties LLC & Finkle Law Firm
Applicant Phone:	607 222 8070
Applicant Email:	Colin @ CRCproperties LLC.com

I, Christine Sheffield (print property owner name), hereby certify that the Applicant specified above has my permission to submit the above-referenced application for consideration by the applicable Town of Mount Pleasant Board/Commission.


(Signature of Property Owner)

4-4-21
(Date)

100 ANN EDWARDS LANE
MOUNT PLEASANT, SC 29464



PHONE: 843-884-1229
FAX: 843-856-2195

PROPERTY OWNER ACKNOWLEDGEMENT FORM
FOR APPLICATIONS TO BOARDS & COMMISSIONS

Board/Commission:	Board of Zoning Appeals
Nature of Approval Requested (e.g. rezoning, variance, etc.):	Story Variance
Parcel ID (TMS No.):	517-16-00-034 517-16-00-058
Property Address:	Scott & Lucas Street Lots
Property Owner:	Toby Fletcher
Property Owner Phone:	864 6501306
Property Owner Email:	tfletcher@sunsetfinance.net
Applicant:	CKC Properties LLC & Finkel Law Firm
Applicant Phone:	607 227 8070
Applicant Email:	Colin@ckcpropertiesllc.com

I, Toby Fletcher (print property owner name), hereby certify that the Applicant specified above has my permission to submit the above-referenced application for consideration by the applicable Town of Mount Pleasant Board/Commission.

DocuSigned by:
Toby Fletcher
(Signature of Property Owner)

4/5/2021

(Date)

100 ANN EDWARDS LANE
MOUNT PLEASANT, SC 29464



PHONE: 843-884-1229
FAX: 843-856-2195

PROPERTY OWNER ACKNOWLEDGEMENT FORM
FOR APPLICATIONS TO BOARDS & COMMISSIONS

Board/Commission:	Board of Zoning Appeals
Nature of Approval Requested (e.g. rezoning, variance, etc.):	Story Variance
Parcel ID (TMS No.):	~~517-15-00-057~~ 517-16-00-057
Property Address:	0 Lucas Street
Property Owner:	Daniel McKay
Property Owner Phone:	843.708.3601
Property Owner Email:	Danny.McKay37@gmail.com
Applicant:	CKC Properties LLC & Finkel Law Firm
Applicant Phone:	607 277 8070
Applicant Email:	Colin@ckcpropertiesllc.com

I, Daniel McKay (print property owner name), hereby certify that the Applicant specified above has my permission to submit the above-referenced application for consideration by the applicable Town of Mount Pleasant Board/Commission.

DocuSigned by:
Danny McKay
(Signature of Property Owner)

4/3/2021 | 13:52 PM PDT
(Date)

EXHIBIT B

April 26, 2021

Via Email: planning@tompsec.com
Town of Mount Pleasant
Board of Zoning Appeals

RE: Case No. V-12-2021, Scott & Lucas Streets, TMS 517-16-00-034, 35, 57, 58

Dear Board Members:

I am the adjoining landowner on three (3) sides of the foregoing proposal, and I object to this variance for many reasons.

First, any hardship is self-created. The applicant does not own the property. If the property is not worth the purchase price under the current zoning, the applicant can forgo the acquisition. As this is the first of four criteria under your current guidelines, this should end the application for a zoning variance.

Second, the subject parcels are not subject to conditions that are any different than many of my parcels and our neighbors. Everyone on Mill Street and many on the lower parts of Simmons, Scott, and Lucas Streets are at the same or similar elevation and are in the same flood zone and subject to the same construction requirements.

Importantly, the application materials that you are reviewing are misleading. The parcel is not that big, and the access to the parking is too narrow for turns. Some of the parking is unusable, as the drawing ignores large tree canopies on the rear Scott Street property line, which would have to be cut down to accommodate this project.¹ Additionally, if you look at the hotel, you will see that the first-floor center area is both a pool at floor level and parking under the pool, likely inconsistent. The street parking shown in these drawings does not exist and cannot exist on both sides of the street – it is not that wide.

Third, the proposed changes and use will be detrimental to the immediately adjacent area. It will not foster “an active, pedestrian-oriented commercial environment,” as it is over-building on a small parcel that is on a street with no sidewalks and inadequate parking and monthly flooding occurrences. (See below). It will dwarf all adjacent structures, except possibly the daylight allowing dry stack marina. Before the dry stack is considered for height comparison, the legitimacy of its current height should be checked.

Fourth, this small neighborhood has extreme flooding problems with the higher high tides, whether or not aggravated by concurrent rain fall. No increased density should be granted until these issues are addressed.

¹ Note this entire neighborhood used to be a pecan farm, it appears that several pecan trees, cherished by residents for their nuts, would be cut down or blocked on this back property line.

Fifth, this small neighborhood has extreme parking problems. No increased density should be permitted until this parking issue is addressed. As noted above, the parking plan for this project is misleading.

You should be aware that the neighborhood is already overrun with employee parking. The employers, especially bars and restaurants, do not have enough parking for both patrons and customers, so the employees arrive starting at 7:30 a.m. taking up the street parking from Bottles to Shem Creek to the Presbyterian Church and beyond. Then the zoo starts when customers begin arriving for lunch and parking on the sidewalks and augments further at happy hour.

Sixth, the applicant properties have previously appeared to be wetlands. The recent partial fill and future fill of two of these lots is questionable.

Seventh, the variance and proposed use of the property is not in accordance with the current character of the neighborhood. Admittedly, there are larger commercial establishments on Shem Creek and on the Coleman and Simmons edges of this former pecan farm neighborhood. However, the majority of the inland areas are either residential or small professional offices in former residences. A similar variance was turned two years ago for one of these four lots.

Eight, its readily apparent that this applicant envisions a massive Air B&B for this property, and that is out of character for the area.

For your further information, I invited the applicant to withdraw this appeal from this hearing and to work with us in May. The applicant declined. At this point, we are no longer interested in working with the applicant; we seek a complete and outright denial of this application.

The applicant notes its alleged prior experience in redeveloping in historical neighborhood and will probably point you to its development at 124 Spring Street. 124 Spring Street may be marginally acceptable for its current downtown location, but Mt. Pleasant is not downtown Charleston. The proposed plan is not similar to 124 Spring Street, and the proposed plan is out of context for this community.

The proposed maximum lot coverage with block buildings having no aesthetic value will contribute to the over congestion and overrun of this community and will block the sunlight during significant portions of the day.

I understand there is a three-minute limit on objections, as two of my neighboring lots are held in 69 Scott Street, LLC, and one is in 415 Mill Street, Inc., I assume I will be allowed six minutes cumulatively. I also request that you make this letter a part of the record in this matter.

Thank you in advance for your time and attention,

/s/ Justin Lucey

Justin Lucey

EXHIBIT C

CC

From: Colin Colbert colin@ckcpropertiesllc.com
Subject: Re: Mill street boutique hotel and umpteen townhouses
Date: April 20, 2021 at 9:55 AM
To: Justin Lucey jlucey@lucey-law.com
Cc: Jennifer Zambriczki jzambriczki@lucey-law.com

Justin,

I am sorry to hear you will not be supporting the variance request. May I ask why you do not like the idea of an active use in the attic space of the town homes or an inclosed entrance to the common roof deck?

In regards to our effort to reach out to you, we stopped by the office on 3/26 to drop off the design package for your review then followed up on 3/27. We received an email from Jennifer at your office on 4/6 after the submittal was made on 4/5.

We will not be able to remove this application from the agenda as we have a strict due diligence timeline.

That being said, this application is only for the zoning variance for the number of stories allowed. As discussed, we will have of time to revisit the design items once we move toward the DRB process. In fact, it may not be a bad idea to set up a meeting now to discuss the design because the variance will not impact us moving toward DRB since it is only to activate the 3rd floor as usable space instead of attic space. Our plan if this were to happen was to simply change the townhome structure to show a pitched roof rather than a parapet wall at the roof deck.

Is there a good time we could sit down and go through the plans tomorrow or early next week?

Please let me know.

Thank you,

Colin Knight Colbert
607.227.8070
Colin@ckcpropertiesllc.com
www.ckcpropertiesllc.com

On Apr 19, 2021, at 8:02 PM, Justin Lucey <jlucey@lucey-law.com> wrote:

I have looked at your downtown project.

You need to pull your MP application until we have a chance to discuss in detail, perhaps May.

If you do not pull it by this Wednesday, I will write the town. And, of course, oppose at the hearing.

Sorry - you should have given us more advance notice and solicited our input BEFORE finalizing unacceptable plans.

Justin Lucey

ELECTRONICALLY FILED - 2023 Mar 03 1:33 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005211



P.O. Box 451. Charleston, SC 29402 • PHONE: 607- 227- 8070 • Colin@CKCPropertiesLLC.com • WWW.CKCPropertiesLLC.com

Information Regarding Development Project on Mill Street Between Lucas and Scott Street in the Shem Creek Area

Dear Neighbors and Business Owners of Shem Creek,

My name is Colin Colbert, owner of CKC Properties, a Charleston based development and property management company.

Our Company has completed the majority of our work in the historic district of Downtown Charleston. Most recently, we completed the Sanctuary Court development on Spring Street in which we worked closely with the neighborhood association, preservation groups and the City of Charleston to obtain a PUD zoning to allow the development of our quaint Court.

It has always been my goal to involve the adjacent neighbors, preservation groups and other stakeholders during the design process to obtain feedback on the design and the development concept.

We are currently working on developing property located on Mill Street between Scott and Lucas Streets in the Shem Creek area.

Our concept for the site is a boutique hotel that provides quality spaces for travelers and families of locals looking to explore the Shem Creek and greater Mount Pleasant area. Our guests will be able to dine at the great restaurants along Mill Street, rent Kayaks or Paddle-boards on the Creek and of course, they can walk to Coleman to experience the nightlife that the Shem Creek area has to offer.

Our goal in design was to provide a residential feel, with an emphasis on quality hardscaping and green spaces throughout an internal "living" court. I have attached renderings of the proposed development that may help illustrate our design intent.

We will not be applying for any variances and our design complies with all the zoning requirements including parking, density, set-backs and overall height.

We are local owners with a strong property management team and a reputation for providing high-quality housing in the immediate Charleston area. We feel strongly that our future guests will enjoy the numerous businesses nearby, in addition to the natural beauty of Shem Creek.

Once you have a chance to review the models, please feel welcome to reach out to me with any questions you may have. We would appreciate a letter of support for the project that we may submit to the design review board, if you are so inclined.

I appreciate your consideration and look forward to hearing from you.

Sincerely,

Colin Knight Colbert
[607.227.8070](tel:607.227.8070)
Colin@CKCPropertiesLLC.com



Birds eye View of Planned Development.



The "Living Court" entered through Lucas Street.



View From corner of Mill and Lucas Street.



Aerial View From Mill Street.

EXHIBIT D

Ross Appel

From: Design Review Board <listserv@civicplus.com>
Sent: Monday, July 19, 2021 11:35 AM
To: Ross Appel
Subject: New Agenda 7/28/2021 for www.tompsc.com

[View this in your browser](#)

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Design Review Board Agenda July 28, 2021

Design Review Board

Design Review Board Agenda July 28, 2021... [View in the Agenda Center](#)

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Planning Commission Application

EXHIBIT E**A PROPERTY OWNER ACKNOWLEDGEMENT FORM MUST BE SUBMITTED WITH THE APPLICATION.**ALL APPLICATIONS ARE DUE BY 11:59 p.m. ON THE DEADLINE DATE. *It is highly recommended that the property owner and/or a representative meet with staff prior to submitting an application.***Nature of Request & Fees**

Check all that apply:*

☒ Zoning/Rezoning	☐ Sketch Plan
☐ Planned Development Amendment	☐ Development Agreement (new)
☐ Comprehensive Plan Amendment	☐ Development Agreement Amendment
☐ Impact Assessment & Conceptual Plan	☐ Other
☐ Land Development Regulations Waiver	

Please Note: Preliminary Plat review requests should be submitted using the following application:[Preliminary Plat Review Application](#)

Description of the request:*

Request to rezone 2 lots owned by 69 Scott Street, LLC. TMS# 517-16-00-055 and # 517-16-000-36. .13 acres each

The lots are currently empty, no buildings or structures exist. There is no plan in place at the moment for use, however, the owners are considering uses that would be in line with the existing business in the neighborhood and the proximity to Shem Creek itself. The property was rezoned in 2012/2013 to Conservation Open Space which greatly limits the use of the land.

The following supplemental information is included with this application (please list):*

69 Scott Street Articles of Incorporation
Property Owner Acknowledgement Form
both attached below

Applicant Information

Name:* Kelly Calaway

Phone number:* 843-849-8400

Address:* 415 Mill Street, Mt. Pleasant, 29464

Email:* office@lucy-law.com

Subject Property / Properties Information

Parcel ID (TMS#):* 517-16-00-055 and 517-16-000-36

Acreage/Square footage:* .13 each

Property Owner:* 69 Scott Street, LLC (LLC owned by Justin Lucey)

Property Address:* Lot 69 and Lot 76

Subdivision:

Present Use of Property,* None

Proposed Use:* None at this time.Future in line w/e

Current Zoning:* CO, Conservation-Open Space

Current Overlay District:* UC-OD, Urban Corridor

Zoning Submittals**Fee Schedule:**

Please select the appropriate fee below. For areas greater than 100.01 acres, the fee is \$800 + \$2 per additional acre. If total project acreage exceeds 100.01 acres, please enter total acreage minus 100 acres in the quantity field below.

If total acreage is less than 100 acres, leave quantity field blank.

0 - 5 Acres - \$200 ▼

100.01 + Quantity (total acres minus 100)=
acres

0

Proposed Zoning: AB, Areawide Business ▼

Proposed Overlay District: UC-OD, Urban Corridor ▼

Please attach any supplemental zoning information as outlined above:
[69 Scott Articles of Inc..pdf](#)

Impact Assessment Submittals

Fee Schedule:

Please select the appropriate fee below. For areas greater than 100.01 acres, the fee is \$800 + \$2 per additional acre. If total project acreage exceeds 100.01 acres, please enter total acreage minus 100 acres in the quantity field below.

If total acreage is less than 100 acres, leave quantity field blank.

Choose From The Following ▼

100.01 + Quantity (total acres minus 100)=
acres

0

*Click on Link below for
[Impact Assessment Checklist](#)*

*Click on link below for
[Conceptual Plan checklist](#)*

Attach impact assessment below:

Please attach supplemental information as outlined above:

Sketch Plan Submittals

Fee Schedule:

Please select the appropriate fee below. For areas greater than 100.01 acres, the fee is \$800 + \$2 per additional acre. If total project acreage exceeds 100.01 acres, please enter total acreage minus 100 acres in the quantity field below.

If total acreage is less than 100 acres, leave quantity field blank.

Choose From The Following ▼

100.01 + Quantity (total acres minus 100)=
acres

0

*Click on link below for
[Sketch Plan checklist](#)*

Attach Sketch plan below:

Please attach any supplemental information as outlined above:

Land Development Regulations Waiver

Fee Schedule:

Please select the appropriate fee below. For areas greater than 100.01 acres, the fee is \$800 + \$2 per additional acre. If total project acreage exceeds 100.01 acres, please enter total acreage minus 100 acres in the quantity field below.

If total acreage is less than 100 acres, leave quantity field blank.

Choose from the Following: ▼

100.01 + Quantity (total acres minus 100)=
acres

0

*Click on link below for
[LDR Waiver Request Form](#)*

Attach LDR Waiver Request Form below:

Please attach any supplemental information as outlined above:

Comprehensive Plan Amendment (only fill out if Comprehensive Plan Amendment requested)**Comprehensive Plan Amendment - (\$250)**

Please indicate quantity below.

0

Present Comprehensive Plan Land Use Designation:

Proposed Comprehensive Plan Land Use Designation:

Description
of
Proposed
Structure
and Use of
Property:

Please attach supplemental information outlined above:

Additional Options**New Development Agreement - (\$500)**

Please indicate quantity below:

0

Amend Development Agreement - (\$250)

Please indicate quantity below

0

Attach development agreement below:

Please attach supplemental information as outlined above:

Electronic Signature

I, the undersigned, serve as the owner or owner's representative and certify the information contained herein to be true and accurate. If an application is found to be incomplete, the primary contact will be notified and the application will be removed from the agenda. I further certify that the tract(s) or parcel(s) of land to which this approval request pertains: *

☐ is restricted☒ is not restricted

by any recorded covenant that is contrary to, conflicts with, or prohibits the activity for which approval is sought as provided in SC Code of Laws Section [6-29-1145](#), and the Town of Mount Pleasant Code of Ordinances [§155.084](#) and [§156.048](#).

I agree that all terms and information are true to my knowledge:*☒ I agree**Information of person completing electronic signature:**

Name:* Kelly Calaway

Date:

10/08/2018

Address (if
different
from
above):Email (if
different
from
above):Phone (if
different from
above):

PROPERTY OWNER ACKNOWLEDGEMENT FORM Please upload this form containing the original signature of the property owner, which verifies the applicant is acting with the owner's permission.

[Property Owner Acknowledgement Forms.pdf](#)

* indicates required fields.



PROPERTY OWNER ACKNOWLEDGEMENT FORM
FOR APPLICATIONS TO BOARDS & COMMISSIONS

Board/Commission:	
Nature of Approval Requested (e.g. rezoning, variance, etc.):	Rezoning
Parcel ID (TMS No.):	517-16-00-055
Property Address:	Lot 76 210 Lucas St.
Property Owner:	69 Scott Street, LLC
Property Owner Phone:	843-849-8400
Property Owner Email:	office@lucy-law.com
Applicant:	Kelly Calaway
Applicant Phone:	843-849-8400
Applicant Email:	office@lucy-law.com

I, 69 Scott Street, LLC
Justin Lucy (print property owner name), hereby certify that the
Applicant specified above has my permission to submit the above-referenced application for
consideration by the applicable Town of Mount Pleasant Board/Commission.

Justin Lucy
(Signature of Property Owner)

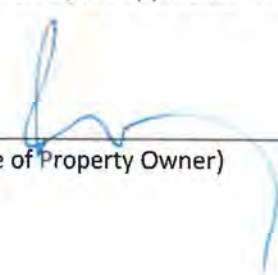
10-8-15
(Date)



PROPERTY OWNER ACKNOWLEDGEMENT FORM
FOR APPLICATIONS TO BOARDS & COMMISSIONS

Board/Commission:	
Nature of Approval Requested (e.g. rezoning, variance, etc.):	Rezoning
Parcel ID (TMS No.):	517-16-000-36
Property Address:	Lot 69 Scott St.
Property Owner:	69 Scott Street, LLC
Property Owner Phone:	843-849-8400
Property Owner Email:	office@lucy-law.com
Applicant:	Kelly Calaway
Applicant Phone:	843-849-8400
Applicant Email:	office@lucy-law.com

I, 69 Scott Street, LLC
Justin Lucy (print property owner name), hereby certify that the
Applicant specified above has my permission to submit the above-referenced application for
consideration by the applicable Town of Mount Pleasant Board/Commission.


(Signature of Property Owner)

10-8-18
(Date)

CERTIFIED TO BE A TRUE AND CORRECT
COPY AS TAKEN FROM AND COMPARED
WITH THE ORIGINAL ON FILE IN THIS OFFICE

Dec 03 2015

Mark Hammond

SECRETARY OF STATE OF SOUTH CAROLINA

151203-0286

Filed: 12/3/2015

69 SCOTT STREET LLC

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

**STATE OF SOUTH CAROLINA
SECRETARY OF STATE**

**ARTICLES OF ORGANIZATION
FOR A
LIMITED LIABILITY COMPANY**

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the 1976 South Carolina Code of Laws, as amended is 69 SCOTT STREET LLC

2. The address of the initial designated office of the Limited Liability Company in South Carolina is

415 MILL ST

Street Address

MT PLEASANT SC

294644350

City

Zip Code

3. The initial agent for service of process of the Limited Liability Company is

JOHN G BROWN II, ESQ

Electronically filed on SCBOS.

Signature not required.

Name

Signature

and the street address in South Carolina for this initial agent for service of process is

103 CHURCH ST

Street Address

MT PLEASANT SC

294644359

City

Zip Code

4. The name and address of each organizer is

a) JOHN G BROWN II

Name

103 CHURCH ST

Street

MT PLEASANT

SC US

294644359

City

State

Zip Code

5. ☒ Check this box if the company is to be a term company. If so, provide the term specified:
2115
6. ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:
7. ☐ Check this box if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time:
9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.
10. Signature of each organizer

Electronically filed on SCBOS.
Refer to attached signature page.

Date 2015-12-03

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

69 SCOTT STREET LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on December 3rd, 2015, with a duration that is until Tuesday, December 03, 2115, has as of this date filed all reports due this office, including its most recent annual report as required by section 33-44-211, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed a certificate of cancellation as of the date hereof.

Given under my Hand and the Great Seal of the
State of South Carolina this 3rd day of
December, 2015

A handwritten signature of Mark Hammond in black ink.

Mark Hammond, Secretary of State

EXHIBIT F

NC

From: Nick Collins <ncollins@carolinaoneplus.com>

Subject: Fwd: Lot

Date: August 25, 2021 at 6:36 PM

To: Danny McKay <danny.mckay37@gmail.com>, Colin Colbert <colin@ckcpropertiesllc.com>, William Stroud <WStroud@finkellaw.com>, Michael Washburn <emwashburn@gmail.com>, Gabriel Joseph <gabe.gpj@gmail.com>, Conner Tharp <CTharp@finkellaw.com>

----- Forwarded message -----

From: Justin Lucey <jlucey@lucey-law.com>

Date: Tue, May 22, 2018 at 6:46 PM

Subject: Re: Lot

To: Nick Collins <ncollins@carolinaoneplus.com>

Not sure they can build much on that lot and it cuts off the corner lots so. ..

Justin Lucey
Justin O'Toole Lucey, PA
843-849-8400

On May 22, 2018, at 6:40 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Here ya go The lot with the house on it is the one that sold. You can see the Lucas st Lot and the 2 corner lots

Thank You

Nick Collins

Your Dream Home Awaits. Please refer me to your Friends and Family. I look forward to serving you and yours.

Visit my Website www.nickcollinsrealestate.com



INSTITUTE for
LUXURY HOME
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Carolina One Real Estate

Commercial --Residential

843-224-8771

843-202-8960 fax

ELECTRONICALLY FILED - 2023 Mar 03 1:33 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005211

On Tue, May 22, 2018 at 6:23 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Ha Good Idea, Working on it now

Thank You

Nick Collins

Your Dream Home Awaits. Please refer me to your Friends and Family. I look forward to serving you and yours.

Visit my Website www.nickcollinsrealestate.com



INSTITUTE for
LUXURY HOME
MARKETING

MEMBER

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843-202-8960 fax

On Tue, May 22, 2018 at 6:21 PM, Justin Lucey <jlucey@lucey-law.com> wrote:

Maybe u could send a tax map w notes so I can understand ayc thanks !

Justin Lucey
Justin O'Toole Lucey, PA
843-849-8400

On May 22, 2018, at 6:07 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Sorry for the confusion. Yes Danny owned back to back lots on Scott and Lucas. He sold his lot on Lucas. His remaining lot is the lot next to the Waterworks. The cousins own both corners Lucas and Scott. His lot on Scott sold for 300k and the buyers have approval for a Mix Used Building 45 ft tall. They are hoping to have 3 floors, But as we speak it looks like 2 floors with the bottom floor for parking. The buyer also has First right of refusal on the Lucas Lot.

Just thought I would get you caught up.

P.S. The cousins have filled their 2 lots and apparently that has fixed the flooding.

Nick

Thank You

Nick Collins

Your Dream Home Awaits. Please refer me to your Friends and Family. I look forward to serving you and yours.

Visit my Website www.nickcollinsrealestate.com



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On Tue, May 22, 2018 at 4:16 PM, Justin Lucey <jlucey@lucey-law.com> wrote:

Nick

Thanks for reaching out, but I don't understand your email. I thought each cousin owned a double lot (just like all my buildings sit on double lots).

Did he sell one lot – or a combo of lots ? one lot seems to small to build on...

Also thought each couzein had a corner – the way you describe it below, Danny had a lot on both lucas and scott ?

So, whats left and whats the price.

And has anyone done anytying about the mill street flooding problem those lots and Mill street were under water last three years in a row....

Justin Lucey

Justin O'Toole Lucey, PA

843-849-8400

From: Nick Collins <ncollins@carolinaoneplus.com>
Sent: Monday, May 7, 2018 2:33 PM
To: Justin Lucey <jlucey@lucey-law.com>
Subject: Lot

Good Afternoon, Just a heads up. We closed on Danny,s lot on Scott St. last week. 300k.

The buyer is having it filled and is building a Multi Use Building. Office on the 1st floor. Residential on the 2nd and 3rd. He will be living on the 3rd. He is in the process of getting the final approvals from the town.

I was thinking it might be a good time for you to buy Danny,s lot on Lucas.?

Just throwing it out there.. I have been getting a Lot Interest.

Any Thoughts ?

Thank You

Nick Collins

Your Dream Home Awaits. Please refer me to your Friends and Family. I look forward to serving you and yours.

Visit my Website www.nickcollinsrealestate.com

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Carolina One Real Estate Services will never request that you send funds or nonpublic personal information, such as social security numbers, credit card or debit card numbers or bank account and/or routing numbers, by email. If you receive an email message concerning any transaction involving Carolina One Real Estate Services, and the email requests that you send funds or provide nonpublic personal information, do not respond to the email and immediately contact Carolina One Real Estate Services by phone.
<Lucas and Scott st plat.pdf>

--

Thank You

Nick Collins
Be Blessed and Be a Blessing

What's Your Home Worth? [Click here to find out](#)

Thank You For the Opportunity to [Serve You](#)

Your Dream Home Awaits. Please refer me to your Friends and Family. I look forward to serving you and yours.

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