

RECEIVED

Jul 22 2024

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 2 (PAGES 325-660)**

MCCULLOUGH KHAN APPEL
Ross A. Appel (SC Bar No. 79149)
2036 eWall Street
Mount Pleasant, South Carolina 29464
(843) 937-0400

*Attorneys for Respondent
CKC Properties, LLC*

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Stephanie Ramia Sandifer (SC Bar No. 100217)
Brian Lee Quisenberry (SC Bar No. 73637)
Zachary M. Kern (SC Bar No. 103731)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

*Attorneys for Appellants
The Town of Mount Pleasant, South
Carolina, and The Town of Mount Pleasant
Board of Zoning Appeals*

**Additional counsel identified on next page*

BYBEE & TIBBALS, LLC

Jeffrey S. Tibbals, Sr. (SC Bar No. 72628)

Evan P. Williams (SC Bar No. 101981)

880 Johnnie Dodds Boulevard, Suite 2

Mount Pleasant, South Carolina 29464

(843) 881-1623

Attorneys for Appellants

Justin O'Toole Lucey; 415 Mill St., Inc.; and

69 Scott Street, LLC

INDEX

Volume 1

Orders

Consent Order of Reference, filed October 19, 2022	1
Order, filed March 9, 2023	5
Order Granting Motion to Dismiss Respondent Michael Robertson in his capacity as Zoning Administrator, filed May 4, 2023	6
Order Reversing BOZA Order in part and Affirming in part, filed July 14, 2023.....	12
Order filed September 21, 2023.....	34

Transcript

Appeal Hearing Transcript, May 26, 2023	35

Other Material

Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition, filed November 16, 2021	118
Appeal Petition, filed June 28, 2022	147
Exhibit U, Mt. Pleasant Code of Ordinances § 156.049 (“Vested Rights”)	178
Return and Answer to CKC’s Petition and Appeal, filed August 16, 2022.....	180
Notice of Opposition to Appeal and Submission of the Record before the Board of Zoning Appeals, filed August 24, 2022	182
Exhibit A, BOZA’s Final Order.....	187
Exhibit B, September 27, 2021 Revised BOZA Meeting Agenda	193
Exhibit C, September 27, 2021 Staff Report	196
Exhibit D, September 27, 2021 BOZA Meeting Minutes	208
Exhibit E, September 27, 2021 Staff Brief 1	218

Exhibit F, September 27, 2021 Staff Brief 2	224
Exhibit G, September 27, 2021 BOZA Meeting Correspondence	233
Exhibit H, August 12, 2021 Letter from Mr. Lucey appealing to BOZA.....	236
Exhibit I, Town’s August 23, 2021 response letter confirming receipt of Mr. Lucey’s August 12, 2021 appeal.....	242
CKC’s Motion to Supplement the Record on Appeal, filed September 27, 2022.....	249
CKC’s Memorandum in Support of its Motion to Supplement the Record on Appeal, filed February 24, 2023	254
Respondents’ Supplement of the Record, filed March 3, 2023	265
Exhibit J, September 24, 2021 Letter from Ross Appel	267

Volume 2

Exhibit K, September 27, 2001 Letter/Outline from Justin Lucey	325
Exhibit L, September 27, 2021 Letter/Memorandum from Colin Colbert.....	354
Exhibit M, September 27, 2021 Letter from Gabe Joseph	359
Exhibit N, Processing Form for Lucey’s Appeal.....	370
Respondents’ Supplement of the Record, filed April 20, 2023	387
Exhibit O, BOZA Rules of Procedure	389
Exhibit P, Mt. Pleasant Code of Ordinances § 156.410 – 413, as of September 27, 2021	399
Exhibit Q, Mt. Pleasant Code of Ordinances § 156.007, as of September 27, 2021	404
Exhibit R, Mt. Pleasant Code of Ordinances § 156.170 – 176, as of September 27, 2021	421
Exhibit S, Transcript of BOZA September 27, 2021 Hearing.....	430

CKC’s Memorandum in Support of Appeal Petition, filed April 21, 2023.....	492
Exhibit 1, FOIA Request Response	529
Exhibit 2, Ordinance No. 21071	537
Exhibit 3, Order in Case No. 2022-CP-10-03328 Lucey v. The Town of Mount Pleasant, South Carolina and WIN515, LLC, filed April 5, 2023.....	544
Memorandum in Opposition to Appellant’s Appeal by Respondents Town of Mount Pleasant and Town of Mount Pleasant Board of Zoning Appeals, filed May 5, 2023.....	556
CKC’s Reply Memorandum in Support of Appeal Petition, filed May 12, 2023.....	585
Defendant/Respondent Justin O. Lucey’s Notice of Motion and Motion to Reconsider, filed July 24, 2023.....	599
The Town of Mount Pleasant and Town of Mount Pleasant Board of Zoning Appeals’ Motion to Reconsider, filed July 24, 2023	603
CKC’s Memorandum in Opposition to Justin O’Toole Lucey’s Motion to Reconsider, filed August 25, 2023.....	614
CKC’s Memorandum in Opposition to the Town of Mount Pleasant and the Town of Mount Pleasant Board of Zoning Appeals’ Motion to Reconsider, filed August 25, 2023.....	625
CKC’s Summons and Complaint in C/A No.: 2021-CP-10-04761, filed October 14, 2021.....	639
Consent Stipulation of Dismissal without Prejudice in C/A No. 2021-CP- 10-04761, filed October 18, 2022	650
Notices of Appeal (omitting orders), and Proof of Service	652
Certificate of Counsel	659

EXHIBIT K

**(September 27, 2021 Letter/Outline from Justin
Lucey)**

Sept. 27, 2001 Boza Boutique Hotel Outline

Summary of Issues:

1. Design, scale, and location on the site (Not Reviewed Before Appeal; incompatible)
2. Parking (Inadequate and incorrect consideration)
3. Boutique Hotel (Town ignored the word "Hotel")
4. FAR (Missing fourth floor space)
5. Access/curb cuts (Town missed the access to 69 Scott Street & mismeasured Lucas)
6. Other written grounds (Incorporated by Reference)

COMPATIBILITY

§ 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**.

Staff Position:

Application of 156.101 and 156.310 are completely in the DRB's discretion, specifically including "[c]oncerns with the aesthetics related to design, scale, and location on the site..."

PARKING

- 1) Town ignored the obvious difference between the term "guest room" and suite;
- 2) Town assessed townhouses as "two guest rooms"
 - a. Townhouses are now at least one, if not more parking space short – handi cap only has one spot under neither
 - b. If you evaluate the hotel separately, nineteen hotel "suites" need x spaces; they only have ____ (34 minus 15=19)
- 3) Town house parking is not shared – which means that:
 - a. Townhouses have 15 parking spaces for 32 guest rooms (which were taxed as 16 guest rooms);
 - b. Building A has 19 parking spaces for 19 suites or 32 guest rooms
 - i. Town's between one and two analysis is wrong
 1. Failure to exercise discretion

- 4) If 4 bedroom townhouse is two guest rooms – then the three, 4 bed suites (“E”) in the alleged hotel must have a second parking spot

BOUTIQUE HOTEL

Boutique hotel – staff failed to recognize the conceptual underpinnings of a boutique “hotel” – this is not a hotel, calling it one doesn’t make it one...

No reception counter or desk or lobby or office or staff resource area other than laundry room w/6’ ceiling

FLOOR AREA RATIO (FAR)

1. “Uncovered” used in error – see “Uncovered in BAR (Building Area Ratio
2. 4th floor stair, lift, planters, pool, pool deck, pergolas ingored
3. Wrong acreage

ACCESS/CURB CUTS

1. Town missed the access to 69 Scott Street, which is within 50’ of the proposed garage exit;
2. Town staff (or CKC) mismeasured the Lucas access, which is located mostly on the 50’ wide corner lot, putting the centerline of the access within 50’ of Mill Street Right of Way

2

12:07 PM - Mon Sep 27

ELECTRONICALLY FILED - 2023 Mar 03 1:33 PM - CHARLESTON - COMMON PLEAS CASE#2021CP1005231

Boat Landing

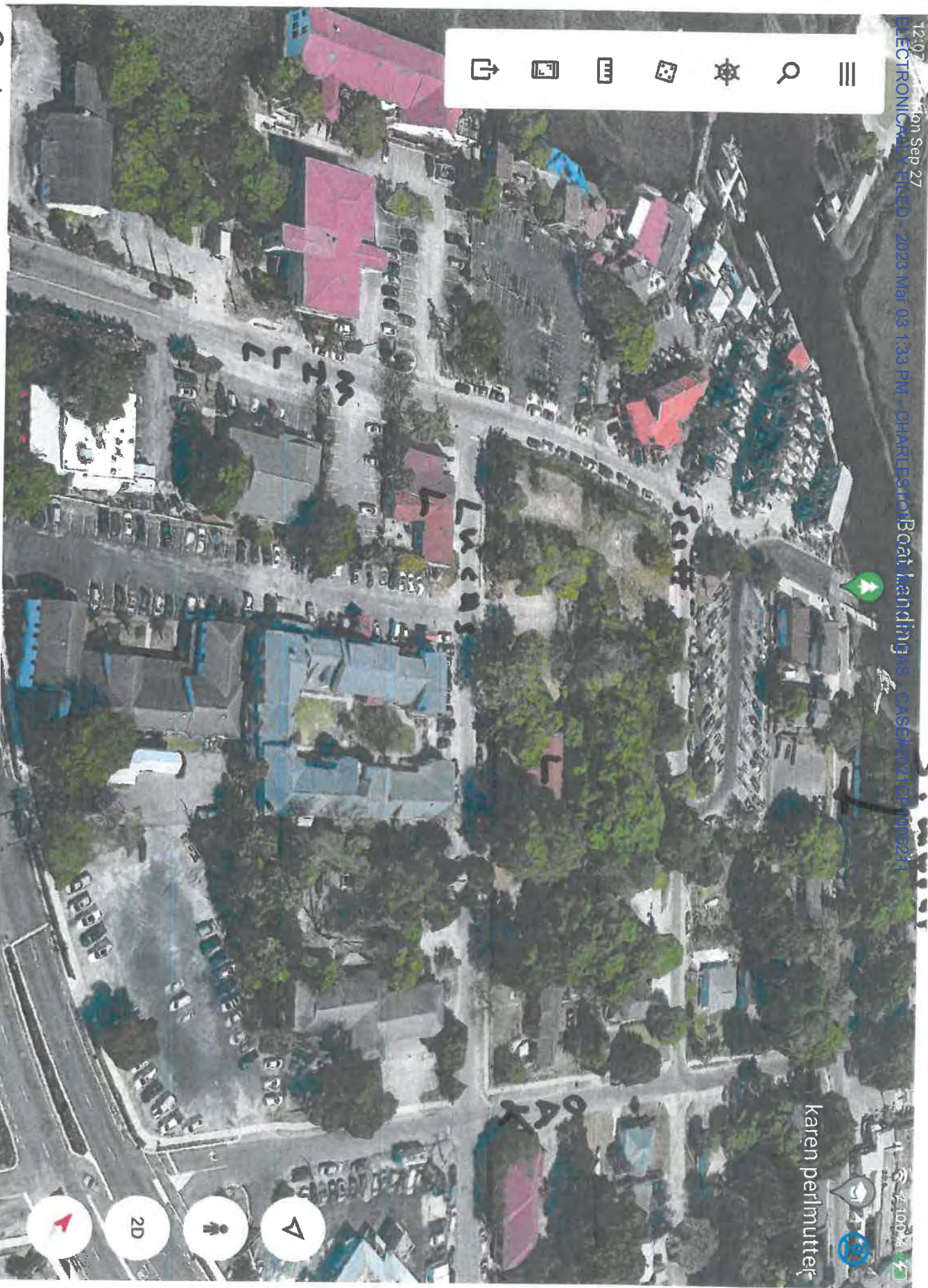
karen perlmuter



Google

(32°47'25"N 79°52'48"W) 813 ft

12:07 on Sep 27
ELECTRONICALLY FILED - 2023 Mar 03 1:33 PM - CHARLESTON Boat Landings - CASE#2021CR001521



karen perlmutter

Google

(32°47'25"N 79°52'48"W) 813 ft



12:05 PM Mon Sep 27
ELECTRONICALLY FILED - 2023 Mar 03 1:35 PM - CHARLESTON, COMMON PLEAS - CASE NO. 23CP000211

Google

(32°47'28"N 79°52'42"W) 490 ft



Google

(32°47'28"N 79°52'42"W) 490 ft

TREE TABULATION

EXISTING TREES PRE-DEY

PROTECTED TREES (8"-23")	14	(210" DBH)
GRAND TREES (≥24")	1	(38" DBH)
TOTAL TREES ON SITE	15	(246" DBH)

TOTAL TREES REQUIRED ON SITE

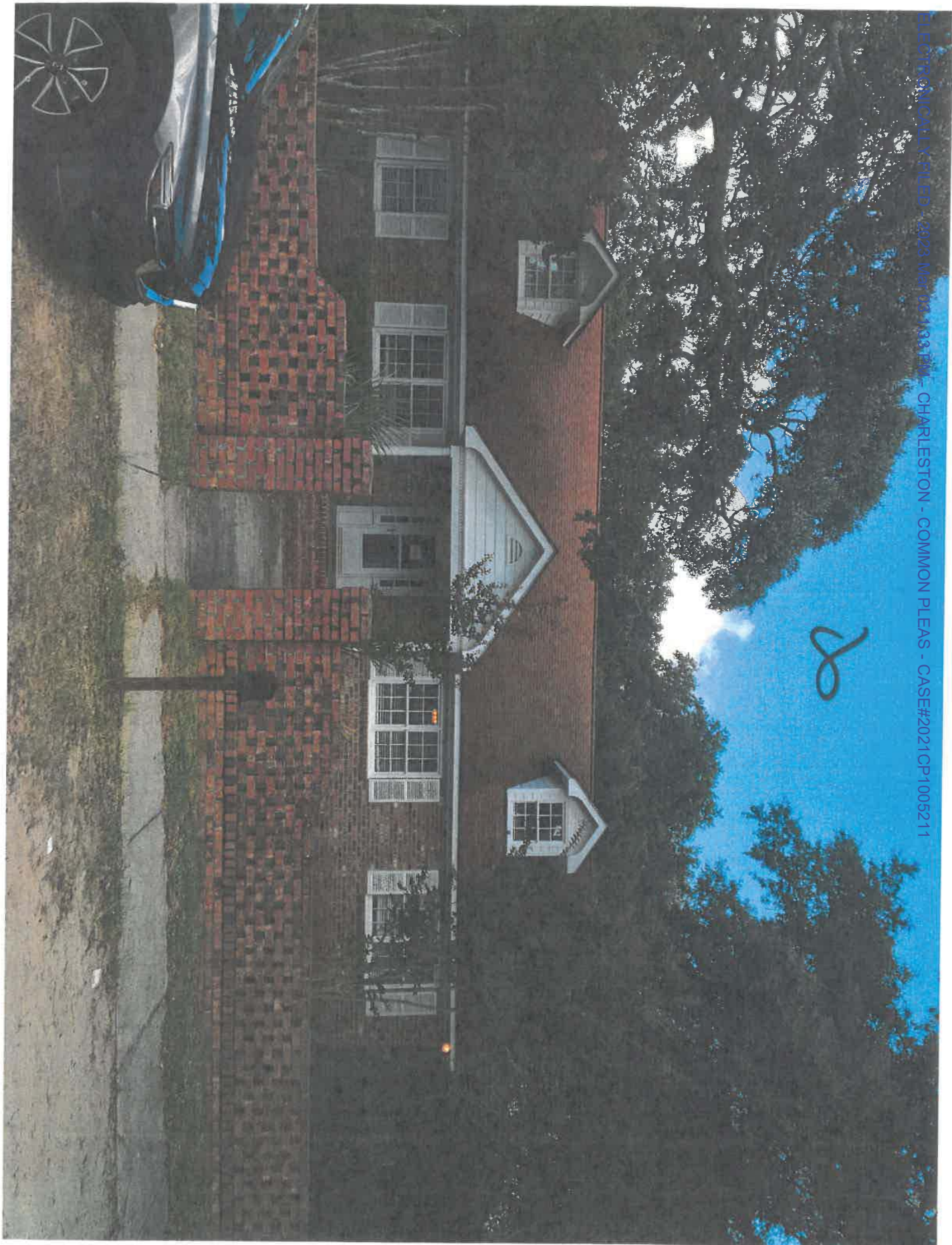
TREES TO BE REMOVED	13	(192" DBH)
TREES DBH REMAINING AFTER REMOVAL	2	(54" DBH)

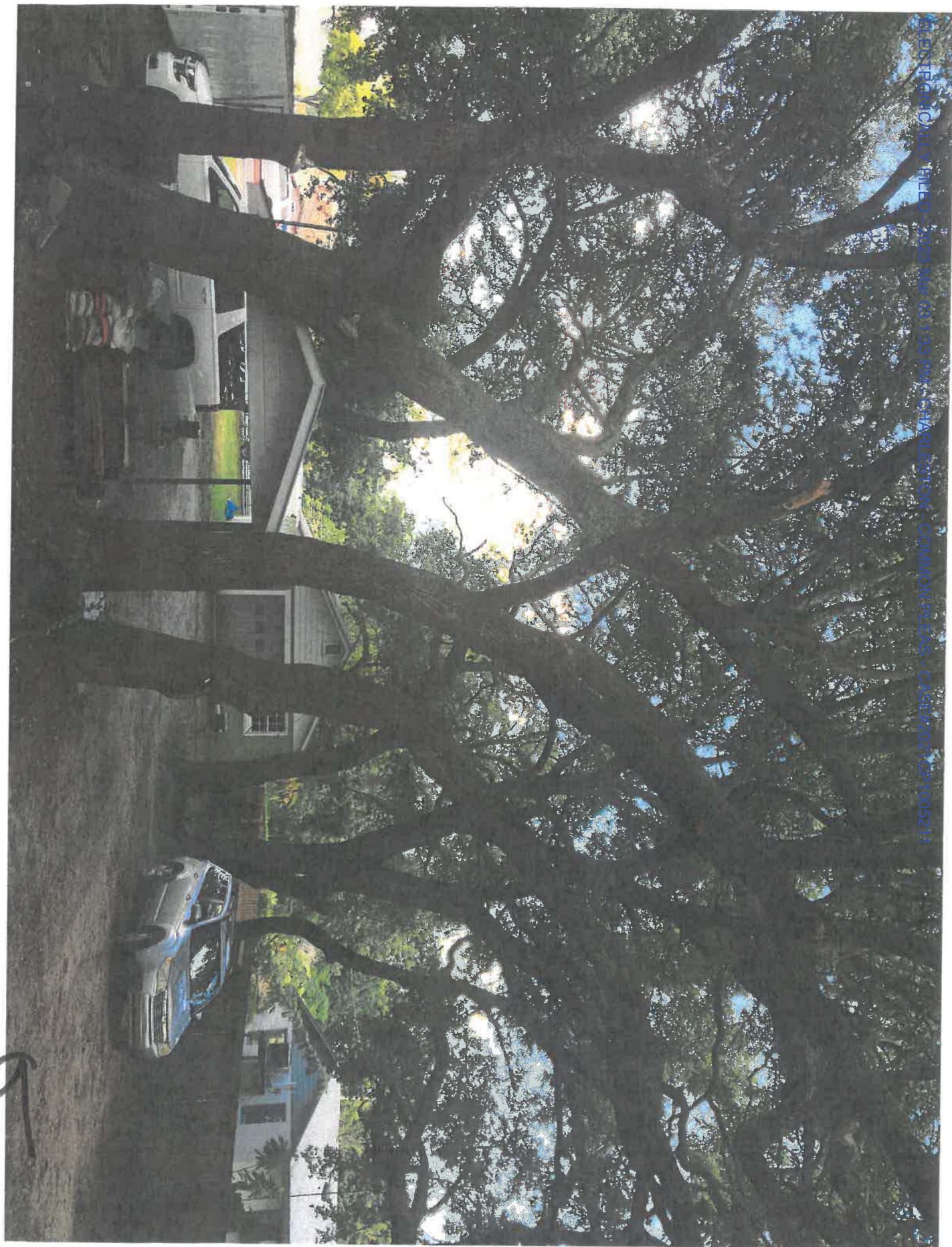
TOTAL TREES DBH REQUIRED ON SITE	95" DBH (160"/ACRE • 0.59 Acres)
TOTAL TREE MITIGATION REQUIRED	41" DBH (95" REQ'D - 54" REMAIN)

GRAND TREE MITIGATION

GRAND TREES REMOVED	0 TREES (0" DBH)
MITIGATION INCHES REQUIRED	0" DBH

✓

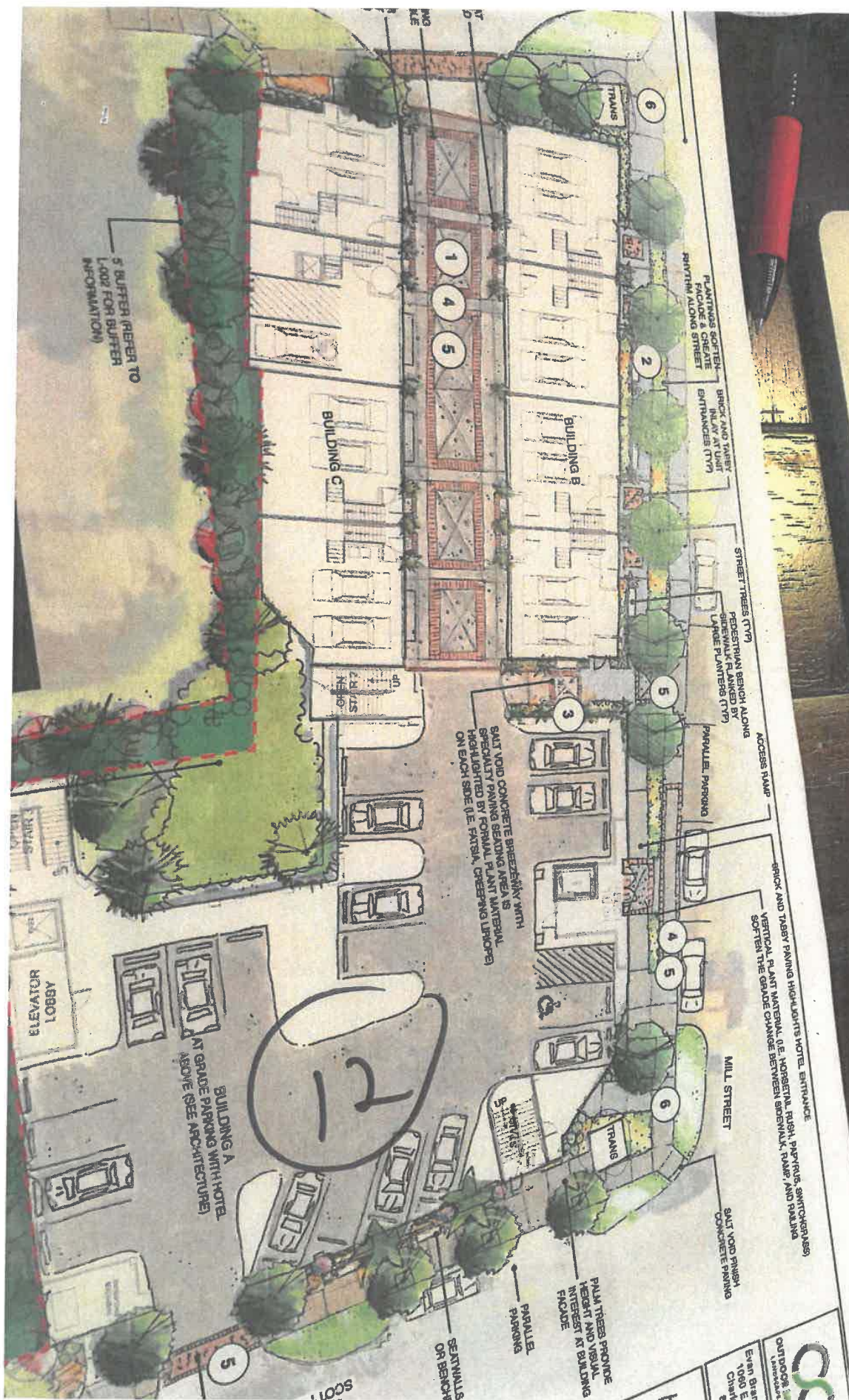


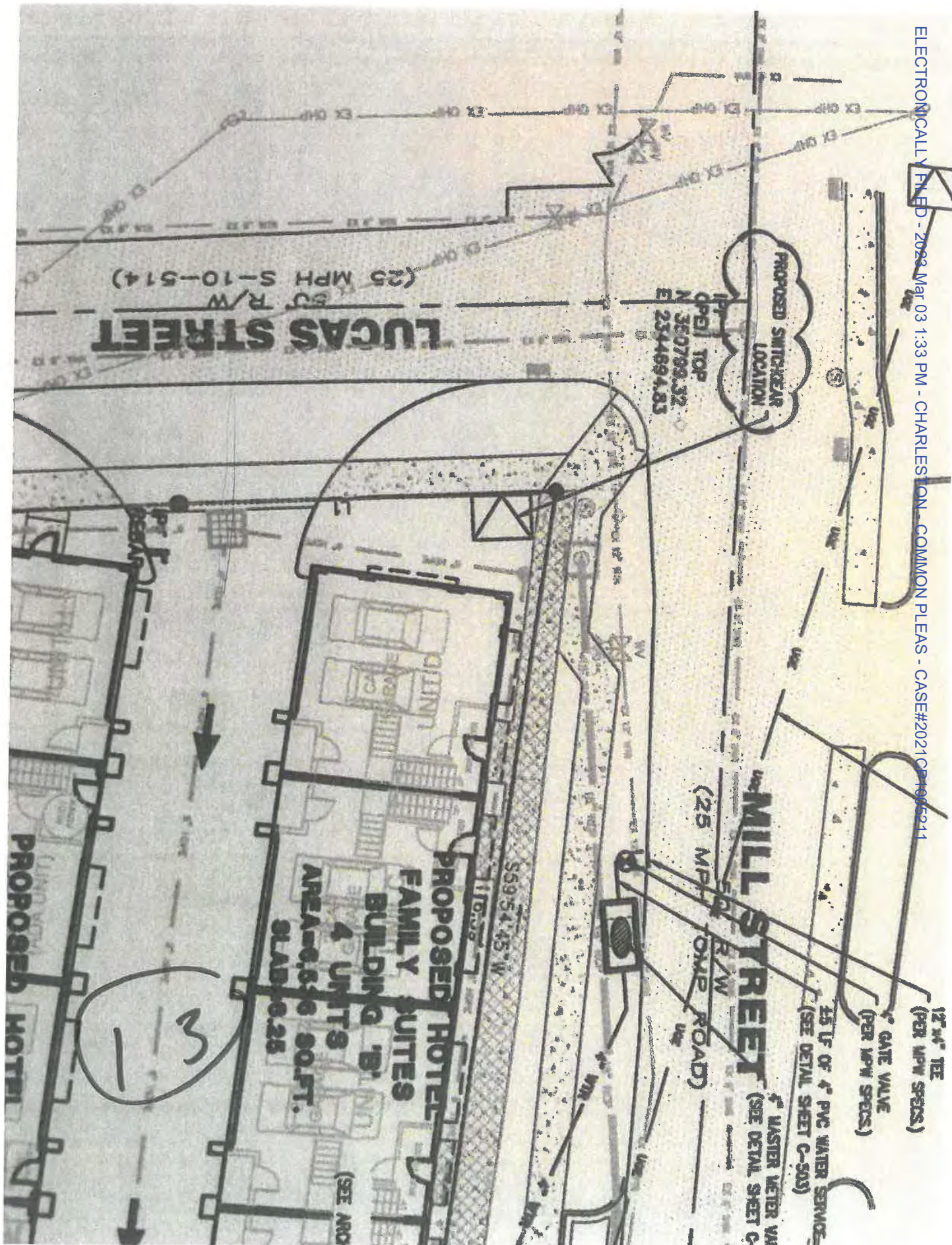




and Alley Access from Mill St

10





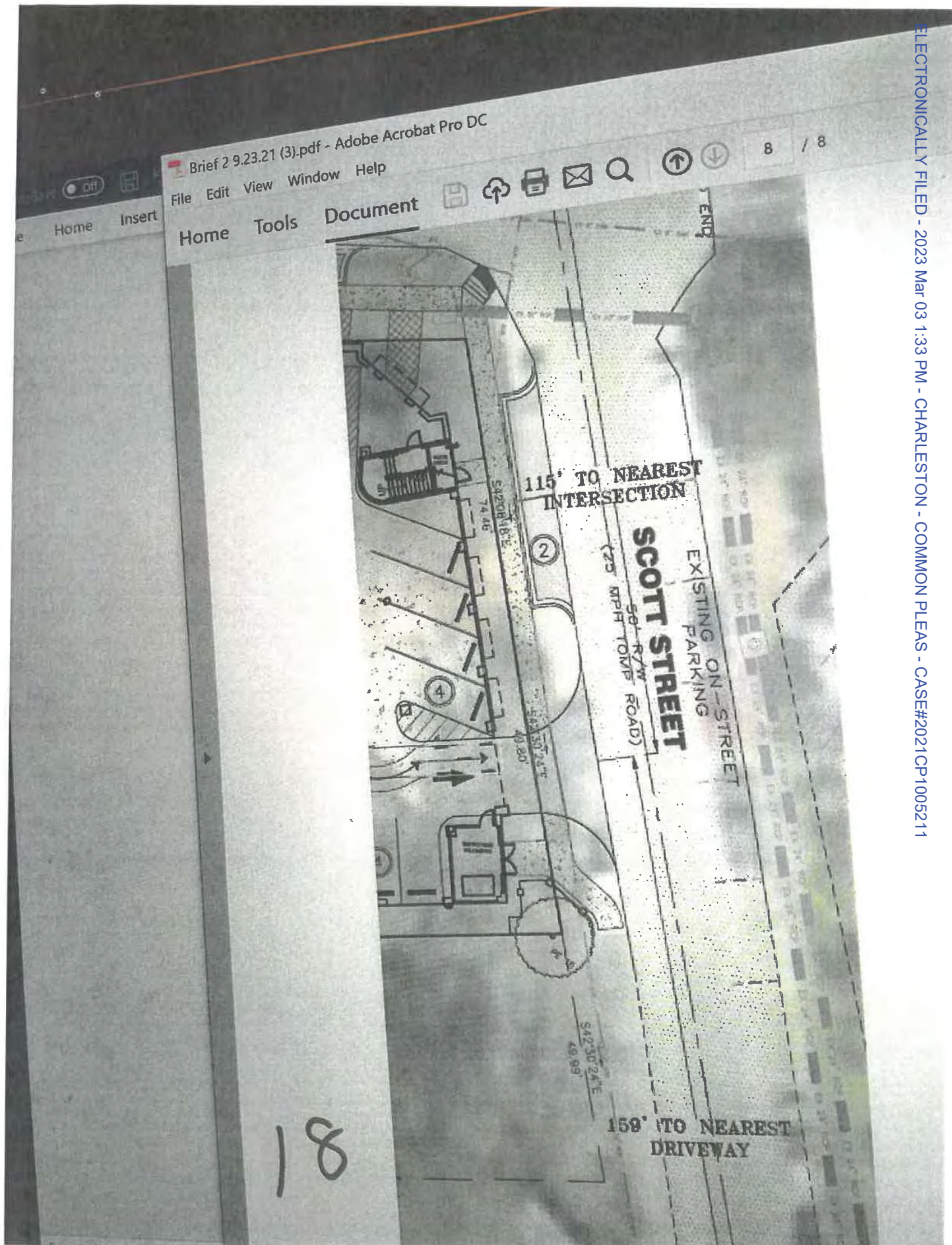
BUILDING FLOOR AREA RATIO (FAR) CHART					
TYPES OF AREA - IN SQUARE FEET					
FLOOR	CONDITIONED	COVERED	UNCOVERED	PARKING	TOTALS
BLDG. 'A'					
FIRST	779 (lobby/land)	340 (stairs)	0	10,560	11,119
SECOND	8,861	2,170	2,308 (local deck)	0	9,031
THIRD	7,171	1,860	303 (gar 4)	0	9,011
FOURTH	0	0	780 (roof deck)	0	780
TOTAL	14,811	4,370	3,091	10,560	18,497
BLDG. 'B'					
FIRST	324	0	0	2,648	3,24
SECOND	3,052	0	0	0	3,052
THIRD	3,220	0	0	0	3,220
FOURTH	1,756	0	446 (roof deck)	0	1,756
TOTAL	8,352	0	946 (roof deck)	2,648	11,946
BLDG. 'C'					
FIRST	324	0	0	2,648	3,24
SECOND	3,052	0	0	0	3,052
THIRD	3,220	0	0	0	3,220
FOURTH	1,756	0	946 (roof deck)	0	1,756
TOTAL	8,352	0	946 (roof deck)	2,648	11,946
TOTAL	31,515	4,370	4,037	15,908	43,835
ALLOWED DIFFERENCE					
					26,517 sq ft @ 1.5 = 39,775.5 sq ft
					39,775.5 - 31,515 = 8,260.5 sq ft





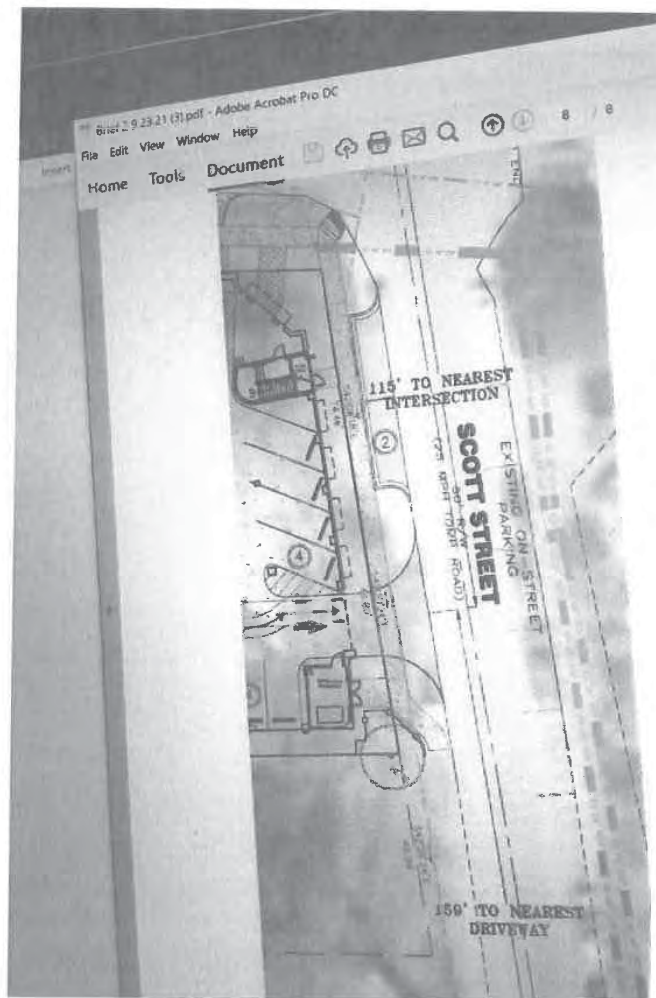
17





Message	Date
50  Message Jason: Edited Note (Each town home rental will be considered equal to 2 hotel rooms. This justification is based off of the fact that a standard hotel room typically has no more than 2 beds whereas the town home has 4. Based on this justification the 8 townhomes equates to 16 hotel rooms at \$3,013.60/room. Transportation impact fee of \$3,013.60 X 16 = \$48,217.60)	3/3/2021
51  Message Jason: Edited Note (Each town home rental will be considered equal to 2 hotel rooms. This justification is based off of the fact that a standard hotel room typically has no more than 2 beds whereas the town home has 4. Based on this justification the 8 town homes equates to 16 hotel rooms at \$3,013.60/room. Transportation impact fee of \$3,013.60 X 16 = \$48,217.60)	3/3/2021
52  Message Jason: Add Note	3/3/2021
53  Message Jason: Edited Note (Total transportation impact fee based off a land use of Hotel (310) with 20 rooms in building A and 16 rooms in building B/C equals a total of 36 rooms at \$3,013.60/room = \$108,480.80. Please see the following information for calculations on this house license placement as	3/3/2021

19



20

§ 156.007 DEFINITIONS.

AREA, FLOOR. The total number of square feet of floor space within the exterior walls of a building, not including space in cellars, basements, or unfinished attics.

FLOOR AREA. See **AREA, FLOOR**.

FLOOR AREA RATIO (FAR). Expresses the relationship between the amount of useable floor area permitted in a building or buildings and the area of the lot on which the building stands. It is obtained by dividing the gross floor area of a building by the total area of the lot. The diagram below illustrates three ways that a FAR of 1.0 might be achieved: a one-story building covering the entire lot, a two-story building covering half the lot, or a four-story building covering one quarter of the lot.



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.

§ 156.318 BOULEVARD OVERLAY DISTRICT.

(G) Floor area ratio. The maximum floor area ratio (FAR) allowed is 1.5. Parking structures shall not be included in FAR calculations. FAR shall not apply to detached single-family dwellings.

Mt. Pleasant intentionally worded the FAR ratio requirement differently than the BAR requirement, which excludes uncovered areas:

§ 156.313 OV-HD; OLD VILLAGE HISTORIC DISTRICT.

(F) Additional development requirements.

21

(a) New construction of residential dwellings, including additions and their accessory use buildings, shall be subject to a building area ratio (BAR).

(b) The BAR shall be calculated by ascertaining the total of number of square feet of building areas taken on a horizontal plane, specifically including any cantilevered areas, of the principal building and all accessory buildings (except those less than 144 square feet in area), exclusive of uncovered porches (decks), terraces, and steps. Building area in two-story rooms (i.e., cathedral ceilings) shall be counted twice. The building area in a crawl space shall not be counted. Garage area shall be counted, regardless of whether it is located underneath a house or in an accessory building.

§ 156.101 USE OF LAND OR BUILDINGS.

(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.

§ 156.082 LIBERAL CONSTRUCTION.

The provisions of this section shall be liberally construed to effectively carry out its stated purposes, which are found and declared to be in the furtherance of the public health, safety, economy, convenience and general welfare for the harmonious, orderly, and progressive development of land within the town.

(Ord. 18097, passed 1-8-19)

§ 156.102 HEIGHT AND SIZE OF BUILDINGS AND/OR STRUCTURES.*(A) Principal buildings.*

(1) No building or structure shall hereafter be erected, altered, or moved so as to exceed 35 feet in height, except that buildings located in special flood hazard areas shall not exceed 40 feet in height, unless otherwise permitted by alternate zoning or the Building Height Plan Map of the town, which is adopted by reference and made a part of this chapter, including any amendments thereto, now or in the future.

(2) Height shall be measured vertically from the highest point on a structure to the ground level of the grade where the walls or other structural elements intersect the ground, unless otherwise specified in this chapter. Unless necessary to meet drainage or other applicable requirements of this Code, lots shall not be filled in order to artificially increase building height.

(3) Exceptions.

(a) Purpose and intent. The purpose and intent of this provision is to allow a certain category of features to exceed the maximum height limitation for buildings and/or structures that would otherwise be unreasonably restrictive. Such features shall not accommodate human occupancy and shall be the minimum necessary to achieve a specified purpose.

(b) The height limitations of this section shall not apply to the following specific listing and any like-kind elements comporting with division (a) above: any chimney or antenna on a building; church spires or the sanctuary portion of a church building; belfries, cupolas, and domes not intended for human occupancy; transmission or telecommunications towers; smokestacks; aerials; the judicious application of portions of a building containing or shielding from view electrical or mechanical equipment; elevator penthouses; masts; and construction cranes or ships; or to other similar

elements such as decorative railings. Any areas intended for human occupancy, such as but not limited to, rooftop decks, pergolas and the like may not exceed the height limitations of this section, unless otherwise specified in this chapter.

§ 156.104 DENSITY.

(A) The number of dwelling units allowed on developable land shall not exceed the maximum number established by the following table for the land use classification shown on the Comprehensive Plan Future Land Use Map.

<i>Future Land Use Map Designation</i>	<i>Standard Density (dwelling units per acre)</i>	<i>Maximum Density (dwelling units per acre)</i>	
Rural Residential (Rural Neighborhoods in the text) - Guerin's Bridge Road Area		0.04	0.04
Rural Residential (Rural Neighborhoods in the text) - Cat Island		0.10	0.20*
Rural Residential (Rural Neighborhoods in the text) - Woodville area, Paradise Island, and other areas past the Urban Growth Boundary		0.33	1.0*
Settlement Communities - inside Urban Growth Boundary		3.0	3.0
Settlement Communities - outside Urban Growth Boundary		0.33	1.0*
Agricultural/Forested - inside Urban Growth Boundary		3.0	3.0
Agricultural/Forested - outside Urban Growth Boundary		0.04	0.04
Conventional Residential Neighborhoods		3.0	3.0
Traditional Residential Neighborhoods		6.0	6.0
Mixed Neighborhoods		9.0	9.0
Waterfront Gateway - Republic		6.0	6.0
Waterfront Gateway - Patriot's Point		12.0	12.0
Maximum density can only be achieved utilizing the Cluster Development subdivision design techniques provided in this chapter.			

(B) Planned Development Districts and Overlay Districts may allow for residential densities different from what is shown in the Residential Density Table above.

24

§ 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.

§ 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 use of the land or principal building on a lot, according to the requirements indicated in the following table, unless otherwise specified in this chapter.

<i>Use Category</i>	<i>Use</i>	<i>Spaces Required¹</i>		<i>Unit of Measure</i>	<i>Notes</i>
Residential	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.
Commercial	Accommodations and lodging	1 to 2	Guest room		

§ 156.175 OFF-STREET LOADING REQUIREMENTS.

(A) *Off-street loading area required.*

(1) Areas suitable for loading and unloading motor vehicles in off-street locations, and specifically designated for this purpose, shall hereafter be required at the time of the initial construction or alteration or conversion of any building or structure used, or

25

arranged to be used, for commercial, industrial, governmental, or multi-family residential purposes.

(2) Such off-street loading areas shall have access to a public alley or street, and shall not be included in the parking requirements.

(B) *Adequacy of loading area.*

(1) All uses, whether specified in this chapter or not, shall provide off-street loading areas sufficient for their requirements.

(2) Such space shall be adequate so that no vehicle being loaded or unloaded in connection with normal operations shall stand in, or project into, a public street, walk, alley, or way.

('81 Code, § 155.98(G) - (K)) (Ord. passed 8-13-79; Ord. passed 8-21-84; Am. Ord. passed 3-11-85; Am. Ord. passed 6-9-92; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14) Penalty, see § 156.034

§ 156.310 CDR-OD; COMMERCIAL DESIGN REVIEW OVERLAY DISTRICT.

(A) *Purpose of district.* The purpose of the district is to protect and provide for the desired character of the commercial districts and development areas of the town. By establishing the Commercial Design Review Overlay District, the town intends:

(1) To promote the appearance, character, and economic value of land located in commercial districts and development areas;

(2) To protect the public from the impact of adverse visual nuisances;

(3) To assure respect for the character, integrity and quality of the built and natural environments of the town;

(4) To enhance public safety by defining spaces to influence traffic movement;

(5) To reduce the amount of storm runoff and provide an appropriate and attractive transition between neighboring properties;

(6) To foster civic beauty; and

(7) To strengthen the local economy.

(D) *Additional development requirements.*

(3) *Construction on public property.* There shall be no private construction of porches, steps, posts, fences, walks, walls, landscaping or other improvements on public property, unless such proposed items have received the required approvals, including encroachment permit and design approvals.

26

(E) *Architectural design review guidelines.*

(1) *General.*

(a) *Architectural design review guidelines.* The **architectural compatibility and aesthetic harmony of structures** located along designated thoroughfares, defined by this section as commercial corridor overlay districts, and in planned developments and light industrial zones are of critical importance in protecting and promoting the appearance, character and economic value of land, in addition to protecting the public from the impact of adverse visual experiences. The **intent** of the Design Review Process **is to assure respect for the character, integrity and quality of the built and natural environments of the town**; it is not intended to stifle innovative architecture.

(c) Where it is reasonably practical, proposed structures shall not impede scenic views from the main road, from existing structures, or from natural settings.

(d) Although maximum site densities and special site requirements defined for particular use districts shall be preserved, **proposed structures shall not dominate, in an incompatible manner, an adjacent building, nor in surrounding general development substantially in compliance with this chapter.**

(e) **The architectural design**, color and material of a proposed structure, or structures, shall conform to community standards of good taste and design, as expressed by this section.

(f) Proposed structures will contribute to the image of the town as a unique place of visual character, integrity and quality.

(j) **The scale of buildings** and accessory structures (including canopies) **shall be appropriate to the scale of structures located in the surrounding area.** Canopies designed as domineering or overpowering architectural features are not allowed.

(n) **In reviewing a proposed structure, specific consideration shall be given to its compatibility with adjacent structures where such structures are substantially in compliance with this section.** Proposed structures shall be shown to scale, in a streetscape view with adjacent buildings, by using elevations or, in certain instances, photographs, of the adjacent structures.

(o) The setback distances from lot lines having street frontage shall be determined during the Design Review Process, utilizing a build-to line between 20 and 30 feet, measured from the property line.

(s) The architecture, landscaping, and building siting must work in concert to create a unified appearance that contributes to the existing/developing streetscape.

27

(6) Misc Site Considerations

4. All utility boxes, cabinets and other similar aboveground structures shall be screened with appropriate landscaping, as approved by designated reviewing authority and the pertinent utility agencies, from all sides that are visible from a public or private street, access way and portions of parking lots that function as streets or thoroughfares.

5. Whenever possible, utility boxes shall be located in areas that will not require bollards for their protection.

§ 156.318 BOULEVARD OVERLAY DISTRICT.

(B) *Purpose.*

- (1) The purpose of the district 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. An emphasis should be placed upon a high degree of design quality for the building facade and a strong interaction between the buildings and the public realm. Public spaces, such as plazas, should be integrated with surrounding development.
- ...

(C) *Design Review Process/development standards.*

(1) All development within the Boulevard Overlay District shall be subject to the CDR-OD, Commercial Design Review Overlay District, process as provided in this chapter. However, in order to achieve the goals of the Boulevard Overlay District, when in conflict, the site development requirements as set forth in this section shall take precedence over those found within the CDR-OD.

(G) *Floor area ratio.* The maximum floor area ratio (FAR) allowed is 1.5. Parking structures shall not be included in FAR calculations. FAR shall not apply to detached single-family dwellings.

(7) Shared vehicular access is encouraged; the benefit is more frontage and more developable land on parcels.

(M) *Parking and loading requirements/on-street parking.* Great care should be taken to create an adequate amount of off-street and on-street parking to serve development areas...

(2) *Multi-family residential uses.* Parking spaces for multi-family residential uses shall be one and one-half to two spaces per dwelling unit.

28

EXHIBIT L

**(September 27, 2021 Letter/Memorandum from Colin
Colbert)**

Memorandum

To: The Board of Zoning Appeals, Mt. Pleasant, SC

From: Colin Knight Colbert – Developer, Mill Street Boutique Hotel

Re: Justin Lucey Appeal of Planning Staff Decisions Relating to the Mill Set Boutique Hotel

Date: September 27, 2021

The following statements by Colin Knight Colbert respond directly to allegations and statements made by Mr. Lucey in his letter of appeal of certain decisions by the Town of Mt. Pleasant Planning staff relating to the proposed Mill Street Boutique Hotel development, in his letter dated August 12, 2021.

Brief History

Our company, CKC Properties, LLC, has been working cooperatively and transparently with the Town of Mt. Pleasant Planning Staff on our proposed Mill Street Boutique Hotel development since November 5th, 2020. In fact, it was the Mt. Pleasant Planning staff who suggested that the boutique hotel use at our site is appropriate and complies with zoning law.

Over the past ten years as an active developer in the Charleston area, our company has always enjoyed cooperative and respectful relationships with the municipalities that our projects are located in. We are long term, local owners and operators of our projects, we are not a developer from out of the area seeking short term gains from our work.

Our projects are high-quality additions to the neighborhoods in which they are located and are aggressively maintained by our staff with direct input from ownership. It is with this philosophy that we are approaching our work at the Mill Street Boutique Hotel. We currently operate accommodations style housing (capable of accommodating nearly 100 visitors per night), as well as multi-family residential and commercial properties

Our plans for the Mill Street Boutique Hotel have been through multiple Town of Mt. Pleasant (TOMP) DRT reviews and we have responded to all comments provided by the DRT. As a result, the DRT has found our plans to fully comply with all zoning laws related to this project.

Prior to our appearance before the Board of Zoning Appeals (BOZA) in April 2021 I made multiple attempts to review our plans with Mr. Lucey, but each time he was not able to meet with me. I provided a set of our plans to Mr. Lucey at his office for his review in advance of the April BOZA appearance.

Lucey: "The project violates the MP Code of Ordinances minimum parking requirements".

- a) The definition of a "Guest Room" as defined by Law Insider is:
GUEST ROOM means a separately-keyed [lodging unit](#) in [the Hotel](#).
- b) Our plans include 27 keyed entry "Guest Rooms" with 35 parking spaces.
- c) This exceeds the base provision of the TOMP zoning ordinance, without requesting the 20% reduction in parking as allowed under The Boulevard Overlay District. Thus, our project could provide as few as 22 parking spaces and comply with TOMP requirements.

Lucey: "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 hundreds of people who visit the immediately nearby food and beverage businesses, and Shem Creek recreational activities, and completely inadequate parking and trailer parking for the public boat landing next door, 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."

- a) The term "Guest Room" has commonly been defined by the TOMP as a "keyed entry", not by the number of individual rooms within each keyed entry.
- b) The TOMP has not availed itself of the minimum parking requirement of 1 per guest room at this project, as claimed by Mr. Lucey. For this project, the town has applied a ratio of 1.3 spaces per guest room. In total, there are 35 parking spaces provided for a total of 27 guest rooms. The parking ratio applied for the townhouse style suites is 2 spaces for each suite.
- c) The "keyed entry" definition of a guest room is appropriate for the following reasons:
 - o Most visitors to the Mt. Pleasant/Charleston area arrive by plane and use transportation services such as Uber & Lyft.
 - o Those who rent larger suites and arrive by car, tend to arrive in one vehicle (families, close friends, etc.).
- d) The TOMP has approved numerous suite-style hotels utilizing this parking ratio without any negative impacts resulting, evidencing the adequacy of this parking provision.

Furthermore, any hotel approved in the TOMP since 2014 would have the same parking ratio approved during their entitlement process and a ruling in favor of Mr. Lucey's appeal would make those hotels a non-conforming use.

- e) The "parking nightmare" referred to by Mr. Lucey has been caused by the surrounding businesses.
 - o The parking issues in this neighborhood are caused by employees of the various restaurants and other businesses. As described by Mr. Lucey in his letter to the BOZA dated April 26, 2021:
"You should be aware that the neighborhood is already overrun with employee parking. The employers, especially the bars and restaurants, do not have enough parking for both patrons and customers, so the employees arrive starting at 7:30 AM taking up the street parking from Bottles to Shem Creek to the Presbyterian Church and beyond."
 - o The parking issue in the neighborhood is a pre-existing condition which could be managed by the businesses and the TOMP. Our project should not be penalized for the pre-existing parking issues that have been caused by others, as our project will provide all required parking spaces within our site.

Lucey: "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."

- a) Per the definition of "short-term rental" (below) in the TOMP ordinance, the Mill street Boutique Hotel is not a short term rental:

RENTAL, SHORT-TERM.

(1) The rental or lease of a residential dwelling unit for a duration of less than 28 consecutive days; or

(2) The use of a residential dwelling unit in return for valuable consideration for a duration of less than 28 consecutive days.

- b) Per the TOMP web-site, the short-term rental ordinance was created for the following purpose: *"As of January 1, 2020, the Town of Mt. Pleasant implemented regulations regarding the use of residential dwelling units as short term rentals. Residents who plan to use residential homes, accessory dwellings, or portions of their homes as short-term rentals will be required to have a short-term rental permit and a business license."*

- c) The Short-Term Rental ordinance was clearly created to protect residential areas from being overrun with short-term rentals.
- d) The Mill Street Hotel is not a residential project. It has been designed to meet all commercial building codes.
- e) Our parcels are not residentially zoned, they are commercially zoned.
- f) Our project will not be operated as a multi-family residential project and this is nothing more than conjecture by Mr. Lucey.

EXHIBIT M

(September 27, 2021 Letter from Gabe Joseph)

GABE JOSEPH

Attorney at Law

PO Box 567, Boone, NC 28607

TELE: (843) 345-3282

EMAIL: gabe.gpj@gmail.com

*Licensed in North and South Carolina

September 27, 2021

VIA E-MAIL

David Pagliarini, Esq.

Town Attorney

Town of Mount Pleasant

100 Ann Edwards Ln

Mt Pleasant, SC 29464

DPagliarini@tompsec.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 finds you well. I represent Tara Cobia, Tammie C. Jones, Brian Fletcher, and Toby Fletcher ("Owners"). Since October 2020 the Owners have been under contract to sell two parcels of their real property in the Town of Mount Pleasant, specifically TMS Nos. 517-16-00-034 & 517-16-00-058 (the "Properties"). The Properties are base zoned Neighborhood Commercial (NC) and located in the Boulevard Overlay District (BOD). **For nearly 40 years a hotel or "Boutique Hotel or Inn" has been permitted by-right in the NC District.** Extensive public input and detailed planning by local representatives went into the comprehensive plans which set this zoning. Since November 2020 the buyer of the Properties, CKC Properties LLC ("CKC"), and its design and engineering team have worked closely and collaboratively with Town staff on plans for the 27-room "Shem Creek Boutique Hotel." On or about June 9, 2021, the Town's Design Review Team granted final staff approval on all zoning matters including, but not limited to, use, parking, and other dimensional requirements.

Owners oppose 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 because it is untimely filed, and the Appellants lack standing. If the Town agrees on either point, the Appeal must be dismissed as a matter of law. These procedural defects deprive the BOZA of jurisdiction. If, however, the BOZA determines it has jurisdiction, it should affirm the Town's zoning administrator's decisions based on the facts in the record and the applicable law.

Rather than copying CKC's September 24, 2021 "Letter in Opposition" word-for-word, Owners ask that the BOZA reference it for a thorough treatment of the untimeliness, standing, and zoning administrator's interpretation issues. Owners concur with CKC's analysis of these issues. This letter will focus on the Appellants' lack of standing.

I. Appellants lack standing because they are not "aggrieved" parties according to South Carolina case law.

Section 156.411(A)(5) states "[a]ppeals to the Board may be taken by any person **aggrieved** by any officer, department, board, or bureau of the municipality or county." South Carolina case law makes two things clear: A. Conjectural and hypothetical harms do not make one an aggrieved party, and B. Where potential injury or prejudice is only an increase in business competition such injury or prejudice is insufficient to confer standing.

A. Conjectural and hypothetical harms do not make one an aggrieved party.

The principle of standing under the United States Constitution is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (560) (1992). The South Carolina Supreme Court follows the standing requirements laid out by the United States Supreme Court:

The United States Supreme Court has established the following requirements to show standing: (1) **the plaintiff must suffer an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical**; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). The Lujan Court also held that it is "substantially more difficult" to establish standing where a challenge to the government action is brought by one who is not the object of the action, but rather seeks to challenge government action or inaction because of alleged illegality. *Id* (emphasis added)

Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992)).

Regarding the **standard of proof for standing** the South Carolina Supreme Court has held:

The party asserting standing bears the burden of proving all of its elements. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291. However, this burden is "substantially more difficult" where the party bringing the claim was not the object of the action "but rather seeks to challenge government action or inaction because of the alleged illegality." *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001).

Appellants have produced no evidence showing injury in fact. They have not proven even the first element of the standing requirement, and they are required by law to prove them all. The parking and other issues complained of in the Appeal are not concrete, particularized, actual, or imminent. They are all conjectural and hypothetical. The Shem Creek Boutique hotel has yet to be built. Since the Appellants have suffered no injury whatsoever and have produced no evidence of injury whatsoever, they are without standing to bring this appeal.

B. Where potential injury or prejudice is only an increase in business competition such injury or prejudice is insufficient to confer standing.

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 (2008).

Here, the Appellants alleged harms center around their own competitive business interests. Appellants own commercial parcels around subject properties and have made multiple lowball offers to purchase Owners’ properties since 2016. In 2018, 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. Since 2016, Appellants have actively sought to acquire the same parcels CKC has under contract. **Exhibit A**.

Owners would like to provide for your review excerpts of emails between Appellant Justin Lucey and realtor Nick Collins. Mr. Collins is the real estate agent for Danny McKay, owner of one of the four parcels CKC has had under contract since last year. A printout of the emails is attached as **Exhibit A**.

On Thu, Feb 25, 2016 at 6:43 PM, Justin Lucey <jlucey@lucey-law.com> wrote:
I would pay 850k for all four IF no wetland mitigation credits were required and the fill expense was less than 50k.

On Mon, Feb 29, 2016 at 10:38 AM, Nick Collins <ncollins@carolinaoneplus.com> wrote:
Justin, I have talked to the owner of the 2 lots I have listed. He is willing to sell for less than asking price. He has confirmed with me. The previous listing did not include his lots. I can bring all 4 lots together with a purchase agreement. However, Unfortunately all parties will not sell for 850k total. If you want to reconsider and bring a better offer to the table. I will be glad to facilitate this deal. Please let me know your thoughts.”

On Mon, Feb 29, 2016 at 10:56 AM, Justin Lucey <jlucey@lucey-law.com> wrote:
My thoughts are that I made an offer; and if the sellers have interest, they should extend a counter; and answer the questions about the wetlands.

On Tue, Mar 1, 2016 at 6:18 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote
Justin, I have contacted all the owners of the other 2 lots. They have confirmed with their attorney they have the Jurisdiction approval to fill in the wetlands. Having cleared this, they are asking 925k for their 2 lots. I am thinking together all parties will entertain somewhere around the 1.5 mil price. Maybe, an idea would be to put in your offer. The owners Fill the

land and deliver the lots to you. Filled and approved for whatever use you would want. All though I do not think zoning is an issue. But I have experience with the Town Politics and would make sure this site has all the entitlements needed.

On Mar 2, 2016, at 8:16 AM, Justin Lucey <jlucey@lucey-law.com> wrote:
thanks

On Wed, Mar 2, 2016 at 9:09 AM, Nick Collins <ncollins@carolinaoneplus.com> wrote:
Are you interested in making another offer?

On Wed, Mar 2, 2016 at 9:23 AM, Justin Lucey <jlucey@lucey-law.com> wrote:
950 filled, all four.

My clients refused to accept this lowball offer. Now, Appellants, untimely, lacking standing, motivated by their commercial and competitive interests, are asking the BOZA to overturn the zoning administrator's interpretations of the Zoning Code. If Appellants are successful, and Owners' Properties are devalued by such an action, perhaps Appellants can finally get the deal they wanted. We trust the BOZA will see through this and uphold the law.

Conclusion

We respectfully ask the BOZA to uphold the law and vote to DENY the Appeal. The Appeal was both untimely filed and the Appellants lack standing. If the BOZA agrees with either point, the Appeal must be denied. If the BOZA believes it has jurisdiction to consider the Appeal, which Owners dispute, 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 exhibit 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. Owners reserve all rights. If you have any questions, please do not hesitate to contact me.

Best Regards,



Gabe Joseph

Cc: Town of Mount Pleasant Mayor and Town Council (via E-mail)
Mac Deford, Esq (via E-mail)
Trisha Hughey (via E-mail)
Eric DeMoura (via E-mail)
Michael Robertson (via E-mail)
Michelle Reed (via E-mail)
Ross Appel, Esq. (via E-mail)
Clients (via E-mail)



EXHIBIT A

Gabriel Joseph <gabe.gpj@gmail.com>

Fwd: scott street and lucas street lots

Nick Collins <ncollins@carolinaoneplus.com>

Wed, Aug 25, 2021 at 6:34 PM

To: Danny McKay <danny.mckay37@gmail.com>, Colin Colbert <colin@ckcpropertiesllc.com>, Michael Washburn <emwashburn@gmail.com>, Gabriel Joseph <gabe.gpj@gmail.com>

[follow the chain](#)

----- Forwarded message -----

From: **Justin Lucey** <jlucey@lucey-law.com>

Date: Wed, Mar 2, 2016 at 9:23 AM

Subject: Re: scott street and lucas street lots

To: Nick Collins <ncollins@carolinaoneplus.com>

950 filled, all four.

On Wed, Mar 2, 2016 at 9:09 AM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Are you interested in making another offer ?

Thank You. Nick Collins.

On Mar 2, 2016, at 8:16 AM, Justin Lucey <jlucey@lucey-law.com> wrote:

thanks

On Tue, Mar 1, 2016 at 6:18 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Justin, I have contacted all the owners of the other 2 lots. They have confirmed with their attorney they have the Jurisdiction approval to fill in the wetlands.

Having cleared this, They are asking 925k for their 2 lots.

I am thinking together all parties will entertain somewhere around the 1.5 mil price.

Maybe, an idea would be to put in your offer. The owners Fill the land and deliver the lots to you. Filled and approved for whatever use you would want. All though I do not think zoning is an issue. But I have experience with the Town Politics and would make sure this site has all the entitlements needed.

Thanks

Nick

On Mon, Feb 29, 2016 at 10:56 AM, Justin Lucey <jlucey@lucey-law.com> wrote:

My thoughts are that I made an offer; and if the sellers have any interest, they should extend a counter; and answer the questions about wetlands. Thanks.

On Mon, Feb 29, 2016 at 10:38 AM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Justin, I have talked to the owner of the 2 lots I have listed. He is willing to sell for less than asking price. He has confirmed with me. The previous listing did not include his lots.

I can bring all 4 lots together with a purchase agreement. However, Unfortunately all parties will not sell for 850k total.

If you want to reconsider and bring a better offer to the table. I will be glad to facilitate this deal.

Please let me know your thoughts.

Thank You

Nick

On Thu, Feb 25, 2016 at 6:44 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

OK I will pass this along You never know Thanks

On Thu, Feb 25, 2016 at 6:43 PM, Justin Lucey <jlucey@lucey-law.com> wrote:

I would pay 850k for all four IF no wetland mitigation credits were required and the fill expense was less than 50k.

On Thu, Feb 25, 2016 at 6:41 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Hang in There Maybe both owners will get Real !!

On Thu, Feb 25, 2016 at 6:39 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Thats weird , OH well

On Thu, Feb 25, 2016 at 6:38 PM, Justin Lucey <jlucey@lucey-law.com> wrote:

All four were drawn on the 4x8 or so sign on the corner of mill and lucas for five years.

On Thu, Feb 25, 2016 at 6:33 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Thanks, My owner has never listed his lots. Maybe the front 2 were.

On Thu, Feb 25, 2016 at 6:31 PM, Justin Lucey <jlucey@lucey-law.com> wrote:

Nick:

thanks. but....

All 4 lots were on the market for years for 850k and never sold. Until last year. In fact, sign just came down a couple of months ago. Price doubled on lots that couldn't sell and flood a lot ? I mean, nice location, but that's a bit of a stretch.

Justin

On Thu, Feb 25, 2016 at 6:24 PM, Nick Collins <ncollins@carolinaoneplus.com> wrote:

Hey Justin, I have 2 separate lots for sale. One on Scott and One on Lucas. My owner has these 2 and they are back to back.

His cousin has the other 2 and will entertain an offer for those as well, But not listed.

My lots are listed for 425k each.

We know this is High and will look at any offer.

Not sure if you can get all 4 for 850k. I can reach out to my owners cousin for a wetland study. I know they have a Jurisdiction to fill the wetlands in place until Oct of this year.

My owners 2 lots have no wetland issues. Other than being Low. We are in the process of pricing all 4 lots to be filled.

Hope this helps.

Nick

On Thu, Feb 25, 2016 at 6:14 PM, Justin Lucey <jlucey@lucey-law.com> wrote:

nick

faith has passed on your inquiry to me.

1) your listings are unclear to me; is each listing for a double lot ? each double lot is listed for 425k ? you are offering all four of your client's lots for 850k ?

2) do you have a wetlands study or phase one ?

Justin Lucey

--

Nick Collins

2015 Realtor of Distinction Executive Circle Award Winner

SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

[843-224-8771](tel:843-224-8771) cell

[843-202-8960](tel:843-202-8960) fax

Thank You For allowing me to serve you.

--

Nick Collins

2015 Realtor of Distinction Executive Circle Award Winner

SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

[843-224-8771](tel:843-224-8771) cell

[843-202-8960](tel:843-202-8960) fax

Thank You For allowing me to serve you.

--

Nick Collins

2015 Realtor of Distinction Executive Circle Award Winner

SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

[843-224-8771](tel:843-224-8771) cell

[843-202-8960](tel:843-202-8960) fax

Thank You For allowing me to serve you.

--

Nick Collins

2015 Realtor of Distinction Executive Circle Award Winner

SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

[843-224-8771](tel:843-224-8771) cell

[843-202-8960](tel:843-202-8960) fax

Thank You For allowing me to serve you.

--

Nick Collins

2015 Realtor of Distinction Executive Circle Award Winner

SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

[843-224-8771](tel:843-224-8771) cell

[843-202-8960](tel:843-202-8960) fax

Thank You For allowing me to serve you.

--

Nick Collins

2015 Realtor of Distinction Executive Circle Award Winner

SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

843-224-8771 cell

843-202-8960 fax

Thank You For allowing me to serve you.

--

Nick Collins

2015 Realtor of Distinction Executive Circle Award Winner

SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

843-224-8771 cell

843-202-8960 fax

Thank You For allowing me to serve you.

--

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.

Visit my Website www.nickcollinsrealestate.com

Certified Luxury Home Market Specialist , SFR Certification / Loss Mitigation Specialist / HAFA Trained / ABR

Carolina One Real Estate

Commercial --Residential

843-224-8771

843-202-8960 fax

Carolina One Real Estate Services will never initiate a request that you send funds electronically 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 unsolicited email message concerning any transaction involving Carolina One Real Estate Services, and the email requests that you send funds electronically or provide nonpublic personal information, do not respond to the email and immediately contact Carolina One Real Estate Services by phone.

EXHIBIT N

(Processing Form for Lucey's Appeal)

Board of Zoning Appeals Appeal From Decision of Zoning Official Application

ELECTRONICALLY FILED - 2023 Mar 03 1:33 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005211

A Property Owner Acknowledgement Form *must be submitted with the application.*

ALL ONLINE 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

Notice of Appeal from Action of a Zoning Official
\$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):*

Original Lucey appeal letter with TOMP response and coding

Please attach supplemental information outlined above:*

[Boutique Hotel Neighborhood Map.pdf](#)

Applicant Information

Applicant(s)*	Justin Lucey, 415 Mill St., Inc., 69 Scott Street, LLC		
Address:*	415 Mill Street		
Daytime Phone:*	8438498400	Email:	jlucey@lucey-law.com

Owner Information (if other than applicant)

Owner(s):	Lucey LLC';s listed above		
Address:	same		
Daytime Phone:		Email:	

Property Information

Stree Address:*	Mill Street (Mill Street Boutique Hotel)		
Lot:		Block:	
Subdivision:		Tax Map No.:	517-16-00-058, 057, 034, 035
Plat Book:		Page:	
Zoning District:*	NC		

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:	

1.Applicant appeals to the Board of Zoning Appeals from the action of the Zoning Official affecting the the property described in the Notice of Appeal on the grounds **Granting** or **Denial** (indicate below) *

☒ Granting ☐ Denial

of an application for a permit to:

build the Mill Street Boutique Hotel as currently designed - see attached Appeal letter.

was erroneous and contrary to provisions of Zoning Code Section:

see attached.

OR

Applicant hereby appeals to the Board of Zoning Appeals from the following action or decision of the Zoning Official:

see attached

which was erroneous and contrary to provisions of Zoning Code Section:

see attached.

2. Applicant is aggrieved by the action or decision in that:

see attached.

3. Applicant contends that the correct interpretation of the particular Zoning Code Section is:

see attached.

4. Applicant requests the following relief:

That the design be rejected and permit denied.

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

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:	Justin Lucey	Date:	August 23, 2021
Address (if different from above):	415 Mill Street		
Email:	jlucey@lucey-law.com	Phone:	8438498400

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 Ack Form TOMP Lucey.pdf](#)

* indicates required fields.

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.

E X H I B I T A

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@tompssc.com

Cc: Planning Department via email:

Town Counsel via clerk: cbarrett@tompssc.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:

§ 10.06 RULES OF CONSTRUCTION.

(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:

Google:

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)

Hoteltech.com:

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

100 ANN EDWARDS LANE
MOUNT PLEASANT, SC 29464

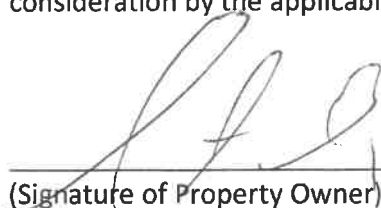


PHONE: 843-884-1229
FAX: 843-856-2195

PROPERTY OWNER ACKNOWLEDGEMENT FORM
FOR APPLICATIONS TO BOARDS & COMMISSIONS

Board/Commission:	B O 2 a
Nature of Approval Requested (e.g. rezoning, variance, etc.):	Denial of Boutique Hotel App
Parcel ID (TMS No.):	517-06-00-036, 37, 38, 39, 40 -053, 54, 55, 59
Property Address:	216, 218, 220, 222 Lucas 69-119 Scott, 415 Mill St
Property Owner:	Justin Lucey, 415 Mill St. Inc, 69 Scott St. LLC
Property Owner Phone:	843-849-8400
Property Owner Email:	jlucey@lucey-law.com
Applicant:	Justin Lucey & above entities
Applicant Phone:	Same
Applicant Email:	Same

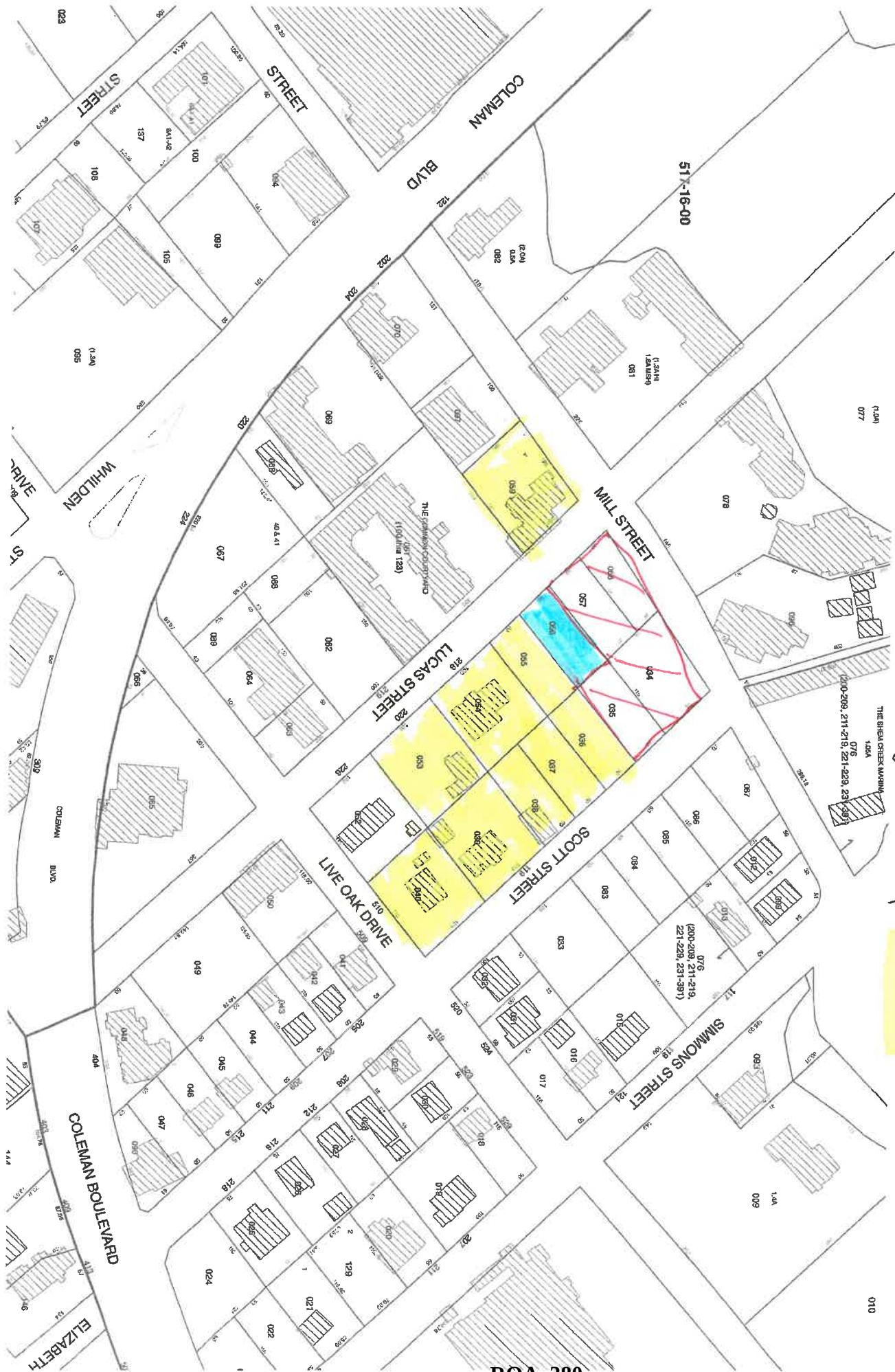
Justin Lucey &
415 Mill St. Inc. & 69 Scott St. LLC
(print property owner name), hereby certify that the
Applicant specified above has my permission to submit the above-referenced application for
consideration by the applicable Town of Mount Pleasant Board/Commission.


(Signature of Property Owner)

See attached

7-23-21
(Date)

ELECTRONICALLY FILED - 2023 Mar 03 1:33 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPI005211



Lucy Property
Pump Station
Boutique Hotel

Justin O'Toole Lucey

415 Mill Street, Mt. Pleasant, SC 29464

843-849-8400

August 25, 2021

Design Review Board

Re: Planning Staff Decisions relating the alleged Mill Street "Boutique Hotel"

Dear Board:

Please accept this letter as an objection to the Preliminary Approval of the Mill Street Boutique Hotel project currently pending before the Design Review Committee.¹

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 18' width of the dual direction alley and the 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.

1. As this location is one of the worst parking nightmares in this town, with completely inadequate parking for the 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

¹ 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 companies (415 Mill St., Inc. & 69 Scott Street, LLC) also own 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, and the half dozen or so lots and structures adjacent to these lots continuing up both Lucas and Scott Streets. My residence is 2.5 blocks away on Rue de Muckle.

any discretion in allowing the applicant to set and avail itself of the minimum parking requirement of 1 per guest room.

2. 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. The plans reflect that this project is not 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. "Boutique Hotels" and STRs are addressed further below.

3. 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.

1. The Plans are deceptive in this regard.

- a. Almost none of the proposed landscaping is located on or even half on the lots; there is simply inadequate room for the indicated landscaping.
- b. The private walkways to the front entrances of building B are in the public right of way.
- c. The handicap ramp for building A is in the public right of way.
- d. What should be the prettiest corner of the project, the corner of Mill and Scott, near the "Hotel door", is occupied by a transformer between the building and the sidewalk.
- e. The plans violate the minimum FAR ration (discussed further below).
- f. The plans claim of 20% impermeable lot acreage is not credible and defies common sense;
- g. The project is completely out of mass and proportion and lot coverage with all surrounding structures;
- h. The lack of off street delivery and loading area violates Sec. 156.175 in the Ordinances.

4. 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.

5. This is not compatible with 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.

6. 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.
- (2) Two-way access drives shall not be closer than 150 feet from 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.

1. Note that the line of sight drawings included in the submittal (presumable to achieve a waiver of the foregoing) do not account for planned landscaping, street parking, or other obstacles.

7. The Floor to Area Ratio (FAR) calculation in the plans violates the ordinance. Under the Ordinance, only parking is excluded from the calculations. The applicant excluded the top/fourth floor elevator and stair shafts, bathrooms, pool, pool deck, pergola deck area, and other auxiliary structures from his calculations. There is no permission for this exclusion. When included, the project way exceeds the allowed FAR of 1.5.

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.

Notably, the Applicant is in the STR business – not the boutique hotel business – JUST GO to the APPLICANT’S WEB SITE WHERE THEY ADVERTISE THEIR STR BUSINESS THOUGHOUT CHARLESTON:

<https://ckcpropertiesllc.com/> [chose vacation rentals to get to the below link)

<https://charlestonvacays.com/vacation-rentals/>

CKC Properties, LLC - the developer - is a professional STR doing business as “Charleston Vacay.” note the guest references to “apartment” not boutique hotel, in the guest comments. Their flagship project at 126 Spring Street downtown (including buildings next door) are all STRs.

CK Properties Air B&B advertisement:

https://www.airbnb.com/rooms/49072724?source_impression_id=p3_1629801893_Kn7TLxar72qrJ%2Fd%2B&guests=1&adults=1

To the extent there is any doubt left, as the terms “hotel” and “boutique hotel” are arguably not clearly defined in the TOMP Ordinances, they 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:

§ 10.06 RULES OF CONSTRUCTION.

(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:

Google:

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)

Hoteltech.com:

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

No Vested Rights

The Applicant and its architect argued/threatened at the recent planning commission meeting that they have "vested rights." Not. They would have to be a legitimate Boutique Hotel and comply with all Ordinances to even argue that they had vested rights. As seen by the forgoing neither apply and the Design Review Board does not need to be intimidated by their veiled threats. The Design Review Board can see this non-compliant end run for what it is and deny preliminary approval.

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
	)	
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 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); (Exhibit S, Transcript of BOZA September 27, 2021 Hearing).

CLEMENT RIVERS, LLP

By: s/ Zachary M. Kern
Brian L. Quisenberry, Esq., SC Bar #73637
E-mail: bquisenberry@ycrlaw.com
Stephanie R. Sandifer, Esq., SC Bar #100217
E-mail: ssandifer@ycrlaw.com
Zachary M. Kern, Esq., SC Bar #103731
E-mail: zkern@ycrlaw.com
P.O. Box 993, Charleston, SC 29402-0993
25 Calhoun Street, Suite 400, Charleston, SC 29401
Telephone: (843) 724-6641
Fax: (843) 579-1325

Attorneys for Respondents The Town of Mount Pleasant, South Carolina, The Town of Mount Pleasant Board of Zoning Appeals

Charleston, South Carolina

Dated: April 20, 2023

EXHIBIT O

(BOZA Rules of Procedure)

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

I. Organization

1. Rules

These rules of procedure, also known as bylaws, are adopted pursuant to [S.C. Code of Laws, Title 6, Chapter 29](#), section 790, for the Mount Pleasant Board of Zoning Appeals.

2. Membership

Members shall be appointed by Town Council and shall serve without compensation. Members are expected to serve for the entire term of appointment and attend scheduled meetings. Members should notify the Chairman and Secretary in advance if they expect to be tardy or absent. Attendance of each meeting will be recorded and maintained. Members shall abide by the attendance policy outlined in §156.410(C) of the [Mount Pleasant Code of Ordinances](#).

A. Education Requirements

Each appointed official must comply with the educational requirements as outlined in [S.C. Code of Laws, Title 6, Chapter 29](#), Article 9 and annually report proof of satisfaction to the Clerk of Council.

B. Conduct of Members

- 1) It is the responsibility of a Board member to render a fair and impartial judgment and remain objective. All reasonable efforts shall be made to avoid individual communications with applicants or those with a vested interest.
- 2) A Board member shall avoid the appearance of influence from applicants or those with a vested interest in a request before the Board.
- 3) A Board member should help to maintain the dignity and integrity of the meeting and all who participate.
- 4) Abuse of any meeting participant of any kind will not be tolerated and could be grounds from dismissal by the governing body.
- 5) A Board member, upon recognition by the Chair, shall have the floor until he/she relinquishes it.
- 6) Each Board member who wishes to speak will be afforded the utmost opportunity.
- 7) No Board member shall interrupt while another is speaking, except where otherwise provided in the rules.
- 8) No Board member should speak twice in a matter until all members have been afforded the opportunity to speak once.
- 9) Individual Board members may express their views or request information without limitation on any subject provided that no member of the Board shall speak for the Board except as may be directed by the Board. In all circumstances, members should exercise care to ensure that their statements and opinions are understood to be solely those of the members.
- 10) The Board members shall refrain from initiating or responding to private communications (including but not limited to emails, instant messages, text

messages, etc.) during the meeting. All electronic devices shall be silenced or turned off during the meeting.

- 11) The Board members shall refrain from initiating, commenting, or responding on social media on any matter before the Board as such communication creates an appearance of an inability to render an impartial and objective decision on an agenda item.

C. Conflict of Interest

Members shall abide by the provisions outlined in the [S.C. Code of Laws, Title 8, Chapter 13](#), section 700(B)(1) and (5) pertaining to conflict of interest. Recusals are permissible pursuant to these provisions.

D. Ex parte communication

As applicable, each appointed official must comply with the requirements regarding ex parte communication as outlined in [S.C. Code of Laws, Title 1, Chapter 23, Article 3](#). The provisions of this section shall apply from the date the matter pending before the Board commences to and including the effective date of the final decision.

3. Officers

The officers of the Board shall be a chairman and vice-chairman elected for one-year terms at the first regularly scheduled meeting of the Board in each calendar year. Members of staff of the Town shall serve as secretary and recording secretary of the Board.

A. Chairman

The chairman shall be a voting member and shall:

- 1) Call special meetings;
- 2) Preside at meetings and hearings;
- 3) Swear in witnesses when applicable;
- 4) Act as spokesperson for the Board; and
- 5) Perform other duties approved by the Board.

B. Vice-chairman

The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, an acting chairman shall be elected by the members present.

C. Secretary

The secretary, when applicable, shall:

- 1) Provide public notice of appeals and meetings;
- 2) Prepare the agenda;
- 3) See that the property involved is properly posted;
- 4) Keep and maintain Board records as public records;
- 5) Serve Board decisions on parties;
- 6) Attend to Board correspondence; and
- 7) Perform other duties normally carried out by a secretary.

D. Recording Secretary

The recording secretary, when applicable, shall:

- 1) Assist with meeting room setup;
- 2) Ensure recording and A/V equipment are available and setup as needed;
- 3) Attend and record each meeting in accordance with Town procedures;
- 4) Prepare minutes from the recorded meetings in accordance with Town procedures; and
- 5) Serve as support staff to Secretary.

II. Meeting Procedures

1. Time and Place

An annual schedule of regular meetings shall be published each year and posted for the public. Special meetings may be called by the chairman upon at least 24-hour notice and must be posted for the public. Meetings shall be held at the place stated on the notices and shall be open to the public.

2. Agenda

A. Order of Agenda

An agenda shall be furnished by the Secretary and posted in accordance with the [S.C. Freedom of Information Act](#). As applicable, agenda items will be listed as outlined in section II.3 of these rules of procedure in the following order:

- 1) Approval of Agenda
- 2) Approval of Minutes
- 3) Public Comment
- 4) General Correspondence
- 5) Administration of Oath
- 6) Business (Article II, Section 2, B below)
- 7) Adjournment

B. Order of Business

Business items shall be placed after the administrative items (Article II, 2, A, 1-5), in the order as numbered and according to the date and time received:

- 1) Items required by ordinance or rules which typically include applications from the public requiring action of the body.
- 2) Matters submitted by Council or departmental staff for the body's consideration.
- 3) Matters proposed by a member of the body with at least one additional sponsoring board member initiated at least one meeting in advance of consideration and having received an affirmative vote for inclusion by the body.
- 4) Applications and other Items may be removed from the agenda at a meeting by a majority vote.

3. Applications

- #### **A.**
- 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 published on the annual schedule of meetings. The application may be filed by the applicant or his or her designee.

- B. Applications may require a submittal and review fee in an amount specified by the schedule of fees established by the Town.
- C. Failure to submit required information or forms and applicable fees may be grounds for rejection of the application.
- D. Requests not permitted or prohibited according to the Mount Pleasant Code of Ordinances shall be rejected unless relief has been sought from the appropriate governing body or appellate body.
- E. Applications shall be marked with the date of receipt and placed on the agenda in the order in which it was received.
- F. Any changes, alterations, or additions to plans after final disposition of the request shall require a new application and applicable fee.

4. Quorum

The number of members that constitute a quorum shall be pursuant to [Mount Pleasant Code of Ordinances](#), §156.410(E). A quorum shall be present before any business is conducted other than rescheduling a meeting. Those recusing themselves for a conflict of interest pursuant to [S.C. Code of Laws, Title 8, Chapter 13](#), section 700(B)(1) and (5), remaining present, shall be counted as present for the purposes of establishing a quorum.

5. Rules of Order

Robert's Rules of Order shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

III. Hearing Procedures

1. Conduct of Hearing

In matters brought before the Board, the following process and time limits will be followed:

- A. Chair or designee opens the hearing (reads agenda item)
- B. Staff presentation (5 minutes)
- C. Applicant presentation (5 minutes)
- D. Public comments (Up to 3 minutes per speaker as determined by §30.36)
- E. Board/Commission Questions
- F. Applicant and staff response (Up to 3 minutes each)
- G. Chair or designee closes public comment
- H. Board comments and deliberation
- I. Board Disposition (motion and vote)

The times set above may be changed on majority acceptance of a motion to suspend the rules with a new time set.

2. Appearance

The applicant or any party in interest may appear in person or by agent or attorney. In the absence of an applicant, the Board may decide by a majority vote to either postpone the matter or proceed with hearing the matter.

3. Evidence

Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The Chair or designee will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

4. Witnesses

Testimony by each witness shall be presented under oath. The oath shall be administered by the Chair or the Chair's designee.

5. Public comment

Public comment shall be allowed in accordance with the provision of the [Mount Pleasant Code of Ordinances §30.36](#) (Ord 19016). Public comment is not a question and answer period or dialogue between the Board or public at any point during the meeting.

Except for public hearings, no person shall speak at a meeting unless invited to do so by the Board.

The Chair or designee will recognize and accept testimony and public comment from all who wish to be heard. No person speaking on an agenda item shall be subject to cross-examination. All inquiries or questions from the public during the meeting shall be posed to the Board and not the applicant or other member of the public. Board members shall refrain from making comments and/or asking questions during the applicant presentation or public comment.

Irrelevant testimony or public comments will not be accepted, nor will the reading of repetitious letters or petitions be permitted by the public. These documents may be filed with the Secretary so that the record will show the names of the persons supporting or opposing an application.

Upon the conclusion of the presentations and public comment, each Board member will have an opportunity to ask questions. Upon the close of the public hearing or public comments, no further testimony or comments will be heard from the public. The Board will then make final comments and deliberation of the request prior to a motion being made. Errors of fact may be corrected at any time after the close of the public hearing or public comments.

6. Correspondence

Written correspondence related to agenda items for the Board shall be submitted to the Town three business days prior to the meeting day in order to be published with the agenda for the public. Correspondence received after that date, will not be forwarded to the Board.

Cross examination

No party shall have the right to cross-examine witnesses; however, the Board may cross examine or question speakers with opposing viewpoints when conducted in an orderly manner. Intimidation of speakers will not be allowed.

7. Electronic Devices

All electronic devices shall be silenced, turned off, or left outside the meeting room or building during the meeting.

8. Disposition or Action by the Board

A. Disposition

The Board may deliberate and either 1) approve, 2) approve with conditions, 3) defer, or 4) deny a matter by a majority vote of members present at the hearing and qualified to vote, provided that not less than a quorum is present. Deliberations shall be conducted in public and voting shall be in public for the record. All decisions by a Board shall include findings of fact and conclusions of law pursuant to [S.C. Code of Laws, Title 1, Chapter 23](#), section 350.

1) Approve

The Board may approve a matter as submitted.

2) Approval with conditions

The Board may approve a matter with conditions. The conditions should be clearly and distinctly enumerated and when applicable must include a timeframe for compliance.

3) Deferral Request by the Applicant

Parties filing appeals or applications may, after the application has been advertised as part of a meeting's agenda, request that the application be deferred. A request for deferral must be made in writing, signed (or sent via electronic mail) by the applicant or agent, and must specify an extraordinary and compelling reason for the deferral. The Board must vote to approve or deny the request for deferral. Without an extraordinary and compelling reason, only one deferral shall be permitted. The deferred item shall be placed on the agenda of the next regular meeting. An item may be only be deferred one time.

4) Deferral by the Board

An appeal or application may be deferred by the Board upon its own motion. Deferred requests are not considered approved and the request must be resubmitted to the Board for review. A member may vote on a matter that the member was not present for when the matter was initially heard.

The deferred item shall be placed on the agenda of the next regular meeting. An item may be only be deferred one time.

5) Denial

Matters before the Board for final disposition that are denied shall not be resubmitted for a period of twelve months, regardless of change(s) in ownership.

6) Continuance by the Board

The hearing of an appeal or application may be continued for a time specified by the Board upon its own motion. If a decision has not been rendered within the specified timeframe, the original request will be placed on the next meeting agenda to be heard and the applicant notified of the date and time of hearing.

7) Continuance by the Applicant

Parties filing applications or appeals may upon a showing of good cause, request that the application be continued for a specified amount of time. A request for a continuance must be made in writing, signed (or sent via electronic mail) by the applicant, or agent and must specify a reason for the continuance. Upon its own motion, the Board may either approve the request for a continuance or proceed to hear the request. Without an extraordinary and compelling reason, only one such continuance shall be permitted. If a decision has not been rendered within the specified timeframe, the original request will be placed on the next meeting agenda to be heard and the applicant notified of the date and time of hearing.

8) Withdrawal

A request may be withdrawn by the applicant or designee upon written notice (or sent via electronic mail) delivered to the Secretary prior to action by the Board. Applications withdrawn by the applicant shall be considered a termination of the application, except as specifically outlined in the [Mount Pleasant Code of Ordinances, §156.031](#). Resubmission of withdrawn applications may be refiled after six months and shall be placed on the agenda according to the date refiled except as specifically outlined in the [Mount Pleasant Code of Ordinances, §156.031](#). Resubmissions shall be processed as a new application with all prescribed fees and other requirements met.

An appeal which is withdrawn may not be refiled after the time for appeal has expired.

9. Voting

All eligible Board members present are expected to vote. A Board member absent at a previous review of a request is eligible to vote on subsequent review of the same request. Voting shall be by voice, except where specifically outlined in the Mount Pleasant Code of Ordinances. An abstention from a vote or failure of a member to vote shall be considered a nonvote. Recusals are only allowed pursuant to [S.C. Code of Laws](#) and as outlined in section II.6.c. of these rules of procedure. A roll call vote can be requested by any member of the Board. Board members not present may not vote.

A. Tie votes

In the event of a tie vote on any given motion, the Board shall endeavor to either approve or disapprove an applicant's request through subsequent motions and votes. If, after at least one additional attempt, the board remains deadlocked as determined by the Chair or designee, no further motions are necessary, no final decision has been made and the matter is unresolved. The applicant may then return at a subsequent meeting for further consideration of the relief requested. Since no final decision has been rendered, a return will not be considered a rehearing; rather, it will be considered a new hearing. All Board members, including those that had not participated in the original hearing may participate in the new hearing. Those that previously participated must do so with an open mind to the new proceedings. Any member prejudiced otherwise shall state so on the record and must not participate.

B. Vested Rights

A request approved by the Board may be vested in accordance with the [S.C. Code of Laws, Title 6, Chapter 29](#), Article 11 and [Mount Pleasant Code of Ordinances §156.049](#).

10. Appeals of Board Decision

Any person aggrieved by a decision of the Board may appeal to the appropriate appellate body. The appeal must be filed in a timely manner as outlined by the [S.C. Code of Laws, Title 6, Chapter 29](#), section 820.

IV. Records

1. Minutes

The Recording Secretary shall record all meetings and hearings of the Board. The Recording Secretary shall prepare a transcription of minutes of each meeting for approval of the Board. Minutes shall include, at a minimum the following information:

- A.** Title and date of the meeting
- B.** Board/Commission members present and absent
- C.** Staff members in attendance
- D.** Time meeting was called to order
- E.** Any action taken by the Board/Commission and final disposition of agenda items
- F.** Time meeting adjourned
- G.** Name of transcriptionist

Recordings and minutes shall be preserved and maintained as public records according to the [S.C. Code of Laws, Title 30, Chapter 1](#) and the Town of Mount Pleasant document retention schedule.

2. Orders and Documents

Where applicable, the Secretary shall prepare and serve all orders of the Board. Copies of all notices, correspondence, documentary evidence, orders, reports, and forms shall

be maintained as public records in accordance with the [S.C. Code of Laws, Title 30, Chapter 1](#) and the Town of Mount Pleasant document retention schedule.

A. Form and Service of Order

The secretary shall assist in the preparation and service of all orders of the Board in the appropriate form to each party of interest as outlined in the S.C. Code of Laws and the Mount Pleasant Code of Ordinances §156.411(E).

B. Reports

The secretary shall assist in the preparation and forwarding of all reports in the appropriate form to the Board members.

V. Adoption and Amendments to Rules of Procedure

1. Adoption

The Board shall approve adoption of the Rules of Procedure by majority vote of the members on an annual basis as outlined by the Mount Pleasant Code of Ordinances. The Secretary shall note the date of adoption on the Rules of Procedure as follow:

These rules were adopted by a majority vote of the members of the Board at the meeting held on January 25, 2021.

2. Amendments

These rules may be amended at any regular Board meeting by majority vote of the members at least seven days after the written amendment is delivered to all members and upon appropriate notice to the public.

EXHIBIT P

**(Mt. Pleasant Code of Ordinances Sec. 156.410 – 413,
as of September 27, 2021)**

- (c) An official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth herein;
 - (d) A landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;
 - (e) A capital improvements program setting forth projects required to implement plans that have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and
 - (f) Policies or procedures to facilitate implementation of planning element.
- (3) Name or rename streets within the town.

('81 Code, § 155.41) (Ord. passed 8-13-79; Am. Ord. 99012, passed 4-21-99; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14)

BOARD OF ZONING APPEALS

§ 156.410 ORGANIZATION.

(A) Creation.

(1) Pursuant to S.C. Code Title, 6, Chapter 29, there is hereby created a Board of Zoning Appeals, to be composed of seven members appointed by the Mayor and Town Council.

(2) It is the declared policy of Town Council that it will consider and approve only those persons who:

- (a) Are residents of the town and have been so for a period of at least one year prior to the appointment; and
- (b) Have demonstrated their general knowledge of the community and concern for the welfare of the total community and its citizens.

(3) Members shall represent a broad cross-section of the interests and concerns within the town.

(B) Term of office.

(1) Town members of the Board of Zoning Appeals currently serve terms of four years, pursuant to their appointment to one of seven specifically numbered seats.

(2) As of March 12, 2002, the terms of office for the current members of these respective seats shall be as follows:

<i>Seat Numbers</i>	<i>Expiration</i>
3 and 4	January 1, 2004
5 and 6	January 1, 2005
1 and 7	January 1, 2006

(3) Thereafter, the terms as shown above shall expire, in respective four-year increments, on January 1 of the calendar year in which they fall.

(4) As provided herein, no Board member may serve more than two successive terms.

(5) The current designation given above shall constitute the first such full term of office for those now serving, regardless of its indicated expiration.

(6) Upon the expiration of any term, the then-serving member shall continue service until the Town Council appoints a successor.

(7) Upon the expiration of a term, the Council shall act promptly to make appointments as soon as may reasonably be accomplished.

(8) While serving on the Board, none of the members shall hold any other public office or position in the municipality or county.

(C) Vacancy and removal.

(1) A vacancy in the term of office shall occur whenever it is found that a member has resigned, is unable to serve for whatever reason, or is removed in accordance with the provisions of this section.

(2) Neglect of duty, no longer being a resident of the town, or misconduct in office shall constitute just cause.

(a) Each member is required to attend 75% of called meetings per year on a rolling-year basis which shall be measured on the first of every month for the preceding year. Each member shall be afforded one excused absence which shall not be counted towards the attendance requirement.

(b) Excused and unexcused absences are to be determined by the Chairperson or, in his or her absence, the acting Chairperson, and are to be stated on the record at each meeting.

1. **EXCUSED ABSENCES** are generally defined as medical or family emergencies, or unavoidable business/personal conflicts.

2. Each member is responsible for notifying the Chairperson or the appropriate staff at least two full working days prior to the meeting, if he or she will not be in attendance.

3. The member shall also state a reason for the anticipated absence.

4. Emergency situations that arise within this 48-hour period can be considered excused by the Chairperson.

(3) If removal for cause, except due to attendance, appears imminent, the Chairperson shall contact the member and ascertain whether removal should be considered by the Mayor and Town Council. The Chairperson shall then make a recommendation to Council, prior to Council action on the matter.

(4) If removal due to attendance is necessary, the Town Administrator shall remove the member from the Board prior to the next scheduled meeting and shall notify Town Council.

(5) Any vacancy in the membership shall be filled for the unexpired term, as soon as may reasonably be accomplished by the Mayor and Town Council, in the same manner as the original appointment.

(6) In determining eligibility for future service, appointments to a vacant term with 24 months or more in duration left under the four-year term of office shall constitute a full term of service.

(7) Appointments to a vacant term with less than 24 months in duration left under the four-year term of office shall be eligible for two subsequent, successive four-year terms of office.

(D) Chairperson; Secretary; rules of procedure.

(1) The Board shall organize itself electing, by secret ballot and majority vote a Chairperson and Vice-Chairperson from among its members.

(a) Said election shall be held at the first meeting in the creation year of the Board, and at the first meeting of each calendar year thereafter.

(b) The term of office of the Chairperson and Vice-Chairperson shall, in the creation year, be from the date of the vote until the end of that calendar year, and thereafter for a period of one year.

(c) If a vacancy occurs in an office prior to the expiration of the full term, another election to fill the remainder of the term of office shall be conducted at the first meeting thereafter.

(d) The election procedures stated herein shall be followed in filling an unexpired term of office.

(2) The Board shall appoint a Secretary, who may be an officer of the governing authority or of the Board of Zoning Appeals.

(3) The Board shall adopt rules of procedure at the first meeting in the creation year, and at the first meeting of each calendar year thereafter *Robert's Rules of Order* shall govern the conduct of meetings, except as otherwise provided by the Board.

(E) *Meetings and quorums.*

(1) Four members of the Board shall constitute a quorum for conducting business.

(2) Meetings of the Board must be held at the call of the Chairperson and at such other times as the Board may determine.

(3) Public notice of all meetings of the Board of Zoning Appeals shall be provided by publication in a newspaper of general circulation in the town or county.

(4) In cases involving variances or special exceptions, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property.

(5) The Chairperson or, in his or her absence, the Vice-Chairperson, may administer oaths and compel the attendance of witnesses by subpoena.

(6) All meetings of the Board shall be open to the public.

(7) Members of the Board shall:

(a) Regularly attend meetings; and

(b) Serve without compensation, except for reimbursement for authorized expenses attendant to the performance of their duties.

(8) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating the fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the Board and must be a public record.

('81 Code, § 155.50) (Ord. passed 8-13-79; Am. Ord. passed 12-11-90; Am. Ord. passed 1-12-93; Am. Ord. 97065, passed 12-9-97; Am. Ord. 99012, passed 4-21-99; Am. Ord. 00039, passed 7-11-00; Am. Ord. 02010, passed 3-12-02; Am. Ord. 02024, passed 6-11-02; Am. Ord. 09053, passed 8-12-09; Am. Ord. 14047, passed 8-12-14; Am. Ord. 16055, passed 8-10-16; Am. Ord. 18035, passed 6-14-18)

§ 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:

(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;

(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:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;

2. These conditions do not generally apply to other property in the vicinity;

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

4. The authorization of 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.

(b) The Board may not grant a variance the effect of which would be to:

1. Allow the establishment of a use not otherwise permitted in a zoning district;

2. Extend physically a nonconforming use of land; or

3. Change the zoning district boundaries shown on the official zoning map.

(c) The fact that property may be utilized more profitably if a variance is granted may not be considered grounds for a variance.

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

(3) To permit uses by special exception, subject to such uses being so designated in the use district regulations of this chapter, and to the following specific terms and conditions:

(a) Adequate provision is made for such items as setbacks, fences, and buffered or planting strips to protect adjacent properties from the possible adverse influence of the proposed use, such as noise, vibration, dust, glare, odor, traffic congestion, and similar factors.

(b) Vehicular traffic and pedestrian movement on adjacent roads shall not be hindered or endangered.

(c) Off-street parking and loading areas and the entrance and exits of these areas shall be adequate in terms of location, amount, design, and construction to serve the proposed use.

(d) The proposed use shall be compatible with existing uses to the extent that such use will not adversely affect the level of property values, general character or general welfare of the nearby area.

(e) In approving a special exception, the Board may attach to it such reasonable terms and conditions as it may consider necessary to accomplish the intent of this section and this entire zoning chapter.

(f) Requests by property owners or their authorized agent(s) for special exceptions may be taken to the Board. An application for same along with any applicable fee must be submitted to the Board pursuant to the terms stated on said application.

(4) To remand a matter to an administrative official, upon motion by a party or the board's own motion, if the Board determines the record is insufficient for review.

(a) A party's motion for remand may be denied if the Board determines that the record is sufficient for review.

(b) The Board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties.

(c) The Board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(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.

(b) The officer from whom the appeal is taken immediately shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(B) *Stays.*

(1) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal has been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life and property.

(2) In that case, proceedings may not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(C) *Hearings*

(1) The Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give at least 15 days' public notice of it in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the same within a reasonable time.

(2) At the hearing, any party may appear in person or by agent or by attorney.

(D) *Exercise of powers and duties.*

(1) In exercising the above power, the Board of Zoning Appeals may:

(a) 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; and

(b) Issue or direct the issuance of a permit.

(2) In the execution of the duties specified in this chapter, the Board may subpoena witnesses and, in case of contempt, may certify this fact to the circuit court having jurisdiction.

(E) *Final decisions and orders.*

(1) All final decisions and orders of the Board must be, in writing, and permanently filed in the office of the Board as a public record.

(2) All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board, which must be delivered to parties of interest by certified mail.

(F) *Consideration for Planning Commission and Town Council procedures.* As a matter of process and procedure, properties involving applications for variances and special exceptions, which also require separate review by the Planning Commission and/or separate Town Council approval, shall not be considered by the Board of Zoning Appeals until the referenced review and/or approval is completed.

('81 Code, § 155.51) (Ord. passed 8-13-79; Am. Ord. 99012, passed 4-21-99; Am. Ord. 01042, passed 8-14-01; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14)

§ 156.412 CONTEMPT; APPEALS; FINANCING.

(A) *Contempt; penalty.*

(1) In case of contempt by a party, witness, or other person before the Board of Zoning Appeals, the Board may certify this fact to the Circuit Court of the county in which the contempt occurs.

(2) The judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

(B) *Appeals.*

(1) A person who may have a substantial interest in any decision of the Board of Zoning Appeals, or an officer or agent of the appropriate governing authority, may appeal from a decision of the Board to the Circuit Court in and for the county, by filing with the Clerk of Court a petition, in writing, setting forth plainly, fully, and distinctly why the decision is contrary to law.

(2) The appeal must be filed within 30 days after the decision of the Board is mailed.

(C) *Notice of appeal; transcript, supersedeas.*

(1) Upon the filing of the appeal, the Clerk of the Circuit Court shall give immediate notice of it to the Secretary of the Board and, within 30 days from the time of the notice, the Board shall file with the Clerk a certified copy of the proceedings held before the Board of Zoning Appeals, including a transcript of the evidence heard before it, if any, and the decision of the Board, including its findings of fact and conclusions.

(2) The filing of an appeal in the Circuit Court from a decision of the Board shall not ipso facto act as a supersedeas, but the judge of the Circuit Court may, at his or her discretion, grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

(D) *Determination of appeal; costs.*

(1) At the next term of the Circuit Court or in chambers, upon ten days' notice to the parties, the presiding judge of the Circuit Court of the county shall proceed to hear and pass upon the appeal on the certified record of the Board proceedings.

(2) The findings of fact by the Board of Zoning Appeals shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.

(3) In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the Board of Zoning Appeals for rehearing.

(4) In determining the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law.

(5) In the event that the decision of the Board is reversed by the Circuit Court, the Board is charged with the costs, which must be paid by the governing authority that established the Board of Zoning Appeals.

(E) *Appeals to Supreme Court.* A party in interest who is aggrieved by the judgment rendered by the Circuit Court upon the appeal may appeal in the same manner as provided by law for appeals from other judgments of the Circuit Court in law cases.

(F) *Financing.* The governing authority may:

(1) Appropriate such monies, otherwise unappropriated, as it considers fit to finance the work of the Board of Zoning Appeals and to generally provide for the enforcement of any zoning regulations and restrictions authorized hereunder that are adopted; and

(2) Accept and expend grants of money for those purposes from either private or public sources, whether local, state or federal.

('81 Code, § 155.52) (Ord. passed 8-13-79; Am. Ord. 99012, passed 4-21-99; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14)

§ 156.413 ADDITIONAL PROCEDURES.

(A) (1) For a period of 12 months, the Board shall not accept an appeal application for a matter upon which it has rendered a final decision, except as provided in their rules.

(2) After the lapse of the 12-month time frame and upon a majority vote ascertaining changed facts or circumstances, the Board may accept such an appeal application for consideration.

(B) In order to complete additional applications and receive the necessary permits for construction, variances and special exceptions shall be vested for a period of two years, subject to the rights and restrictions contained within § 156.049 (Vested Rights). Failure to receive the necessary permits within the prescribed timeframe shall render relief granted as a result of the appeal void and of no force or effect.

(C) (1) Unless specifically modified by the Board's approval, relief granted as the result of an appeal shall be in accordance with the specific plans submitted with the application.

(2) Minor changes to the approved plans that do not affect the relief granted may be allowed to meet subsequent approval requirements, if approval of same is granted by the Zoning Administrator.

(D) The burden of proof for the relief sought is upon the applicant.

(1) In this regard, a complete application of forms and information is required.

(2) Prior to consideration by the Board, incomplete applications will be returned to the applicant.

(E) Routine repairs and maintenance may be made to a structure constructed pursuant to relief granted by the Board as required to preserve it in sound condition. Any proposed changes to the structure shall be presented to the Board Secretary for determination whether a new application is required.

(Ord. 02001, passed 2-12-02; Am. Ord. 02024, passed 6-11-02; Am. Ord. 02068, passed 1-14-03; Am. Ord. 05035, passed 6-14-05; Am. Ord. 14047, passed 8-12-14)

DESIGN REVIEW BOARD

§ 156.420 ORGANIZATION.

(A) *Creation.*

(1) Pursuant to S.C. Code Title 6, Chapter 29, there is hereby created a Design Review Board, to be composed of seven members appointed by the Mayor and Town Council.

(2) It is the declared policy of the Town Council that it will consider and approve only those persons who:

(a) Are residents of the town and have been so for a period of at least one year prior to the appointment; and

(b) Have demonstrated their general knowledge of the community and concern for the welfare of the total community and its citizens.

(3) Members shall have a demonstrated interest in, and/or competence and knowledge of, architecture, landscape architecture, and urban design.

(4) To the extent that there are local resources, membership priority may be given, in Council's sole discretion, to state-licensed landscape architects, state-licensed architects, and licensed professional engineers or licensed general building contractors.

(B) *Term of office.*

(1) Members of the Design Review Board currently serve terms of four years, pursuant to one of seven specifically numbered seats.

(2) As of April 9, 2003, the seat designations shall continue and the terms of office for the current members of these respective seats shall be as follows:

<i>Seat Number</i>	<i>Expiration</i>
<i>Seat Number</i>	<i>Expiration</i>
1	January 1, 2007
2	January 1, 2006
3	January 1, 2004
4	July 1, 2006
5	January 1, 2003
6	July 1, 2003
7	July 1, 2003

(3) Thereafter, the terms as shown above shall expire, in respective four-year increments, on either January 1 or July 1 of the calendar year in which they fall.

(4) No Board member may serve more than two successive terms. A partial term of 24 months or more shall constitute one term for purposes of this division.

(5) Any service on the DRB, prior to the reconstitution date herein, shall be included in determining eligibility for future service.

(6) Upon expiration of a term, the then serving member shall continue service until Town Council appoints a successor.

(7) make appointments in order to avoid vacant seats and the continued service of members with expired terms.

(8) While serving on the Board, none of the members shall hold any other public office or position in the municipality or county.

(C) *Vacancy and removal.*

(1) A vacancy in the term of office shall occur whenever it is found that a member has resigned, is unable to serve for whatever reason, or is removed in accordance with the provisions of this section.

(2) Neglect of duty, no longer being a resident of the town, or misconduct in office shall constitute just cause.

(a) Each member is required to attend 75% of called meetings per year on a rolling-year basis which shall be measured on the first of every month for the preceding year. Each member shall be afforded one excused absence which shall not be counted towards the attendance requirement.

EXHIBIT Q

**(Mt. Pleasant Code of Ordinances Sec. 156.007, as of
September 27, 2021)**

§ 156.007 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. For any terms not defined herein, the applicable definition from *Black's Law Dictionary* shall be used.

ACCESSORY BUILDING, STRUCTURE, OR USE. A building, structure, or use customarily incidental and subordinate to, and detached from, the principal use or building and located on the same lot with such principal use, uses, or building.

ACTIVITY ZONE. The improved area located between the street right-of-way and the build-to line, which has been approved through the Design Review Process and which may be utilized for pedestrian- friendly uses, such as but not limited to, streetside dining, entertainment, pushcarts, or outdoor display of merchandise.

ADULT USES. Any business or activity located on a premises, or portion thereof utilized as an adjunct to some other business activity but which constitutes a major attraction to the premises, from which minors are generally excluded and in which a substantial portion of its stock-in-trade involve the sale, rental, or viewing of materials that are characterized by their emphasis on sexual subject matter, or where activities are conducted that are distinguished or characterized by an emphasis on exposing depicting, describing or otherwise relating to specified sexual activities or specified anatomical parts.

AGRICULTURAL STORAGE. The keeping of materials and/or equipment related to an agricultural use either outdoors or inside a structure.

ALLEY. An improved private right-of-way used primarily as a secondary means of access to the side or rear of properties whose principal frontage is on another street.

ALTER. As applied to a building or structure, a change or rearrangement in the structural parts, or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.

ALTERATIONS OF BUILDING. Any change in the supporting members of a building, such as bearing walls, columns, beams, girders, or floor joists.

AMENITY BUILDINGS OR FACILITIES. Those features of a residential development designed for and intended to serve residents of the development, which may include, but are not limited to, swimming pools, tennis courts, fitness rooms, picnic areas, play fields, walking trails, docks, boat launches, and boat storage.

AMUSEMENT CENTER. Any privately-owned or operated establishment, whether operated for profit or not for profit, which houses six or more mechanical or electronic amusement devices, and either:

(1) Has as its chief, leading, main, or most considerable and important activity the operation of mechanical or electronic amusement devices; or

(2) Obtains 25% or more of its gross receipts from the operation of mechanical or electronic amusement devices.

AMUSEMENT DEVICE, MECHANICAL OR ELECTRONIC. Any machine, device, or game that permits a person or operator of the same to use the device as a game, contest of skill, or amusement. It shall include, but not be limited to, pinball machines, skill ball, bowling machines, billiard and pool tables, and video games, and specifically includes a computer or similar device used, in whole or in part, for gaming or amusement.

ANIMAL BOARDING FACILITY OR DAYCARE. A commercial establishment where dogs, cats, or other household pets are kept for any length of time. Such establishment may offer ancillary services,

such as grooming.

ANIMAL HUSBANDRY. The practice of raising and managing any domestic animals other than customary household pets, including breeding, pasturing, ranching, and sales of animals, but not concentrated animal feeding operations.

ANIMAL SHELTER. An establishment where stray or abandoned dogs, cats, or other household pets are kept, boarded, treated, and/or groomed for purposes of adoption by members of the public.

ANNUAL MEETING SCHEDULE. A schedule of all regular meetings of appointed and elected officials of the Town of Mount Pleasant, published no later than December of each year and which maybe amended from time to time.

APICULTURE. Beekeeping, which includes one or more hives or boxes occupied by honeybees (hives or boxes include colonies), but does not include honey houses, extraction houses, warehouses or appliances.

APPLICANT. A property owner or any person or entity acting as an agent for the property owner in an application for permits or other approval required by this chapter.

AQUACULTURE. The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

AREA, FLOOR. The total number of square feet of floor space within the exterior walls of a building, not including space in cellars, basements, or unfinished attics.

AREA, FOOTPRINT. The portion of the lot area that is covered by the maximum horizontal cross-section of any portion of a building or structure and includes any two-dimensional coverage, specifically including such elements as steps, decks, terraces, and roof and eave structure.

AREA, LOT. The total square footage of the horizontal surface within the boundary lines of a lot.

AREA, SITE. The total area within the property lines of a project, excluding external streets.

ARTISAN (includes **ARTIST, CRAFTSMAN**). A person skilled in an applied art, artistic, or craft discipline.

ARTISAN WORKSHOP (includes **ARTIST STUDIO**). An establishment for the preparation, display, and/or sale of individually crafted artwork, jewelry, furniture, sculpture, pottery, leathercraft, hand-woven article, baked or prepared food and drink, watercraft, and similar items by one or more artisans

AVIATION FACILITY. A location where aircraft such as fixed-wing, rotary wing, or lighter- than-air aircraft, helicopters, and/or blimps take off and land. Aircraft may be stored or maintained at an aviation facility. An **AVIATION FACILITY** consists of at least one surface such as a runway for a plane to take off and land or a helipad, and often includes buildings such as control towers, hangars, and terminal buildings.

BAR (includes **NIGHTCLUB, LOUNGE**). An establishment serving alcoholic beverages for on-site consumption as the primary use.

BASEMENT (includes **CELLAR**). A portion of a building partly underground with more than half of its height, measured from finished floor to finished ceiling, above the average grade of the adjoining ground; and not deemed a story unless the ceiling is six feet or more above the grade.

BOARDING HOUSE. See **DWELLING, GROUP**.

BOAT LAUNCH OR DOCK. A facility for launching and/or mooring boats that is available for use by the general public and for which a user fee may or may not be charged. Also includes associated parking areas.

BOAT LAUNCH OR DOCK, NEIGHBORHOOD. A facility for launching and/or mooring boats located within a residential area and intended primarily for use by residents of the immediate area. Also includes associated parking areas.

BOAT LAUNCH OR DOCK, PERSONAL. A facility for launching and/or mooring boats located on an individual residential parcel and intended solely for use by the parcel owner.

BODY PIERCING. The creation of an opening in the body of a person so as to create a permanent hole for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of the lip, tongue, nose, eyebrow and the cartilaginous portion of an ear. For the purpose of this chapter, **BODY PIERCING** does not include piercing of the ear lobe.

BONA FIDE FORESTRY OPERATIONS. See **FORESTRY OPERATIONS, BONA FIDE.**

BREWERY. A facility used for the commercial purpose of the production of beers, ales, and similar beverages. The facility may incorporate all aspects of production including aging, storage, bottling, wholesale sales, warehousing, and administrative office functions. Retail sales, tasting facilities, and event facilities may be permitted as part of the facility operations.

BUILD-TO LINE. The line at which construction of a building façade is to occur on a parcel. A **BUILD-TO LINE** runs parallel to the street right-of-way and is established to create a generally consistent building line along a street.

BUILDABLE AREA. The maximum two- dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback and buffer requirements.

BUILDING. Any structure having a roof supported by columns or walls, for the shelter, housing, or enclosure of any individual, animal, activity, process, equipment, goods, or materials of any kind, exclusive of mailboxes, birdhouses, or similar construction. The term **BUILDING** shall be construed as if followed by the words "or part thereof."

BUILDING FOOTPRINT. All parts of a building that rest, directly or indirectly, on the ground, including, but not limited to: garages, bay windows with floor space, chimneys, porches, decks, cantilevered floor space or decks, and covered breezeways or walkways.

BUILDING COVERAGE. The proportion of the lot area, generally expressed as a percent, that is covered by the building footprint. Buildings which are completely below the finished lot grade, including subgrade basements, shall not be included in building coverage.

BUILDING HEIGHT. Height shall be measured vertically from the highest point on a structure, to the ground level of the grade where the walls or other structural elements intersect the ground, unless otherwise specified in this chapter.

BUILDING LINE (includes **SETBACK**). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation so as to provide the greatest amount of buildable area.

BUILDING, PRINCIPAL. See **STRUCTURE, PRINCIPAL.**

CAMPGROUND OR CAMPSITE. A nonresidential use of a parcel of land for temporary overnight use by tents or cabins for which a fee may be charged. Tent camping areas may include site improvements, such as gravel pads, parking areas, fire pits, or tent platforms, but may not have permanent utility hookups. Cabins may have utilities such as electricity, water, sewer, telephone, or cable television.

CAR WASH (includes **SELF-SERVICE CAR WASHES**). A building, or portion thereof, where vehicles and watercraft are cleaned. A car wash may include washing, drying, vacuuming, and/or tire-

filling services.

CELLAR. See **BASEMENT**.

CLUB, LODGE, OR FRATERNAL ORGANIZATION. An incorporated or unincorporated association for civic, cultural, religious, literary, political, recreational or like activities, but not including shooting clubs, operated for the benefit of its members and not open to the general public.

CLUSTER DEVELOPMENT. A subdivision design technique recognized by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, as amended, that concentrates development in specific areas of a site. It allows the grouping of residential uses within a subdivision, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel.

COMMERCIAL NURSERY OPERATIONS. An establishment where trees, shrubs, vines, and other plant stock are grown, propagated, and/or stored, for the purpose of sale or wholesale. Ancillary items such as mulch, sand, gravel or similar materials; and seasonal items, such as Christmas trees and pumpkins, may be sold in addition to plants, but must clearly be incidental to the primary use.

COMMERCIAL RECREATION AND ENTERTAINMENT. See **RECREATION AND ENTERTAINMENT, COMMERCIAL**.

COMMUNITY GARDEN. A grouping of garden plots available for small-scale cultivation by members of the general public.

COMMUNITY SERVICE FACILITY. A noncommercial establishment intended primarily for the benefit and service of the general public of the community in which it is located. Such facilities may have membership provisions that allow the general public to join at any time. Examples include, but are not limited to, community centers, community health clinics, senior centers, East Cooper Community Outreach facilities, and Meals on Wheels facilities.

CONDOMINIUM. Refers to a form of ownership, not an actual structure. A unit in a series or in a multi-unit type structure, which may be owned or leased by an individual, firm, or corporation, that may have common use of all related activities associated with the structure; or as defined in state law as a horizontal property regime.

CONTINUING CARE RETIREMENT COMMUNITY (CCRC). A development in which seniors may reside throughout all stages of their retirement. A **CCRC** generally includes a full range of living arrangements, progressing from independent living, to assisted living, to Alzheimer's and skilled nursing care for dependent residents. Such facility may also include in-patient and/or out-patient rehabilitation services for individuals of any age. Such facility need not include all of the aforementioned living arrangements, but a range of care services and living arrangements should be provided in order for a facility to be considered a **CCRC**.

CROP, GREENHOUSE, HORTICULTURAL, OR HYDROPONIC PRODUCTION. The growing, harvesting, and/or processing of fruits, vegetables, medicinal plants, and/or landscape plant materials.

CULTURAL FACILITY. An establishment providing for the display, preservation, and/or exhibition of objects of historical or cultural interest. Examples of this use include, but are not limited to, museums, libraries, historical sites, botanical gardens, nature exhibitions, environmental education facilities, and interpretive centers.

CULTURAL FESTIVALS AND EVENTS. Commemorations, celebrations, or gatherings of special importance to the community, such as, but not limited to, concerts, holiday/seasonal events, food festivals, ethnic festivals, craft fairs, and reenactments.

DAYCARE FACILITY. A facility which provides care, protection, and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day.

DENSITY. The number of dwelling units per acre of land within the boundaries of a residential project, including lands or parcels designated for support of the development.

DESIGN REVIEW PROCESS. The procedure for evaluation of certain developments to ensure compliance with the requirements of this chapter. Generally, non-residential and mixed-use developments are subject to this process; however, the applicability of this process to a particular development depends upon the specific zoning of the property on which the development is or will be located.

DISTILLERY. A facility used for the commercial purpose of the production of liquors and similar beverages. The facility may incorporate all aspects of production including aging, storage, bottling, wholesale sales, warehousing, and administrative office functions. Retail sales, tasting facilities, and event facilities may be permitted as part of the facility operations.

DISTRIBUTION TERMINAL. An establishment engaged in the storage or movement of goods, such as manufactured products, supplies, equipment, or food. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.

DRY STACK WATERCRAFT STORAGE. A facility for storing boats out of water. This is principally a land operation, where boats are dry stored or "stacked" until such time as they are transferred to the water for use.

DWELLING. A building or portion of a building arranged or designed to provide complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

DWELLING, ACCESSORY. A separate housing arrangement within, attached to, or detached from a single-family dwelling unit (not including townhouses), which includes its own dedicated entrance from the outdoors and a kitchen and bath separate from those contained within the principal structure, and therefore functions as a complete living unit.

DWELLING, ATTACHED SINGLE-FAMILY. See **DWELLING, TOWNHOUSE.**

DWELLING, BIG HOUSE. A building containing between two and six dwellings that is articulated to appear more like a detached single-family dwelling than an apartment building. This dwelling type has the appearance of a medium- or large-sized family home, typically with one shared entry, and is appropriately scaled to fit within primarily single-family neighborhoods.

DWELLING, DETACHED SINGLE-FAMILY. See **DWELLING, SINGLE-FAMILY.**

DWELLING, DUPLEX (includes **TWO-FAMILY DWELLING**). A detached or semi-detached building designed for, or occupied exclusively by, two families living independently of each other.

DWELLING, GROUP. A building or portion of a building occupied or intended for occupancy by more than three unrelated persons, but in which separate cooking facilities are not provided for such residents, persons, or families. Examples include, but are not limited to, boarding house, rooming house, fraternity house, or sorority house. A hotel, motel, boutique hotel or inn shall not be deemed a group dwelling as defined herein.

DWELLING, GROUP CARE. A staffed residence providing meals, supervision, education, counseling, treatment, therapy, and/or other support services for elderly or physically, emotionally, and/or mentally disabled individuals.

DWELLING, MULTI-FAMILY. A building designed for, or occupied by, three or more families living independently of each other, with the number of families in residence not exceeding the number of dwellings provided. Each multi-family living unit constitutes a dwelling.

DWELLING, SINGLE-FAMILY (includes **DWELLING, DETACHED SINGLE-FAMILY**). A detached building, other than a manufactured home, designed for or occupied exclusively by one family. This definition includes dwellings built using modular construction methods.

DWELLING, TOWNHOUSE (includes **DWELLING, ATTACHED SINGLE-FAMILY**). One of a series of three or more separate attached single-family dwellings that:

- (1) May or may not have a common roof;
- (2) Share at least one common wall;
- (3) Are separate from each other by a fire-resistance-rated wall assembly, as required in the adopted building code; and
- (4) Are sold as individual lots of record.

ELIGIBLE IMPROVEMENTS. Additions, renovations, or other changes made to a dwelling unit that are permanent in nature and clearly add to the long-term market value of the dwelling unit, such as, but not limited to, additions containing conditioned space, screened porches, decks, patios (other than concrete slab), and improvements related to energy and water efficiency. Normal maintenance, repair work, or improvements that are strictly cosmetic in nature are not considered eligible improvements. Purchase of household appliances such as, but not limited to, refrigerators, stoves, and dishwashers, shall not be considered an **ELIGIBLE IMPROVEMENT**.

ENTERTAINMENT AND RECREATION, COMMERCIAL. See **RECREATION AND ENTERTAINMENT, COMMERCIAL**.

ENTERTAINMENT, HIGH-IMPACT. Predominantly large-seating capacity spectator uses with the potential for high vehicle trip generation and/or which has a greater potential for nuisance to adjacent properties due to noise, light, or glare. Examples include but are not limited to, large-scale event venues, and professional sports venues.

EQUESTRIAN FACILITY. An establishment where horses are boarded and/or used for rentals, riding lessons, shows, training, or the like.

EVENT VENUE. A commercial facility used for the hosting of events such as, but not limited to, weddings, parties, or meetings, which does not meet the definition of high-impact entertainment.

FACILITY. A building, structure, or space established for a particular purpose.

FAMILY. The following groups of persons and no others:

- (1) Any number of persons related by blood, marriage, adoption, or under approved foster care, and living and cooking together as a single housekeeping unit, plus not more than two unrelated roomers, boarders, or domestic employees; or
- (2) No more than three unrelated persons living and cooking together as a single housekeeping unit.

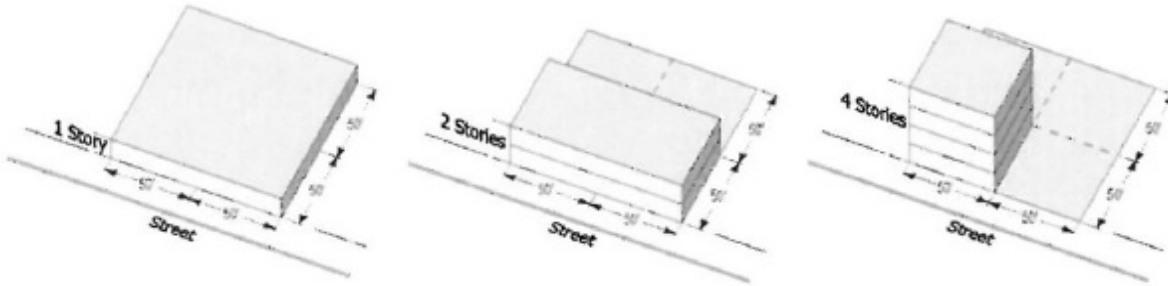
FLEX SPACE. A facility containing a combination of office and any one or more of the following uses: warehouse, distribution, and/or showroom facilities.

FLOOD PLAIN. Those areas subject to periodic inundation by large floods that occur with calculable flood frequency, and subject to flooding that may reasonably be expected to cause damage or hazard of damage sufficient to justify protection therefrom.

FLOOR AREA. See **AREA, FLOOR**.

FLOOR AREA RATIO (FAR). Expresses the relationship between the amount of useable floor area permitted in a building or buildings and the area of the lot on which the building stands. It is

obtained by dividing the gross floor area of a building by the total area of the lot. The diagram below illustrates three ways that a FAR of 1.0 might be achieved: a one-story building covering the entire lot, a two-story building covering half the lot, or a four-story building covering one quarter of the lot.



FOOTPRINT AREA. See **AREA, FOOTPRINT**.

FORESTRY OPERATIONS, BONA FIDE. BONA FIDE FORESTRY OPERATIONS shall mean that the property is eligible for, and actually used for forestry or timber operations, and written application has been approved by the Charleston County Assessor for the special assessment for agricultural use for the property in question pursuant to S.C. Code § 12-43-220, S.C. Department of Revenue Regulation 117-1780.1., and other applicable statutes, rules, and regulations.

GAS STATION. A place where gasoline is stored only in underground tanks, and kerosene, lubricating oil and grease for operation of automobiles, trucks, or watercraft are offered for sale at retail directly to the public on premises.

GOLF COURSE. A facility, other than a miniature golf course, for the playing of golf, at which there may be a clubhouse including restrooms and locker rooms. A golf course may provide additional services customarily furnished such as swimming pools, tennis courts, play fields, park land, driving ranges, and related retail sales that may include a restaurant and cocktail lounge.

GOVERNMENT FACILITY. A building, structure, or space owned, operated, and/or occupied by a government agency.

HOME-BASED BUSINESS. An occupation, profession, or trade customarily carried on by an occupant in a dwelling unit or accessory structure as a secondary use, which is clearly incidental to the dwelling unit for residential purposes.

HOSPICE CARE FACILITY. A licensed facility providing palliative and supportive medical and health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in a home-like setting.

HOTEL (includes **MOTEL** and **EXTENDED STAY**). A building or group of attached or detached buildings containing lodging units 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 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.

IMPERVIOUS SURFACE. Area covering the ground that is continuous and made of non-porous material. This material prevents rainwater from passing through impeding soil infiltration. It does not include elevated surfaces designed to allow rainwater to reach the soil underneath. Such structures and component of the like include uncovered timber decking, building eaves/overhangs, cantilevered balconies, and fence tops (caps). Any part of referenced components extending beyond the area covering the ground. Examples of impervious ground cover are a concrete or asphalt slab,

driveway, sidewalk, patio, pool building footprint area, street, curbing and elevated covered decks. Any material is considered impervious when the Soil Conservation Service (SC) Curve Number is equal to or greater than 90.

INN. See **HOTEL, BOUTIQUE.**

KITCHEN. Any room principally used, intended, or designed to be used for cooking or the preparation of food. The presence of a range or oven, or utility connections suitable for servicing a range or oven, shall be considered as establishing a kitchen. The meaning of **KITCHEN** shall exclude a bar, butler's pantry, or similar room or portion of a room.

LOADING SPACE. A space within the main building or on the same lot, providing for the standing, loading, or unloading of trucks.

LOT. A plot or parcel of land considered as a unit, devoted to a certain use or occupied by a building or group of buildings permitted in this chapter, and having its principal frontage upon a street or access in accordance with municipal regulations, and the customary accessories and open spaces belonging to the same.

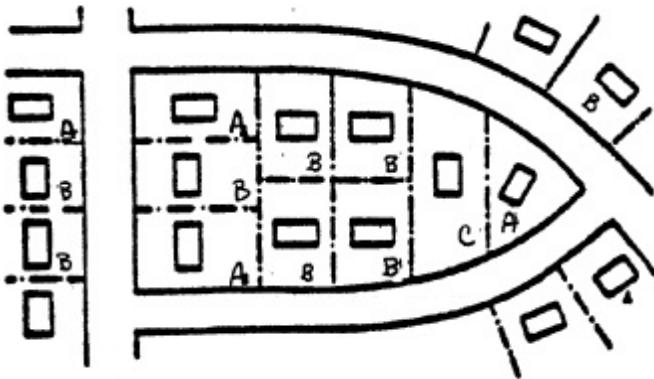
LOT AREA. See **AREA, LOT.**

LOT, CORNER. A lot at the junction of, and fronting on, two or more streets (but not alleys) at their intersection (lot "A" in diagram shown below).

LOT, DEPTH. The average horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

LOT, DOUBLE FRONTAGE. A lot having a frontage on two streets (but not alleys), at a point other than at their intersection, as distinguished from corner lot (lot "C" in diagram shown below).

LOT, INTERIOR. A lot other than a corner lot, having frontage on only one street other than an alley (lot "B" in diagram shown below).



LOT LINE. The legal boundary of a parcel.

LOT OF RECORD. An area designated as a separate and distinct parcel of land on a legally recorded deed and/or approved plat as filed in the official records of the Charleston County RMC Office.

LOT WIDTH. The distance between side lot lines as measured at the building line.

LOUNGE. See **BAR.**

MANUFACTURED HOUSING UNIT. A single-family dwelling unit designed to be transported after fabrication on its own wheels, or on flatbed or other trailers or detachable wheels; arriving at the site where it is to be occupied in a dwelling complete and ready for occupancy, except for minor and

incidental unpacking and assembly operations, connection to utilities, and the like. Such housing units shall be installed in accordance with the manufacturer's installation manual; in the absence of such a manual, such housing units shall be installed in accordance with all applicable State installation regulations. This definition does not include modular buildings, which are certified as such by the South Carolina Modular Building Construction Act of 1984, S.C. Title 43, Chapter 43, 1976, as amended.

MANUFACTURING AND PRODUCTION. Businesses engaged in the processing, manufacturing, production, compounding, assembly, packaging, treatment or fabrication of materials and products from processed or previously manufactured materials. This definition shall include incidental storage, wholesale sales, and distribution of such products.

MARICULTURE. A specialized branch of aquaculture involving the cultivation of marine organisms in salt water, usually by enclosing a portion of a natural waterway but also in tanks or ponds.

MARINA. A facility for storage, servicing, fueling, berthing, or securing of boats.

MARINE SALVAGE OPERATIONS. The use of any part of a lot, whether inside or outside of a building, for the storage, dismantling, and/or sale of objects recovered from waterways.

MARINE WAREHOUSING. An establishment for the storage, wholesale, and distribution of manufactured marine equipment, products, and supplies. This term does not include self-storage facilities or flex space.

MARKET-RATE HOUSING. Housing priced according to prevailing market trends and sold with no restrictions on either the sale price or on the buyer's income.

MOBILE FOOD VENDING UNIT. A self-contained, vehicle-mounted food service unit that returns daily to its base of operation, as approved by DHEC, and is used for the preparation and/or sale of food products.

MOBILE FOOD VENDOR. A person selling food other than fresh fruit or vegetables from a mobile vendor unit. This definition shall not include solicitors, peddlers, or transient merchants.

MOBILE RETAIL VENDING UNIT. A truck, trailer, or similar conveyance, whether operated under its own power or towed to a location, from which non-perishable goods or merchandise are sold to individual customers.

MOBILE RETAIL VENDOR. A person selling retail, non-food products from a mobile retail vendor unit. This definition shall not include solicitors, peddlers, or transient merchants.

MOTOR VEHICLE. Any vehicle which is self-propelled, as defined in S.C. Code § 56-5-130. For purposes of this chapter, this definition shall include mopeds.

MOTOR VEHICLE OR WATERCRAFT SERVICE AND REPAIR. A business involving the upkeep, maintenance, and/or repair of motor vehicles and/or watercraft.

NEIGHBORHOOD GATHERING PLACE. An establishment intended for social meetings and low-intensity commercial uses offering services such as, but not limited to, beauty salons, barber shops, and neighborhood general stores, and in some cases serving food and drinks. These establishments are generally locally-owned and operated and are intended to serve the immediate community.

NIGHTCLUB. See **BAR**.

NONCONFORMING USE. A building, structure, or parcel of land lawfully occupied by a use that does not conform to the regulations of the zoning district in which it is situated.

OFFICE, GENERAL. Use of a site for business, professional, or administrative offices, excluding medical offices. Typical uses include real estate, insurance, management, computer software or

information systems research and development, or other business offices; organization and association offices; or law, architectural, engineering, accounting or other professional offices. Retail sales do not comprise more than an ancillary aspect of the primary activity of a general office.

OFFICE, MEDICAL. Use of a site for facilities which provide medical treatment, preventative care, and/or outpatient physical or mental health care on a routine basis, but which does not provide overnight care or serve as a base for an ambulance service. Medical offices are operated by doctors, dentists, psychiatrists, or similar practitioners licensed by the State of South Carolina. Retail sales do not comprise more than an ancillary aspect of the primary activity of a medical office.

OPEN SPACE. Land areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state. Open space areas should be contiguous or connected to each other by a pedestrian and bicycle path or sidewalk system. Open space areas intended for active or passive recreation use shall be of sufficient size so as to constitute meaningful and usable space. Open space areas may include high ground and wetland buffer areas, but do not include freshwater or saltwater wetlands.

OPEN SPACE, NATURAL. An essentially undisturbed area not occupied by any structure or impervious surface. Pervious pedestrian trails are permitted in natural open space areas.

OUTDOOR DINING. An open-air dining area of an eating and/or drinking establishment enclosed by three or fewer walls of the building in which the eating and/or drinking establishment is located. These areas may be open to the elements and temporarily enclosed by means such as fencing, walls plastic, or other enclosing materials and methods due to inclement weather; these areas may not have amplified music. In the UC-OD, Urban Corridor Overlay District, these areas shall be located outside of the activity zone.

OUTDOOR STORAGE. The keeping, other than in a building, of any goods, materials, or merchandise on a parcel for any period of time.

PARCEL. A piece of land which can be owned and conveyed. Each parcel in Charleston County has a unique Parcel Identification (PID) or Tax Map Sequence (TMS) number.

PARKING SPACE. The area required for parking one vehicle.

PARKING SPACE, TANDEM. The arrangement of not more than two parking spaces in depth, wherein one space is located directly in front of another space, such that it is necessary to pass through one space in order to enter or leave the other space.

PARKING STRUCTURE (includes the terms **PARKING GARAGE, PARKING DECK, PODIUM PARKING**, and **UNDERGROUND** or **UNDER- BUILDING PARKING**). A structure designed to accommodate vehicular parking spaces that are fully or partially enclosed or located on the deck surface of the structure.

PATIO. A level surfaced area adjacent to a building at finished grade, without permanent walls or a roof. A patio is typically constructed from concrete, brick, or other masonry material, including pervious pavers.

PERSONAL AND BUSINESS SUPPORT SERVICES. Establishments providing specialized services to individuals and organizations to assist with the maintenance of their person and effects or organizational needs. Such services include, but are not limited to, dry cleaners and laundries; tailors, dressmakers and alterations shops; cleaning services; beauty and barber salons; photography studios; computer and electronics repair; information technology services; and print and copy shops. These uses may also include ancillary retail sales of products related to the services provided.

PERSONAL IMPROVEMENT EDUCATION. Establishments providing specialized instruction and/or training in a particular subject or hobby to students of any age. Examples of this use include, but are

not limited to, fine arts schools, including music, art, and dance; and driving schools for motor vehicles not requiring a Commercial Driver's License (CDL).

PERVIOUS SURFACE. A surface covering the ground that consists of porous or non-compacted loose material that allows water to pass through. Examples are manufactured pervious pavers and parking spaces, loose gravel, rocks and sand. It can be a monolithic slab of porous material if installed and maintained per manufacturer's specifications. Pervious materials allow water to infiltrate to the underlying soil. Pervious areas will allow rainwater to reach the ground surface directly underneath.

PLAT. A map, plan, or layout of a tract of land, or a section or subdivision of land, indicating the location and boundaries of individual properties.

PORT. A facility for the docking, loading and unloading of ships.

PORTABLE STORAGE UNIT. Any container designed for the storage of personal property which is typically rented to owners or occupants of property for their temporary use and which is delivered and removed by truck.

PRELIMINARY STAFF REVIEW. A non-binding review of an Impact Assessment or a proposed new/amended Planned Development District by Department of Planning and Development staff required prior to formal submittal of the proposal to the Planning Commission and Town Council.

PRODUCTION STUDIO. A facility specially equipped for broadcasting, filming, and/or recording music, motion pictures, television shows, radio programs, and the like.

PUBLIC REALM. All exterior places, linkages, and built form elements that are physically and/or visually accessible regardless of ownership. These elements may include, but are not limited to, streets, pedestrian ways, bikeways, bridges, plazas, nodes, squares, transportation hubs, gateways, parks, waterfronts, natural features, view corridors, and landmarks. The **PUBLIC REALM** is organized into four categories: parks, streetscapes, coastal and waterfront areas, and public spaces. These categories may have differing ownership and maintenance arrangements, and are defined as follows:

(1) **PARKS.** Public open spaces within a community intended for active or passive recreational use.

(2) **STREETSCAPES.** The visual elements of a street, including the road, sidewalk, street furnishings, trees, and open spaces, that combine to form the street's character.

(3) **COASTAL AND WATERFRONT AREAS.** All land areas along the water's edge and the connections between these areas and the streetscape.

(4) **PUBLIC SPACES.** All open areas within a community visible to the public or for public gathering or assembly.

PUSHCART. A non-self-propelled vehicle designed to be readily moveable, from which merchandise or food is sold.

RECREATION AND ENTERTAINMENT, COMMERCIAL. Any establishment not meeting the definition of high-impact entertainment or high-impact recreation which receives a fee in return for providing the general public with an amusing or entertaining activity including, but not limited to, swimming pools, tennis facilities, bowling alleys, billiards, laser tag facilities, skating rinks, indoor go-karts, theatres, movie theatres, gyms, and fitness centers.

RECREATION, COMMUNITY. Recreational facilities and structures generally serving the area at large and having a greater impact on its surroundings than neighborhood recreation. Facilities may or may not charge a fee, but are generally not commercial establishments. Examples include, but are not limited to, multiple playing fields or courts, large-tract passive parks, pools, Alhambra Hall, and the G.M. Darby Building.

RECREATION, HIGH-IMPACT. Any commercial recreational establishment with the potential for high vehicle trip generation and/or which has a greater potential for nuisance to adjacent properties due to noise, light, or glare. Examples include but are not limited to outdoor go-karts, mini- golf, waterpark, and driving ranges.

RECREATION, NEIGHBORHOOD. Recreational facilities and structures generally serving a small area such as a subdivision and having a low impact on its surroundings. Facilities are generally not illuminated, and may or may not charge a nominal fee. Examples include, but are not limited to, courts and ball fields, playgrounds, and kayak launches.

RECREATIONAL VEHICLE. A vehicle which is built on a single chassis; designed to be self-propelled or permanently towable by a car, sport- utility vehicle, or light duty truck; and designed to be used as a temporary dwelling for travel, recreational, or vacation purposes. This definition includes pickup campers, converted buses, and pop-up campers.

RECREATIONAL VEHICLE PARK. A nonresidential use of a parcel of land for temporary overnight use by recreational vehicles for which a fee may be charged. Recreational vehicle camping areas may involve site improvements, such as concrete pads, parking areas, or fire pits, but may not include permanent utility hookups.

RECYCLING FACILITY. An establishment engaged in the collection, storage, transfer, and/or processing of recyclable materials. This does not include collection bins typically seen behind shopping centers or at government facilities.

RENTAL, SHORT-TERM.

(1) The rental or lease of a residential dwelling unit or portion thereof for a duration of less than 30 consecutive days; or

(2) Home-based business and tourist accommodations, including **HOTEL** (includes motel and extended stay), **HOTEL, BOUTIQUE** (includes inn) and similar accommodations located on property in a commercial zoning district are not considered **SHORT-TERM RENTALS**.

(3) This definition shall apply to any and all businesses that qualified as a bed and breakfast under previous town ordinances.

RESEARCH AND DEVELOPMENT FACILITY. An establishment in which an organization conducts investigative activities for the purpose of developing new products, procedures, or processes, or improving existing products, procedures, or processes. Such facility may include limited on-site production of related goods.

RESIDENTIAL TREATMENT FACILITY. An establishment providing for the assessment, diagnosis, treatment, and/or care of children, adolescents, or adults with mental illness, substance abuse, or other behavioral problems. Services may include educational programs, individual and family counseling programs, occupational training programs or facilities, and recreational facilities, all accommodated in a residential setting.

RESOURCE EXTRACTION. A use involving on-site extraction of surface or subsurface mineral products or natural resources. Typical uses are quarries, borrow pits, sand and gravel operations, mining, and soil mining. Specifically excluded from this use is timber harvesting; silviculture; grading and removal of dirt associated with an approved site plan or subdivision; or excavations associated with, and for the improvement of, a bona fide agricultural use.

RESOURCE PROCESSING AND STORAGE. A use involving on-site separation or aggregation of mineral products and/or extracted natural resources, such as mulching or chipping, and/or storage of mineral products and/or extracted natural resources such as trees, dirt, and similar materials.

RESTAURANT, FAST FOOD. An establishment whose principal business is the sale of food and/or beverages in a ready-to-consume state for consumption:

- (1) Within the restaurant building;
- (2) Within a motor vehicle parked on the premises; or
- (3) Off the premises as carry-out orders, and whose principal method of operation includes the following characteristics: food and/or beverages are usually served in edible containers or in paper, plastic, or other disposable containers.

RESTAURANT, STANDARD. An establishment whose principal business is the sale of food and/or beverages to customers in a ready-to-consume state, and whose principal method of operation includes one or both of the following characteristics:

- (1) Customers, normally provided with an individual menu, are served their food and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed;
- (2) A cafeteria-type operation where food and beverages generally are consumed within the restaurant building.

RETAIL CENTER. Two or more tenants occupying less than 40,000 square feet of retail space. A retail center may accommodate tenants in individual units within a single building or within multiple buildings.

RIGHT-OF-WAY. An area of land not on a lot that is dedicated for public or private use to accommodate pedestrian, bicycle, and vehicular movement and necessary public utility infrastructure (including, but not limited, to water lines, sewer lines, power lines, and gas lines). In no case shall a right-of-way be construed to mean an easement.

ROOMING HOUSE. See **DWELLING, GROUP.**

RURAL COMPOUND. A living arrangement where multiple principal detached single-family dwelling units are established on one or more lots of record.

SHOPPING CENTER. A group of at least four tenants occupying 40,000 square feet of retail space or greater. A shopping center may accommodate tenants in individual units within a single building or within multiple buildings.

SPECIAL EXCEPTION. Use of property granted only by review and approval of the Board of Zoning Appeals, subject to the terms and conditions set forth in the zoning ordinance and as determined by the Board.

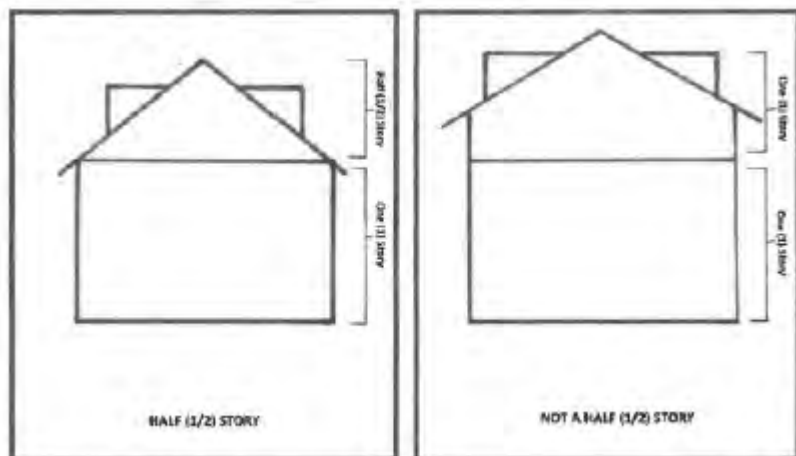
SPORTS COMPLEX. A facility, generally not commercial in nature, with or without seating for spectators, and providing accommodations for a variety of individual, organized sports, including but not limited to basketball, wrestling, soccer, tennis, volleyball, football, baseball, or swimming pool. Such facility may also provide other regular organized events; health and fitness club facilities; snack bar; limited retail sales of related sports, health or fitness items; and other support facilities.

STABLE. A structure in which horses or other large animals are kept for the purposes of boarding, breeding, personal use, or training, provided any training is limited to those animals being boarded on the property.

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.

STORY, HALF (½). A story under a sloping roof, where the roof is connected to the top plates of the story wall below, without short walls, and accessed by a stairway compliant with the building code. The floor area with head room of five feet or more may not exceed 50% of the total floor area of the story below it. Dormers may be attached to the sloping roof, provided the combined width of the dormers does not exceed more than 50% of the length of the horizontal plane measured from inner edge of eave to inner edge of eave.



STREET, MAJOR. A public right-of-way, generally containing four or more travel lanes.

STREETSIDE DINING. These areas shall be located within the activity zone, and are specifically required to be open air, unconditioned dining, open to the elements and not enclosed by any means, such as fencing, walls, plastic, or other enclosing materials and methods; except that awnings shall be allowed. Temporary planters for landscaping may be used to delineate the dining area, but may not impede pedestrian access.

STRUCTURE. Anything constructed or erected that requires a fixed location on the ground, or is attached to something having a fixed location on the ground, including, but not limited to, buildings, manufactured homes, signs, billboards, backstops for athletic activities, swimming pools, walls, and fences. The term **STRUCTURE** shall be construed as if followed by the words "or part thereof."

STRUCTURE, PRINCIPAL. A structure within which the principal use is conducted.

SWEETGRASS BASKET STAND. An open-air stand from which baskets handmade from locally grown sweetgrass are sold.

TATTOO or TATTOOING. To indelibly mark or color the skin by subcutaneous introduction of nontoxic dyes or pigments.

TERMINAL VISTA. The building or landscape element that is visible at the end of a street, or along the outside edge of a curve.

TRAILER. Any vehicle or structure, capable of moving, or being moved, over streets and highways on its own wheels or on flatbeds or other carriers, that is designed or utilized to: provide temporary or permanent quarters for the conduct of a business, profession, trade, or occupation; serve as a carrier of new or used goods, products, or equipment; or be used as a selling, advertising, or display device. A **TRAILER** is not used as a residence or for permanent sleeping quarters, such as a manufactured home.

TRANSPORTATION TERMINAL. A facility for loading, unloading, and interchange of passengers, baggage, and incidental freight or package express between modes of ground transportation,

including bus terminals, truck terminals, and public transit facilities.

TRAVEL TRAILER. See **RECREATIONAL VEHICLE**.

USE, ACCESSORY. See **ACCESSORY BUILDING, STRUCTURE, OR USE**.

USE, CIVIC (also **USE, INSTITUTIONAL**). Utility, educational, recreational, cultural, medical, protective, governmental, and other uses that provide public or quasi-public services and are strongly vested with social importance. Examples may include, but are not limited to the following: city halls; post offices; police and fire stations; schools; museums; universities; public parks; meeting halls; libraries; transit centers; and parking structures.

USE, CONDITIONAL. A use not otherwise permitted in a district, and which would not be appropriate generally or without restriction throughout a zoning district, but which, if controlled as to number, area, location, relation to the neighborhoods, and subject to the conditions noted, would promote the public health, safety, welfare, order, comfort, convenience, appearance, proprietary, or general welfare of the town.

USE, PERMITTED. Any use allowed in a given zoning district without a requirement for conditional or special exception approval.

USE, PRINCIPAL. The main or primary purpose for which a building, other structure, and/or lot is designed, arranged, or intended, or for which they may be used, occupied, or maintained under this chapter. The use of any other building, other structure, and/or land on the same lot and incidental or supplementary thereto and permitted under this chapter shall be considered an accessory use.

USE, PUBLIC. A building or property owned or occupied by a use which is open to all people, without or with minimal restrictions or regard as to membership, and which is established for their common or general use and enjoyment. A church is a public use.

USE, QUASI-PUBLIC. Essentially public (as in services rendered) although under private ownership or control. Examples of quasi-public uses include institutional, academic, and community service uses.

USE, SEMI-PUBLIC. A building or property owned or occupied by an organization, institution, or group of people with written and adopted rules for membership, that are used or enjoyed primarily by that group.

VARIANCE. A modification of the strict terms of this chapter granted by the town where such modification will not be contrary to the public interest, and where, owing to conditions peculiar to the property and not as the result of any action on the part of the property owner, a literal enforcement of the chapter would result in unnecessary and undue hardship.

VERGE. The typically grassed area located adjacent to the street, between the back of curb or edge of pavement and the sidewalk.

VETERINARY CLINIC. An establishment for the care, observation, and/or treatment of animals and where animals may be boarded during their convalescence.

WAREHOUSING FACILITY. An establishment for the storage, wholesale, and distribution of manufactured equipment, products, and supplies. This term does not include self-storage facilities or flex space.

WAREHOUSING, MARINE. See **MARINE WAREHOUSING**.

WASTE-RELATED SERVICES. Establishments that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the biological decomposition of organic material.

WHOLESALE SALES. The sale or distribution of merchandise to retailers; industrial, commercial, institutional, or professional business users; or to other wholesalers.

WILD GAME PROCESSING FACILITY. An establishment that renders legally killed wild animals, fish, and/or game into packaged cuts of meat, meat products, or other products.

WINERY. A facility used for the commercial purpose of the production of wine or similar spirits. The facility may incorporate all aspects of production, including aging, storage, bottling, wholesale sales, warehousing, and administrative office functions. Retail sales, tasting facilities, and event facilities may be permitted as part of the facility operations.

WORKFORCE HOUSING. Housing affordable to low and moderate income families (those earning up to 120% of the Charleston-North Charleston- Summerville Metropolitan Statistical Area (MSA) median family income, as defined in the schedule published annually by the U.S. Department of Housing and Urban Development).

YARD, FRONT. A yard situated between the front building line and the front lot line extending the full width of the lot.

YARD, REAR. A yard situated between the rear building line and the rear lot line and extending the full width of the lot.

YARD, SIDE. A yard situated between a side building line and side lot line, and extending from the front yard to the rear yard.

ZONING DISTRICT. An area or areas within the limits of the town for which the regulations and requirements governing use, lot, and bulk for buildings and premises are uniform.

('81 Code, §§ 155.14 and 155.90) (Ord. passed 8-13-79; Am. Ord. passed 3-11-85; Am. Ord. passed 6-9-92; Am. Ord. 93017, passed 4-13-93; Am. Ord. 99012, passed 4-21-99; Am. Ord. 02024, passed 6-11-02; Am. Ord. 04003, passed 5-11-04; Am. Ord. 04072, passed 7-12-05; Am. Ord. 05025, passed 5-10-05; Am. Ord. 06024, passed 5-10-06; Am. Ord. 08037, passed 7-8-08; Am. Ord. 08057, passed 10-15-08; Am. Ord. 09056, passed 8-12-09; Am. Ord. 09062, passed 9-9-09; Am. Ord. 11032, passed 5-10-11; Am. Ord. 11033, passed 5-10-11; Am. Ord. 11034, passed 5-10-11; Am. Ord. 11019, passed 7-12-11; Am. Ord. 12035, passed 6-12-12; Am. Ord. 12037, passed 6-12-12; Am. Ord. 12074, passed 11-13-12; Am. Ord. 12076, passed 11-13-12; Am. Ord. 13004, passed 2-12-13; Am. Ord. 14022, passed 4-8-14; Am. Ord. 14047, passed 8-12-14; Am. Ord. 14049, passed 9-9-14; Am. Ord. 16043, passed 7-13-16; Am. Ord. 16082, passed 10-11-16; Am. Ord. 16094, passed 11-8-16; Am. Ord. 17049, passed 10-10-17; Am. Ord. 19062, passed 11-13-19; Am. Ord. 19080, passed 12-11-19; Am. Ord. 20022, passed 4-14-20)

EXHIBIT R

**(Mt. Pleasant Code of Ordinances Sec 156.170 – 176,
as of September 27, 2021)**

OFF-STREET PARKING AND LOADING REQUIREMENTS

§ 156.170 PURPOSE.

(A) Areas suitable for parking and storing automobiles in designated locations shall hereafter be required in all zoning districts 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.

(B) Such designated parking area shall have direct access to a street or alley, and shall be developed and maintained in accordance with the landscaping provisions of this chapter.

('81 Code, § 155.98(A)) (Ord. passed 8-13-79; Ord. passed 8-21-84; Am. Ord. passed 3-11-85; Am. Ord. passed 6-9-92; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14) Penalty, see § 156.034

§ 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 use of the land or principal building on a lot, according to the requirements indicated in the following table, unless otherwise specified in this chapter.

<i>Use Category</i>	<i>Use</i>	<i>Spaces Required¹</i>	<i>Unit of Measure</i>	<i>Notes</i>
Residential	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.
Commercial	Accommodations and lodging	1 to 2	Guest room	
	Commercial and retail (excluding shopping centers)	1	200-3 00 sq. ft.	
	Office and warehouse, including medical office	1	200-3 00 sq. ft.	For warehouse uses only, the office portion is subject to the parking requirement. Fleet parking may require additional

				spaces at staff discretion .
	Personal and business support services, including personal improvement education	1	200-3 00 sq. ft.	Fleet parking may require additional spaces at staff discretion .
	Restaurant, bar, nightclub, lounge, including associated decks or plazas	1 to 2	100 sq. ft.	
	Shopping center	1	250 sq. ft.	
Civic	Church or place of public assembly	3 to 5	100 sq. ft. of main assembly	For simultaneous uses, parking requirements for each use may be separately applied.
	Government facility	Warrant ²		
	Medical care facility, such as a nursing home or hospital	1 to 4	Room	
	School: middle, primary, pre-school, educational nursery, day care, and similar uses	2 to 10	Classroom	
	School: secondary/high school/technical	5 to 10, or	Classroom, or	Whichever is greater at initial construction and any future alterations .
		1 to 2	100 sq. ft. of main assembly	
Recreation	Park and all other sports- related uses	Warrant ²		
	Sports complex - with fixed seats (such as a field or gym)	1	3-5 seats	
	Sports complex - without fixed seats (such as a field or pool)	Warrant ²		
Other	All other uses	Warrant ²		

¹ Unless otherwise specified in this chapter.

2 Where the number of required parking spaces is established by warrant, a private parking study, Urban Land Institute standards, or other appropriate standards shall be used to justify the proposed number of parking spaces, subject to staff or Design Review Board approval, as applicable. Such justification shall be included on all plans submitted to the Town for approval.

(B) However, in commercial zoning districts, all parking spaces provided above the minimum amount shall be surfaced with pervious materials, as approved by the Zoning Administrator.

('81 Code, § 155.98(B)) (Ord. passed 8-13-79; Ord. passed 8-21-84; Am. Ord. passed 3-11-85; Am. Ord. passed 6-9-92; Am. Ord. 94044, passed 11-8-94; Am. Ord. 02024, passed 6-11-02; Am. Ord. 03074, passed 1-13-04; Am. Ord. 10045, passed 9-14-10; Am. Ord. 14047, passed 8-12-14) Penalty, see § 156.034

§ 156.172 APPLICATION OF PARKING REQUIREMENTS.

(A) *Location of required parking spaces.*

(1) All parking spaces required herein shall be located on the same lot with the principal building or use or uses served or in other areas as provided in this division.

(2) On-street parking may be allowed as provided in Planned Development District ordinances or zoning overlay districts, as applicable.

(3) *Off-site parking.*

(a) In cases where the required parking space is not located on the same lot as the principal use or as allowed in the public right-of-way, the owner of the lot on which the off-site parking is located must relinquish, through a covenant agreement with the town, their development rights over the property, until such time as parking space is provided elsewhere or on the same premises as the principal use or uses.

(b) The off-site parking area shall be no more than 600 feet from the entrance of the principal use, as measured along the street right-of-way.

(c) The off-site parking spaces may not be separated from the use(s) served by a street right-of-way greater than 80 feet in width.

(B) *Mixed uses/joint uses.*

(1) For more than one principal or accessory use or uses, the parking spaces required shall equal the sum of the requirements of the various uses computed separately, unless a detailed parking study based upon Urban Land Institute (ULI) standards is submitted to, and approved by, the Zoning Administrator or designee.

(2) Parking for mixed or joint uses must be available on an equal basis for all users; provided however, that shared parking spaces provided pursuant to a ULI parking study may be restricted to specific users during certain hours.

(3) Recorded cross-easements may be required for shared parking.

(C) *Change in use, alteration of use, or extension of use.* Off-street parking spaces shall be provided in accordance with these regulations whenever a building or use is changed, altered, or enlarged in floor area, or other manner that generates the need for additional parking.

(D) *Requirements for uses not specifically listed.* The parking space requirements for a use not listed in § 156.171 shall be determined by warrant. In such cases, a private parking study, Urban Land Institute standards, or other appropriate standards shall be used to justify the proposed number of

parking spaces, subject to staff or Design Review Board approval, as applicable. Such justification shall be included on all plans submitted to the town for approval.

(E) *Fractional computations.* Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number.

('81 Code, § 155.98(C)) (Ord. passed 8-13-79; Ord. passed 8-21-84; Am. Ord. passed 3-11-85; Am. Ord. passed 6-9-92; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14) Penalty, see § 156.034

§ 156.173 AREA AND PAVING REQUIREMENTS.

(A) Each parking space shall exclude aisles, maneuvering space, turnaround space, and drives. This precludes "tandem" parking; that is, parking arranged "back to back" where the access to one parking space is through another parking space, unless specifically allowed elsewhere in this chapter.

(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.

(C) Parking spaces 90 degrees to the travel way aisle shall not be less than nine feet in width and 18 feet in length; however, the paved length of the parking stall may be reduced to 17 feet, provided that curbing or anchored concrete wheel stops are furnished at the edge of paving to allow the vehicle to overhang the landscape area.

(D) Angled parking spaces positioned at other than 90 degrees to the aisle travel way, parallel parking spaces, and one-way travel aisles shall be dimensioned in accordance with recognized standard criteria.

(E) All two-way aisles shall be a minimum of 24 feet in width.

(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.

(2) Depth of termination area and height of landscaping shall be determined by preserving a sight triangle within the parking area formed by a long leg of 50 feet and a height of eye of 3-1/2 feet.

(3) Stop signs shall be provided at the transition from the parking area to the public right-of-way.

(4) The preceding landscape requirements shall apply only to surface parking lots and not to parking structures.

(G) For businesses that have drive-through access, parking spaces and travel aisles shall be arranged in a manner that provides sufficient stacking area from the public access driveway to prevent vehicles from backing up into the adjacent roadway.

('81 Code, § 155.98(D)) (Ord. passed 8-13-79; Ord. passed 8-21-84; Am. Ord. passed 6-9-92; Am. Ord. 94029, passed 8-9-94; Am. Ord. 95019, passed 6-13-95; Am. Ord. 99012, passed 4-21-99; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14) Penalty, see § 156.034

§ 156.174 DESIGN REGULATIONS FOR COMMERCIAL, INSTITUTIONAL, AND MULTI-FAMILY USE PARKING LOTS.

(A) *Lighting.*

(1) Parking lots and vehicular use areas shall be lighted; however, such shall not illuminate, nor cast glare into neighboring properties.

(2) Lighting fixtures shall be part of the overall project design and contribute to the landscaping effect.

(3) Certification indicating compliance with this requirement shall be placed on the plans by the developer.

(B) *Screening.* All parking lots and vehicular use areas shall be screened from all abutting properties or rights-of-way by the minimum requirements of § 156.201.

(C) *Interior landscaping.*

(1) Interior areas of parking lots shall contain planter islands located so as to best relieve the expanse of paving.

(a) A maximum of 12 parking spaces in a row will be permitted without a planter island.

(b) However, this section may be modified by the Zoning Administrator, when strict application will seriously limit the function of an area.

(2) Planter islands shall have a minimum of 150 square feet in area.

(a) Planter islands shall contain at least one 2.5-inch-caliper canopy tree, having a minimum clean trunk of five feet and a minimum overall height of eight feet.

(b) The remainder shall be landscaped with shrubs, ground cover, or other approved material.

(c) As it presents considerable root competition for trees, the use of lawn within an island should be limited.

(3) Landscaped border areas may be interrupted to provide ingress and egress drives for the property.

(D) *Existing plant material.*

(1) The natural landscape shall be preserved according to the provisions of this chapter and the Town Tree Protection Ordinance.

(2) Wherever healthy plant material exists on a site, the above-mentioned standards may be adjusted to allow credit for such plant material, if, in the opinion of the Zoning Administrator, such adjustment is in the best interests of the town, and preserves all intents of this chapter and the Tree Protection Ordinance.

('81 Code, § 155.98(E)) (Ord. passed 8-13-79; Ord. passed 8-21-84; Am. Ord. passed 3-11-85; Am. Ord. passed 6-9-92; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14) Penalty, see § 156.034

§ 156.175 OFF-STREET LOADING REQUIREMENTS.

(A) *Off-street loading area required.*

(1) Areas suitable for loading and unloading motor vehicles in off-street locations, and specifically designated for this purpose, shall hereafter be required at the time of the initial construction or alteration or conversion of any building or structure used, or arranged to be used, for commercial, industrial, governmental, or multi-family residential purposes.

(2) Such off-street loading areas shall have access to a public alley or street, and shall not be included in the parking requirements.

(B) *Adequacy of loading area.*

(1) All uses, whether specified in this chapter or not, shall provide off-street loading areas sufficient for their requirements.

(2) Such space shall be adequate so that no vehicle being loaded or unloaded in connection with normal operations shall stand in, or project into, a public street, walk, alley, or way.

('81 Code, § 155.98(G) - (K)) (Ord. passed 8-13-79; Ord. passed 8-21-84; Am. Ord. passed 3-11-85; Am. Ord. passed 6-9-92; Am. Ord. 02024, passed 6-11-02; Am. Ord. 14047, passed 8-12-14)
Penalty, see § 156.034

§ 156.176 BICYCLE PARKING REQUIREMENTS.

(A) *Spaces required.* Bicycle storage and parking shall be required for multi-family residential developments and commercial developments 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.

(1) *Multi-family parking requirement.* Multi-family developments in excess of ten units shall provide enough secure bicycle parking to accommodate 10% of the units at one space per unit.

(2) *Commercial parking requirement.* Commercial developments and redevelopments of 6,000 square feet or more shall provide enough secure bicycle parking in accordance with the following table:

Gross Floor Area	Required Number of Minimum Bicycle Parking Spaces
0 - 6,000 sq. ft.	1
6,001 - 10,000 sq. ft.	2
Over 10,000 sq. ft.	1 per each additional 10,000 sq. ft.

(B) *Parking requirement reduction.* Commercial developments outside of the Urban Corridor Overlay District may be eligible for up to a 10% reduction in the number of required off-street parking spaces for developments or uses that make special provisions to accommodate bicyclists in addition to the required bicycle parking. Examples of accommodations include enclosed bicycle lockers, personal lockers, employee shower facilities and dressing areas. A reduction in parking may not be granted merely for providing outdoor bicycle parking spaces. Examples of indoor bicycle accommodations are shown in the following Figure 1.



Figure 1. Examples of indoor bicycle accommodations.

(C) *Design and location.* All bicycle parking is subject to the Design Review Process. Required bicycle parking shall:

- (1) Consist of racks or lockers of theft- resistant construction which shall be anchored so that they cannot be easily removed;
- (2) Allow both the bicycle frame and the wheels to be locked using a standard U-lock;
- (3) Be designed so as not to cause damage to the bicycle;
- (4) Facilitate easy locking without interference from or to adjacent bicycles;
- (5) Be located in convenient, visible, well- lighted areas, close to entrances, without interfering with pedestrian movements;
- (6) Where provided for residential developments, must be protected from the elements; and
- (7) Where located in commercial parking lots, shall utilize a paving material or surface different from the adjacent parking and shall include some means of protection of bicyclists and the bicycle facility from vehicular conflicts.



Exterior parking

Interior parking

Figure 2. Examples of protected bicycle parking for residential developments.



Figure 3. Examples of outdoor commercial development bicycle parking.

(Ord. 14047, passed 8-12-14)

EXHIBIT S

**(Exhibit S - Transcript of BOZA
September 27, 2021 Hearing)**

1 TOWN OF MOUNT PLEASANT, SOUTH CAROLINA

2 BOARD OF ZONING APPEALS

3 SEPTEMBER 27, 2021

4
5 AUDIO TRANSCRIPTION

6 CASE NO. A-10-21

7 TMS Nos. 517-16-00, 057, 034, and 035

8
9 DATE: SEPTEMBER 27, 2021

10 TIME: 6:00 p.m.

11
12 BEFORE: BARRY WOLFF, CHAIR

13 STEPHEN DUKE

14 STEPHEN WOOD

15 AARON BUTNER

16 ELLIOTT BARROW

17 MEGAN STEVENS

18 JULIAN HOPKINS

19 Board of Zoning Appeals

20 TRANSCRIBED BY: CAROL T. LUCIC, RPR, RMR

21
22 CLARK BOLEN COURT REPORTING & VIDEO CONFERENCING

23 CHARLESTON, SC 29405

24 843-762-6294

25 WWW.CLARK-ASSOCIATES.COM

1 THE CHAIRMAN: It is long about 6:00, and
2 it is time for that meeting we all love and adore,
3 which is the Board of Zoning Appeals meeting of
4 September 27, 2021. Let the record reflect that we
5 have our entire board here tonight.

6 I would look for a motion for approval of
7 the agenda.

8 MR. HOPKINS: I'll make a motion to
9 approve the agenda, Mr. Chairman.

10 THE CHAIRMAN: We have a motion. Do we
11 have a second?

12 MS. STEVENS: Second.

13 THE CHAIRMAN: All in favor?

14 (Aye)

15 THE CHAIRMAN: How about a motion for the
16 approval of the minutes of last month?

17 MR. HOPKINS: I will also make a motion to
18 approve the minutes from last month, Mr. Chairman.

19 THE CHAIRMAN: Do we have a second?

20 MS. STEVENS: Second.

21 THE CHAIRMAN: Any discussion? All in
22 favor?

23 (Aye)

24 THE CHAIRMAN: Very good. Now is the time
25 when anybody in the audience, if you have something

1 that you -- anything you want to bring up to the
2 board that is not part of tonight's meeting, just
3 general comments, now is the time where you can do
4 that. If not, you will have plenty of time during
5 public comments for stuff that's in front of the
6 board. Seeing none, let's move on.

7 Do we have any general correspondence?

8 MS. BROWDER: We don't.

9 THE CHAIRMAN: Okay. In that case here is
10 how we're going to run the meeting tonight. The
11 testimony, we'll have -- hold on a second. I'm
12 sorry. As we get to each item we'll call the item.
13 The staff will have five minutes to present, and
14 then the applicant will have five minutes to
15 present. Then we'll open the thing up to public
16 comment. After public comment the staff will have
17 five minutes and the applicant will have five
18 minutes. The public will have three minutes for
19 comments. After public comment the staff and the
20 applicant or appellant will have five minutes for
21 rebuttal so to speak. Then we'll close the public
22 comment and we'll open it up to deliberation of the
23 board for findings of facts and to make a decision.

24 The Board of Zoning Appeals has three
25 specific powers and duties: To hear and decide

1 appeals from the decision of the zoning
2 administrator, to permit uses by special exception
3 when designated within the zoning code, and to hear
4 and decide appeals for variance from the
5 requirements of the zoning ordinance when strict
6 application of the provisions of the ordinance
7 would result in unnecessary hardship.

8 There are four tests of hardship
9 established by the State, and it is incumbent upon
10 the applicant to demonstrate the hardships. First
11 that there are extraordinary and exceptional
12 conditions pertaining to the particular piece of
13 property; B, that these conditions do not generally
14 apply to other property in the vicinity; C, because
15 of these conditions the application of the
16 ordinance to a particular piece of property would
17 effectively prohibit or unreasonably restrict the
18 utilization of the piece of property; and that the
19 authorization of a variance will not be a
20 substantial detriment to the adjacent property or
21 to the public good and the character of the
22 district will not be harmed by the granting of the
23 variance. The board must strictly follow these
24 criteria and has no authority to grant otherwise.

25 A person who may have a substantial

1 interest in any decision of the Board of Zoning
2 Appeals or an officer or agent of the appropriate
3 governing authority may appeal a decision of the
4 board to the Circuit Court in the county by filing
5 with the Clerk of Court a petition in writing
6 setting forth plainly, fully, and distinctly why
7 the decision is contrary to law. The appeal must
8 be filed within 30 days after the decision of the
9 board is mailed. For information on appeal and/or
10 re-hearing procedures please contact staff at the
11 planning department.

12 I would ask now that if you are going to
13 testify in front of the board, that you please
14 stand and raise your right hand.

15 I swear or affirm that under penalty of
16 perjury pursuant to the laws of the State of South
17 Carolina my testimony is given freely of my own
18 volition, and that I will tell the truth, the whole
19 truth, and nothing but the truth. Thank you.

20 THE CHAIRMAN: Item 2 is Case V-41-21, 336
21 Coinbow Drive, has been withdrawn by staff, which
22 will bring us to Case No. 3, A-10-21, the Mill
23 Street Boutique Hotel, TMS No. 517-16-00-058, 57,
24 34, and 35. It is an appeal of the zoning
25 administrator's decision in the following matters:

1 156.171, accommodations and lodging,
2 requires that the application provide one-two
3 parking spaces per guest room. The 19 units in
4 Building A contain 32 or more guest rooms; the
5 eight townhouse units contain 32 or more guest
6 rooms for a total of 64 guest rooms. The project
7 plans provide for 34 parking spaces violating the
8 ordinance. The applicant contends that the project
9 is not a permissible use under the current zoning
10 of these parcels (156.325).

11 The project violates both paragraphs of
12 156.101(a) and (c); that the project violates the
13 recent BOZA decision not to permit residential uses
14 above three stores. The plan continues to set
15 forth residential balconies on the top floor and
16 other unexplained structures. The shed-like areas
17 on the roof facing the pool at 6 and 9 o'clock
18 (Page 35 of 57 of the submittal) appear to be
19 future rooftop food and beverage structures.

20 Finally, the applicant contends that the
21 project violates 156.108, curb cuts, visibility at
22 intersections, and pedestrian access (A) (1) (3) (4)
23 and (B).

24 Mr. Pagliarini for the Town.

25 MR. PAGLIARINI: Thank you, Mr. Wolff.

1 Just for the record I'm David Pagliarini
2 corporation counsel for the Town. As the Town's
3 legal department is representing staff in this
4 issue, the board will be represented by outside
5 counsel brought in specifically for that purpose.
6 So that is for the record.

7 THE CHAIRMAN: Thank you for that, sir.
8 Mr. Barrow.

9 MR. BARROW: For purposes of the record
10 I'm going to recuse myself from consideration of
11 this matter on the grounds that I have a conflict.
12 One of the parties who is involved in this
13 represents our law firm in a piece of litigation,
14 so I'm not going to participate in this particular
15 matter.

16 THE CHAIRMAN: You may step away,
17 Mr. Barrow.

18 (Inaudible)

19 THE CHAIRMAN: At this point the appellant
20 will kindly address the board, please.

21 MR. LUCEY: Thank you, sir. Justin Lucey.
22 My office is at 415 Mill Street over in the same
23 neighborhood. I'm here speaking on behalf of three
24 entities, three interested parties as their factual
25 representative and legal representative. I own two

1 of these properties -- corporations over there, and
2 my law firm is a tenant at one of those buildings.
3 So there are three entities.

4 I would ask for extra time to address the
5 board. The board is probably aware that either the
6 planning staff or the Town attorney -- I'm not sure
7 which -- filed lengthy memoranda in opposition to
8 my appeal, and it will take me a few extra minutes
9 to cover those if it will please the board.

10 THE CHAIRMAN: I really need to hold you
11 to five minutes. You will have five minutes at the
12 end as far as rebuttal, sir.

13 MR. LUCEY: If the board will allow me to
14 hand up some extra (inaudible) to make it quicker
15 for us to get through all of this voluminous
16 material, I can direct you to page numbers as we go
17 through it and try to move this thing along.

18 The memorandum from the Town staff
19 (inaudible) addressed most of the issues that we
20 have presented in our appeal and any attachments,
21 and the good news is they did a good job. The bad
22 news is they came out against me on all but one
23 issue, so let's focus on that one issue first.
24 They did confirm -- they shot me down every which
25 way they could except for one issue. They

1 confirmed that this board is here to judge the
2 suitability of this project for this neighborhood.
3 They said that is your job, and you have complete
4 discretion on that. That suitability includes the
5 aesthetics, the scale, and the compatibility with
6 the other properties in this neighborhood. We know
7 the Town staff did not address that issue at all
8 because there was no comparative properties in the
9 plans submitted to the Town staff until after we
10 brought this to the Town's attention in August.
11 They have now added some case studies. We'll talk
12 about briefly about those, but those case studies
13 don't involve this. This project is not compatible
14 with the area.

15 I would like to ask you to turn to Page 3
16 of the handout. You will see the area we're
17 discussing. It is bound by Coleman Boulevard,
18 Simmons, and Shem Creek. That's a very finite
19 area. It is cut off from the rest of Mount
20 Pleasant. The applicant for the construction firm
21 would like you to include other parts of the town
22 across the bridge and whatever else. They're not
23 part of our neighborhood. Even if they were, the
24 effort still is going to fail.

25 If you look at the very center of this

1 first picture, you will see a little red roof in
2 the center in the middle of all of those trees.
3 It's a huge green oasis in the middle of this area.
4 We're going to go to the next page, and I've
5 labeled the streets on here to make sure we're all
6 on the same page. We've got Simmons at the very
7 top, then Scott Street coming down, then Lucas, and
8 we've got Mill on the left going top to bottom, and
9 we've got Oak on the right going top to bottom.

10 Again, in the middle of this entire
11 neighborhood is an oasis of Grand Oak trees
12 surrounding a red roof. We're here in part to talk
13 about that red roof. If you go to Page 5, you will
14 see a close-up. That red roof is my office. That
15 is my annex. Those Grand trees -- if you go to
16 Page 6, I put a little circle for all the Grand
17 trees. Those are all Grand trees. Next to it
18 where the Xs are, that's where they want to build
19 your boutique hotel. You don't see any circles on
20 there. Why? There are no Grand trees. What trees
21 they do have, they do have protected trees. Where
22 all the Xs are, none of those are protected trees.
23 They're cutting them all down.

24 One of the primary ordinances in this town
25 is that the Town is to favor existing vegetation

1 rather than artificial landscaping. This firm is
2 cutting all the trees down, and they don't need to.
3 If you go to the next page, Page 7, you will see
4 the tree cutting table from their plans, and it
5 shows that there are 14 protected trees of 18 to 23
6 inches, one Grand tree for a total of 15, and
7 they're cutting down 13 and are going to leave two.

8 So if you go back to Page 6, do you see
9 where all those Xs are on the left on Page 6? All
10 of those Xs are all coming out. That's their rear
11 property line. As the board probably knows, we
12 were here four months ago. We were here on the
13 fourth floor four months ago. The rear property
14 line goes around that utility station right there
15 in the back of the (inaudible).

16 So going further, Page 8 is a close-up of
17 the annex, our annex, that's in the middle of all
18 of those Grand trees on their property line. There
19 is absolutely nothing compatible about the
20 building on Page 8 and the proposed boutique hotel.
21 This building on Page 8 is the centerpiece of this
22 entire neighborhood and it's my annex, and it's
23 surrounded by two dozen Grand Oaks.

24 If you look at Page 9 and you look out the
25 back door of the building on Page 8, you will see

1 some of those Grand Oaks. (inaudible)

2 Let's go to Page 10. Let's talk about
3 compatibility. Page 10 is the front of the alleged
4 hotel. You can see out there on Page 10 you
5 have -- most of their frontage is in the
6 right-of-way, the 50-foot Mill Street right-of-way.

7 THE CHAIRMAN: Sum it up.

8 MR. LUCEY: Thank you, sir. Again, I
9 would request more time to address the board given
10 that the staff filed two five-page legal memos
11 against this appeal.

12 THE CHAIRMAN: As I said, you will have
13 time for rebuttal.

14 MR. LUCEY: Thank you, sir.

15 THE CHAIRMAN: Now the staff report,
16 please. You have five minutes.

17 MR. ROBERTSON: Mr. Chairman, I'll go
18 through this fairly quickly for you. The first
19 item that we have is the timing that we believe the
20 notification was made and an appeal was made for
21 the board to determine if the appeal is timely or
22 not. (inaudible). Also (inaudible) the briefs
23 that were provided. The first was for the
24 determination of guest room, so the items before
25 you are those specifically listed in the appeal

1 description.

2 So guest room, we walk through what the
3 issue was, that a guest room is not defined in the
4 ordinance; therefore, part of the process is making
5 that determination. We walk you through what the
6 process typically would be for applying the legal
7 or statutory construction and that determination
8 that a guest room is more (inaudible) than a
9 general dictionary would be in someone's house, a
10 room in someone's house. (inaudible) for a guest
11 room in a hotel.

12 We walk you through those definitions for
13 you to understand that a room (inaudible) or a
14 suite, all of them are single key. When you make a
15 reservation, you get to all rooms behind the door
16 with that key; therefore, that's all part of how
17 that is calculated. We show you how that is
18 calculated is a range (inaudible)

19 Council does not give any discretion to
20 the staff to determine what would constitute the
21 required parking. It is a range in the parking
22 requirement, and we must approve it, and there are
23 case laws within the State which have not
24 (inaudible) the ability to create its own
25 (inaudible).

1 Also the other questions that are before
2 you tonight that were appealed, the determination
3 for a curb cut separation, we showed you from the
4 plans how the curb cut separations are measured
5 (inaudible), also a determination of height based
6 on the area (inaudible), and so we have given you
7 an explanation of how the height is met and how
8 that zoning determination was made to be
9 applicable. We also have a question of the use
10 (inaudible) so you were provided with that
11 definition of how that use works.

12 I understand there are some questions
13 (inaudible) Removing trees is not one of the
14 requests before this board tonight. That is
15 something for the Commercial Zoning Review Board,
16 so any comments about tree removal, that is for the
17 Town Council (inaudible) to make the determination.
18 So it's not up to this board to determine if it's
19 tall enough or should be shorter. That's a zoning
20 function, and that is clearly treated in the law
21 and case law to Town Council. They draw a box.
22 The Commercial Zoning Review Board can say what it
23 looks like within that box. They can do things to
24 the building to make it appear smaller, but they do
25 not have the authority to say that you have to

1 lower (inaudible) also (inaudible)

2 So a lot of that legal framework was late
3 in that initial appeal. So some of those comments
4 are really best before the Design Review Board
5 (inaudible) site development requirements, but if
6 you all have any questions regarding the
7 determinations that were made by staff back in the
8 spring leading up to the submittals that were made
9 I believe in May and July.

10 THE CHAIRMAN: Thank you. Now we'll open
11 it up to public comment, and if you want to address
12 the board, let's make sure first of all that you
13 were sworn in. If you weren't sworn in, feel free
14 to raise your hand. You will have three minutes,
15 and you have a solid three minutes. We're going to
16 hold everybody to the clock tonight.

17 Anybody who would like to address the
18 board, now is the time to do it.

19 MS. REILLY: My name is Christine Reilly.
20 I own Foxworth Decorative Hardware. My business is
21 on the corner of Lucas and Live Oak, so I'm in the
22 neighborhood.

23 I understand what you're trying to do, and
24 I don't think it's all negative by any means, but I
25 don't think the design of this build fits our

1 neighborhood. I know it fits Coleman Boulevard
2 beautifully. I mean it does, but I'm also more
3 concerned about the drainage, which is ironic with
4 the young man before me.

5 Our street drains this way. It comes off
6 Coleman. You all know about it because you all
7 have been trying to fix it for years. If you've
8 seen that area, it looks like a wetland. It really
9 does when the tides come in. It's very wet. I
10 always thought that's just the way it was and
11 whoever owned the property couldn't do anything
12 about it, and if they can address it, that's fine,
13 but I just don't think it fits in the neighborhood.

14 When you go down -- I blanking because I'm
15 so dang nervous -- by The Scratch Pad, it's not a
16 big road, you all, and you really have to pull over
17 at The Scratch Pad, let this dude go this way, and
18 then you go around. It's a small street. It's not
19 a through-way street. I know it probably says
20 that, but we have to share the road, and I think
21 there is an issue with that, and I'm concerned
22 about the parking and the drainage.

23 I think that if they can stay with them
24 and make it more like a neighborhood, then it
25 wouldn't be so bad. Right now it's too massive and

1 it's too much concrete. We're on a creek. Let's
2 just stay at the creek. (inaudible) It's still
3 Shem Creek. (inaudible) try to keep it a little
4 bit more local. That's all I have to say. Thank
5 you.

6 THE CHAIRMAN: Thank you.

7 MS. WOODY: My name is Ashley Woody. I
8 live at 110 Friend Street, Mt. Pleasant, 29464.

9 My issue with is the parking. You know,
10 we have been around this before. They're saying
11 that, you know, they don't have but 19 rooms, guest
12 rooms, and the definition of guest room being a
13 suite, but it has been pointed out to me that the
14 Town of Mount Pleasant will be taxing the
15 townhouses as two rooms. Instead of one guest unit
16 it will be taxed as two rooms because it has four
17 beds where a typical hotel has two beds or a
18 typical suite has two rooms.

19 Anyway, if you do the math on that, they
20 don't have enough off-street parking. If the Town
21 is taxing the four-bedroom townhouses as two rooms
22 per floor -- I'm sorry. I'm really nervous, too --
23 that means that there are 16 rooms there, and if
24 you do the math on it, it should come out to 52-1/2
25 off-street parking spaces, and they just don't have

1 that. So you can't have it both ways.

2 Anyway, they do also encroach with their
3 landscaping. The required landscaping encroaches
4 into the right-of-way on Mill Street. They
5 eliminate parking spaces on Mill Street. It's an
6 area where there is very little parking.

7 So I encourage you to deny this request
8 until they figure out the parking issue and provide
9 enough off-street parking for the number of guest
10 rooms in their hotel. Thank you.

11 THE CHAIRMAN: Thank you.

12 MR. LUCEY: Good evening, Charles Lucey,
13 109 Simmons Street. I'm here on behalf of myself
14 and also my mother, who lives at 109 Simmons
15 Street. She's pushing 90 years old, and I know
16 that there are a lot of questions (inaudible) on
17 that, but it's pretty clear to anybody who walks
18 through this neighborhood (inaudible) Sure, you
19 can decide which trees can be cut down or not, but
20 you're getting rid of all the last green lawns in
21 this residential neighborhood. You walk through
22 the backyards and you've got all those Grand trees,
23 and you're taking away that ecosystem for the
24 benefit of whom? A few people? The neighborhood?
25 Who benefits here?

1 You're charged with protecting the
2 community, and just a few of us are coming here to
3 speak. Most people didn't even hear about it, the
4 people I talked to in the last few days.

5 (inaudible) that one yellow sign there, no one had
6 noticed it really. This is a permanent decision
7 you're making.

8 I read the minutes. At the bottom it says
9 the Mount Pleasant Town Council has the
10 responsibility to protect the Americans with
11 Disabilities Act and so forth. My mom can't walk
12 up that street past 7:30 in the morning because the
13 traffic is too bad and there is too much going on,
14 so she gets up at 4:30 or 5:00 in the morning to
15 try to take a walk and make it up to the walkway by
16 the creek. She can't go after 7:00 or 7:30.

17 So here we have a project with less than
18 half of the available parking spots they're
19 supposed to have that's going to take 20, 30
20 percent of the street from the public good and make
21 it their own basically. They could have solved
22 those problems, but they didn't. They're trying to
23 get the project through without it.

24 This is a permanent decision you're making
25 affecting the quality of that neighborhood. So I

1 think the point that the man made here tonight
2 about the character of the neighborhood is very
3 salient here. It's not just about the nature of
4 the trees; it's about the people who live there,
5 and there are people who live there like my mom.

6 This hotel matches nothing in that
7 neighborhood. It does not fit the neighborhood
8 whatsoever. If you all walk through the backyards
9 there, you will know exactly what I'm talking
10 about. Thank you very much.

11 THE CHAIRMAN: Thank you.

12 MR. APPEL: Good evening, board members.
13 My name is Ross Appel. I'm here on behalf of CKC
14 Properties, LLC, who is the permitted party here
15 for the Shem Creek boutique hotel.

16 Before I get started I want to make sure
17 everyone has a copy of my letter. We submitted
18 this in advance of the hearing, but staff requested
19 that we provide a copy today. Before I get started
20 on my argument I want to remind the BOZA of what
21 its role is here this evening.

22 Contrary to Mr. Lucey's comments, the
23 board is not completely open-ended in their
24 discretion tonight whether to approve this project
25 or deny this project if they like it or they don't

1 like it. The board's role here is very narrow.
2 Justin is asking this board to reverse the zoning
3 administrator's decision to approve and certify
4 that this project complies with all zoning
5 requirements, use, parking, curb cuts, et cetera.
6 I want to be very clear about this. Ken Krause and
7 Mike Robertson have approved everything that we're
8 speaking to do, which is by right.

9 We're not in front of you this evening on
10 a variance request. We're not in front of you this
11 evening on a special exception. This has already
12 been approved, and Justin is trying to replace the
13 Town professional staff's interpretation of their
14 own ordinances with his, and respectfully I would
15 submit that this board defer to its professional,
16 extremely capable staff and not replace their
17 decision with Justin Lucey's decision.

18 I want to focus my comments on two
19 threshold legal issues that if you agree with me on
20 either of them, you don't even have to take up
21 these very complicated issues that were peppered to
22 you all this evening. We believe Mr. Lucey's
23 appeal should be dismissed for two reasons. It was
24 filed untimely, and he lacks standing to appeal
25 this decision.

1 If you agree with me on either of these
2 points, the appeal is dismissed. Let's first talk
3 about timeliness. Section 156.411 says this appeal
4 must be brought within 30 days of when Mr. Lucey
5 received actual notice of the decision. He
6 admitted he was here in April. He filed his appeal
7 August 23. He's way out of time. If he had actual
8 notice of this project at any time prior to July
9 24, 2021, he's out of time and his appeal is
10 defective and must be dismissed.

11 A project cannot appear on the Design
12 Review Board agenda unless it has certification of
13 all zoning requirements being approved. The DRB's
14 agenda was posted July 19. 30 days from July 19 is
15 August 18. He appealed August 23. He's way out of
16 time. In addition to being out of time Mr. Lucey
17 lacks standing to appeal the zoning administrator's
18 decision. The code only allows aggrieved
19 parties --

20 MR. CHAIRMAN: Time.

21 MR. COLBERT: My name is Collin Colbert,
22 and our company has submitted plans for the Mill
23 Street boutique hotel that is up for appeal this
24 evening.

25 THE CHAIRMAN: Address, please.

1 MR. COLBERT: 41 Barre Street downtown.

2 Throughout our 12-month design process we
3 along with our design team have worked openly and
4 honestly with the Town and the Town staff to insure
5 that we met all zoning regulations and have been
6 approved three times by the DRB because we met all
7 zoning requirements. The parking requirement
8 calculation was determined by the Town to be one to
9 two spaces per guest room as is written in the
10 code. This same interpretation has been applied on
11 every similar project that the Town staff has
12 reviewed for many years.

13 A guest room has always been considered a
14 keyed entry and is depicted that way by various
15 sources including (inaudible.) The size or number
16 of rooms in a suite does not change the definition
17 of a guest room. The reason a hotel room
18 is considered a keyed entry is because it makes
19 sense. When a group of guests travel together to
20 stay in a single guest room, they come in -- they
21 either come in in one single vehicle or they fly in
22 and rent a single vehicle. More often the majority
23 of travelers that visit Charleston fly into the
24 airport and Uber to their suite and then continue
25 to Uber throughout town to restaurants and beaches

1 because the average traveler does not want the
2 hassle of trying to find parking or navigate a city
3 they aren't familiar with.

4 The claim that this project is a
5 short-term rental property is not accurate since
6 the definition of an STR requires it to be a rental
7 or lease of a residential dwelling unit for 28 days
8 or less in a residentially zoned area. This
9 boutique hotel is located on a commercially zoned
10 parcel surrounded by commercially designated
11 parcels used for restaurants, offices, boat
12 storage, and recreational facilities.

13 In fact, Mr. Lucey rezoned his adjacent
14 parcels from conservation open space to areawide
15 business in 2018 utilizing that exact argument.
16 There are many extended stay hotels in Mount
17 Pleasant that have similar layouts with in-suite
18 kitchens geared towards the modern traveler who
19 does not want to stay in a small hotel with their
20 family sharing that small hotel room. This
21 boutique hotel is responding to the demands of the
22 current day post-COVID traveler seeking home
23 comforts without large indoor lobbies and gathering
24 areas and minimal person-to-person contact.

25 I urge you to see this appeal for what it

1 is. This is not a concerned neighbor looking out
2 for the surrounding community, but an investor that
3 has seen his land assemblage in jeopardy by our
4 acquisition. The claims made are simply an attempt
5 to slow our project and have absolutely no merit.
6 To concur with this claim would make Homewood
7 Suites and other suite-style hotels alike
8 nonconforming uses within this town.

9 I encourage you to uphold the zoning laws
10 and maintain the integrity of the planning process
11 by ruling in the Town's favor and deny this appeal.
12 Thank you.

13 MR. JOSEPH: Good evening. My name is
14 Gabe Joseph. I represent the owners of two of four
15 of these parcels. I have provided you a letter in
16 opposition to the appellant tonight.

17 I'm not as loud, aggressive, forceful, a
18 fast talker --

19 THE CHAIRMAN: Will you state your
20 address, sir.

21 MR. JOSEPH: My address is -- attorney
22 for --

23 THE CHAIRMAN: Your name and address.

24 MR. JOSEPH: My address is 239 Sawmill
25 Branch Road, Beech Mountain, North Carolina.

1 THE CHAIRMAN: Thank you.

2 MR. JOSEPH: Yes, sir. So I'll pick up
3 where Ross Appel left off on the aggrieved party
4 piece. So for nearly 40 years this parcel has been
5 permitted as being able to have the entitlement of
6 a hotel or boutique hotel by right. The buyer has
7 been working with the Town for the past year on
8 this and the Town's professional staff on these
9 issues.

10 The appeal has been filed. Mr. Appel for
11 CKC -- I don't do much public speaking myself --
12 Mr. Appel zeroed in on the timeliness of the issue
13 and the standing of Mr. Lucey. To be an aggrieved
14 party -- well, first to have standing you have to
15 have suffered injury in fact. It can't be
16 hypothetical or conjectural. That's a Supreme
17 Court ruling, the United States Supreme Court and
18 South Carolina Supreme Court.

19 Here all we have are hypothetical and
20 conjectural suppositions by Mr. Lucey because the
21 thing hasn't been built. The party asserting
22 standing bears the burden of proving all the
23 elements, and he has proven none, but I'm going to
24 zero in on the second one.

25 When the potential injury or prejudice is

1 only an increase in business competition, such an
2 injury or prejudice is insufficient to confer
3 standing. Mr. Lucey owns almost the entire block
4 through the different LLCs. He has been trying to
5 buy this property or has tried to buy this property
6 from my clients and the other sellers since 2016.
7 I provided you all with the email chain showing
8 that between him and Nick Lucey.

9 The last thing he said in his 950 filled
10 (inaudible.) He's talking about all four of the
11 parcels filled with no longer having any wetlands
12 issues there. (inaudible) according to the law, and
13 that's all my clients want. They have been trying
14 to sell this property for a while, have had
15 entitlement for a while. They're just asking you
16 to follow the law and uphold the staff decision.
17 Thank you.

18 MR. BERRY: Good evening, Kevin Berry with
19 Earthsource Engineering, 962 Houston Northcutt
20 Boulevard in Mount Pleasant. We're the civil
21 engineers on the project, and we have been before
22 you before.

23 I just want to follow up on staff. They
24 did a great job in their responses, but just to
25 clarify a few things, I'm going to talk real

1 quickly on parking, which has been brought up a
2 lot, and then also on the driveway separation, and
3 we're absolutely compliant on both.

4 For parking ratios there has been a lot of
5 discussion. We mentioned we worked with the Town
6 for the past 10, 12 months on this project. In
7 discussions on the guest rooms I'll tell you I've
8 done numerous hotels. I've owned my business for
9 20-plus years. We've done hotels all over.

10 Industry standard for hotels is typically
11 one parking space per room. The Town has a ratio
12 of one to two parking spaces per room. We've got
13 two parking spaces per guest room in Buildings B
14 and C, and then we've got one parking space per
15 room in Building A. There is a total of 27 keyed
16 entry rooms in this hotel. We have got 35 on-site
17 parking spaces.

18 What I will also share is with the Town's
19 overlay district, which you probably are aware of,
20 you're allowed a 20 percent reduction in parking
21 within the overlay district. We're not utilizing
22 that at all. We're not taking the 20 percent
23 reduction, which would reduce it by another seven
24 parking spaces on site if we wanted, so we're not
25 utilizing that. Also we're paving seven -- we're

1 proposing to pave seven on-street parking spaces
2 out front. Currently people do park all up and
3 down the road. I'm sure you all have seen it. It
4 was mentioned before when we were before you in
5 April people park illegally up and down that
6 roadway. It's not legal parking.

7 We're going to pave and put in seven
8 on-street parking spaces. They do not count
9 towards our parking requirements, but the owner
10 feels like that's the right thing to do and it
11 helps the character of the neighborhood.

12 The Town's ordinance is very compatible
13 with every other local municipality as far as
14 parking ratios for a hotel except for North
15 Charleston. North Charleston only requires one
16 parking space per three rooms, so a huge difference
17 there, but I don't think that's a good idea either.

18 As far as the curb cut separation which
19 was mentioned also, we are compliant with all the
20 curb cut separations. I know the staff had put in
21 their presentation some graphics there, and if you
22 want more, I would be happy to share this with you,
23 but we're compliant with all of the separations.

24 Thank you for your time, and I'm happy to
25 answer any questions later if you have any.

1 THE CHAIRMAN: Name and address, and you
2 have three minutes.

3 MR. KNIGHT: Good evening. My name is
4 Losse Knight, 802 Coleman Boulevard. I'm the
5 project architect, and I just wanted to speak
6 tonight just to first clarify where things stand on
7 the appeals relevant to the number of stories in
8 use on the fourth floor of the building.

9 This image in front of you shows the
10 proposed building, and I want to talk you through
11 each story. At ground area we are in an AE-10
12 flood zone, so there is no use on the ground level
13 other than just parking. On the second and third
14 levels we have guest rooms, we have lobbies, and we
15 have a private gym that serves the boutique hotel.
16 On the rooftop level there is nothing but roof and
17 attic space. You can actually get to a rooftop
18 balcony through the open air stairs. We worked
19 very closely with staff and the zoning
20 administrator to come to this design to make sure
21 we're within the intent of the ordinance.

22 Next slide, please. This is the top of
23 Building A, and so as part of the rooftop balcony
24 there is a private pool that can be only used by
25 guests staying in the boutique hotel. There has

1 been some question about these wood elements, and
2 we want to clarify that those are attic spaces. We
3 designed those with wood trusses, if you know what
4 those are. They are 24 on center. They have
5 diagonal webbing for structure. You can't occupy
6 that space. So what you're seeing there are just
7 simply wood accents that are meant to have some
8 landscape on them to sort of soften that exterior
9 on the rooftop.

10 Next slide, please. This is a building
11 section for -- this is Buildings B and C.
12 Obviously we have three buildings. We tried to
13 break down the scale of this boutique hotel, and
14 this is showing the individual family units where
15 you have an open air spiral stair that leads to a
16 private rooftop balcony that's open air.

17 Next slide, please. Finally there are
18 some technical sections that sort of reinforce --
19 if you look on the right-hand side, you can see
20 where you have these attic trusses, so it's
21 impossible to occupy the fourth floor.

22 I will be happy to answer any questions in
23 the next session.

24 THE CHAIRMAN: Thank you. Anybody else of
25 the public that wants to speak to this?

1 (inaudible) You were not sworn in?

2 MR. RAVALICO: I was not expecting to
3 speak, but I kind of learned a lot of things.

4 THE CHAIRMAN: Raise your right hand. I
5 swear or affirm under the penalty of perjury
6 pursuant to the laws of the State of South Carolina
7 my testimony is given freely of my own volition,
8 and I will tell the truth, the truth whole truth,
9 and nothing but the truth.

10 MR. RAVALICO: I do.

11 THE CHAIRMAN: Thank you. Your name and
12 address.

13 MR. RAVALICO: Filippo Ravalico, 1044
14 Wharf Indigo Road. I would refer to the board when
15 you had a variance request Tuesday night, and I
16 spoke back then bringing up issues that I learned
17 now in hindsight is not necessarily in the purview
18 of your task, and it's something that has been
19 brought up again and again tonight, people telling
20 you what you are supposed to do. I also remember
21 the time someone found out that you are a board of
22 volunteers other than staff, of course, and the
23 attorneys and the other people that spoke tonight.
24 So I only want to say something about the
25 (inaudible) because we are speaking from the public

1 of our understanding of the situation, but you are
2 put in a pretty challenging situation. These are
3 not laymen issues in the least. You have
4 (inaudible) zoning on the other, and everybody is
5 reminding you and you have to follow the lawyers.
6 (inaudible) You are volunteers. This is a project
7 that you're well aware was discussed at Town
8 Council just a few weeks ago as well. Nobody
9 except the developers like this project.

10 Now, I was surprised to hear even from the
11 counsel where they were trying to change the
12 definition of some of the -- they were trying to
13 change some of the definitions that have come up
14 tonight, and I will not get into the details, but
15 there were some threatening letters from attorney
16 (inaudible) counsel and the staff (inaudible) and
17 the Board of Zoning Appeals, which is you all, if
18 you don't follow procedures (inaudible) 100
19 percent, what is going to happen I wonder.

20 As I said, I was not expecting to speak,
21 but these issues are unlikely to finish tonight. I
22 suspect that one way or another someone is going to
23 bring it to a civil court, so then it's going to
24 follow (inaudible)

25 I haven't heard anybody speaking in

1 support of this idea other than the various group
2 of the interested parties. I can't believe a guest
3 room is the keyed access definition we heard
4 tonight, but this is not a normal situation.
5 (inaudible) I think that the lady before spoke very
6 eloquently. It's a unique kind of location. It's
7 a uniquely drawn project because of the location,
8 and we just happen to be in a situation where the
9 zoning board allows them to do the project, so what
10 they're trying to do -- everybody is not happy with
11 that, so maybe a volunteer board of very interested
12 (inaudible) could maybe do something about it. So
13 thank you for your work.

14 THE CHAIRMAN: Thank you.

15 MR. WASHBURN: My name is Mike Washburn.
16 I live in North Carolina, 127 Summit Landing. I'm
17 one of the property owners, part of the 035 Brown
18 Zac, LLC.

19 I noted earlier the comment by Justin
20 Lucey that there were a lot of trees going down.
21 On the property that we own there are some small
22 trees. I'm not aware of large Grand Oaks that are
23 being affected by this. That was one thing I
24 wanted to comment on, the other being that we had
25 previously looked at something with the Town on our

1 property, and that did not work, and that was much,
2 much, much, much smaller scale.

3 I just wanted to point out as well that
4 Justin Lucey has all the other properties with the
5 exception of one on this block, and I'm just saying
6 looking forward in the future and if you're talking
7 about scale, typically when I've seen larger,
8 larger pieces of property put together, it
9 typically ends up with something much larger on the
10 scale scope, so I think a boutique hotel could be a
11 very good solution for this. That would be my
12 perspective on it. So thank you very much for your
13 time.

14 THE CHAIRMAN: Thank you. If there is
15 nobody else that wants to speak to that, I will
16 give Mr. Lucey and then staff --

17 MR. LUCEY: As a point of order having
18 allowed the developer, his architect and his
19 engineer an opportunity to speak, the contractor
20 and the developer was given much more time to
21 oppose the appeal than the appellant has been given
22 to support the appeal, so I wish the board would be
23 permissible with me finishing my presentation.

24 If we go back to Page 10 where we were
25 just a second ago in the handout that I've given to

1 you, while you're turning to that, let me just
2 address this newfound issue of the timeliness of
3 the appeal. There was nothing to appeal in April.
4 What happened in April was this board denied the
5 (inaudible.) There was nothing to appeal. The
6 appeal -- excuse me -- on August 12 they said the
7 appeal had to be filed by August 25. We have been
8 through that before.

9 Going back to Page 10 here, you see the
10 front of this alleged hotel. Let's talk about that
11 for a second. Let's not leave common sense at the
12 door. The United States Supreme Court in
13 considering (inaudible) said, you know, it's hard
14 to define, but I recognize it when I see it.

15 Everybody in this room has been going to
16 hotels of one sort or another since we were born.
17 That's not a hotel. In the opposition we received
18 from the Town, the two briefs that they put on
19 line, they just passed over the issue of what is a
20 hotel. They go to what is a boutique hotel? 50
21 rooms. Well, what is a hotel? It's a hospitality
22 establishment of some sort. There is no
23 hospitality in this establishment. There is no
24 reception area. There is no place to sit down.
25 There is no place to get a key. There is no place

1 to hang your hat. There is nothing. This is a
2 multi-family dwelling. Let's not forget what a
3 hotel is. It is something subsumed in the English
4 language.

5 Going back to Page 10, you see the front
6 sketch of this hotel. That's in the Mill Street
7 right-of-way. That's where we travel right now to
8 go to work. The handicapped ramp going up both
9 ways, that's in the right-of-way, the 50-foot
10 right-of-way. The next sidewalk, that's in the
11 right-of-way. We've now lost 12 feet of Mill
12 Street right-of-way to this hotel and the
13 landscaping. Then you're going to have a VIP
14 conference center. That's another 10 feet. 22
15 feet of the 50-foot Mill Street right-of-way is now
16 gone in this plan.

17 Going to the next page, please, this just
18 shows you exactly where the property line is --
19 we're on Page 11 -- and all the stuff I just showed
20 you at the bottom of this page (inaudible) there is
21 no justification for it. In fact, the Town
22 ordinance says the landscaping must be on your
23 site. It's not supposed to be in the town
24 right-of-way.

25 Going to Page 12 briefly, I just wanted to

1 show you that all of the landscaping on Mill Street
2 is outside of the property line. It's in the
3 right-of-way. Most of the landscaping on Scott
4 Street to the right is outside of the property
5 line.

6 By the way, while we're on the drawing on
7 Page 12, note the top left and the top right
8 corners of the edges of these buildings. Do you
9 see these little boxes that say TRANS?
10 Transformers between the building and the
11 intersection, which, of course, require bars to
12 protect them. (inaudible) You cannot have those
13 bars there, and you're not supposed to have
14 transformers there, and you're supposed to have
15 surrounding fences and landscaping, protective
16 areas and that kind of stuff. Truth be known, a
17 live transformer is actually a switch box, which
18 typically (inaudible) Not only are they forced out
19 there because this building is using all of our
20 right-of-way just to build a hotel -- not only are
21 they forced out there, but the aesthetics, the
22 aesthetics of having electrical boxes sitting out
23 there on the street corners now even if it is
24 permissible, which it's not.

25 If you go to the following page, 13, this

1 is a good page to show that the developer got it
2 wrong when they told the developer that the access
3 points from their new alley to the tangent of Mill
4 Street is 50 feet or more. Most of the alley is on
5 the corner lot. The lot is 50 feet wide. The
6 minimum centerline of the alley is therefore less
7 than 50 feet from the intersection of Mill Street.

8 Going to the following page, you see a
9 blow-up again showing a transformer on the top
10 right. So now the intersection of Scott and Mill
11 Street will have a transformer between our parked
12 cars.

13 Going to the following page, Page 15 --
14 I'm sorry. I'm rushing to get this done -- we have
15 the FAR chart from the plan. This is one version
16 of the FAR chart. If you see in the center column,
17 it's labeled uncovered. Uncovered is not in the
18 definition of FAR. That column doesn't belong
19 there. Uncovered as used in the definition of VAR
20 is only applicable in the Old Village. In FAR
21 uncovered is not applicable. In FAR the definition
22 is floor space between walls. I would like to
23 finish this. Is that possible?

24 THE CHAIRMAN: Mr. Lucey, this is public
25 time, which is a different standard. I'm trying to

1 stick to the rules of the board. Thank you, sir.
2 I will give the staff five minutes.

3 MR. ROBERTSON: Thank you, Mr. Chairman.
4 I just wanted to reiterate that the issues before
5 the board are -- (inaudible), and if you have any
6 further questions on any of those items, I will be
7 happy to answer the ones (inaudible).

8 THE CHAIRMAN: Thank you, Mr. Robertson.
9 With that we'll close the public comments and open
10 it up to deliberations.

11 MR. WOOD: Mr. Chairman, I would move the
12 board move into executive session to receive the
13 advice of counsel on this matter.

14 MR. HOPKINS: Second.

15 THE CHAIRMAN: We have a motion and a
16 second to move to executive session. All in favor?
17 (Aye) Any opposed? We will move into executive
18 session.

19 MEMBER OF THE AUDIENCE: Wasn't there
20 supposed to be another round of public comment?

21 (Brief recess.)

22 THE CHAIRMAN: The board is back and out
23 of executive session. No votes were taken. No
24 decisions were made. We'll open it up to the board
25 for deliberation of the motion.

1 MR. WOOD: I'll offer a motion,
2 Mr. Chairman, in Case A-10-21, TMS 517-16-00-058,
3 057, 034, and 035 -- I would move to grant the
4 appeal on the grounds that in the ordinances that
5 the Town has passed a boutique hotel is defined as
6 having 50 or fewer lodging units, but when defining
7 the parking requirements, it chose not to use that
8 same term, but used the term instead "guest rooms,"
9 and therefore I believe that the staff
10 misinterpreted the term "guest rooms," and
11 therefore the number of parking spaces would be
12 insufficient for this particular property, and on
13 the other matters I would move to deny the appeal.

14 THE CHAIRMAN: So we have a motion to
15 grant the appeal.

16 MR. HOPKINS: I'll second.

17 THE CHAIRMAN: We have a motion and a
18 second. Is there any discussion? Seeing none,
19 I'll call the motion. All in favor of the motion?
20 (Aye) Any opposed? The motion on the appeal is
21 granted.

22 For the record I will note that Mr. Wood
23 has a previous engagement and must leave the
24 building.

25 (End of audio transcription)

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

4 I, Carol T. Lucic, Registered Professional
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing audio file was recorded stenographically
8 by me and thereafter transcribed by computer-aided
transcription; that the foregoing is a full,
complete, and true record of the audio file to the
best of my knowledge, skills, and ability.

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

11
12 Witness my hand, I have hereunto affixed
13 my official seal on March 28, 2023, at Charleston,
Charleston County, South Carolina.

14 Carol T. Lucic
15 NCRA MERIT REPORTER
16 REGISTERED PROFESSIONAL REPORTER

17 My Commission expires: November 27, 2027
18
19
20
21
22
23
24
25

WORD INDEX

< 0 >

034 1:7 41:3
035 1:7 34:17 41:3
057 1:7 41:3

< 1 >

10 12:2, 3, 4 28:6
35:24 36:9 37:5, 14
100 33:18
1044 32:13
109 18:13, 14
11 37:19
110 17:8
12 28:6 36:6
37:11, 25 38:7
127 34:16
12-month 23:2
13 11:7 38:25
14 11:5
15 11:6 39:13
156.101(a) 6:12
156.108 6:21
156.171 6:1
156.325 6:10
156.411 22:3
16 17:23
18 11:5 22:15
19 6:3 17:11 22:14

< 2 >

2 5:20
20 19:19 28:20, 22
2016 27:6
2018 24:15
2021 1:3, 9 2:4
22:9
2023 42:12
2027 42:17
20-plus 28:9
22 37:14
23 11:5 22:7, 15
239 25:24
24 22:9 31:4
25 36:7
27 1:3, 9 2:4
28:15 42:17
28 24:7 42:12

29405 1:23
29464 17:8

< 3 >

3 5:22 9:15
30 5:8 19:19 22:4,
14
32 6:4, 5
336 5:20
34 5:24 6:7
35 5:24 6:18 28:16

< 4 >

4:30 19:14
40 26:4
41 23:1
415 7:22

< 5 >

5 10:13
5:00 19:14
50 36:20 39:4, 5, 7
41:6
50-foot 12:6 37:9,
15
517-16-00 1:7
517-16-00-058 5:23
41:2
52-1/2 17:24
57 5:23 6:18

< 6 >

6 6:17 10:16 11:8,
9
6:00 1:10 2:1
64 6:6

< 7 >

7 11:3
7:00 19:16
7:30 19:12, 16

< 8 >

8 11:16, 20, 21, 25
802 30:4
843-762-6294 1:24

< 9 >

9 6:17 11:24

90 18:15
950 27:9
962 27:19

< A >

A)(1)(3)(4) 6:22
A-10-21 1:6 5:22
41:2
AARON 1:15
ability 13:24 42:7
able 26:5
absolutely 11:19
25:5 28:3
accents 31:7
access 6:22 34:3
39:2
accommodations 6:1
accurate 24:5
acquisition 25:4
Act 19:11
actual 22:5, 7
added 9:11
addition 22:16
address 7:20 8:4
9:7 12:9 15:11, 17
16:12 22:25 25:20,
21, 23, 24 30:1
32:12 36:2
addressed 8:19
adjacent 4:20 24:13
administrator 4:2
30:20
administrator's
5:25 21:3 22:17
admitted 22:6
adore 2:2
advance 20:18
advice 40:13
AE-10 30:11
aesthetics 9:5
38:21, 22
affirm 5:15 32:5
affixed 42:10
agenda 2:7, 9
22:12, 14
agent 5:2
aggressive 25:17
aggrieved 22:18
26:3, 13
ago 11:12, 13 33:8
35:25
agree 21:19 22:1
air 30:18 31:15, 16
airport 23:24
alike 25:7
alleged 12:3 36:10
alley 39:3, 4, 6
allow 8:13
allowed 28:20
35:18
allows 22:18 34:9
Americans 19:10
and/or 5:9
annex 10:15 11:17,
22
answer 29:25
31:22 40:7
anybody 2:25
15:17 18:17 31:24
33:25
Anyway 17:19 18:2
appeal 5:3, 7, 9, 24
8:8, 20 12:11, 20, 21,
25 15:3 21:23, 24
22:2, 3, 6, 9, 17, 23
24:25 25:11 26:10
35:21, 22 36:3, 5, 6,
7 41:4, 13, 15, 20
appealed 14:2
22:15
APPEALS 1:2, 19
2:3 3:24 4:1, 4
5:2 30:7 33:17
appear 6:18 14:24
22:11
APPEL 20:12, 13
26:3, 10, 12
appellant 3:20 7:19
25:16 35:21
applicable 14:9
39:20, 21
applicant 3:14, 17,
20 4:10 6:8, 20
9:20
application 4:6, 15
6:2
applied 23:10
apply 4:14

applying 13:6
 appropriate 5:2
 approval 2:6, 16
 approve 2:9, 18
 13:22 20:24 21:3
 approved 21:7, 12
 22:13 23:6
 April 22:6 29:5
 36:3, 4
 architect 30:5
 35:18
 area 9:14, 16, 19
 10:3 14:6 16:8
 18:6 24:8 30:11
 36:24
 areas 6:16 24:24
 38:16
 areawide 24:14
 argument 20:20
 24:15
 artificial 11:1
 Ashley 17:7
 asking 21:2 27:15
 assemblage 25:3
 asserting 26:21
 attachments 8:20
 attempt 25:4
 attention 9:10
 attic 30:17 31:2, 20
 attorney 8:6 25:21
 33:15
 attorneys 32:23
 audience 2:25
 40:19
 AUDIO 1:5 41:25
 42:5, 7
 August 9:10 22:7,
 15 36:6, 7
 authority 4:24 5:3
 14:25
 authorization 4:19
 available 19:18
 average 24:1
 aware 8:5 28:19
 33:7 34:22
 Aye 2:14, 23 40:17
 41:20
 < B >

back 11:8, 15, 25
 15:7 32:16 35:24
 36:9 37:5 40:22
 backyards 18:22
 20:8
 bad 8:21 16:25
 19:13
 balconies 6:15
 balcony 30:18, 23
 31:16
 Barre 23:1
 BARROW 1:16
 7:8, 9, 17
 BARRY 1:12
 bars 38:11, 13
 based 14:5
 basically 19:21
 beaches 23:25
 bears 26:22
 beautifully 16:2
 beds 17:17
 Beech 25:25
 behalf 7:23 18:13
 20:13
 believe 12:19 15:9
 21:22 34:2 41:9
 belong 39:18
 benefit 18:24
 benefits 18:25
 BERRY 27:18
 best 15:4 42:7
 beverage 6:19
 big 16:16
 bit 17:4
 blanking 16:14
 block 27:3 35:5
 blow-up 39:9
 BOARD 1:2, 19
 2:3, 5 3:2, 6, 23, 24
 4:23 5:1, 4, 9, 13
 7:4, 20 8:5, 9, 13
 9:1 11:11 12:9, 21
 14:14, 15, 18, 22
 15:4, 12, 18 20:12,
 23 21:2, 15 22:12
 32:14, 21 33:17
 34:9, 11 35:22
 36:4 40:1, 5, 12, 22,
 24

board's 21:1
 boat 24:11
 BOLEN 1:22
 born 36:16
 bottom 10:8, 9
 19:8 37:20
 Boulevard 9:17
 16:1 27:20 30:4
 bound 9:17
 Boutique 5:23
 10:19 11:20 20:15
 22:23 24:9, 21
 26:6 30:15, 25
 31:13 35:10 36:20
 41:5
 box 14:21, 23 38:17
 boxes 38:9, 22
 BOZA 6:13 20:20
 Branch 25:25
 break 31:13
 bridge 9:22
 Brief 40:21
 briefly 9:12 37:25
 briefs 12:22 36:18
 bring 3:1 5:22
 33:23
 bringing 32:16
 brought 7:5 9:10
 22:4 28:1 32:19
 BROWDER 3:8
 Brown 34:17
 build 10:18 15:25
 38:20
 Building 6:4 11:20,
 21, 25 14:24 28:15
 30:8, 10, 23 31:10
 38:10, 19 41:24
 buildings 8:2 28:13
 31:11, 12 38:8
 built 26:21
 burden 26:22
 business 15:20
 24:15 27:1 28:8
 BUTNER 1:15
 buy 27:5
 buyer 26:6
 < C >
 calculated 13:17, 18

calculation 23:8
 call 3:12 41:19
 capable 21:16
 CAROL 1:20 42:4,
 14
 CAROLINA 1:1
 5:17 25:25 26:18
 32:6 34:16 42:1, 5,
 12
 cars 39:12
 CASE 1:6 3:9
 5:20, 22 9:11, 12
 13:23 14:21 41:2
 cause 42:9
 center 9:25 10:2
 31:4 37:14 39:16
 centerline 39:6
 centerpiece 11:21
 CERTIFICATE
 42:1
 certification 22:12
 certify 21:3 42:5, 9
 cetera 21:5
 chain 27:7
 CHAIR 1:12
 CHAIRMAN 2:1, 9,
 10, 13, 15, 18, 19, 21,
 24 3:9 5:20 7:7,
 16, 19 8:10 12:7, 12,
 15, 17 15:10 17:6
 18:11 20:11 22:20,
 25 25:19, 23 26:1
 30:1 31:24 32:4,
 11 34:14 35:14
 39:24 40:3, 8, 11, 15,
 22 41:2, 14, 17
 challenging 33:2
 change 23:16 33:11,
 13
 character 4:21
 20:2 29:11
 charged 19:1
 Charles 18:12
 CHARLESTON
 1:23 23:23 29:15
 42:2, 12
 chart 39:15, 16
 chose 41:7
 Christine 15:19

circle 10:16
 circles 10:19
 Circuit 5:4
 city 24:2
 civil 27:20 33:23
 CKC 20:13 26:11
 claim 24:4 25:6
 claims 25:4
 clarify 27:25 30:6
 31:2
 CLARK 1:22
 clear 18:17 21:6
 clearly 14:20
 Clerk 5:5
 clients 27:6, 13
 clock 15:16
 close 3:21 40:9
 closely 30:19
 close-up 10:14
 11:16
 code 4:3 22:18
 23:10
 Coinbow 5:21
 COLBERT 22:21
 23:1
 Coleman 9:17 16:1,
 6 30:4
 Collin 22:21
 column 39:16, 18
 come 16:9 17:24
 23:20, 21 30:20
 33:13
 comes 16:5
 comforts 24:23
 coming 10:7 11:10
 19:2
 comment 3:16, 19,
 22 15:11 34:19, 24
 40:20
 comments 3:3, 5, 19
 14:16 15:3 20:22
 21:18 40:9
 Commercial 14:15,
 22
 commercially 24:9,
 10
 Commission 42:17
 common 36:11
 community 19:2
 25:2
 company 22:22
 comparative 9:8
 compatibility 9:5
 12:3
 compatible 9:13
 11:19 29:12
 competition 27:1
 complete 9:3 42:7
 completely 20:23
 compliant 28:3
 29:19, 23
 complicated 21:21
 complies 21:4
 computer-aided 42:6
 concerned 16:3, 21
 25:1
 concrete 17:1
 concur 25:6
 conditions 4:12, 13,
 15
 confer 27:2
 conference 37:14
 CONFERENCING
 1:22
 confirm 8:24
 confirmed 9:1
 conflict 7:11
 conjectural 26:16,
 20
 conservation 24:14
 consideration 7:10
 considered 23:13, 18
 considering 36:13
 constitute 13:20
 construction 9:20
 13:7
 contact 5:10 24:24
 contain 6:4, 5
 contends 6:8, 20
 continue 23:24
 continues 6:14
 contractor 35:19
 contrary 5:7 20:22
 copy 20:17, 19
 corner 15:21 39:5
 corners 38:8, 23
 corporation 7:2
 corporations 8:1
 correspondence 3:7
 Council 13:19
 14:17, 21 19:9 33:8
 counsel 7:2, 5
 33:11, 16 40:13
 42:9
 count 29:8
 county 5:4 42:2, 12
 course 32:22 38:11
 COURT 1:22 5:4,
 5 26:17, 18 33:23
 36:12
 cover 8:9
 create 13:24
 Creek 9:18 17:1, 2,
 3 19:16 20:15
 criteria 4:24
 curb 6:21 14:3, 4
 21:5 29:18, 20
 current 6:9 24:22
 Currently 29:2
 cut 9:19 14:3, 4
 18:19 29:18, 20
 cuts 6:21 21:5
 cutting 10:23 11:2,
 4, 7
 < D >
 dang 16:15
 DATE 1:9
 David 7:1
 day 24:22
 days 5:8 19:4 22:4,
 14 24:7
 decide 3:25 4:4
 18:19
 decision 3:23 4:1
 5:1, 3, 7, 8, 25 6:13
 19:6, 24 21:3, 17, 25
 22:5, 18 27:16
 decisions 40:24
 Decorative 15:20
 defective 22:10
 defer 21:15
 define 36:14
 defined 13:3 41:5
 defining 41:6
 definition 14:11
 17:12 23:16 24:6
 33:12 34:3 39:18,
 19, 21
 definitions 13:12
 33:13
 deliberation 3:22
 40:25
 deliberations 40:10
 demands 24:21
 demonstrate 4:10
 denied 36:4
 deny 18:7 20:25
 25:11 41:13
 department 5:11
 7:3
 depicted 23:14
 description 13:1
 Design 15:4, 25
 22:11 23:2, 3 30:20
 designated 4:3
 24:10
 designed 31:3
 details 33:14
 determination
 12:24 13:5, 7 14:2,
 5, 8, 17
 determinations 15:7
 determine 12:21
 13:20 14:18
 determined 23:8
 detriment 4:20
 developer 35:18, 20
 39:1, 2
 developers 33:9
 development 15:5
 diagonal 31:5
 dictionary 13:9
 difference 29:16
 different 27:4 39:25
 direct 8:16
 Disabilities 19:11
 discretion 9:4
 13:19 20:24
 discussed 33:7
 discussing 9:17
 discussion 2:21
 28:5 41:18
 discussions 28:7
 dismissed 21:23
 22:2, 10
 distinctly 5:6
 district 4:22 28:19,
 21

door 11:25 13:15
36:12
downtown 23:1
dozen 11:23
drainage 16:3, 22
drains 16:5
draw 14:21
drawing 38:6
drawn 34:7
DRB 23:6
DRB's 22:13
Drive 5:21
driveway 28:2
dude 16:17
DUKE 1:13
duties 3:25
dwelling 24:7 37:2

< E >

earlier 34:19
Earthsource 27:19
ecosystem 18:23
edges 38:8
effectively 4:17
effort 9:24
eight 6:5
either 8:5 21:20
22:1 23:21 29:17
electrical 38:22
elements 26:23 31:1
eliminate 18:5
ELLIOTT 1:16
eloquently 34:6
email 27:7
encourage 18:7
25:9
encroach 18:2
encroaches 18:3
ends 35:9
engagement 41:23
engineer 35:19
Engineering 27:19
engineers 27:21
English 37:3
entire 2:5 10:10
11:22 27:3
entities 7:24 8:3
entitlement 26:5
27:15

entry 23:14, 18
28:16
established 4:9
establishment 36:22,
23
et 21:5
evening 18:12
20:12, 21 21:9, 11,
22 22:24 25:13
27:18 30:3
events 42:10
everybody 15:16
33:4 34:10 36:15
exact 24:15
exactly 20:9 37:18
exception 4:2
21:11 35:5
exceptional 4:11
excuse 36:6
executive 40:12, 16,
17, 23
existing 10:25
expecting 32:2
33:20
expires 42:17
explanation 14:7
extended 24:16
exterior 31:8
extra 8:4, 8, 14
extraordinary 4:11
extremely 21:16

< F >

facilities 24:12
facing 6:17
fact 24:13 26:15
37:21
facts 3:23
factual 7:24
fail 9:24
fairly 12:18
familiar 24:3
family 24:20 31:14
far 8:12 29:13, 18
39:15, 16, 18, 20, 21
fast 25:18
favor 2:13, 22
10:25 25:11 40:16
41:19

feel 15:13
feels 29:10
feet 37:11, 14, 15
39:4, 5, 7
fences 38:15
fewer 41:6
figure 18:8
file 42:5, 7
filed 5:8 8:7 12:10
21:24 22:6 26:10
36:7
filing 5:4
Filippo 32:13
filled 27:9, 11
Finally 6:20 31:17
find 24:2
findings 3:23
fine 16:12
finish 33:21 39:23
finishing 35:23
finite 9:18
firm 7:13 8:2 9:20
11:1
First 4:10 8:23
10:1 12:18, 23
15:12 22:2 26:14
30:6
fit 20:7
fits 15:25 16:1, 13
five 3:13, 14, 17, 20
8:11 12:16 40:2
five-page 12:10
fix 16:7
flood 30:12
floor 6:15 11:13
17:22 30:8 31:21
39:22
fly 23:21, 23
focus 8:23 21:18
follow 4:23 27:16,
23 33:5, 18, 24
following 5:25
38:25 39:8, 13
food 6:19
forced 38:18, 21
forceful 25:17
foregoing 42:5, 6
forget 37:2
forth 5:6 6:15

19:11
forward 35:6
found 32:21
four 4:8 11:12, 13
17:16 25:14 27:10
four-bedroom 17:21
fourth 11:13 30:8
31:21
Foxworth 15:20
framework 15:2
free 15:13
freely 5:17 32:7
Friend 17:8
front 3:5 5:13
12:3 21:9, 10 29:2
30:9 36:10 37:5
frontage 12:5
full 42:6
fully 5:6
function 14:20
further 11:16 40:6
42:9
future 6:19 35:6

< G >

Gabe 25:14
gathering 24:23
geared 24:18
general 3:3, 7 13:9
generally 4:13
getting 18:20
give 13:19 35:16
40:2
given 5:17 12:9
14:6 32:7 35:20,
21, 25
go 8:16 10:4, 13, 15
11:3, 8 12:2, 17
16:14, 17, 18 19:16
35:24 36:20 37:8
38:25
goes 11:14
going 3:10 5:12
7:10, 14 9:24 10:4,
8, 9 11:7, 16 15:15
19:13, 19 26:23
27:25 29:7 33:19,
22, 23 34:20 36:9,
15 37:5, 8, 13, 17, 25
39:8, 13

good 2:24 4:21
8:21 18:12 19:20
20:12 25:13 27:18
29:17 30:3 35:11
39:1
governing 5:3
Grand 10:11, 15, 16,
17, 20 11:6, 18, 23
12:1 18:22 34:22
grant 4:24 41:3, 15
granted 41:21
granting 4:22
graphics 29:21
great 27:24
green 10:3 18:20
ground 30:11, 12
grounds 7:11 41:4
group 23:19 34:1
guest 6:3, 4, 5, 6
12:24 13:2, 3, 8, 10
17:11, 12, 15 18:9
23:9, 13, 17, 20 28:7,
13 30:14 34:2
41:8, 10
guests 23:19 30:25
gym 30:15

< H >

half 19:18
hand 5:14 8:14
15:14 32:4 42:10
handicapped 37:8
handout 9:16 35:25
hang 37:1
happen 33:19 34:8
happened 36:4
happy 29:22, 24
31:22 34:10 40:7
hard 36:13
hardship 4:7, 8
hardships 4:10
Hardware 15:20
harmed 4:22
hassle 24:2
hat 37:1
hear 3:25 4:3 19:3
33:10
heard 33:25 34:3
hearing 20:18

height 14:5, 7
helps 29:11
hereunto 42:10
hindsight 32:17
hold 3:11 8:10
15:16
home 24:22
Homewood 25:6
honestly 23:4
HOPKINS 1:18
2:8, 17 40:14 41:16
hospitality 36:21, 23
Hotel 5:23 10:19
11:20 12:4 13:11
17:17 18:10 20:6,
15 22:23 23:17
24:9, 19, 20, 21 26:6
28:16 29:14 30:15,
25 31:13 35:10
36:10, 17, 20, 21
37:3, 6, 12 38:20
41:5
hotels 24:16 25:7
28:8, 9, 10 36:16
house 13:9, 10
Houston 27:19
huge 10:3 29:16
hypothetical 26:16,
19

< I >

idea 29:17 34:1
illegally 29:5
image 30:9
impossible 31:21
Inaudible 7:18
8:14, 19 11:15
12:1, 22 13:8, 10, 13,
18, 24, 25 14:5, 6, 10,
13, 17 15:1, 5 17:2,
3 18:16, 18 19:5
23:15 27:10, 12
32:1, 25 33:4, 6, 16,
18, 24 34:5, 12 36:5,
13 37:20 38:12, 18
40:5, 7
inches 11:6
include 9:21
includes 9:4

including 23:15
increase 27:1
incumbent 4:9
Indigo 32:14
individual 31:14
indoor 24:23
Industry 28:10
information 5:9
initial 15:3
injury 26:15, 25
27:2
insufficient 27:2
41:12
in-suite 24:17
insure 23:4
integrity 25:10
intent 30:21
interest 5:1
interested 7:24
34:2, 11 42:10
interpretation 21:13
23:10
intersection 38:11
39:7, 10
intersections 6:22
investor 25:2
involve 9:13
involved 7:12
ironic 16:3
issue 7:4 8:23, 25
9:7 13:3 16:21
17:9 18:8 26:12
36:2, 19
issues 8:19 21:19,
21 26:9 27:12
32:16 33:3, 21 40:4
item 3:12 5:20
12:19
items 12:24 40:6
its 13:24 20:21
21:15
< J >
jeopardy 25:3
job 8:21 9:3 27:24
JOSEPH 25:13, 14,
21, 24 26:2
judge 9:1
JULIAN 1:18

July 15:9 22:8, 14
justification 37:21
Justin 7:21 21:2,
12, 17 34:19 35:4

< K >

keep 17:3
Ken 21:6
Kevin 27:18
key 13:14, 16 36:25
keyed 23:14, 18
28:15 34:3
kind 32:3 34:6
38:16
kindly 7:20
kitchens 24:18
KNIGHT 30:3, 4
know 9:6 16:1, 6,
19 17:9, 11 18:15
20:9 29:20 31:3
36:13
knowledge 42:7
known 38:16
knows 11:11
Krause 21:6

< L >

labeled 10:5 39:17
lacks 21:24 22:17
lady 34:5
land 25:3
Landing 34:16
landscape 31:8
landscaping 11:1
18:3 37:13, 22
38:1, 3, 15
language 37:4
large 24:23 34:22
42:5
larger 35:7, 8, 9
late 15:2
law 5:7 7:13 8:2
14:20, 21 27:12, 16
lawns 18:20
laws 5:16 13:23
25:9 32:6
lawyers 33:5
laymen 33:3
layouts 24:17

leading 15:8
 leads 31:15
 learned 32:3, 16
 lease 24:7
 leave 11:7 36:11
 41:23
 left 10:8 11:9 26:3
 38:7
 legal 7:3, 25 12:10
 13:6 15:2 21:19
 29:6
 lengthy 8:7
 letter 20:17 25:15
 letters 33:15
 level 30:12, 16
 levels 30:14
 line 11:11, 14, 18
 36:19 37:18 38:2, 5
 listed 12:25
 litigation 7:13
 little 10:1, 16 17:3
 18:6 38:9
 Live 15:21 17:8
 20:4, 5 34:16 38:17
 lives 18:14
 LLC 20:14 34:18
 LLCs 27:4
 lobbies 24:23 30:14
 local 17:4 29:13
 located 24:9
 location 34:6, 7
 lodging 6:1 41:6
 long 2:1
 longer 27:11
 look 2:6 9:25
 11:24 31:19
 looked 34:25
 looking 25:1 35:6
 looks 14:23 16:8
 Losse 30:4
 lost 37:11
 lot 15:2 18:16
 28:2, 4 32:3 34:20
 39:5
 loud 25:17
 love 2:2
 lower 15:1
 Lucas 10:7 15:21
 LUCEY 7:21 8:13
 12:8, 14 18:12

22:4, 16 24:13
 26:13, 20 27:3, 8
 34:20 35:4, 16, 17
 39:24
 Lucey's 20:22
 21:17, 22
 LUCIC 1:20 42:4,
 14
 < M >
 mailed 5:9
 maintain 25:10
 majority 23:22
 making 13:4 19:7,
 24
 man 16:4 20:1
 March 42:12
 massive 16:25
 matches 20:6
 material 8:16
 math 17:19, 24
 matter 7:11, 15
 40:13
 matters 5:25 41:13
 mean 16:2
 means 15:24 17:23
 meant 31:7
 measured 14:4
 meeting 2:2, 3 3:2,
 10
 MEGAN 1:17
 MEMBER 40:19
 members 20:12
 memoranda 8:7
 memorandum 8:18
 memos 12:10
 mentioned 28:5
 29:4, 19
 merit 25:5 42:14
 met 14:7 23:5, 6
 middle 10:2, 3, 10
 11:17
 Mike 21:7 34:15
 Mill 5:22 7:22
 10:8 12:6 18:4, 5
 22:22 37:6, 11, 15
 38:1 39:3, 7, 10
 minimal 24:24
 minimum 39:6

minutes 2:16, 18
 3:13, 14, 17, 18, 20
 8:8, 11 12:16
 15:14, 15 19:8
 30:2 40:2
 misinterpreted
 41:10
 modern 24:18
 mom 19:11 20:5
 month 2:16, 18
 months 11:12, 13
 28:6
 morning 19:12, 14
 mother 18:14
 motion 2:6, 8, 10, 15,
 17 40:15, 25 41:1,
 14, 17, 19, 20
 MOUNT 1:1 9:19
 17:14 19:9 24:16
 27:20
 Mountain 25:25
 move 3:6 8:17
 40:11, 12, 16, 17
 41:3, 13
 Mt 17:8
 multi-family 37:2
 municipality 29:13
 < N >
 name 15:19 17:7
 20:13 22:21 25:13,
 23 30:1, 3 32:11
 34:15
 narrow 21:1
 nature 20:3
 navigate 24:2
 NCRA 42:14
 nearly 26:4
 necessarily 32:17
 need 8:10 11:2
 negative 15:24
 neighbor 25:1
 neighborhood 7:23
 9:2, 6, 23 10:11
 11:22 15:22 16:1,
 13, 24 18:18, 21, 24
 19:25 20:2, 7 29:11
 neither 42:9
 nervous 16:15

17:22
 new 39:3
 newfound 36:2
 news 8:21, 22
 Nick 27:8
 night 32:15
 nonconforming 25:8
 normal 34:4
 North 25:25 29:14,
 15 34:16
 Northcutt 27:19
 Nos 1:7
 Notary 42:4
 note 38:7 41:22
 noted 34:19
 notice 22:5, 8
 noticed 19:6
 notification 12:20
 November 42:17
 number 18:9 23:15
 30:7 41:11
 numbers 8:16
 numerous 28:8
 < O >
 Oak 10:9, 11 15:21
 Oaks 11:23 12:1
 34:22
 oasis 10:3, 11
 Obviously 31:12
 occupy 31:5, 21
 o'clock 6:17
 offer 41:1
 office 7:22 10:14
 officer 5:2
 offices 24:11
 official 42:12
 off-street 17:20, 25
 18:9
 Okay 3:9
 old 18:15 39:20
 ones 40:7
 one-two 6:2
 on-site 28:16
 on-street 29:1, 8
 open 3:15, 22
 15:10 24:14 30:18
 31:15, 16 40:9, 24
 open-ended 20:23

openly 23:3
 opportunity 35:19
 oppose 35:21
 opposed 40:17
 41:20
 opposition 8:7
 25:16 36:17
 order 35:17
 ordinance 4:5, 6, 16
 6:8 13:4 29:12
 30:21 37:22
 ordinances 10:24
 21:14 41:4
 outside 7:4 38:2, 4
 overlay 28:19, 21
 owned 16:11 28:8
 owner 29:9
 owners 25:14 34:17
 owns 27:3

< P >

p.m 1:10
 Pad 16:15, 17
 Page 6:18 8:16
 9:15 10:4, 6, 13, 16
 11:3, 8, 9, 16, 20, 21,
 24, 25 12:2, 3, 4
 35:24 36:9 37:5,
 17, 19, 20, 25 38:7,
 25 39:1, 8, 13
 Pagliarini 6:24, 25
 7:1
 paragraphs 6:11
 parcel 24:10 26:4
 parcels 6:10 24:11,
 14 25:15 27:11
 park 29:2, 5
 parked 39:11
 parking 6:3, 7
 13:21 16:22 17:9,
 20, 25 18:5, 6, 8, 9
 19:18 21:5 23:7
 24:2 28:1, 4, 11, 12,
 13, 14, 17, 20, 24
 29:1, 6, 8, 9, 14, 16
 30:13 41:7, 11
 part 3:2 9:23
 10:12 13:4, 16
 30:23 34:17
 participate 7:14

particular 4:12, 16
 7:14 41:12
 parties 7:12, 24
 22:19 34:2
 parts 9:21
 party 20:14 26:3,
 14, 21 42:9
 passed 36:19 41:5
 pave 29:1, 7
 paving 28:25
 pedestrian 6:22
 penalty 5:15 32:5
 pending 42:10
 people 18:24 19:3,
 4 20:4, 5 29:2, 5
 32:19, 23
 peppered 21:21
 percent 19:20
 28:20, 22 33:19
 perjury 5:16 32:5
 permanent 19:6, 24
 permissible 6:9
 35:23 38:24
 permit 4:2 6:13
 permitted 20:14
 26:5
 person 4:25
 person-to-person
 24:24
 perspective 35:12
 pertaining 4:12
 petition 5:5
 pick 26:2
 picture 10:1
 piece 4:12, 16, 18
 7:13 26:4
 pieces 35:8
 place 36:24, 25
 plainly 5:6
 plan 6:14 37:16
 39:15
 planning 5:11 8:6
 25:10
 plans 6:7 9:9 11:4
 14:4 22:22
 PLEASANT 1:1
 9:20 17:8, 14 19:9
 24:17 27:20
 please 5:10, 13
 7:20 8:9 12:16

22:25 30:22 31:10,
 17 37:17
 plenty 3:4
 point 7:19 20:1
 35:3, 17
 pointed 17:13
 points 22:2 39:3
 pool 6:17 30:24
 possible 39:23
 post-COVID 24:22
 posted 22:14
 potential 26:25
 powers 3:25
 prejudice 26:25
 27:2
 present 3:13, 15
 presentation 29:21
 35:23
 presented 8:20
 pretty 18:17 33:2
 previous 41:23
 previously 34:25
 primary 10:24
 prior 22:8
 private 30:15, 24
 31:16
 probably 8:5 11:11
 16:19 28:19
 problems 19:22
 procedures 5:10
 33:18
 process 13:4, 6
 23:2 25:10
 professional 21:13,
 15 26:8 42:4, 15
 prohibit 4:17
 project 6:6, 8, 11,
 12, 21 9:2, 13 19:17,
 23 20:24, 25 21:4
 22:8, 11 23:11
 24:4 25:5 27:21
 28:6 30:5 33:6, 9
 34:7, 9
 properties 8:1 9:6,
 8 20:14 35:4
 property 4:13, 14,
 16, 18, 20 11:11, 13,
 18 16:11 24:5
 27:5, 14 34:17, 21

35:1, 8 37:18 38:2,
 4 41:12
 proposed 11:20
 30:10
 proposing 29:1
 protect 19:10 38:12
 protected 10:21, 22
 11:5
 protecting 19:1
 protective 38:15
 proven 26:23
 provide 6:2, 7 18:8
 20:19
 provided 12:23
 14:10 25:15 27:7
 proving 26:22
 provisions 4:6
 public 3:5, 15, 16,
 18, 19, 21 4:21
 15:11 19:20 26:11
 31:25 32:25 39:24
 40:9, 20 42:4
 pull 16:16
 purpose 7:5
 purposes 7:9
 pursuant 5:16 32:6
 purview 32:17
 pushing 18:15
 put 10:16 29:7, 20
 33:2 35:8 36:18

< Q >

quality 19:25
 question 14:9 31:1
 questions 14:1, 12
 15:6 18:16 29:25
 31:22 40:6
 quicker 8:14
 quickly 12:18 28:1

< R >

raise 5:14 15:14
 32:4
 ramp 37:8
 range 13:18, 21
 ratio 28:11
 ratios 28:4 29:14
 RAVALICO 32:2,
 10, 13

read 19:8
 real 27:25
 really 8:10 15:4
 16:8, 16 17:22 19:6
 rear 11:10, 13
 reason 23:17
 reasons 21:23
 rebuttal 3:21 8:12
 12:13
 receive 40:12
 received 22:5 36:17
 reception 36:24
 recess 40:21
 recognize 36:14
 record 2:4 7:1, 6, 9
 41:22 42:7
 recorded 42:5
 recreational 24:12
 recuse 7:10
 red 10:1, 12, 13, 14
 reduce 28:23
 reduction 28:20, 23
 refer 32:14
 reflect 2:4
 regarding 15:6
 Registered 42:4, 15
 regulations 23:5
 re-hearing 5:10
 REILLY 15:19
 reinforce 31:18
 reiterate 40:4
 related 42:9
 relevant 30:7
 remember 32:20
 remind 20:20
 reminding 33:5
 removal 14:16
 Removing 14:13
 rent 23:22
 rental 24:5, 6
 replace 21:12, 16
 report 12:15
 REPORTER 42:1,
 4, 14, 15
 REPORTING 1:22
 represent 25:14
 representative 7:25
 represented 7:4
 representing 7:3
 represents 7:13

request 12:9 18:7
 21:10 32:15
 requested 20:18
 requests 14:14
 require 38:11
 required 13:21 18:3
 requirement 13:22
 23:7
 requirements 4:5
 15:5 21:5 22:13
 23:7 29:9 41:7
 requires 6:2 24:6
 29:15
 reservation 13:15
 residential 6:13, 15
 18:21 24:7
 residentially 24:8
 respectfully 21:14
 responding 24:21
 responses 27:24
 responsibility 19:10
 rest 9:19
 restaurants 23:25
 24:11
 restrict 4:17
 result 4:7
 reverse 21:2
 Review 14:15, 22
 15:4 22:12
 reviewed 23:12
 rezoned 24:13
 rid 18:20
 right 5:14 10:9
 11:14 16:25 21:8
 26:6 29:10 32:4
 37:7 38:4, 7 39:10
 right-hand 31:19
 right-of-way 12:6
 18:4 37:7, 9, 10, 11,
 12, 15, 24 38:3, 20
 RMR 1:20
 road 16:16, 20
 25:25 29:3 32:14
 roadway 29:6
 ROBERTSON
 12:17 21:7 40:3, 8
 role 20:21 21:1
 roof 6:17 10:1, 12,
 13, 14 30:16

rooftop 6:19 30:16,
 17, 23 31:9, 16
 room 6:3 12:24
 13:2, 3, 8, 10, 11, 13
 17:12 23:9, 13, 17,
 20 24:20 28:11, 12,
 13, 15 34:3 36:15
 rooms 6:4, 6 13:15
 17:11, 12, 15, 16, 18,
 21, 23 18:10 23:16
 28:7, 16 29:16
 30:14 36:21 41:8,
 10
 Ross 20:13 26:3
 round 40:20
 RPR 1:20
 rules 40:1
 ruling 25:11 26:17
 run 3:10
 rushing 39:14

< S >

salient 20:3
 Sawmill 25:24
 saying 17:10 35:5
 says 16:19 19:8
 22:3 37:22
 SC 1:23
 scale 9:5 31:13
 35:2, 7, 10
 scope 35:10
 Scott 10:7 38:3
 39:10
 Scratch 16:15, 17
 seal 42:12
 second 2:11, 12, 19,
 20 3:11 26:24
 30:13 35:25 36:11
 40:14, 16 41:16, 18
 Section 22:3 31:11
 sections 31:18
 see 9:16 10:1, 14,
 19 11:3, 8, 25 12:4
 24:25 31:19 36:9,
 14 37:5 38:9 39:8,
 16
 Seeing 3:6 31:6
 41:18
 seeking 24:22

seen 16:8 25:3
 29:3 35:7
 sell 27:14
 sellers 27:6
 sense 23:19 36:11
 separation 14:3
 28:2 29:18
 separations 14:4
 29:20, 23
 SEPTEMBER 1:3,
 9 2:4
 serves 30:15
 session 31:23 40:12,
 16, 18, 23
 set 6:14
 setting 5:6
 seven 28:23, 25
 29:1, 7
 share 16:20 28:18
 29:22
 sharing 24:20
 shed-like 6:16
 Shem 9:18 17:3
 20:15
 shorter 14:19
 short-term 24:5
 shot 8:24
 show 13:17 38:1
 39:1
 showed 14:3 37:19
 showing 27:7 31:14
 39:9
 shows 11:5 30:9
 37:18
 side 31:19
 sidewalk 37:10
 sign 19:5
 similar 23:11 24:17
 Simmons 9:18 10:6
 18:13, 14
 simply 25:4 31:7
 single 13:14 23:20,
 21, 22
 sir 7:7, 21 8:12
 12:8, 14 25:20
 26:2 40:1
 sit 36:24
 site 15:5 28:24
 37:23
 sitting 38:22

situation 33:1, 2
 34:4, 8
 size 23:15
 sketch 37:6
 skills 42:7
 slide 30:22 31:10, 17
 slow 25:5
 small 16:18 24:19, 20 34:21
 smaller 14:24 35:2
 soften 31:8
 solid 15:15
 solution 35:11
 solved 19:21
 someone's 13:9, 10
 sorry 3:12 17:22 39:14
 sort 31:8, 18 36:16, 22
 sources 23:15
 SOUTH 1:1 5:16 26:18 32:6 42:1, 4, 12
 space 24:14 28:11, 14 29:16 30:17 31:6 39:22
 spaces 6:3, 7 17:25 18:5 23:9 28:12, 13, 17, 24 29:1, 8 31:2 41:11
 speak 3:21 19:3 30:5 31:25 32:3 33:20 35:15, 19
 speaking 7:23 21:8 26:11 32:25 33:25
 special 4:2 21:11
 specific 3:25
 specifically 7:5 12:25
 spiral 31:15
 spoke 32:16, 23 34:5
 spots 19:18
 spring 15:8
 staff 3:13, 16, 19 5:10, 21 7:3 8:6, 18 9:7, 9 12:10, 15 13:20 15:7 20:18 21:16 23:4, 11 26:8 27:16, 23 29:20 30:19 32:22 33:16 35:16 40:2 41:9
 staff's 21:13
 stair 31:15
 stairs 30:18
 stand 5:14 30:6
 standard 28:10 39:25
 standing 21:24 22:17 26:13, 14, 22 27:3
 started 20:16, 19
 State 4:9 5:16 13:23 25:19 32:6 42:1, 4
 States 26:17 36:12
 station 11:14
 statutory 13:7
 stay 16:23 17:2 23:20 24:16, 19
 staying 30:25
 stenographically 42:5
 step 7:16
 STEPHEN 1:13, 14
 STEVENS 1:17 2:12, 20
 stick 40:1
 storage 24:12
 stores 6:14
 stories 30:7
 story 30:11
 STR 24:6
 Street 5:23 7:22 10:7 12:6 16:5, 18, 19 17:8 18:4, 5, 13, 15 19:12, 20 22:23 23:1 37:6, 12, 15 38:1, 4, 23 39:4, 7, 11
 streets 10:5
 strict 4:5
 strictly 4:23
 structure 31:5
 structures 6:16, 19
 studies 9:11, 12
 stuff 3:5 37:19 38:16
 submit 21:15
 submittal 6:18
 submittals 15:8
 submitted 9:9 20:17 22:22
 substantial 4:20, 25
 subsumed 37:3
 suffered 26:15
 suitability 9:2, 4
 suite 13:14 17:13, 18 23:16, 24
 Suites 25:7
 suite-style 25:7
 Sum 12:7
 Summit 34:16
 support 34:1 35:22
 supposed 19:19 32:20 37:23 38:13, 14 40:20
 suppositions 26:20
 Supreme 26:16, 17, 18 36:12
 sure 8:6 10:5 15:12 18:18 20:16 29:3 30:20
 surprised 33:10
 surrounded 11:23 24:10
 surrounding 10:12 25:2 38:15
 suspect 33:22
 swear 5:15 32:5
 switch 38:17
 sworn 15:13 32:1
 < T >
 table 11:4
 take 8:8 19:15, 19 21:20
 taken 40:23
 talk 9:11 10:12 12:2 22:2 27:25 30:10 36:10
 talked 19:4
 talker 25:18
 talking 20:9 27:10 35:6
 tall 14:19
 tangent 39:3
 task 32:18
 taxed 17:16
 taxing 17:14, 21
 team 23:3
 technical 31:18
 tell 5:18 28:7 32:8
 telling 32:19
 tenant 8:2
 term 41:8, 10
 testify 5:13
 testimony 3:11 5:17 32:7
 tests 4:8
 Thank 5:19 6:25 7:7, 21 12:8, 14 15:10 17:4, 6 18:10, 11 20:10, 11 25:12 26:1 27:17 29:24 31:24 32:11 34:13, 14 35:12, 14 40:1, 3, 8
 thereof 42:10
 thing 3:15 8:17 26:21 27:9 29:10 34:23
 things 14:23 27:25 30:6 32:3
 think 15:24, 25 16:13, 20, 23 20:1 29:17 34:5 35:10
 third 30:13
 thought 16:10
 threatening 33:15
 three 3:18, 24 6:14 7:23, 24 8:3 15:14, 15 23:6 29:16 30:2 31:12
 threshold 21:19
 through-way 16:19
 tides 16:9
 TIME 1:10 2:2, 24 3:3, 4 8:4 12:9, 13 15:18 22:7, 8, 9, 16, 20 29:24 32:21 35:13, 20 39:25
 timeliness 22:3 26:12 36:2
 timely 12:21

times 23:6
 timing 12:19
 TMS 1:7 5:23 41:2
 today 20:19
 told 39:2
 tonight 2:5 3:10
 14:2, 14 15:16
 20:1, 24 25:16
 30:6 32:19, 23
 33:14, 21 34:4
 tonight's 3:2
 top 6:15 10:7, 8, 9
 30:22 38:7 39:9
 total 6:6 11:6
 28:15
 TOWN 1:1 6:24
 7:2 8:6, 18 9:7, 9,
 21 10:24, 25 14:17,
 21 17:14, 20 19:9
 21:13 23:4, 8, 11, 25
 25:8 26:7 28:5, 11
 33:7 34:25 36:18
 37:21, 23 41:5
 townhouse 6:5
 townhouses 17:15,
 21
 Town's 7:2 9:10
 25:11 26:8 28:18
 29:12
 traffic 19:13
 TRANS 38:9
 TRANSCRIBED
 1:20 42:6
 TRANSCRIPTION
 1:5 41:25 42:6
 transformer 38:17
 39:9, 11
 Transformers 38:10,
 14
 travel 23:19 37:7
 traveler 24:1, 18, 22
 travelers 23:23
 treated 14:20
 tree 11:4, 6 14:16
 trees 10:2, 11, 15,
 17, 20, 21, 22 11:2, 5,
 18 14:13 18:19, 22
 20:4 34:20, 22
 tried 27:5 31:12

true 42:7
 trusses 31:3, 20
 truth 5:18, 19 32:8,
 9 38:16
 try 8:17 17:3
 19:15
 trying 15:23 16:7
 19:22 21:12 24:2
 27:4, 13 33:11, 12
 34:10 39:25
 Tuesday 32:15
 turn 9:15
 turning 36:1
 two 7:25 11:7, 23
 12:10 17:15, 16, 17,
 18, 21 21:18, 23
 23:9 25:14 28:12,
 13 36:18
 typical 17:17, 18
 typically 13:6
 28:10 35:7, 9 38:18
 <U>
 Uber 23:24, 25
 uncovered 39:17, 19,
 21
 understand 13:13
 14:12 15:23
 understanding 33:1
 unexplained 6:16
 unique 34:6
 uniquely 34:7
 unit 17:15 24:7
 United 26:17 36:12
 units 6:3, 5 31:14
 41:6
 unnecessary 4:7
 unreasonably 4:17
 untimely 21:24
 uphold 25:9 27:16
 urge 24:25
 use 6:9 14:9, 11
 21:5 30:8, 12 41:7
 uses 4:2 6:13 25:8
 utility 11:14
 utilization 4:18
 utilizing 24:15
 28:21, 25

<V>
 V-41-21 5:20
 VAR 39:19
 variance 4:4, 19, 23
 21:10 32:15
 various 23:14 34:1
 vegetation 10:25
 vehicle 23:21, 22
 version 39:15
 vicinity 4:14
 VIDEO 1:22
 Village 39:20
 violates 6:11, 12, 21
 violating 6:7
 VIP 37:13
 visibility 6:21
 visit 23:23
 volition 5:18 32:7
 voluminous 8:15
 volunteer 34:11
 volunteers 32:22
 33:6
 votes 40:23
 <W>
 walk 13:2, 5, 12
 18:21 19:11, 15
 20:8
 walks 18:17
 walkway 19:15
 walls 39:22
 want 3:1 10:18
 15:11 20:16, 20
 21:6, 18 24:1, 19
 27:13, 23 29:22
 30:10 31:2 32:24
 wanted 28:24 30:5
 34:24 35:3 37:25
 40:4
 wants 31:25 35:15
 WASHBURN 34:15
 way 8:25 16:5, 10,
 17 22:7, 15 23:14
 33:22 38:6
 ways 18:1 37:9
 webbing 31:5
 weeks 33:8
 well 26:14 33:7, 8
 35:3 36:21

we're 3:10 9:16
 10:4, 5, 12 15:15
 17:1 21:7, 9, 10
 27:20 28:3, 21, 22,
 24, 25 29:7, 23
 30:21 37:19 38:6
 wet 16:9
 wetland 16:8
 wetlands 27:11
 We've 10:6, 8, 9
 28:9, 12, 14 37:11
 Wharf 32:14
 whatsoever 20:8
 wide 39:5
 wish 35:22
 withdrawn 5:21
 Witness 42:10
 WOLFF 1:12 6:25
 wonder 33:19
 WOOD 1:14 31:1,
 3, 7 40:11 41:1, 22
 WOODY 17:7
 work 34:13 35:1
 37:8
 worked 23:3 28:5
 30:18
 working 26:7
 works 14:11
 writing 5:5
 written 23:9
 wrong 39:2
 WWW.CLARK-
 ASSOCIATES.COM
 1:25
 <X>
 Xs 10:18, 22 11:9,
 10
 <Y>
 year 26:7
 years 16:7 18:15
 23:12 26:4 28:9
 yellow 19:5
 young 16:4
 <Z>
 Zac 34:18
 zero 26:24

zeroed 26:12
zone 30:12
zoned 24:8, 9
ZONING 1:2, 19
2:3 3:24 4:1, 3, 5
5:1, 24 6:9 14:8,
15, 19, 22 21:2, 4
22:13, 17 23:5, 7
25:9 30:19 33:4,
17 34:9

WORD LIST

< 0 >	3 (2)	able (1)	appellant (4)
034 (2)	30 (4)	absolutely (3)	applicable (3)
035 (3)	32 (2)	accents (1)	applicant (7)
057 (2)	336 (1)	access (3)	application (3)
	34 (2)	accommodations (1)	applied (1)
	35 (3)	accurate (1)	apply (1)
		acquisition (1)	applying (1)
< 1 >	< 4 >	Act (1)	appropriate (1)
10 (8)	4:30 (1)	actual (2)	approval (2)
100 (1)	40 (1)	added (1)	approve (5)
1044 (1)	41 (1)	addition (1)	approved (4)
109 (2)	415 (1)	address (15)	April (4)
11 (1)		addressed (1)	architect (2)
110 (1)		adjacent (2)	area (10)
12 (5)	< 5 >	administrator (2)	areas (3)
127 (1)	5 (1)	administrator's (3)	areawide (1)
12-month (1)	5:00 (1)	admitted (1)	argument (2)
13 (2)	50 (5)	adore (1)	artificial (1)
14 (1)	50-foot (3)	advance (1)	Ashley (1)
15 (2)	517-16-00 (1)	advice (1)	asking (2)
156.101(a) (1)	517-16-00-058 (2)	AE-10 (1)	assemblage (1)
156.108 (1)	52-1/2 (1)	aesthetics (3)	asserting (1)
156.171 (1)	57 (2)	affirm (2)	attachments (1)
156.325 (1)		affixed (1)	attempt (1)
156.411 (1)	< 6 >	agenda (4)	attention (1)
16 (1)	6 (4)	agent (1)	attic (3)
18 (2)	6:00 (2)	aggressive (1)	attorney (3)
19 (4)	64 (1)	aggrieved (3)	attorneys (1)
		ago (4)	audience (2)
< 2 >	< 7 >	agree (2)	AUDIO (4)
2 (1)	7 (1)	air (3)	August (6)
20 (3)	7:00 (1)	airport (1)	authority (3)
2016 (1)	7:30 (2)	alike (1)	authorization (1)
2018 (1)		alleged (2)	available (1)
2021 (4)	< 8 >	alley (3)	average (1)
2023 (1)	8 (4)	allow (1)	aware (4)
2027 (1)	802 (1)	allowed (2)	Aye (4)
20-plus (1)	843-762-6294 (1)	allows (2)	
22 (1)		Americans (1)	< B >
23 (3)	< 9 >	and/or (1)	back (9)
239 (1)	9 (2)	annex (4)	backyards (2)
24 (2)	90 (1)	answer (3)	bad (3)
25 (1)	950 (1)	anybody (5)	balconies (1)
27 (5)	962 (1)	Anyway (2)	balcony (3)
28 (2)		appeal (33)	Barre (1)
29405 (1)	< A >	appealed (2)	BARROW (4)
29464 (1)	A)(1)(3)(4) (1)	APPEALS (9)	BARRY (1)
	A-10-21 (3)	appear (3)	bars (2)
	AARON (1)	APPEL (5)	based (1)
< 3 >	ability (2)		

basically (1)
 beaches (1)
 bears (1)
 beautifully (1)
 beds (2)
 Beech (1)
 behalf (3)
 believe (5)
 belong (1)
 benefit (1)
 benefits (1)
 BERRY (2)
 best (2)
 beverage (1)
 big (1)
 bit (1)
 blanking (1)
 block (2)
 blow-up (1)
 BOARD (47)
 board's (1)
 boat (1)
 BOLEN (1)
 born (1)
 bottom (4)
 Boulevard (4)
 bound (1)
 Boutique (14)
 box (3)
 boxes (2)
 BOZA (2)
 Branch (1)
 break (1)
 bridge (1)
 Brief (1)
 briefly (2)
 briefs (2)
 bring (3)
 bringing (1)
 brought (5)
 BROWDER (1)
 Brown (1)
 build (3)
 Building (13)
 buildings (5)
 built (1)
 burden (1)
 business (4)
 BUTNER (1)

buy (2)
 buyer (1)
 < C >
 calculated (2)
 calculation (1)
 call (2)
 capable (1)
 CAROL (3)
 CAROLINA (9)
 cars (1)
 CASE (9)
 cause (1)
 center (5)
 centerline (1)
 centerpiece (1)
 CERTIFICATE (1)
 certification (1)
 certify (3)
 cetera (1)
 chain (1)
 CHAIR (1)
 CHAIRMAN (43)
 challenging (1)
 change (3)
 character (3)
 charged (1)
 Charles (1)
 CHARLESTON (7)
 chart (2)
 chose (1)
 Christine (1)
 circle (1)
 circles (1)
 Circuit (1)
 city (1)
 civil (2)
 CKC (2)
 claim (2)
 claims (1)
 clarify (3)
 CLARK (1)
 clear (2)
 clearly (1)
 Clerk (1)
 clients (2)
 clock (1)
 close (2)
 closely (1)

close-up (2)
 code (3)
 Coinbow (1)
 COLBERT (3)
 Coleman (4)
 Collin (1)
 column (2)
 come (6)
 comes (1)
 comforts (1)
 coming (3)
 comment (8)
 comments (8)
 Commercial (2)
 commercially (2)
 Commission (1)
 common (1)
 community (2)
 company (1)
 comparative (1)
 compatibility (2)
 compatible (3)
 competition (1)
 complete (2)
 completely (1)
 compliant (3)
 complicated (1)
 complies (1)
 computer-aided (1)
 concerned (3)
 concrete (1)
 concur (1)
 conditions (3)
 confer (1)
 conference (1)
 CONFERENCING (1)
 confirm (1)
 confirmed (1)
 conflict (1)
 conjectural (2)
 conservation (1)
 consideration (1)
 considered (2)
 considering (1)
 constitute (1)
 construction (2)
 contact (2)
 contain (2)

contends (2)
 continue (1)
 continues (1)
 contractor (1)
 contrary (2)
 copy (2)
 corner (2)
 corners (2)
 corporation (1)
 corporations (1)
 correspondence (1)
 Council (5)
 counsel (6)
 count (1)
 county (3)
 course (2)
 COURT (8)
 cover (1)
 create (1)
 Creek (6)
 criteria (1)
 curb (6)
 current (2)
 Currently (1)
 cut (6)
 cuts (2)
 cutting (4)
 < D >
 dang (1)
 DATE (1)
 David (1)
 day (1)
 days (5)
 decide (3)
 decision (17)
 decisions (1)
 Decorative (1)
 defective (1)
 defer (1)
 define (1)
 defined (2)
 defining (1)
 definition (9)
 definitions (2)
 deliberation (2)
 deliberations (1)
 demands (1)
 demonstrate (1)

denied (1)
 deny (4)
 department (2)
 depicted (1)
 description (1)
 Design (6)
 designated (2)
 designed (1)
 details (1)
 determination (7)
 determinations (1)
 determine (3)
 determined (1)
 detriment (1)
 developer (4)
 developers (1)
 development (1)
 diagonal (1)
 dictionary (1)
 difference (1)
 different (2)
 direct (1)
 Disabilities (1)
 discretion (3)
 discussed (1)
 discussing (1)
 discussion (3)
 discussions (1)
 dismissed (3)
 distinctly (1)
 district (3)
 door (3)
 downtown (1)
 dozen (1)
 drainage (2)
 drains (1)
 draw (1)
 drawing (1)
 drawn (1)
 DRB (1)
 DRB's (1)
 Drive (1)
 driveway (1)
 dude (1)
 DUKE (1)
 duties (1)
 dwelling (2)

< E >

earlier (1)
 Earthsource (1)
 ecosystem (1)
 edges (1)
 effectively (1)
 effort (1)
 eight (1)
 either (5)
 electrical (1)
 elements (2)
 eliminate (1)
 ELLIOTT (1)
 eloquently (1)
 email (1)
 encourage (2)
 encroach (1)
 encroaches (1)
 ends (1)
 engagement (1)
 engineer (1)
 Engineering (1)
 engineers (1)
 English (1)
 entire (4)
 entities (2)
 entitlement (2)
 entry (3)
 established (1)
 establishment (2)
 et (1)
 evening (10)
 events (1)
 everybody (4)
 exact (1)
 exactly (2)
 exception (3)
 exceptional (1)
 excuse (1)
 executive (4)
 existing (1)
 expecting (2)
 expires (1)
 explanation (1)
 extended (1)
 exterior (1)
 extra (3)
 extraordinary (1)
 extremely (1)

< F >

facilities (1)
 facing (1)
 fact (3)
 facts (1)
 factual (1)
 fail (1)
 fairly (1)
 familiar (1)
 family (2)
 far (8)
 fast (1)
 favor (6)
 feel (1)
 feels (1)
 feet (6)
 fences (1)
 fewer (1)
 figure (1)
 file (2)
 filed (7)
 filing (1)
 Filippo (1)
 filled (2)
 Finally (2)
 find (1)
 findings (1)
 fine (1)
 finish (2)
 finishing (1)
 finite (1)
 firm (4)
 First (9)
 fit (1)
 fits (3)
 five (9)
 five-page (1)
 fix (1)
 flood (1)
 floor (6)
 fly (2)
 focus (2)
 follow (6)
 following (4)
 food (1)
 forced (2)
 forceful (1)
 foregoing (2)
 forget (1)

forth (3)
 forward (1)
 found (1)
 four (6)
 four-bedroom (1)
 fourth (3)
 Foxworth (1)
 framework (1)
 free (1)
 freely (2)
 Friend (1)
 front (9)
 frontage (1)
 full (1)
 fully (1)
 function (1)
 further (3)
 future (2)

< G >

Gabe (1)
 gathering (1)
 geared (1)
 general (3)
 generally (1)
 getting (1)
 give (3)
 given (7)
 go (16)
 goes (1)
 going (29)
 good (13)
 governing (1)
 Grand (11)
 grant (3)
 granted (1)
 granting (1)
 graphics (1)
 great (1)
 green (2)
 ground (2)
 grounds (2)
 group (2)
 guest (23)
 guests (2)
 gym (1)

< H >

half (1)

hand (5)
 handicapped (1)
 handout (2)
 hang (1)
 happen (2)
 happened (1)
 happy (5)
 hard (1)
 hardship (2)
 hardships (1)
 Hardware (1)
 harmed (1)
 hassle (1)
 hat (1)
 hear (4)
 heard (2)
 hearing (1)
 height (2)
 helps (1)
 hereunto (1)
 hindsight (1)
 hold (3)
 home (1)
 Homewood (1)
 honestly (1)
 HOPKINS (5)
 hospitality (2)
 Hotel (33)
 hotels (6)
 house (2)
 Houston (1)
 huge (2)
 hypothetical (2)

< I >

idea (2)
 illegally (1)
 image (1)
 impossible (1)
 Inaudible (46)
 inches (1)
 include (1)
 includes (1)
 including (1)
 increase (1)
 incumbent (1)
 Indigo (1)
 individual (1)
 indoor (1)

Industry (1)
 information (1)
 initial (1)
 injury (3)
 insufficient (2)
 in-suite (1)
 insure (1)
 integrity (1)
 intent (1)
 interest (1)
 interested (4)
 interpretation (2)
 intersection (3)
 intersections (1)
 investor (1)
 involve (1)
 involved (1)
 ironic (1)
 issue (12)
 issues (9)
 item (4)
 items (2)
 its (3)

< J >

jeopardy (1)
 job (3)
 JOSEPH (5)
 judge (1)
 JULIAN (1)
 July (4)
 justification (1)
 Justin (6)

< K >

keep (1)
 Ken (1)
 Kevin (1)
 key (3)
 keyed (4)
 kind (3)
 kindly (1)
 kitchens (1)
 KNIGHT (2)
 know (11)
 knowledge (1)
 known (1)
 knows (1)
 Krause (1)

< L >

labeled (2)
 lacks (2)
 lady (1)
 land (1)
 Landing (1)
 landscape (1)
 landscaping (8)
 language (1)
 large (3)
 larger (3)
 late (1)
 law (7)
 lawns (1)
 laws (4)
 lawyers (1)
 laymen (1)
 layouts (1)
 leading (1)
 leads (1)
 learned (2)
 lease (1)
 leave (3)
 left (4)
 legal (7)
 lengthy (1)
 letter (2)
 letters (1)
 level (2)
 levels (1)
 line (7)
 listed (1)
 litigation (1)
 little (5)
 Live (6)
 lives (1)
 LLC (2)
 LLCs (1)
 lobbies (2)
 local (2)
 located (1)
 location (2)
 lodging (2)
 long (1)
 longer (1)
 look (5)
 looked (1)
 looking (2)

looks (2)
 Losse (1)
 lost (1)
 lot (8)
 loud (1)
 love (1)
 lower (1)
 Lucas (2)
 LUCEY (19)
 Lucey's (3)
 LUCIC (3)

< M >

mailed (1)
 maintain (1)
 majority (1)
 making (3)
 man (2)
 March (1)
 massive (1)
 matches (1)
 material (1)
 math (2)
 matter (3)
 matters (2)
 mean (1)
 means (2)
 meant (1)
 measured (1)
 meeting (4)
 MEGAN (1)
 MEMBER (1)
 members (1)
 memoranda (1)
 memorandum (1)
 memos (1)
 mentioned (3)
 merit (2)
 met (3)
 middle (4)
 Mike (2)
 Mill (14)
 minimal (1)
 minimum (1)
 minutes (17)
 misinterpreted (1)
 modern (1)
 mom (2)
 month (2)

months (3)
 morning (2)
 mother (1)
 motion (13)
 MOUNT (6)
 Mountain (1)
 move (8)
 Mt (1)
 multi-family (1)
 municipality (1)

< N >

name (10)
 narrow (1)
 nature (1)
 navigate (1)
 NCRA (1)
 nearly (1)
 necessarily (1)
 need (2)
 negative (1)
 neighbor (1)
 neighborhood (18)
 neither (1)
 nervous (2)
 new (1)
 newfound (1)
 news (2)
 Nick (1)
 night (1)
 nonconforming (1)
 normal (1)
 North (4)
 Northcutt (1)
 Nos (1)
 Notary (1)
 note (2)
 noted (1)
 notice (2)
 noticed (1)
 notification (1)
 November (1)
 number (4)
 numbers (1)
 numerous (1)

< O >

Oak (3)
 Oaks (3)

oasis (2)
 Obviously (1)
 occupy (2)
 o'clock (1)
 offer (1)
 office (2)
 officer (1)
 offices (1)
 official (1)
 off-street (3)
 Okay (1)
 old (2)
 ones (1)
 one-two (1)
 on-site (1)
 on-street (2)
 open (9)
 open-ended (1)
 openly (1)
 opportunity (1)
 oppose (1)
 opposed (2)
 opposition (3)
 order (1)
 ordinance (8)
 ordinances (3)
 outside (3)
 overlay (2)
 owned (2)
 owner (1)
 owners (2)
 owns (1)

< P >

p.m (1)
 Pad (2)
 Page (32)
 Pagliarini (3)
 paragraphs (1)
 parcel (2)
 parcels (5)
 park (2)
 parked (1)
 parking (34)
 part (7)
 participate (1)
 particular (4)
 parties (4)
 parts (1)

party (5)
 passed (2)
 pave (2)
 paving (1)
 pedestrian (1)
 penalty (2)
 pending (1)
 people (9)
 peppered (1)
 percent (4)
 perjury (2)
 permanent (2)
 permissible (3)
 permit (2)
 permitted (2)
 person (1)
 person-to-person (1)
 perspective (1)
 pertaining (1)
 petition (1)
 pick (1)
 picture (1)
 piece (5)
 pieces (1)
 place (3)
 plainly (1)
 plan (3)
 planning (3)
 plans (5)
 PLEASANT (7)
 please (10)
 plenty (1)
 point (4)
 pointed (1)
 points (2)
 pool (2)
 possible (1)
 post-COVID (1)
 posted (1)
 potential (1)
 powers (1)
 prejudice (2)
 present (2)
 presentation (2)
 presented (1)
 pretty (2)
 previous (1)
 previously (1)
 primary (1)

prior (1)
 private (3)
 probably (4)
 problems (1)
 procedures (2)
 process (4)
 professional (5)
 prohibit (1)
 project (24)
 properties (5)
 property (21)
 proposed (2)
 proposing (1)
 protect (2)
 protected (3)
 protecting (1)
 protective (1)
 proven (1)
 provide (4)
 provided (4)
 proving (1)
 provisions (1)
 public (16)
 pull (1)
 purpose (1)
 purposes (1)
 pursuant (2)
 purview (1)
 pushing (1)
 put (6)

< Q >

quality (1)
 question (2)
 questions (7)
 quicker (1)
 quickly (2)

< R >

raise (3)
 ramp (1)
 range (2)
 ratio (1)
 ratios (2)
 RAVALICO (4)
 read (1)
 real (1)
 really (6)
 rear (2)

reason (1)	requires (3)	Section (2)	solution (1)
reasons (1)	reservation (1)	sections (1)	solved (1)
rebuttal (3)	residential (4)	see (16)	someone's (2)
receive (1)	residentially (1)	Seeing (3)	sorry (3)
received (2)	respectfully (1)	seeking (1)	sort (4)
reception (1)	responding (1)	seen (4)	sources (1)
recess (1)	responses (1)	sell (1)	SOUTH (7)
recognize (1)	responsibility (1)	sellers (1)	space (7)
record (6)	rest (1)	sense (2)	spaces (13)
recorded (1)	restaurants (2)	separation (3)	speak (8)
recreational (1)	restrict (1)	separations (3)	speaking (5)
recuse (1)	result (1)	SEPTEMBER (3)	special (2)
red (4)	reverse (1)	serves (1)	specific (1)
reduce (1)	Review (4)	session (5)	specifically (2)
reduction (2)	reviewed (1)	set (1)	spiral (1)
refer (1)	rezoned (1)	setting (1)	spoke (3)
reflect (1)	rid (1)	seven (4)	spots (1)
regarding (1)	right (12)	share (3)	spring (1)
Registered (2)	right-hand (1)	sharing (1)	staff (28)
regulations (1)	right-of-way (12)	shed-like (1)	staff's (1)
re-hearing (1)	RMR (1)	Shem (3)	stair (1)
REILLY (2)	road (5)	shorter (1)	stairs (1)
reinforce (1)	roadway (1)	short-term (1)	stand (2)
reiterate (1)	ROBERTSON (4)	shot (1)	standard (2)
related (1)	role (2)	show (3)	standing (6)
relevant (1)	roof (6)	showed (2)	started (2)
remember (1)	rooftop (6)	showing (3)	State (7)
remind (1)	room (21)	shows (3)	States (2)
reminding (1)	rooms (20)	side (1)	station (1)
removal (1)	Ross (2)	sidewalk (1)	statutory (1)
Removing (1)	round (1)	sign (1)	stay (5)
rent (1)	RPR (1)	similar (2)	staying (1)
rental (2)	rules (1)	Simmons (4)	stenographically (1)
replace (2)	ruling (2)	simply (2)	step (1)
report (1)	run (1)	single (4)	STEPHEN (2)
REPORTER (4)	rushing (1)	sir (8)	STEVENS (3)
REPORTING (1)		sit (1)	stick (1)
represent (1)	< S >	site (3)	storage (1)
representative (2)	salient (1)	sitting (1)	stores (1)
represented (1)	Sawmill (1)	situation (4)	stories (1)
representing (1)	saying (2)	size (1)	story (1)
represents (1)	says (4)	sketch (1)	STR (1)
request (4)	SC (1)	skills (1)	Street (25)
requested (1)	scale (5)	slide (3)	streets (1)
requests (1)	scope (1)	slow (1)	strict (1)
require (1)	Scott (3)	small (4)	strictly (1)
required (2)	Scratch (2)	smaller (2)	structure (1)
requirement (2)	seal (1)	soften (1)	structures (2)
requirements (7)	second (13)	solid (1)	studies (2)

stuff (3)
 submit (1)
 submittal (1)
 submittals (1)
 submitted (3)
 substantial (2)
 subsumed (1)
 suffered (1)
 suitability (2)
 suite (5)
 Suites (1)
 suite-style (1)
 Sum (1)
 Summit (1)
 support (2)
 supposed (6)
 suppositions (1)
 Supreme (4)
 sure (7)
 surprised (1)
 surrounded (2)
 surrounding (3)
 suspect (1)
 swear (2)
 switch (1)
 sworn (3)

< T >

table (1)
 take (4)
 taken (1)
 talk (7)
 talked (1)
 talker (1)
 talking (3)
 tall (1)
 tangent (1)
 task (1)
 taxed (1)
 taxing (2)
 team (1)
 technical (1)
 tell (3)
 telling (1)
 tenant (1)
 term (3)
 testify (1)
 testimony (3)
 tests (1)

Thank (26)
 thereof (1)
 thing (6)
 things (4)
 think (9)
 third (1)
 thought (1)
 threatening (1)
 three (12)
 threshold (1)
 through-way (1)
 tides (1)
 TIME (20)
 timeliness (3)
 timely (1)
 times (1)
 timing (1)
 TMS (3)
 today (1)
 told (1)
 tonight (14)
 tonight's (1)
 top (8)
 total (3)
 TOWN (31)
 townhouse (1)
 townhouses (2)
 Town's (6)
 traffic (1)
 TRANS (1)
 TRANSCRIBED (2)
 TRANSCRIPTION (3)
 transformer (3)
 Transformers (2)
 travel (2)
 traveler (3)
 travelers (1)
 treated (1)
 tree (3)
 trees (18)
 tried (2)
 true (1)
 trusses (2)
 truth (8)
 try (3)
 trying (11)
 Tuesday (1)
 turn (1)

turning (1)
 two (16)
 typical (2)
 typically (5)
 < U >
 Uber (2)
 uncovered (4)
 understand (3)
 understanding (1)
 unexplained (1)
 unique (1)
 uniquely (1)
 unit (2)
 United (2)
 units (4)
 unnecessary (1)
 unreasonably (1)
 untimely (1)
 uphold (2)
 urge (1)
 use (7)
 uses (3)
 utility (1)
 utilization (1)
 utilizing (3)

< V >

V-41-21 (1)
 VAR (1)
 variance (5)
 various (2)
 vegetation (1)
 vehicle (2)
 version (1)
 vicinity (1)
 VIDEO (1)
 Village (1)
 violates (3)
 violating (1)
 VIP (1)
 visibility (1)
 visit (1)
 volition (2)
 voluminous (1)
 volunteer (1)
 volunteers (2)
 votes (1)

< W >

walk (7)
 walks (1)
 walkway (1)
 walls (1)
 want (15)
 wanted (6)
 wants (2)
 WASHBURN (2)
 way (9)
 ways (2)
 webbing (1)
 weeks (1)
 well (5)
 we're (22)
 wet (1)
 wetland (1)
 wetlands (1)
 We've (7)
 Wharf (1)
 whatsoever (1)
 wide (1)
 wish (1)
 withdrawn (1)
 Witness (1)
 WOLFF (2)
 wonder (1)
 WOOD (7)
 WOODY (2)
 work (3)
 worked (3)
 working (1)
 works (1)
 writing (1)
 written (1)
 wrong (1)
 WWW.CLARK-ASSOCIATES.COM (1)

< X >

Xs (4)

< Y >

year (1)
 years (5)
 yellow (1)
 young (1)

<Z>
Zac (1)
zero (1)
zeroed (1)
zone (1)
zoned (2)
ZONING (25)

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.	)	APPELLANT’S MEMORANDUM IN
	)	SUPPORT OF APPEAL PETITION
The Town of Mount Pleasant, South	)	
Carolina; The Town of Mount Pleasant	)	(BOZA 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.	)	

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.	)	APPELLANT’S MEMORANDUM IN
	)	SUPPORT OF APPEAL PETITION
The Town of Mount Pleasant, South	)	
Carolina; and The Town of Mount Pleasant	)	(DRB Appeal)
Commercial Design Review Board,	)	
	)	
Respondents.	)	

Appellant CKC Properties, LLC (“CKC”) hereby files this memorandum in support of its Appeal Petitions filed in the above-captioned matters. For the reasons below, CKC respectfully requests this Court reverse the Town of Mount Pleasant Board of Zoning Appeals’ (“BOZA”) Order that reversed the Town Zoning Administrator’s final approval of the off-street parking plan for CKC’s Shem Creek Boutique Hotel project. CKC further respectfully requests this Court

reverse the Town of Mount Pleasant Design Review Board's ("DRB") order deferring a decision on the project so it may continue through the development review process.

RECORD ON APPEAL AND BACKGROUND

Record on Appeal

On August 24, 2022, the Town and 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 Town and the BOZA filed a Supplement of 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 own expense, denying the Motion to Supplement the Record in all other respects.

On April 20, 2023, the Town and 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.

The aforementioned items comprise the “BOZA Record.”

On August 24, 2022, the Town and the DRB filed the Record on Appeal in the instant DRB Appeal pursuant to S.C. Code Ann. § 6-29-920(A). The documents therein include the following:

- Exhibit A - DRB’s Deferral Order re: August 25, 2021 DRB Meeting;
- Exhibit B - Petitioner’s Appeal Petition with Exhibits;
- Exhibit C - August 25, 2021 DRB Meeting Agenda;
- Exhibit D - August 25, 2021 DRB Meeting Minutes;
- Exhibit E - August 25, 2021 Staff Report; and
- Exhibit F - Shem Creek Boutique Hotel Preliminary DRB Submittal.

(collectively, “DRB Record”).

The citations to the Record herein refer to the aforementioned items.

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

These appeals involve a twenty-seven (27) room boutique hotel to be located on 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, and CKC is the developer of the “Shem Creek Boutique Hotel” (the “Project”). (BOZA Record, Exhibit J, p. 1.)

The Properties are zoned Neighborhood Commercial (NC) and are located in the Boulevard Overlay District (BOD). (BOZA Record, Exhibit F, p. 1.) 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 BOD. (*Id.*) 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 the “Boutique Hotel” use, which has been allowed in the NC District for decades.¹

CKC contracted to purchase the Properties on or about October 2020. Shortly thereafter, CKC and its engineering and architecture team began working closely and collaboratively with Town staff on plans for the Project. As recounted by the Zoning Administrator in the BOZA Staff Report, “[t]he Zoning Administrator discussed off-street parking requirements with the developer of the Shem Creek Boutique Hotel on or around February and March 2021.” (BOZA Record, Exhibit C, p. 5.) “The developer proceeded with project design and site-specific development plans based on the determination made by the Zoning Administrator.” (*Id.*) At the time of this approval, Kent Prause was the Town’s Zoning Administrator.² CKC purchased the Properties for \$1.45 million in reliance on the NC District zoning, which allows a “Boutique Hotel” use as a matter of right.

Based on this feedback and confirmation from the Zoning Administrator, CKC and its team developed a site-specific development plan for the Project. The plan was carefully crafted, in close collaboration with the Zoning Administrator and Town staff, to satisfy all applicable zoning regulations without the need for any discretionary entitlements such as variances, special

¹ 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.

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

exceptions, or a rezoning. Only DRB review and approval would be required prior to building permit eligibility.

CKC “submitted plans to determine feasibility of the project on March 19, 2021.” (BOZA Record, Exhibit C, p. 5.) 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.” (*Id.*)

On or about June 9, 2021, the Design Review Team (“DRT”), which includes the Town’s Zoning Administrator, confirmed the site-specific development plan for the Project complied fully with the Town’s Zoning Code. After obtaining DRT approval, CKC was able to move forward with a request for “Preliminary Approval of Site, Landscape, and Architecture.”

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.” (BOZA Record, Exhibit C, p. 5.) “The [DRB] agenda [including the Project] was posted to the Town website on July 19th, 2021, at 11:35 am.” (*Id.*)

DRB approval was the only thing standing in CKC’s way from obtaining a building permit. DRB’s scope of review is limited to site, landscape, and architecture. It does not get to consider zoning issues such as use, height/scale/mass, and off-street parking or policy issues.

DRB Agenda Revision and Political Controversy

Approximately twenty-four (24) hours before the DRB hearing on July 28, 2021 at which the Project was set to appear, the Town staff informed CKC that the Project would be removed from the agenda due to alleged minor technical deficiencies. This late revelation surprised CKC and its engineering and architecture team, especially considering the several months of close

collaboration with Town staff and repeat assurances that the Project, as designed, fully complied with zoning.

Contemporaneously, Town of Mount Pleasant Mayor Will Haynie spoke to the press and posted on his Facebook page that he did not support the Project. On July 27, 2021, Michelle Reed, the Director of Planning, Land Use and Neighborhoods, sent an email update on the Project to the Mayor and Town Council. The email confirms, among other things, that the Project “is a permitted use by right” and “the applicant has gone through DRT.”

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!!

Town Administrator Eric DeMoura responded to Ms. Reed’s email, stating “You’re doing good. Keep your team doing their jobs, stick to the ordinances, stay professional, then stand strong.”³

Zoning Change Initiated

Less than a week after the Project was removed from the July 28, 2021 DRB agenda and while CKC’s development application was pending, the Town initiated sweeping zoning changes aimed directly at thwarting the Project.

³ These emails are being provided for the Court’s information and for background purposes only. They are not part of the certified record, as they were not made publicly available prior to the BOZA hearing. They were uncovered via FOIA request after the BOZA Hearing. **Exhibit 1.**

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 off-street 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 Project.

On December 15, 2021, Town Council gave final reading to Ordinance No. 21071.⁴ Among other things, Ordinance No. 21071 eliminates boutique hotels as an allowed use in the NC District and redefined “Guest Room” to substantially increase the off-street parking required for suite-style hotel rooms.

Justin Lucey’s Appeal

On August 12, 2021, Justin O’Toole Lucey, Esq., 415 Mill St., Inc., and 69 Scott Street, LLC (collectively, “Lucey”)⁵ sent a letter to the Town’s general counsel objecting to the Project on several fronts (the “Lucey Letter”). (BOZA Record, Exhibit H.) The Lucey Letter took issue with, among other things, various zoning, design, and policy decisions pertaining to the Project. (*Id.*)

On August 23, 2021, the Town’s staff attorney replied to the Lucey Letter. (BOZA Record, Exhibit I). This response observes that some, but not all, of the objections raised in the Lucey Letter are properly appealable to the BOZA. (*Id.*) The response concludes as follows:

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

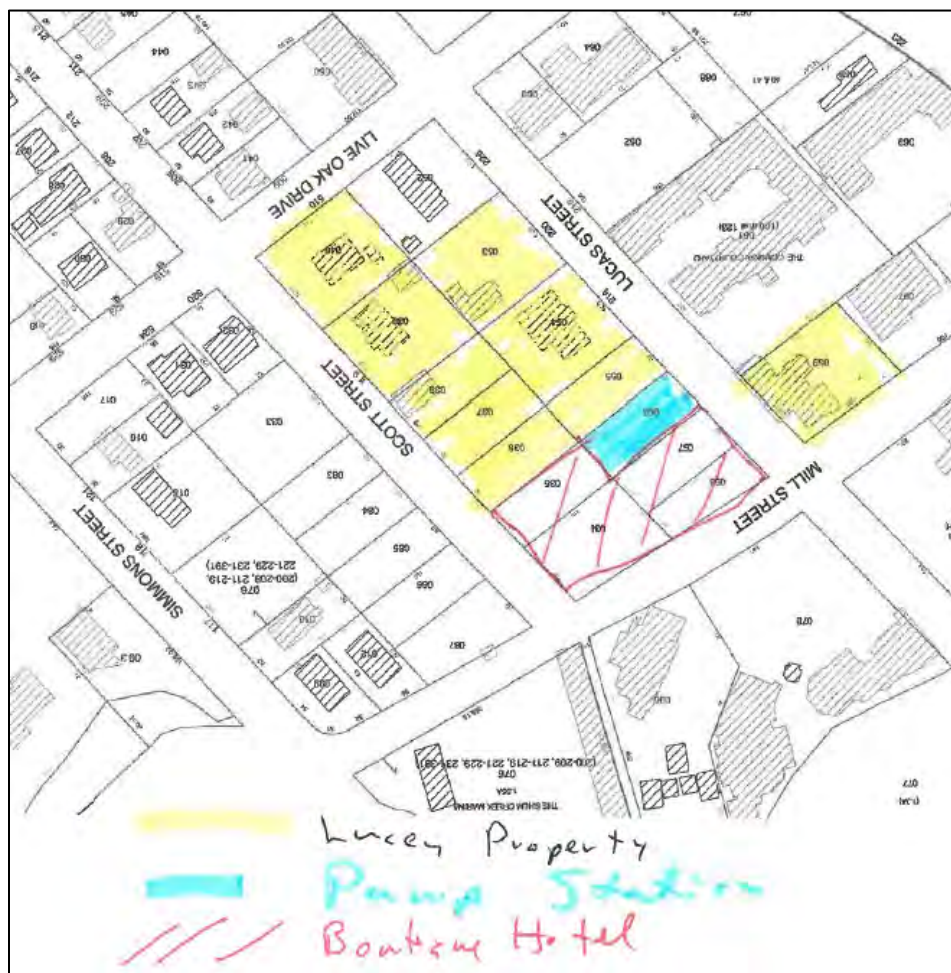
⁴ This ordinance was obviously not presented at the BOZA Hearing because it had not been adopted. However, this ordinance substantially amended the zoning ordinances relevant to this appeal and are relevant to this Court’s consideration. A copy of Ordinance No. 21071 is attached hereto as **Exhibit 2**. CKC respectfully requests Ordinance No. 21071 be placed into the record and the Court take judicial notice of same.

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

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 filled out and submitted the BOZA appeal application form through the Town's online portal (the "Lucey Appeal"). (BOZA Record, Exhibit N.) The Lucey Appeal included, as an exhibit, both the Lucey Letter (highlighted by the Town's attorney) 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.) Finally, the Lucey Appeal contained a new letter dated August 25, 2021, which contained additional arguments against the Project, including objections to its off-street parking calculations that were not present in the August 12, 2021 Lucey Letter. (*Id.*, pp. 11-16.) Lucey subsequently emailed Kara Browder, planner with the Town, on August 27, 2021 including additional documents in support of his appeal. Ms. Browder confirmed receipt on August 30, 2021.

The Lucey Appeal claims the Zoning Administrator erred when he concluded that the specific plans for the Project met the applicable use, off-street parking, height, and curb-cut regulations. Essentially, the Lucey Appeal in “shotgun style” suggests that every decision made by the Zoning Administrator was in error.

DRB Deferral Order

The Project appeared before the DRB at its August 25, 2021 meeting for Preliminary Approval of Site, Landscape, and Architecture. (DRB Record, Exhibit D.) The Town staff provided the DRB a thorough report and PowerPoint presentation concerning the project. (*Id.*) Town staff recommended the DRB grant preliminary approval because it satisfied all relevant design criteria – in addition to its satisfying all applicable zoning regulations. (DRB Record, Exhibit E.)

During the public comment period, a handful of nearby property owners and businesses – including Lucey – raised a series of non-germane objections to the Project. (DRB Record, Exhibit D, pp. 2-3.) Among other things, “Mr. Lucey expressed concern that the proposed plans are out of scale with the other adjacent buildings in height, scale, and mass . . . He expressed concern with parking and that it is not sufficient.” (*Id.*) All these objections are zoning objections – not design review objections.

CKC 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. (DRB Record, Exhibit D, p. 3.) The DRB's scope of review is limited to aesthetic matters – not zoning, 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.

After the close of public comment, the DRB voted to go into executive session. (DRB Record, Exhibit D, p. 3.) 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 CKC's request for Preliminary Approval of Site, Landscape, and Architecture. (*Id.*) The motion to defer carried unanimously. (*Id.*) 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." Upon information and belief, the deferral was based on the filing of the Lucey Appeal on August 23, 2021.

The DRB issued a signed, but undated order memorializing the decision (the "DRB Deferral Order"). (DRB Record, Exhibit A.)

On September 24, 2021, CKC appealed the DRB Deferral Order by filing a Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition (C/A No. 2021-CP-10-04416) (the "DRB Appeal").

The BOZA Hearing on the Zoning Administrator Appeal

The Lucey Appeal was heard by the BOZA at its September 27, 2021 meeting. (BOZA Record, Exhibit D.) Despite the Lucey Appeal having been formally filed on August 23, 2021 and supplemented on August 27, 2021, the Zoning Administrator noted in the Staff Report that "Mr.

Lucey filed an appeal with the Town Legal Department, as described in the agenda, on August 12, 2021.” (BOZA Record, Exhibit C, p. 5.) Therefore, the Zoning Administrator concluded:

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.

As discussed in further detail below, CKC disputes the Lucey Appeal was perfected on August 12, 2021 because it did not comply with the Zoning Code and the BOZA’s Rules of Procedure. Therefore, neither the Town’s legal counsel nor the Zoning Administrator could deem the appeal perfected on that date.

Prior to the meeting, Mike Robertson (the Town’s new Zoning Administrator as of August 2, 2021) filed two memoranda supporting the final zoning approvals for the Project. (BOZA Record, Exhibits E and F.) Exhibit E focuses on the off-street parking requirements for the Project, and Exhibit F focuses on all other zoning issues raised in the Lucey Appeal.

The Zoning Administrator summarized the rationale behind the 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). This approach corresponds to prior off-street parking plan approvals for other suite-style hotels in the Town including, but not limited to, the Staybridge Suites, Residence Inn on the Isle of Palms Connector, and the Homewood Suites.

On September 24, 2021, 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 and his entities lacked standing, and the Zoning Administrator's final approval was correct on the merits. (*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 argued 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 to the BOZA and how he arrived at the interpretation that a “Guest Room” meant an individually keyed unit – not a bedroom. He concluded his remarks on off-street parking by stating, “Council does not give any discretion to the staff to determinate 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 got up and made his arguments, as the appellant. During the entirety of his remarks and rebuttal, Lucey did not even raise the issue of off-street parking. Instead, he focused on tree issues, floor area ratios, the definition of “boutique hotel,” and other miscellaneous matters. (BOZA Record, Exhibit S, 7:21–12:14; 35:17–39:23; Exhibit D.)

Then, the BOZA opened the floor to public comment. CKC's counsel and representatives spoke in favor of the Zoning Administrator's decisions and against the Lucey Appeal. (BOZA Record, Exhibit D.) Counsel for the owner of the Properties commented further on standing and mentioned prior attempts by Lucey to purchase the Properties. (*Id.*) 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, specifically the off-street parking calculations. (*Id.*)

After the close of public comment, the BOZA immediately and without any public deliberation whatsoever moved to go into executive session to obtain "legal advice." No specific issue was disclosed – just "legal advice," in general. The BOZA remained behind closed doors for approximately 30 minutes. When the BOZA returned, one member – reading from a prepared script – moved to reverse the Zoning Administrator on the off-street parking calculation 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. 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 as the Zoning Administrator had determined and argued at the hearing. The motion unanimously carried without any discussion. (BOZA Record, Exhibit S, 40:8–41:21; Exhibit D.)

The BOZA's reversal of the off-street parking plan, approved by the Zoning Administrator, effectively halted the Project. To date, CKC has spent approximately \$500,000.00 in engineering and architecture fees, legal fees, and other expenses related to this project and in reliance on the Town's repeated confirmation and assurances that the Project fully complied with zoning, including off-street parking requirements. Additionally, CKC purchased the Properties for \$1.45

million in reliance on the NC District zoning, which allows a “Boutique Hotel” as a matter of right.

CKC’s Appeal of the BOZA Decision

The final order of the BOZA, memorializing its September 27, 2021 decision, 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.*)

On November 16, 2021, CKC filed a “Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition” pursuant to S.C. Code Ann. §§ 6-29-820, -825(A). The 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 Project’s off-street parking plan. CKC also challenged the timeliness of the Lucey Appeal and Lucey’s standing. CKC agrees with the BOZA Order insofar as it upheld the Zoning Administrator’s final determination that the Project satisfies all other applicable provisions of the Zoning Code.

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)).

“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).

ARGUMENT

I. The Lucey Appeal was Untimely, the BOZA Lacked Jurisdiction to Consider it, and this Court Can Reverse the BOZA Order on this Ground Alone

The jurisdictional time limits for appealing zoning administrator decisions are not idle recommendations or flexible concepts that can administered by the Town’s legal counsel and the Zoning Administrator as they deem appropriate. They are hard and fast rules established by the General Assembly and the Town Council, which must be strictly observed. 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. Alternatively, an opponent could wait until a project was actually built before contesting a zoning interpretation. Obviously, this would produce absurd 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 strictly comply with the procedures to perfect an appeal.

A zoning appeal must be perfected within the 30-day appeal period. *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000) (holding the timeliness of an appeal is jurisdictional). An appellant cannot amend an appeal outside the 30-day appeal window. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). “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 Envtl. Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008).

The Zoning Code states that a zoning administrator 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.**” Section 156.411(A)(5)(a); see also, S.C. Code Ann. § 6-29-840(A) (emphasis added).

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) (emphasis added). “**Incomplete applications will be returned to the applicant.**” Section 156.413(D)(2) (emphasis added). The BOZA’s Rules of Procedure go on to state 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.” (BOZA Record, Exhibit O, Section II(3)(A)) (emphasis added).

The parties contest when Lucey received “actual notice” of the Zoning Administrator’s approval of the Project.⁶ However, *at the very latest*, Lucey received actual notice along with the rest of the public on July 19, 2021, when the Town posted the July 28, 2021 DRB agenda online, which included the Project. This was the Zoning Administrator’s position regarding when Lucey obtained actual notice, according to the Staff Report. (BOZA Record, Exhibit C, p. 5.)

Going by the Zoning Administrator’s position on when Lucey acquired actual notice, Lucey had 30 days from July 19, 2021 to appeal to the BOZA. Thirty (30) days from July 19, 2021 is August 18, 2021.

The Lucey Appeal was not properly filed and perfected until, at the earliest, August 23, 2021. (BOZA Record, Exhibit N.) This was five days past the deadline. Not until August 23, 2021 did Lucey file the required applications and forms through the Town’s online application portal and pay the appeal fee, as the Town’s counsel instructed him to do. (*Id.*) Completing and submitting the zoning administrator appeal form online, filling out all necessary forms, and payment of the appeal fee 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. Additional materials were e-mailed by Lucey to Town staff on August 27, 2021, receipt of which was confirmed on August 30, 2021.

⁶ On April 26, 2021, Lucey sent a letter to the Town and BOZA objecting to the Project. (BOZA Record, Exhibit J; Exhibit B). The letter, among other things, objects to the off-street parking plan for the project, alleging “this small neighborhood has extreme parking problems” and “the parking plan for this project is misleading.” By all accounts, Lucey had notice of the Project and its off-street parking plan in April of 2021 – several months prior to August 23, 2021, when his appeal was filed with the Town.

Both the Staff Report and the Order conclude that the Lucey Appeal was perfected on August 12, 2021. This is the date the Lucey Letter was apparently sent to the Town's general counsel – not the BOZA or the Zoning Administrator. *See*, Section 156.411(A)(5)(a) (requiring a zoning administrator appeal be filed “with the officer from whom the appeal is taken and with the Board of Zoning Appeals”). The Lucey Letter contains a host of zoning, design, and general policy objections to the Project. The Town's August 23, 2021 response to the Lucey Letter explained that only some of the issues raised are appealable to the BOZA and directs Lucey to the Town's website where the “Board of Zoning Appeals – Appeal from Decision of Zoning Official Application” and its exhibits can be located and filed online. (BOZA Record, Exhibit I.) These exhibits include, among other things, the Town's “Property Owner Acknowledgement Form,” which “must be submitted with the application” along with a \$200.00 fee. (*Id.*) The Town's response complies with Section 156.413(D)(2), which provides that “[i]ncomplete applications will be returned to the applicant.” The Lucey Letter, dated August 12, 2021, was clearly materially deficient in numerous respects. The Lucey Letter is not a perfected zoning appeal satisfying the Zoning Code and BOZA Rules of Procedure. **Lucey did not submit his appeal online, sign the Property Owner Acknowledgement Form, and pay the \$200.00 fee until August 23, 2023.** The complete appeal was not received until August 27, 2021.

Neither the Town's counsel, nor the BOZA itself, has the legal authority or discretion to “deem” August 12, 2021 as the effective date of the Lucey Appeal. Doing so violates the Zoning Code and the BOZA's Rules of Procedure. Section 156.411(A)(5)(a) (requiring an appeal be filed “with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal”); Section 156.413(D)(1) (a “complete application of forms and information is required”); Section 156.413(D)(2) (“Incomplete applications will be

returned to the applicant.”); BOZA Rules of Procedure, Section II(3)(A) (“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 published on the annual schedule of meetings”). Local government staff lack the authority to administratively waive or amend ordinances. *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 241, 692 S.E.2d 499, 509 (2010).

The BOZA Order commits legal error by finding the Lucey Appeal was filed and perfected on August 12, 2021 and, thus, timely. Neither the Town’s attorney, nor Zoning Administrator, nor the BOZA itself, possessed the authority to modify Sections 156.413(D)(1) and (2) and Section II(3)(A) of the BOZA Rules of Procedure.

Lucey is an experienced 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 and the importance of perfecting appeals by strictly complying with all procedural requirements, including filing deadlines. He knew, or should have known, to file his appeal properly before the 30-day deadline expired, but he failed to do so. It is no excuse Lucey was unaware of the correct zoning appeals procedure because “citizens are presumed to know the law and are charged with exercising ‘reasonable care to protect their interests.’” *Ahrens v. S.C. Ret. Sys.*, 392 S.C. 340, 709 S.E.2d 54, 61 (2011) (quoting *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct.App.2008)). Lucey failed to do so, as demonstrated by his ham-fisted attempt to appeal in this case.

The Town staff and the BOZA’s decision to “deem” the Lucey Appeal timely filed on August 12, 2021 – **in direct violation of the Zoning Code and BOZA Rules of Procedure** – is an error of law. Had the Town staff and the BOZA strictly applied the appellate procedure, rather

than attempt to coach Lucey through the process and cut him slack for a sloppy and untimely appeal in violation of the Zoning Code and BOZA Rules of Procedure, the Lucey Appeal would never have been put on a BOZA agenda because it was filed several days past the deadline. If the law had been followed, the Project would not have been derailed back in September of 2021, and the Project would have been constructed and taking reservations by now.

CKC respectfully requests the Court reverse the BOZA Order, on the issue of off-street parking only, because the Lucey Appeal was untimely and the BOZA lacked jurisdiction to consider it.

II. Lucey and His Entities Lack Standing to Appeal because they are Not “Aggrieved” Parties

Zoning appeals are governed by strict statutory standing rules. *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012) (“The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.”). CKC argued before the BOZA that Lucey did not comply with the applicable statutory standing rules, but the BOZA disagreed. On appeal, this Court has the power to review, as a matter of law, whether Lucey possesses statutory standing under these facts.

With respect to zoning administrator appeals, like the Lucey Appeal, S.C. Code Ann. § 6-29-800(B) and Section 156.411(A)(5) limit standing to appeal zoning administrator decisions to “any person aggrieved...” (emphasis added). Neither state statute nor the Zoning Code defines the term “aggrieved,” but the case law provides ample guidance.

When interpreting a statute, one first looks to the plain meaning of the words or phrases at issue. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). Black’s Law Dictionary defines “aggrieved party” as “[a] party entitled to a remedy; esp., a party whose personal, pecuniary, or

property rights have been adversely affected by another person's actions or by a court's decree or judgement." *Black's Law Dictionary* (8th Ed. 2005).

The South Carolina Court of Appeals has similarly interpreted the term "aggrieved" in the context of a zoning appeal 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 of an administrative approval of 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 lacked standing to appeal the administrative 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).

Lucey and his entities are not "aggrieved parties" because (1) their alleged impacts are purely "conjectural and hypothetical" and (2) their interests are motivated solely by commercial, competitive concerns. Lucey has pointed to no "actual injury" to "some personal or property right" in connection with the Zoning Administrator's approval of the Project. Lucey has merely, at best, pointed to conjectural and hypothetical impacts in terms of traffic and parking in the area. However, no traffic, parking, or other technical studies, i.e., "competent evidence" were introduced

by Lucey at the BOZA hearing to support his position and none appear in the certified record on appeal. See, *Wyndham Enters., LLC v. City of N. Augusta*, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct. App. 2012) (requiring “competent evidence” on technical subjects in zoning appeals); see, also *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 206, 516 S.E.2d 439, 441 (1999) (reversing a zoning board’s denial of a special exception permit and holding that although neighboring residents testified they felt a proposed halfway house would increase traffic, there was no factual evidence presented to support that allegation).

Much like the subdivision in *Beaufort Realty Co., Inc. v. Beaufort County*, the Project has yet to be constructed; therefore, Lucey cannot point to any actual impacts suffered – be it from use, parking, traffic, or otherwise. The complete absence of any such competent evidence in the record on the alleged impacts raised by Lucey renders his alleged concerns conjectural, hypothetical, and ultimately insufficient to establish statutory standing as an “aggrieved” party in the context of a zoning appeal.

Additionally, Lucey lacks standing because his alleged concerns and impacts are wholly commercial and competitive in nature. 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 his own admission, Lucey opposes the Project due to perceived parking and other impacts to *his businesses and significant real estate holdings* in the area. None of Lucey’s properties in the immediate vicinity are residential properties. This area of Shem Creek is already highly commercialized due, in significant measure, to Lucey’s own investments, developments, and rezoning efforts.

Lucey has 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. (BOZA Record, Exhibit J, p.4.) In fact, Lucey has in recent years attempted to purchase the Properties themselves. (*Id.* at Exhibits E and F, therein.) These business competition factors cannot be ignored in the standing analysis.

Finally, it must be noted that Lucey himself recently had another of his zoning appeals challenging a by-right development in the Town dismissed with prejudice.⁷ In that case, Lucey appealed the Design Review Board's ("DRB") approval of a mixed-use office and retail building located at 515 Coleman Blvd. Both the Town and the developer argued Lucey lacked standing, and Judge Kelly agreed. Judge Kelly's order states, in relevant part, as follows on the question of statutory standing:

Furthermore, Lucey's alleged harms are purely "conjectural and hypothetical" and do not constitute an "individualized injury." Lucey's Complaint focuses on alleged traffic safety issues associated with the proposed development, but none of these technical matters are addressed by way of "competent evidence" either in the record of the DRB hearing or in the Complaint. *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 206, 516 S.E.2d 439, 441 (1999) (reversing a zoning board's denial of a special exception permit and holding that although neighboring residents testified they felt a proposed halfway house would increase traffic, there was no factual evidence presented to support that allegation); *Wyndham Enters., LLC v. City of N. Augusta*, 401 S.C. 144, 150-51, 735 S.E.2d 659, 663 (Ct. App. 2012) ("Regarding the residents' traffic concerns, we note that although there was testimony that residents felt the fireworks business would increase traffic, they failed to offer any competent evidence to support their opinions.") Lucey is an attorney – not a traffic engineer or safety expert; therefore his opinion on these technical matters does not consist of "competent evidence."

Owning adjacent real property is not enough, in and of itself, to establish statutory standing in a zoning appeal. Where the alleged harms are "conjectural and hypothetical" and not supported by "competent evidence" in the record, as they are in the instant case, statutory standing has not

⁷ CKC respectfully requests the Court take judicial notice of the Order attached hereto as **Exhibit 3**.

been established. Therefore, for the same reasoning outlined in Judge Kelly's Order, Lucey lacks statutory standing in this case.

Should the Court find that the Lucey Appeal was timely, which it was not, the Court still need not reach the merits of the appeal if it finds that Lucey lacked statutory standing. Upon such a finding, it follows that the BOZA lacked jurisdiction to consider the Lucey Appeal, 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 and Longstanding Interpretations of the Off-Street Parking Requirements for Suite-Style Accommodations Uses Like the Project

If the Court agrees with CKC that the Lucey Appeal is barred, as a matter of law, on either timeliness or standing grounds, the Court need not delve into the substantive merits of the BOZA Order's conclusions regarding off-street parking and the proper interpretation of "Guest Room."⁸ However, should the Court decide to reach the merits of the instant appeal, it should find that the BOZA erred by reversing the Zoning Administrator's approval of the Project's off-street parking plan.

"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

⁸ If the Court reverses the BOZA Order solely on timeliness or standing grounds, the Zoning Administrator's original approval of the site-specific development plan from the Project would stand as the final decision and the law of the case. No appeal from the Zoning Administrator's determination would have been timely filed within the 30-day time period.

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). “In construing ordinances, the terms used must be taken in their ordinary and popular meaning.” *Charleston Cnty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995). 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).

This Court must grant, and the BOZA should have granted, 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.”). CKC respectfully requests this Court grant the Zoning Administrator’s final approvals of the Project the necessary and appropriate deference under the law, which the BOZA rejected without any public discussion whatsoever. Both Mike Robertson, the current Zoning Administrator, and Kent Prause, the former Zoning Administrator, concluded that the Project complied with the applicable off-street parking requirements.

Before turning to an analysis of the competing interpretations of “Guest Room,” CKC 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 has held as follows:

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.”) Put simply, this means that zoning ordinances must be strictly construed in favor of the property owner – not the government, neighbors, or others.

The ordinance language at issue here is the term “Guest Room” as it appears in the Town’s off-street parking table in Section 156.171(A). The term “Guest Room” was *undefined* in Section 156.007 of the Zoning Code (“Definitions”) at the time of CKC’s application and the BOZA hearing on September 27, 2021.⁹ The off-street parking table appeared as follows at the time of the BOZA hearing:

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

⁹ On December 15, 2021, Town Council gave final reading to Ordinance No. 21071. 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, increasing the amount of off-street parking required for suite-style hotel rooms. These ordinance amendments were put into motion in August 2021 in response to political pushback from Lucey and others concerning the Project.

The Zoning Administrator determined CKC's site-specific development plan for the Project satisfied the off-street parking requirements of Section 156.171(A). In so doing, and as set forth in greater detail in the Zoning Administrator's "Staff Brief #1" presented to the BOZA, the Zoning Administrator found that the term "Guest Room" refers to an individually keyed lodging unit – not each bedroom within a unit in a suite-style guest room (as Lucey maintains and the BOZA ultimately found). (BOZA Record, Exhibit E). "Staff Brief #1," which CKC fully supports and incorporates herein by reference, 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 CKC's team testified extensively about the Town's longstanding interpretation of "Guest Room," in the hotel context, at the BOZA hearing.

At the BOZA hearing, the Zoning Administrator offered the following analysis in support of his determination and approval of the Project's off-street parking plan:

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.

(BOZA Record, Exhibit E, p. 3). In further support, the Zoning Administrator offered the following legislative history:

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.**

(*Id.*) (emphasis added).

Based on the foregoing analysis and as discussed in more detail in Staff Brief #1, the Zoning Administrator presented his – and the prior Zoning Administrator’s – final determination regarding the Project 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) (underlining in original, bold added).

The BOZA’s competing interpretation, which was revealed publicly only after a 30-minute closed door executive session and no public deliberation by the BOZA whatsoever, turns the Zoning Administrator’s interpretation on its head by reading “Guest Room” to refer to a bedroom *within a unit*. This interpretation finds no support in the text of the Zoning Code and produces absurd results. Requiring one or two spots per bedroom would necessitate excessive amounts of off-street parking that is in no way 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 suite-style accommodations uses.

Lucey’s interpretation would also be wildly inconsistent with how the Project’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 Project. In the age of Uber and Lyft, the off-street parking calculations for accommodations uses should actually be less than those for primary residence townhomes. Lucey’s interpretation is an

unreasonable one that produces absurd results. The BOZA erred by accepting this interpretation offered by Lucey in an effort to kill the Project.

Finally, Town Council's adoption of Ordinance No. 21071 reveals the error of the BOZA's off-street parking analysis. This ordinance, which was the direct end-product of a political backlash to the Project,¹⁰ substantially amends the off-street parking rules for boutique hotels. It does so by, for the first time ever, defining "Guest Room" and creating a new phrase "Guest Suite" 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*.

Recall, the term "Guest Room" was undefined at the time of CKC's application and the BOZA hearing. Ordinance No. 21071 amends the off-street parking table as follows:

§ 156.171 SCHEDULE OF OFF-STREET PARKING SPACE REQUIREMENTS.

Use Category	Use	Spaces Required¹		Unit of Measure	Notes
Residential	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.
Commercial	Accommodations and lodging	1 2	Guest Room <u>Guest Suite</u>		<u>If more than 4 Guest Rooms in a Guest Suite, 1 additional space shall be required per 2 Guest Rooms. Employee parking shall be required at 2 spaces for Boutique Hotels and 3 spaces for Hotels and Extended Stay Hotels.</u>

¹⁰ Ordinance No. 21071 also removed "Boutique Hotel" as a use allowed by-right in the NC District where the Properties and the Project are located.

Ordinance No. 21071 essentially legislatively adopts the off-street parking ruling contained in the BOZA Order. This demonstrates the weakness of the BOZA's legal analysis and conclusions on the interpretation of "Guest Room."

The reason is simple. If the BOZA's reversal of the Zoning Administrator found legal support in Section 156.171, as it read at the time of CKC's application and the BOZA Hearing, there would have been no reason to change the off-street parking rules via Ordinance No. 21071 to reflect the result reached by the BOZA. The fact that legislative changes were necessary demonstrates that the BOZA lacked the legal authority to interpret "Guest Room" in a manner completely divorced from the text. The BOZA's decision, therefore, constitutes policy making and an arbitrary and capricious decision.

The BOZA's newfangled interpretation of "Guest Room" not only materially prejudices CKC and the Project, 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 should be upheld.

CKC contends that the Zoning Administrator's interpretation of "Guest Room" is clearly correct based on the above authorities. However, to the extent this undefined term in the Zoning Code is deemed to be ambiguous or capable of competing interpretations, South Carolina law compels that the term be strictly construed in favor of the free exercise of property. *Helicopter*

Solutions, Inc. v. Hinde, supra. Therefore, this legal dispute must be settled in favor of CKC – not the BOZA and certainly not Lucey.

IV. The BOZA Committed an Error of Law and Abuse of Discretion by Conducting the Entirety of its Substantive Deliberations in Executive Session and Violating the FOIA

The BOZA violated the Freedom of Information Act (the “FOIA”) by conducting the entirety of its substantive deliberations on the Lucey Appeal behind closed doors under the guise of receiving legal advice. Further, the BOZA transcript reveals the BOZA’s motion, which was ultimately unanimously approved, was formulated and voted on in executive session in violation of the FOIA.

Immediately after the BOZA Chair closed public comment and prior to any BOZA member discussion whatsoever, the following exchange occurred:

THE CHAIRMAN: Thank you, Mr. Robertson. With that we’ll close the public comments and open it up to deliberations.

MR. WOOD: Mr. Chairman, I would move the board move into executive session to receive the advice of counsel on this matter.

MR. HOPKINS: Second.

THE CHAIRMAN: We have a motion and a second to move to executive session. All in favor? (Aye) Any opposed? We will move into executive session.

MEMBER OF THE AUDIENCE: Wasn’t there supposed to be another round of public comment?

(Brief recess.)

THE CHAIRMAN: The board is back and out of executive session. No votes were taken. No decisions were made. We’ll open it up to the board for deliberation of the motion.

MR. WOOD: I’ll offer a motion, Mr. Chairman, in Case A-10-21, TMS 517-16-00-058, 057, 034, and 035 -- I would move to grant the appeal on the grounds that in the ordinances that the Town has passed a boutique hotel is defined as having 50 or fewer lodging units, but when defining the parking requirements, it chose not to use that same term, but used the term instead “guest rooms,” and therefore I believe

that the staff misinterpreted the term “guest rooms,” and therefore the number of parking spaces would be insufficient for this particular property, and on the other matters I would move to deny the appeal.

THE CHAIRMAN: So we have a motion to grant the appeal.

MR. HOPKINS: I’ll second.

THE CHAIRMAN: We have a motion and a second. Is there any discussion? Seeing none, I’ll call the motion. All in favor of the motion? (Aye) Any opposed? The motion on the appeal is granted.

(BOZA Record, Exhibit S, 40:8–41:21.) This exchange is the entirety of the BOZA’s deliberation on the Lucey Appeal. The entire deliberation took place behind closed doors and zero deliberation by the BOZA took place publicly. The only conclusion that can be reached is that the substantive discussions and decision took place in executive session, which is improper and violative of the FOIA.

“The essential purpose of FOIA is to protect the public from secret government activity.” *Wiedemann v. Town of Hilton Head Island*, 330 S.C. 532, 535 n. 4, 500 S.E.2d 783, 785 n. 4 (1998). However, a public body may hold “a meeting closed to the public,” i.e., an executive session, under specific circumstances. S.C. Code Ann. § 30-4-70(a)(1)-(6). Before going into executive session, the public body must take a vote and “the presiding officer shall announce the **specific purpose** of the executive session.” S.C. Code Ann. § 30-4-70(b) (emphasis added). The South Carolina Supreme Court has held that the “specific purpose” requirement cannot be satisfied by mere conclusory statements. *See Donohue v. City of North Augusta*, 412 S.C. 526, 531-33, 773 S.E.2d 140, 142-43 (2015) (announcement that “contractual matter” would be discussed in executive session insufficient to satisfy “specific purpose” requirement of section 30-4-70(b)).

As an initial matter, the BOZA violated the FOIA by failing to announce a “specific purpose” prior to entering executive session. A public body may enter executive session for “the

receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.” S.C. Code Ann. § 30-4-70(a)(2). One questions what legal interests the BOZA has as a quasi-judicial rather than legislative body. This question was not answered, much less clarified, by the BOZA’s invocation of the executive session power. The basis of his motion was merely “to receive the advice of counsel on this matter.” This general, conclusory motion was insufficient to satisfy the “specific purpose” requirement under *Donohue v. City of North Augusta, supra*. Such general, opened ended legal advice is not appropriate – especially for boards of zoning appeals in a zoning administrator appeal where the sole, limited issue before the board is whether the zoning administrator erred in his interpretation of the zoning ordinance, which is itself a legal issue.

The BOZA also committed a FOIA violation by unlawfully “polling” its members in executive session, preparing and drafting a motion, and obtaining unanimous consensus its ultimate decision. A public body cannot take any action in executive session other than to adjourn or return to public session. S.C. Code Ann. § 30-4-70(b). Importantly, the “members of a public body may not commit the public body to a course of action by a polling of members in executive session.” *Id.* However, the transcript from the hearing leaves no doubt that the BOZA violated this prohibition. The BOZA engaged in zero public deliberation on any of the issues raised in the Lucey Appeal after the close of public comment. After the close of public comment, Mr. Wood immediately moved to go into executive session and his motion was unanimously approved without discussion or any clarification of purpose. As the BOZA minutes reflect, “[t]he Board convened into executive session at 7:20 pm and reconvened at 7:50 pm.” (BOZA Record, Ex. D, p. 7.) After this 30-minute executive session and without any public deliberation on the merits of

the Lucey Appeal whatsoever, Mr. Wood read a lengthy, detailed, and obviously prepared written motion from the executive session. The motion was quickly seconded and unanimously approved with no discussion by BOZA members whatsoever.

The BOZA conducted the entirety of its substantive deliberations on the Lucey Appeal behind closed doors in executive session, formulating consensus on the motion that was ultimately approved. This is a clear violation of S.C. Code Ann. § 30-4-70(b) and its prohibition on polling members and voting on substantive matters behind closed doors.

These FOIA violations are not only legal errors committed by the BOZA but also reveal the arbitrary and capricious nature of the ultimate decision. It is impossible for the record to be read any other way.

Facing extreme political and public pressure to deny the Project (a by-right entitled development approved by the Zoning Administrator), the BOZA contrived a complicated, technical, and ultimately pretextual basis to derail the Project behind closed doors. Lucey did not even raise the issue of off-street parking compliance during his presentation at the hearing; instead, he focused on tree issues, floor area ratios, the definition of “boutique hotel,” and other miscellaneous matters. (BOZA Record, Exhibit S, 7:21-12:14; 35:17-39:23.)

Nevertheless, the BOZA seized on the off-street parking issue to overturn the Zoning Administrator’s approval of the site-specific plan for the Project. This reveals nothing less than a coordinated and contrived scheme by the BOZA – cooked up in an unlawful executive session – to kill the Project. For these reasons, the BOZA Order must be reversed.

CONCLUSION

CKC respectfully requests the Court find that the Lucey Appeal was untimely, and Lucey lacked statutory standing. In so doing, CKC respectfully requests the Court vacate and reverse the

BOZA Order *only* with respect to its findings and conclusions regarding the Project's compliance with the Town's off-street parking regulations so that the Zoning Administrator's original approval can be reinstated, and the Project may proceed through the development review process that was interrupted by the Lucey Appeal.

To that end, CKC seeks confirmation that the Project, as depicted in site-specific development plan approved by the DRT and Zoning Administrator, satisfies all applicable requirements of the Zoning Code in effect at the time of application, including off-street parking. This is the same site-specific development plan that was to go before the DRB on August 21, 2021. The BOZA Order affirmed the Zoning Administrator's decision that the Project complied with all aspects of the Zoning Code, other than off-street parking, therefore those determinations, which were not appealed, are final decisions and remain binding on the parties.

CKC further seeks an Order directing the Town and Zoning Administrator to process the Project through the development review process under the ordinances and regulations that existed at the time CKC submitted its applications to the Town and DRB. Furthermore, CKC seeks an Order confirming the Shem Creek Boutique Hotel is vested against the application of Ordinance No. 21071 and any other ordinance enacted after CKC's applications and DRB and BOZA hearings at issue here. In so doing, CKC respectfully requests the Court reverse the DRB Deferral Order and direct the Project return to the DRB for Preliminary Approval of Site, Landscape, and Architecture.

Finally, CKC respectfully requests an order awarding attorneys' fees and costs under Code Ann. § 6-29-840(A), S.C. Code Ann. § 15-77-300, and S.C. Code Ann. § 30-4-100.

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 CKC Properties, LLC

April 21, 2023
Mount Pleasant, South Carolina

Exhibit 1

ADVERTISEMENT

Questions looming regarding proposed Shem Creek hotel



By [Summer Huechtker](#)
 Published: Jul. 28, 2021 at 7:32 AM EDT
[f](#) [m](#) [t](#) [p](#) [in](#)

MOUNT PLEASANT, S.C. (WCSC) - Mount Pleasant Mayor Will Haynie says he’s been getting non-stop phone calls this week regarding a proposed hotel in Shem Creek.

“I haven’t heard from any residents who support it,” Haynie said.

Originally, [Mount Pleasant’s Design Review Board was set to review preliminary plans on Wednesday for a proposed boutique hotel at Mill Street and Lucas Street.](#)

The Design Review Board has since cancelled Wednesday’s meeting because of technical questions.

ADVERTISEMENT

CKC Properties is the developer of the project, and they say they plan to build the proposed Mill Street Hotel right next to the Shem Creek boat landing and across from Shem Creek Crab House and Mill Street Tavern. Behind it, is a residential area.



Design plans provided by CKC Properties show the Mill Street Hotel having a total of 27 unit and three separate buildings. (CKC Properties)

Building A is proposed to be a three-story hotel. This would be the largest of the three spaces, with 19 units ranging from one, two, and three bedroom units.

ADVERTISEMENT



Plans show buildings B and C would have four units each, and each have four-bedroom family suites.

Elected officials are not a part of the design review process, but the idea of a hotel here is one Haynie says, he is strongly opposed to.



Design plans provided by CKC Properties show the Mill Street Hotel having a total of 27 unit and three separate buildings. (CKC Properties)

"This 27 rooms is not going to put a dent in the demand for tourism, but it is going to make parking, and drainage, and just the feel of Shem Creek look different," Haynie said. "So, we don't get a vote on this, but I have a history of not supporting this type of development."

CKC Properties Representative Colin Colbert says they have been working on this development for months. He believes they are not asking for anything outside of what zoning allows.

"We are very upset that they cancelled the meeting tonight," Colbert said. "We have worked with the town for the last seven months and we feel that our plans met every requirement to be reviewed for DRB preliminary approval. We plan to continue to work with the town and move forward full steam ahead."

Usually Design Review Board meetings are held monthly, but there's no word yet on if this Mill Street Hotel is on the August agenda.

Copyright 2021 WCSC. All rights reserved.

AD



Sponsored Stories



1 Day Walk-in Shower Installation: See How Much it Costs You!

WestShoreHomeBaths.com

Ross Appel

From: Michele Reed
Sent: Tuesday, July 27, 2021 1:17 PM
To: Brittany Johnson; Chris Hoover; Eddie Bernard; Jane Yager-Baumrind; Joshua Cato; Kara Browder; Katherine Miller; Kent Prause; Liz Boyles; Lynnette Lynes; Mike Robertson; Peter Stone; Susan Bettelli; Theresa Horan
Subject: FW: Shem Creek Boutique Hotel

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!! AND....shoutout to Mr. Prause last night for a job well done!!!

Michele



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



How are we doing? Please take our brief survey below.

[Planning Department Customer Survey](#)

From: Michele Reed
Sent: Tuesday, July 27, 2021 12:44 PM
To: Mayor Will Haynie <WHaynie@tompsc.com>; All Council <AllCouncil@tompsc.com>
Cc: Eric DeMoura <EDeMoura@tompsc.com>; Christiane Farrell <CFarrell@tompsc.com>
Subject: RE: Shem Creek Boutique Hotel

Mayor and Council –

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

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

1. This area is zoned NC, Neighborhood Commercial District, and is located within the Boulevard Overlay District. It is not within the Shem Creek Overlay.
2. A Boutique Hotel is a permitted use in the NC zoning district, regardless of the Boulevard Overlay District.
3. Since this is a permitted use by right, the only approvals required are through DRB for site, architecture, etc.

4. The applicant has gone through DRT (Design Review Team), which is where staff from various departments and agencies look at an application and provide feedback. They first went for a Feasibility Meeting in December of last year and again in March of this year. Most recently they went through DRT for Conceptual Review.
5. The applicant appeared before the Board of Zoning Appeals back in April requesting a variance from the height requirements. They were requesting 4 stories, which was subsequently denied. This was a public hearing and the property was posted with yellow signs.

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

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

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

Best Regards,

Michele



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



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



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

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



Eric DeMoura

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



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

Thank you. And thanks for the support/encouragement.



Michele Reed, AICP

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



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

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

Good email.



Eric DeMoura

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



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

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

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

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

Subject: RE: Shem Creek Boutique Hotel

Mayor and Council –

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

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

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

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

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

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

Exhibit 2

ORDINANCE NO. 21071

STATE OF SOUTH CAROLINA	)	AN ORDINANCE TO AMEND SECTIONS
	)	156.007, 156.171, 156.304, 156.318, 156.325 OF
COUNTY OF CHARLESTON	)	THE TOWN OF MOUNT PLEASANT ZONING
	)	CODE RELATED TO HOTELS, INNS,
TOWN OF MOUNT PLEASANT	)	BOUTIQUE HOTELS, AND PARKING
	)	REQUIREMENTS FOR THE SAME

WHEREAS, the Town of Mount Pleasant, in its Zoning Code which is identified as Chapter 156 of the Town of Mount Pleasant Code of Ordinances, contains provisions related to accommodations and lodging; and

WHEREAS, Town Council wishes to amend the Zoning Code in order to add and re-define definitions, change certain off-street parking requirements, amend provisions related to the Boulevard Overlay District, and amend the Principal Use Table; and

WHEREAS, the Mount Pleasant Planning Commission held a public hearing on _____, 2021, pursuant to the Mount Pleasant Code of Ordinances, to consider the request referenced herein; and

WHEREAS, Mount Pleasant Town Council is empowered with the authority to make amendments to the Zoning Code of the Town of Mount Pleasant and now wishes to do so as follows:

1. Amend section 156.007 to add definitions for Bedroom, Extended Stay Hotel, Guest Suite and Guest Room and to amend definitions for Hotel and Boutique Hotel;
2. Amend section 156.171, Schedule for Off-Street Parking Space Requirements for certain accommodations and lodging;
3. Amend section 156.304, Nonresidential Use Districts, related to Maximum Building Sizes;

4. Amend section 156.318, Boulevard Overlay District, related to NC uses and Maximum Building Size;
5. Amend section 156.325, Principal Use Table, to remove Boutique Hotels as a Permitted Use in the NC District.

WHEREAS, the proposed amendments are shown in Exhibit A, attached hereto.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Municipality of Mount Pleasant, in Council assembled, that Chapter 156 of the Town of Mount Pleasant Code of Ordinance is hereby amended to reflect the same.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING.

SIGNED, SEALED AND DELIVERED THIS _____ DAY OF _____, 2021.

J.W. Haynie, Mayor
Town of Mount Pleasant

Attest:

Christine Barrett
Clerk of Council

_____, 2021
Mount Pleasant, SC

Introduced: _____, 2021
Final Reading: _____, 2021

APPROVED AS TO FORM:

David G. Pagliarini
Corporation Council

EXHIBIT A

*For all changes, new language and symbols shall be underlined, and removed language and symbols shall be represented by a strikethrough. Save for the changes below, Chapter 156 shall remain intact and unchanged.

§ 156.007 DEFINITIONS.

BEDROOM. (See **GUEST ROOM**)

EXTENDED STAY HOTEL. Any HOTEL in which some or all of its GUEST ROOMS or GUEST SUITES include a stove, range or cooktop. No EXTENDED STAY shall be considered a BOUTIQUE HOTEL, regardless of the number of GUEST ROOMS or GUEST SUITES.

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.

HOTEL (includes **MOTEL** and **EXTENDED STAY**). A building or group of attached or detached buildings containing more than 25 total GUEST ROOMS intended for rental or lease to transients by the day, week or month, whether individually or combined in GUEST SUITES. A HOTEL shall have at least one full-time employee on site during daytime hours. A HOTEL typically provides services and amenities such as daily maid service, restaurant, meeting rooms, conference rooms and/or recreation facilities.

HOTEL, BOUTIQUE (includes **INN**). A building or group of attached or detached buildings containing up to 25 total GUEST ROOMS intended for rental or lease to transients by the day, week or month, whether individually or combined in GUEST SUITES. A BOUTIQUE HOTEL shall have at least one full-time employee on site during daytime hours. A BOUTIQUE HOTEL also shall provide services and amenities such as daily maid service and/or recreation facilities.

§ 156.171 SCHEDULE OF OFF-STREET PARKING SPACE REQUIREMENTS.

Use Category	Use	Spaces Required¹		Unit of Measure	Notes
Residential	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.
Commercial	Accommodations and lodging	1 2	Guest Room <u>Guest Suite</u>		<u>If more than 4 Guest Rooms in a Guest Suite, 1 additional space shall be required per 2 Guest Rooms. Employee parking shall be required at 2 spaces for Boutique Hotels and 3 spaces for Hotels and Extended Stay Hotels.</u>
	Commercial and retail (excluding shopping centers)	1	200-3 00 sq. ft.		
	Office and warehouse, including medical office	1	200-3 00 sq. ft.		For warehouse uses only, the office portion is subject to the parking requirement. Fleet parking may require additional spaces at staff discretion .
	Personal and business support services, including personal improvement education	1	200-3 00 sq. ft.		Fleet parking may require additional spaces at staff discretion .
	Restaurant, bar, nightclub, lounge, including associated decks or plazas	1 to 2	100 sq. ft.		
	Shopping center	1	250 sq. ft.		
Civic	Church or place of public assembly	3 to 5	100 sq. ft. of main assembly		For simultaneous uses, parking requirements for each use may be separately applied.
	Government facility	Warrant2			
	Medical care facility, such as a nursing home or hospital	1 to 4	Room		
	School: middle, primary, pre-school, educational nursery, day care, and similar uses	2 to 10	Classroom		
	School: secondary/high school/technical	5 to 10, or	Classroom, or		Whichever is greater at initial construction and any future alterations .
		1 to 2	100 sq. ft. of main assembly		
Recreation	Park and all other sports- related uses	Warrant2			
	Sports complex - with fixed seats (such as a field or gym)	1	3-5 seats		

§ 156.304 NONRESIDENTIAL USE DISTRICTS.

(C) *Lot, yard, height and coverage requirements.* Development standards for all Nonresidential Use Districts shall be in accordance with the following Development Standards Table except as provided in division (D) of this section.

DEVELOPMENT STANDARDS TABLE															
Nonresidential lot, yard, & height requirements	LG	OP	NC	AB	AB-2	PM-1	PI-1	ED	MO	LI	CO	CR-O	CL	WG-C	WG-H
LOT REQUIREMENTS															
Minimum lot size	10,000 sf														
Minimum building size	3,000 sf		6,000 sf												
Maximum: MINIMUM SETBACKS (in feet) - Except as provided in § 156.105, Minimum buffer/yard requirements may supersede minimum building setbacks.															
Front	25 ¹	25 ¹	30 ¹	25 ¹	30 ¹	30	30	35 ¹	25 ¹	35 ¹				2	2
Rear	25	15	15	15	15	15	15	25	10	25				2	2
Side (corner lot)	10 ¹	25 ¹	30 ¹	30 ¹	20 ¹	30	30	35 ¹	25 ¹	35 ¹				2	2
Side	10	10	10	10	10	10	10	15	10	15				none	none

§ 156.318 BOULEVARD OVERLAY DISTRICT.

(D) *Permitted uses/overlay district/area and frontage requirements.* As an overlay district, permitted uses shall be those of the underlying zoning district classification, as modified herein.

(5) Permitted uses for commercially-zoned properties are:

- (a) Duplex dwellings;
- (b) Townhouses dwellings, with no restriction on the number of units within a single building or length of individual rows of townhouse dwelling units;
- (c) Multi-family dwellings;
- (d) Permitted, conditional, and special exception uses as provided in the OP, NC, AB, CO, and PI-1 Districts, subject to their applicable requirements and approval processes, notwithstanding the following provisions:
 1. Only NC uses shall be allowed in the NC District; and
 2. Maximum building size shall remain 6,000 sf. in the NC District
- (e) Permitted, conditional, and special exception uses as provided in the AB-2 District, will be allowed only when the underlying zoning of a parcel is AB-2, and provided further that conditional and special exception uses are subject to their applicable requirements and approval processes;
- (f) Outdoor and streetside dining uses, including the sale and consumption of alcoholic beverages, shall be a permitted use in all underlying commercial use districts, provided the conditions specified in the underlying use district have been met;
- (g) Accessory uses, except Accessory Dwelling Units;
- (h) Any combination of the aforementioned uses.

§ 156.325 PRINCIPAL USE TABLE.

ZONING DISTRICT																											
PRINCIPAL USE TABLE		RC-1	RC-2	RR	CC	R-1	R-2	R-3	R-4	RTH	MF	LO	OP	NC	AB	AB-2	PI-1	PI-2	ED	MD	LI	CO	CR-O	CL	WG-C	WG-W	Use Conditions
P = Permitted Use C = Conditional Use S = Special Exception Use																											
Overnight Guest Accommodation	Short-term Rental	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	156.325(C)(5)(e)
	Boutique Hotel or Inn													~~P~~	P	P				P					P	P	
	Hotel / Motel / Extended Stay														P	P			P						P		
																										P	

(Ord. 14047, passed 8-12-14; Am. Ord. 16043, passed 7-13-16; Am. Ord. 18057, passed 8-17-18; Am. Ord. 19013, passed 4-9-19; Am. Ord. 19080, passed 12-11-19 ; Am. Ord. 21003, passed 2-9-21)

Exhibit 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2022-CP-10-03328
Justin O'Toole Lucey,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING DEFENDANT'S
	)	WIN515, LLC'S MOTION TO DISMISS
	)	PLAINTIFF'S APPEAL
The Town of Mount Pleasant, South Carolina	)	
and WIN515, LLC,	)	
	)	
Defendants.	)	

This matter comes before the Court on Defendant WIN515, LLC's ("WIN515") Motion to Dismiss Plaintiff Justin O'Toole Lucey's ("Lucey") Complaint.

The Court conducted a hearing on the matter on January 27, 2023. Lucey, an attorney himself, appeared on his own behalf, Ross Appel appeared for WIN515 and Brian Quisenberry appeared for The Town of Mount Pleasant, South Carolina (the "Town"). On January 20, 2023 Defendant WIN515, LLC filed a memorandum in support of its Motion to Dismiss. On January 23, 2023, Plaintiff Justin Lucey filed a memorandum in opposition to the Motion to Dismiss. On January 26, 2023, Defendant Town of Mount Pleasant filed a memorandum in support of WIN515 LLC's Motion to Dismiss.

The Court has fully considered WIN515's Motion to Dismiss, the memoranda of law submitted in support of and in opposition, Lucey's Complaint, the Town's Notice of Opposition and Submission of the Record before the Design Review Board filed on August 24, 2022,¹ the applicable law, and the arguments of counsel.

¹ The Town takes the position that Lucey's attempt at an appeal is "procedurally and jurisdictionally defective in several respects. Thus, the Court may deny this appeal summarily without the need to proceed further into the substance of Appellant's appeal."

The Court finds the Complaint should be dismissed, with prejudice, because Lucey lacks statutory standing to appeal the Town of Mount Pleasant Commercial Design Review Board (“DRB”) decision at issue in this case, failed to name the DRB as a necessary party, failed to timely serve the DRB as required by Rule 74, SCRCP, and failed to exhaust certain mandatory administrative remedies.

COMPLAINT’S ALLEGATIONS AND RECORD ON APPEAL

On July 25, 2022, Lucey filed a document styled a “Complaint”² against the Town of Mount Pleasant, South Carolina (the “Town”) and WIN515. The Complaint seeks an order reversing both (1) the DRB’s unanimous decision to grant June 29, 2022 “Final Approval of Site, Landscape, and Architecture” for WIN515’s three-story office/retail development at 515 Coleman Boulevard, Mt. Pleasant, SC 29464 (the “Property”) and (2) the decision to place WIN515’s project on the June 29, 2022 agenda in the first place. (Compl. ¶¶ 21, 22, 24) (Record, Ex. A, Ex. B, Ex. D). The DRB is not named as a party.

The Complaint alleges Lucey has standing to appeal the DRB’s decision because “[t]he Project is adjacent to a school, a school crossing, and a dangerous and busy intersection located at Coleman and Simmons (‘the Crossing’)” and “Plaintiff resides and owns properties near the Crossing. Plaintiff and his minor children have utilized the Crossing for a decade and continue to do so.” (Compl. ¶¶ 8, 10). The Complaint includes, as an exhibit, Lucey’s June 27, 2022 letter, which states in a footnote as follows:

As you may be aware, my main office building and annex are located at the corner of Mill and Lucas (and has been since 1999), which neighborhood is accessed by the subject intersection. My residence is on the edge of this neighborhood on Rue de

² The Complaint was filed under the “Case Sub Type” classification “Real Prop / Other 499” – not “Zoning Board – 970.” As a result, the Charleston County Clerk of Court processed the Complaint as an ordinary civil action, not a zoning appeal from a local quasi-judicial body.

Muckle. I pass through this intersection on foot, on bike, and by car many times a week, alone, or with my 3-year-old child and others.

STANDARD OF REVIEW

The Rules of Civil Procedure generally apply with respect to appeals to circuit court from “the judgement of an inferior court or decision of an administrative agency or tribunal.” Rule 74, SCRCP (“The proceedings in the circuit court shall be in accordance with these rules, and priority shall be given to the hearing and disposition of such appeals in accordance with law.”).

Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its “failure to state facts sufficient to constitute a cause of action.” In considering a motion to dismiss under Rule 12(b)(6), a court must base its ruling solely on the allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper. *Id.*

CONCLUSIONS OF LAW

South Carolina’s appellate courts have not been shy to dismiss, with prejudice, jurisdictionally defective zoning appeals. Lucey’s appeal suffers from numerous, fatal jurisdictional defects. These include the failures to allege statutory standing, to name the DRB (a necessary party to this appeal), to timely serve the DRB, and to exhaust administrative remedies. Each of these jurisdictional defects, on their own, is sufficient to dismiss the Complaint with prejudice. The Court agrees with both WIN515 and the Town that the Complaint should be dismissed with prejudice.

A. Lucey lacks statutory standing to appeal the DRB’s decision.

Lack of standing can be raised on a motion to dismiss. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014) (“Defendants move to dismiss Plaintiffs' complaint in its entirety on the ground Plaintiffs lack standing to bring any of the claims contained therein. We agree.”).

“Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation.” *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). “The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.” *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020), *reh'g denied* (Aug. 7, 2020).

The Town's Zoning Code establishes the DRB and governs the procedure for appealing its decisions. Section 156.420(A)(1) confirms the DRB is a “board of architectural review” governed by the South Carolina Planning and Enabling Act of 1994, S.C. Code Ann. §§ 6-29-310, *et seq.* (the “Act”). S.C. Code Ann. § 6-29-900(A) limits statutory standing to appeal board of architectural review decisions to those with a “substantial interest” in the decision.

Neither Lucey's Complaint nor the evidence contained in the Record on Appeal establish that Lucey has a “substantial interest” as required to confer standing sufficient to support his appeal in this case. Lucey has failed to establish that he is an owner of property “adjacent to and in the near vicinity of the proposed development at issue in this appeal. See, *Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island*, 292 S.C. 542, 357 S.E.2d 487 (Ct. App. 1987), *rev'd on other grounds*, 367 S.E.2d 160 (1988) (holding that owners of property “adjacent to and in the near vicinity of [a proposed development]” were persons with “substantial

interest” in a zoning decision to establish standing to appeal the decision). See also, *Momeier v. John McAlister*, 193 S.C. 422, 8 S.E.2d 737 (1940) (neighboring property owner alleging special injury and damage to his property because immediate neighbor was conducting funeral home in a residential district has a significant interest different from the public at large to support an action for injunction for violation of the city ordinance).

To have standing a party must also be a real party in interest. The South Carolina Court of Appeals has described a “real party in interest” as one with “a real, material, or substantial interest in the outcome of the litigation.” *Hill v. South Carolina Dept. of Health and Environmental Control*, 389 S.C. 1, 698 S.E.2d 612 (2010). Someone who is a “real party in interest” with “substantial interest” is not “one who has only a nominal, formal, or technical interest in, or connection with, the action.” *Stoney v. Stoney*, 425 S.C. 47, 819 S.E.2d 201 (2018).

The requirement that the party must have a “substantial interest” to have standing to appeal a zoning decision was discussed in detail in *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001). There, the Court of Appeals found a non-profit environmental group lacked standing because:

The League has not alleged that it or its members have suffered or will suffer an individualized injury as the result of the filing of the subdivision plats. Although the League alleges its members will suffer injury if the islands are developed, the injury is purely conjectural and hypothetical. 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.

551 S.E.2d 589.

The Complaint alleges Lucey “resides and owns properties near the Crossing. Plaintiff and his minor children have utilized the Crossing for a decade and continue to do so.” (Compl. ¶ 10). The June 27, 2022 letter, attached to the Complaint, states: “As you may be aware, my main office building and annex are located at the corner of Mill and Lucas (and has been since 1999), which

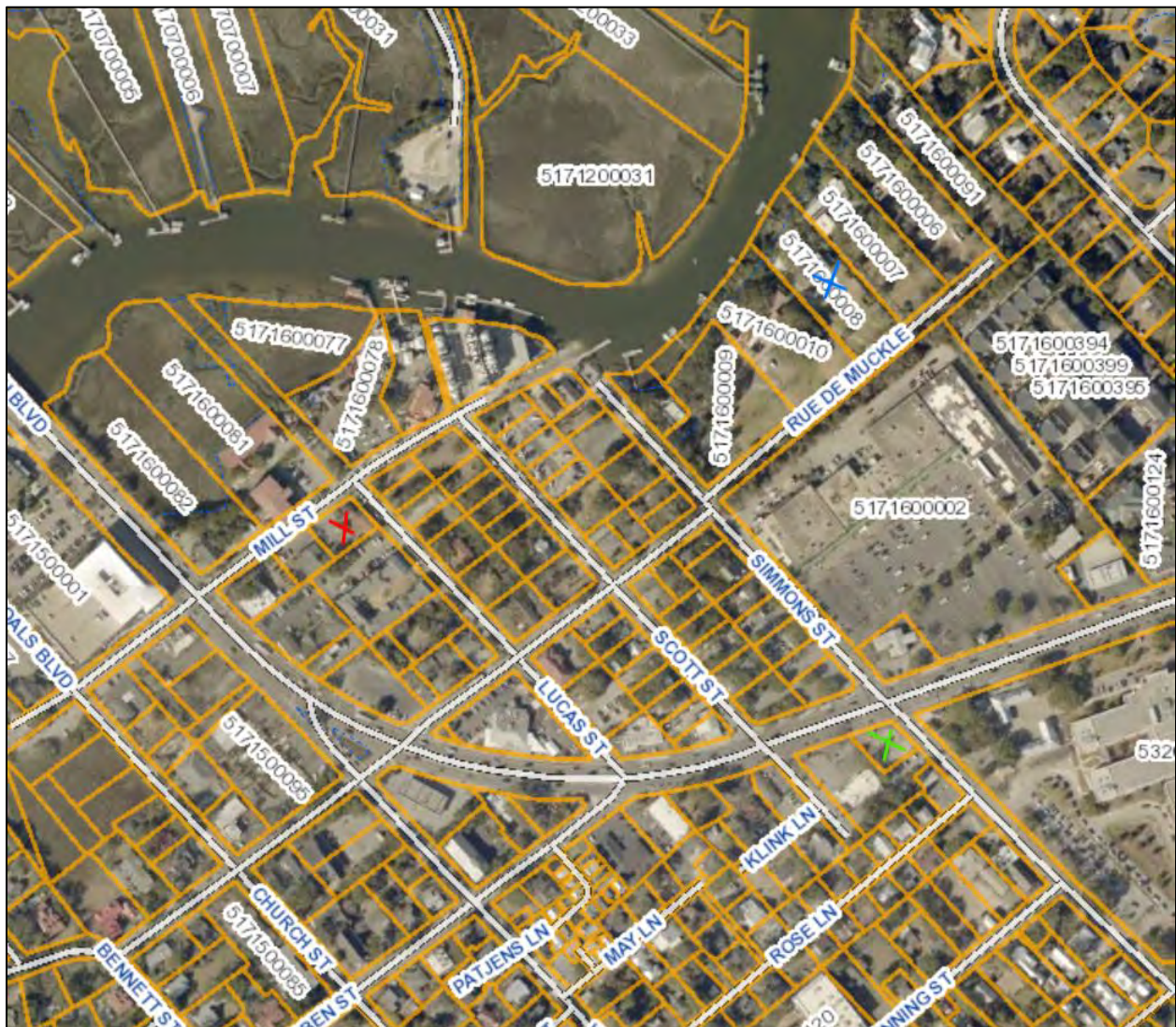
neighborhood is accessed by the subject intersection. My residence is on the edge of this neighborhood on Rue de Muckle.”

The Complaint fails to provide the address for Lucey’s law firm and his home, and that information is not contained in the Record on Appeal. Lucey therefore has failed to establish that he is an owner of property adjacent to and in the near vicinity of this proposed development.

Furthermore, Lucey’s alleged harms are purely “conjectural and hypothetical” and do not constitute an “individualized injury.” Lucey’s Complaint focuses on alleged traffic safety issues associated with the proposed development, but none of these technical matters are addressed by way of “competent evidence” either in the record of the DRB hearing or in the Complaint. *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 206, 516 S.E.2d 439, 441 (1999) (reversing a zoning board’s denial of a special exception permit and holding that although neighboring residents testified they felt a proposed halfway house would increase traffic, there was no factual evidence presented to support that allegation); *Wyndham Enters., LLC v. City of N. Augusta*, 401 S.C. 144, 150-51, 735 S.E.2d 659, 663 (Ct. App. 2012) (“Regarding the residents’ traffic concerns, we note that although there was testimony that residents felt the fireworks business would increase traffic, they failed to offer any competent evidence to support their opinions.”) Lucey is an attorney – not a traffic engineer or safety expert; therefore his opinion on these technical matters does not consist of “competent evidence.” Furthermore, the DRB is a board of architectural review and traffic safety issues are entirely outside its purview. Finally, while Lucey alleges to use the intersection near the Property – so do several thousands of other people every day. Lucey’s alleged harms, to the extent there are any, are indistinguishable from that of the general public. For these reasons, the Complaint’s alleged harms are purely “conjectural and hypothetical” and fail to articulate any “individualized harm.” *Beaufort Realty Co., Inc. v. Beaufort County*, *supra*. Accordingly, the Court concludes the Complaint and the Record

on Appeal fail to establish Lucey has the required “substantial interest” to confer standing to bring this appeal.

This Court also takes judicial notice of the following public records: Lucey’s law firm is located at 415 Mill Street, Mt. Pleasant, SC 29464 (the “Lucey Office”) and Lucey’s residence is located at 634 Rue De Muckle, Mt. Pleasant, SC 29464 (the “Lucey Home”). The Court further takes judicial notice of the location of and spatial relationship between the Lucey Office, Lucey Home, and the Property at issue in this appeal, according to the GIS Website for Charleston County.



The Lucey Office is denoted by a red “X,” the Lucey Home by a blue “X,” and the Property by a green “X.”

Lucey does not own property physically adjacent to WIN515’s Property. Both the Lucey Office and the Lucey Home are on the other side of Coleman Boulevard, one the busiest thoroughfares in Mount Pleasant. Therefore, his property ownership interests alleged in the Complaint fail to satisfy the “substantial interest” test laid out in *Spanish Wells Prop. Owners Ass’n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island, supra*.

Given the above, Lucey lacks statutory standing under S.C. Code Ann. § 6-29-900(A) to maintain the instant appeal, and his appeal is therefore dismissed.

B. Lucey failed to timely name the DRB – a necessary party to this appeal.

An appeal from the DRB must be “filed within thirty days after the affected party receives actual notice of the decision... .” S.C. Code Ann. § 6-29-900(A). A zoning appeal must be perfected within the statutorily defined thirty (30) day appeal period. *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000) (the timeliness of an appeal from the decision of a zoning board is jurisdictional). An appellant cannot amend an appeal outside the thirty (30) day appeal period to name a necessary party. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004).

The DRB is a necessary party in this appeal.³ The statutory procedures governing appeals from the board of architectural review necessitate bringing the board itself within the circuit court’s jurisdiction. *See, e.g.*, S.C. Code Ann. § 6-29-920 (“the clerk of the circuit court must give

³ Zoning appeals routinely include, as a respondent, the board itself in addition to the local government entity itself. *See, e.g., Croft v. Town of Summerville Bd. of Architectural Review*, 433 S.C. 473, 860 S.E.2d 352 (2021); *Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm’n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019); *Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals*, 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018).

immediate notice of the appeal to the secretary of the board. . .”); S.C. Code Ann. § 6-29-930(A) (“In the event that the decision of the board is reversed by the circuit court, the board must be charged with the costs which must be paid by the governing authority which established the board of architectural review.”); *Spanish Wells Prop. Owners Asso. v. Bd. of Adjustment*, 295 S.C. 67, 68-69, 367 S.E.2d 160, 161 (1988) (holding a development permittee is a necessary party in a zoning appeal because, among other things, it “serves judicial economy” because “the permittee will be bound because it is a party to the appeal.”).

Lucey failed to name the DRB within the thirty (30) day appeal period, and he has not attempted to name the DRB since the filing of the Complaint. Without naming the DRB, this Court lacks jurisdiction over the DRB and lacks the authority to order any relief in this matter. The DRB would not be bound by this Court’s decision since it is not a party. See, *Spanish Wells Prop. Owners Asso. v. Bd. of Adjustment*, *supra*. Naming the Town itself is insufficient to perfect the instant zoning appeal. The Town and the DRB are distinct legal entities with separate interests and roles in this appeal.

For these reasons, the purported appeal is jurisdictionally deficient due to Lucey’s failure to name all necessary parties. This is a fatal defect that cannot be cured given the expiration of the thirty (30) day appeal period. The Complaint, therefore, must be dismissed with prejudice.

C. Lucey failed to timely serve the DRB – a necessary party to this appeal.

In addition to being governed by the Act, zoning appeals must also comply with Rule 74, SCRPC (“Procedure on Appeal to the Circuit Court”). That rule provides, in relevant part, as follows: “Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from.” (Emphasis added).

Lucey has failed to comply with Rule 74, SCRCF because the filings of record reveal that the Complaint was not timely served on the DRB (a necessary, but omitted party). The sole affidavit of service of record reveals that the purported appeal was served on the Town. There is no affidavit of service on file with respect to the DRB.

As a result, Lucey has failed to timely perfect the instant appeal by serving all necessary parties. The timeliness of an appeal is jurisdictional. *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, supra*. Therefore, the Complaint must be dismissed with prejudice because Rule 74, SCRCF was not satisfied.

FINAL ORDER AND JUDGMENT

The Court **GRANTS** WIN515's Motion to Dismiss Lucey's Complaint with prejudice. Lucey has no right to appeal or otherwise challenge the DRB's June 29, 2022 "Final Approval of Site, Landscape, and Architecture" for the Property. It is hereby **ORDERED, ADJUDGED AND DECREED** that this appeal is **DENIED** with prejudice.

IT IS SO ORDERED.

_____, 2023
Charleston, South Carolina

Judge R. Keith Kelly



Charleston Common Pleas

Case Caption: Justin O'Toole Lucey VS Win515 Llc , defendant, et al

Case Number: 2022CP1003328

Type: Order/Dismissal

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2023-04-05 09:08:29 page 11 of 11

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.	)	
	)	MEMORANDUM IN OPPOSITION TO
THE TOWN OF MOUNT PLEASANT,	)	APPELLANT’S APPEAL BY
SOUTH CAROLINA; THE TOWN OF	)	RESPONDENTS TOWN OF MOUNT
MOUNT PLEASANT BOARD OF	)	PLEASANT AND TOWN OF MOUNT
ZONING APPEALS; MICHAEL	)	PLEASANT BOARD OF ZONING
ROBERTSON, IN HIS OFFICIAL	)	APPEALS
CAPACITY AS ZONING	)	
ADMINISTRATOR; JUSTIN O’TOOLE	)	
LICEY; 415 MILL ST., INC.; AND 69	)	
SCOTT STREET, LLC	)	
	)	
RESPONDENTS.	)	
	)	

Respondents the Town of Mount Pleasant and the Town of Mount Pleasant Board of Zoning Appeals (hereinafter “Town” or “BOZA”) hereby submit this Memorandum in Opposition to Appellant CKC Properties, LLC’s (hereinafter “Appellant” or “CKC”) Petition appealing BOZA’s decision that Appellant’s proposed hotel development lacked sufficient off-street parking to comply with the Town’s then-applicable Zoning Code.

RECORD ON APPEAL

On August 24, 2022, The Town of Mount Pleasant, South Carolina (the “Town”) and the Mount Pleasant Board of Zoning Appeals (“BOZA”) filed the Record on Appeal pursuant to S.C. Code Ann. § 6-29-830(A). This filing included the following:

- 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 Justin Lucey appealing to BOZA
 Exhibit I: Town's August 23, 2021 response letter confirming receipt of Mr. Lucey's August 12, 2021 appeal.

On March 3, 2023, the Town and the BOZA filed a Supplement of the Record. This filing included the following:

Exhibit J: September 24, 2021 Letter from Appellant counsel
 Exhibit K: September 27, 2021 Letter/Outline from Mr. Lucey
 Exhibit L: September 27, 2021 Letter/Memorandum from Colin Colbert
 Exhibit M: September 27, 2021 Letter from Gabe Joseph
 Exhibit N: Processing Form for Mr. Lucey's Appeal.

On April 20, 2023, the Town and BOZA filed a second Supplement of the Record. This filing included the following:

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

BACKGROUND AND INTRODUCTION

Appellant is the developer of the proposed Shem Creek Boutique Hotel (hereinafter “Hotel”) along Mill Street in Mt. Pleasant. On July 15, 2021, Appellant applied for Preliminary Approval of Site, Landscape, and Architecture Plans from the Town's Design Review Board (hereinafter “DRB”). (See Exhibit C, September 27, 2021 Staff Report). On July 19, 2021, the Town posted the agenda for the DRB meeting concerning that review. However, before that meeting occurred, on August 12, 2021, a property owner adjacent to the proposed site for the Hotel, Justin Lucey (hereinafter “Mr. Lucey”), appealed the Hotel's compliance with the Town's zoning code on numerous grounds. (See Exhibit H, August 12, 2021 Letter from Mr. Lucey Appealing to BOZA).

On September 27, 2021, BOZA held a public meeting on Mr. Lucey's appeal. (See Exhibit B, September 27, 2021 Revised Meeting Agenda). At the hearing, BOZA heard presentations from the Town Zoning Administrator, Appellant's representative, Appellant's counsel, Mr. Lucey, and members of the public. BOZA denied Mr. Lucey's appeal on all grounds except off-street parking. (See Exhibit A, October 26, 2021 Final Order).

(A) BOZA's Order

Mr. Lucey's appeal challenged the Town Zoning Administrator's interpretation of the term "Guest Room" in the Town's then-applicable Ordinance §156.171. The Ordinance required that a boutique hotel maintain "1-2 parking spaces per Guest Room". (See Exhibit R, Mt. Pleasant Code of Ordinances §156.170- 176 as of September 21, 2021). The Hotel, as currently designed, includes three buildings, which contain twenty-seven (27) keyed lodging units and sixty-four (64) individual bedrooms. (See Exhibit A, October 26, 2021 Final Order).

The proposed development is not a standard "suite style" hotel. The proposed plans contain multi-bedroom and multi bathroom units with kitchens and living rooms¹. These large multi-bedroom units offer space for multiple families to stay within a single keyed lodging unit.

BOZA's ruling interprets the term "Guest Room" synonymous with "bedroom", rather than "keyed lodging unit". The hotel plans contain sixty-four (64) separate bedrooms, with only thirty-five (35) off-street parking spaces. *Id.* BOZA held the plans lacked the required off street parking spaces under the Ordinance. Appellant now asks this Court to overrule BOZA's decision.

BOZA's Order is well reasoned, and offers sound analysis to support its decision:

¹ The following unit layouts: four "family units" each with four bedrooms, four bathrooms, a kitchen and a living room; Seven units each with two bedrooms and two bathrooms a kitchenette; five units with one bedroom, bathroom and kitchenette; four studios with living room and kitchenette; three units with three bedrooms, three bathrooms, a kitchen and living room.

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.

(See Exhibit A, October 26, 2021 Final Order).

BOZA denied Mr. Lucey's appeal on all other zoning issues. As such, the **sole issue** for this appeal is BOZA's interpretation of "Guest Room" under the then-applicable Ordinance §156.171.

(B) This Court cannot consider extraneous documents and arguments based on evidence not part of the Record on Appeal in this matter.

The Circuit Court sits as an appellate Court in this appeal. *McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill*, 360 S.C. 301, 304, 599 S.E.2d 617, 619 (Ct. App. 2004); *see also* S.C. Code Ann. §6-29-840(A). This Court's decision is therefore limited to only those documents in the record on appeal, and this Court may not take additional evidence. *See* S.C. Code Ann. §6-29-840 (A). The record on appeal is limited to only those documents which were ***introduced into evidence at the BOZA hearing or relied upon by BOZA in making its ruling***. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 40, 606 S.E.2d 209, 214 (Ct. App. 2004) (Emphasis Added).

Appellant's memorandum in support of their Petition includes numerous extraneous documents and arguments that are not properly before this Court. The following documents and assertions are improperly included in Appellant's memorandum: (1) a news article concerning Mayor Haynie and arguments based on same² (2) internal emails from Town officials, and arguments based on the contents of the emails³, (3) speculative allegations of political interference based on assertions not supported by the record⁴, (4) parking requirements at other Hotels with arguments based on a comparison to this case⁵, (5) the Town Ordinance concerning off-street

² *See* Appellant's Memorandum in Support of Appeal, pg. 6; *see also* Exhibit 1 to Appellant's Memorandum in Support of Appeal.

³ *See* Appellant's Memorandum in Support of Appeal, pg. 6; *see also* Exhibit 1 to Appellant's Memorandum in Support of Appeal.

⁴ *See* Appellant's Memorandum in Support of Appeal, pg. 5, 6, 7, 26, 30, 35.

⁵ *See* Appellant's Memorandum in Support of Appeal, pg. 12, 27, 31.

parking passed after the BOZA hearing in this case, and arguments based on same⁶ (6) baseless assertions regarding what allegedly occurred during executive session⁷ (7) assertions regarding the Design and Review Board and materials relevant to the developer's dispute with that Board⁸.

The documents and assertions listed above were not introduced into evidence at the BOZA hearing or relied upon by BOZA when making its decision, and therefore, are outside the record on appeal in this matter – **as this Court has already ruled**. See Order on Appellant's Motion to Supplement the Record on Appeal, attached as Exhibit 1.) As noted, the sole issue on this appeal is the interpretation of "Guest Room" in the then-applicable Ordinance §156.171. Any consideration of these extraneous documents constitutes reversible error. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 39, 606 S.E.2d 209, 214 (Ct. App. 2004). Therefore, the Court should strike all documents and assertions submitted by the Appellant that are outside the Record on Appeal prior to ruling on this appeal.

STANDARD OF REVIEW

Appellant has appealed BOZA's decision to this Court in accordance with §6-29-840(A) of the South Carolina Code. This Court is to treat the findings of fact by BOZA in the same manner as a finding of fact by a jury and this Court cannot take additional evidence. S.C. Code §6-29-840(A). In reviewing BOZA's decision, "the court shall determine **only** whether the decision of the board is correct as a matter of law". *McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill*, 360 S.C. 301, 304, 599 S.E.2d 617, 619 (Ct. App. 2004) (Emphasis Added). Further, "a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with

⁶ See Appellant's Memorandum in Support of Appeal, pg. 6; 7, 26, 30, 31, 36; see also Exhibit 2 to Appellant's Memorandum in Support of Appeal.

⁷ See Appellant's Memorandum in Support of Appeal, pg. 13, 32, 33, 34, 35.

⁸ See Appellant's Memorandum in Support of Appeal, 3, 5, 6, 9, 10, 36.

the decision”. *Wyndham Enterprises, LLC v. City of N. Augusta*, 401 S.C. 144, 148, 735 S.E.2d 659, 661 (Ct. App. 2012) (citing *Restaurant Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). In addition, the Court gives great deference to the decisions of those charged with interpreting and applying local zoning ordinances. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).

ARGUMENT AND CITATION OF AUTHORITY

I. This Court should uphold BOZA’s ruling on off-street parking.

For boutique hotels, such as the hotel in question, the determining factor for calculating off-street parking under the then-existing Town Ordinance, was number of “Guest Rooms”. (See Exhibit R, Mt. Pleasant Code of Ordinances §156.170- 176 as of September 21, 2021). Specifically, the Ordinance required 1-2 parking spaces per “Guest Room”. However, the Ordinance did not define “Guest Room”. As such, BOZA, in this case, defined “Guest Room” as “bedroom”, which is the customary and usual meaning of “Guest Room” and consistent with the legislative intent and overall purpose of the off-street parking requirements.

In reviewing BOZA’s decision, the governing authorities make clear that this court must “refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Restaurant Row Associates*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). The Court should not overturn BOZA’s decision unless “it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.”

It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's

view of the matter just to inject its own ideas into the picture of things.

Id., quoting, *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952).

(a) The usual and customary meaning of “Guest Room” is “bedroom”.

South Carolina law on statutory construction is clear, “when faced with an undefined statutory term, the court must interpret the term in accord with its *usual and customary meaning*.” *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) (citing *Branch v. City of Myrtle Beach*, 340 S.C. 405, 532 S.E.2d 289 (2000); *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 504 S.E.2d 117 (1998))) (Emphasis Added). The Supreme Court of South Carolina has further stated “in construing ordinances, the terms must be taken in their *ordinary and popular meaning*.” *Charleston Cnty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995) (citing *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992)) (Emphasis Added). The usual, customary, ordinary, and popular meaning of “Guest Room” is “bedroom”, and not “keyed lodging unit” as Appellant argues.

The South Carolina Court of Appeals has held that dictionaries are useful tools in interpreting undefined words in ordinances. The Court of Appeals recently used the Merriam-Webster dictionary definition of “monument” in determining the ordinary and popular meaning of same in upholding a City of Charleston Board of Zoning Appeals decision interpreting “monument” in the City Ordinance. *Abdo v. City of Charleston*, No. 2019-001910, 2023 WL 34431, at *1 (S.C. Ct. App. Jan. 4, 2023).

Here, dictionaries define “Guest Room” as an individual “bedroom” not as a “keyed lodging unit” of multiple rooms. (See Merriam-Webster: defining “Guest Room” as “a bedroom

for a person who is invited to visit or stay in someone's home"⁹; Collins: "A guest room is a *bedroom* in a house or hotel for visitors or guests to sleep in"¹⁰; Oxford Learner's: defining "Guest Room" as "a *bedroom* that is kept for guests to use"¹¹; Macmillan: defining "Guest Room" as "a *bedroom* for a visitor in someone's home or in a hotel"¹²). BOZA, therefore, utilized the usual and customary definition of "Guest Room" appropriately in interpreting the Ordinance at issue here.

(b) BOZA's definition of "Guest Room" is appropriate in the context of the Ordinance and comports with the legislative intent behind it.

In interpreting ordinances, in addition to examining the usual and customary meaning of an undefined term, the Court must construe the term in the context of the ordinance by looking at other terms used in the ordinance. *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Consumer Advocate for State v. South Carolina Dept. of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012).

In *Consumer Advocate for State v. South Carolina Dept. of Ins.*, the Court of Appeals reversed the Administrative Law Court's (ALC) interpretation of SC. Code 38-73-910(A), which requires the Department of Insurance to issue rate-increase notices. *Consumer Advocate for State*,

⁹ *Guest room*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/guest-room> (last visited May 3, 2023).

¹⁰ *Guest room*, Collins Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/guest-room> (last visited May 3, 2023).

¹¹ *Guest room*, Oxford Learner's Dictionaries, <https://www.oxfordlearnersdictionaries.com/us/definition/english/guest-room> (last visited May 3, 2023).

¹² *Guest room*, Macmillan Dictionary, <https://www.macmillandictionary.com/us/dictionary/american/guest-room> (last visited May 3, 2023).

397 S.C. at 602-04. The ALC held that the undefined term “increase” meant “overall increase” in total rates. *Id.* at 601. The ALC reasoned that the statutory notice requirement was not triggered because while insurance rates went up for some occupations, rates went down for others so as the overall result of the changes was a total decrease in overall rates. *Id.*

The Court of Appeals in *Consumer Advocate* reversed holding that “the Court has no right to add the words the legislature omitted, nor to interpolate them on conceits of symmetry and policy.” *Id.* at 602. The Court held that if the legislature had meant “overall increase” by the term “increase” it could have easily included the word “overall” in the statute section. *Id.* at 603. “Language in a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Id.* at 602. The Court of Appeals reviewed the other related code sections for harmony and noted that the legislature uses the phrase “overall increases” in other sections of the code, and concluded that the omission of the word “overall” in Section 910 was therefore intentional. *Id.* at 603. The Court of Appeals also reasoned that the interpretation requiring notice for any increase was consistent with the “overarching purpose of the statute” to give insured an ability to protest before the rate increase goes into effect. *Id.*

The same reasoning applies here. Appellant contends that this Court should read the phrase “Guest Room” in the ordinance as synonymous with “lodging unit”, so as to count multiple bedrooms together as a single unit. However, this does not harmonize the code provisions and is inconsistent with the general purpose of the statute.

In the ordinance, 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”. Just as the Court of Appeals did in *Consumer Advocate*, BOZA looked to harmonize other relevant code sections to determine Town Council’s intent and noted that Town Council uses the phrase

“Lodging Unit” in other parts of the code. 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 Exhibit Q, Mt. Pleasant Code of Ordinances §156.007, as of September 27, 2021) (Emphasis Added).

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 within §156.171 as well but did not do so. Instead, Town Council uses a different phrase - “Guest Room” within §156.171.

Thus, similar to the Court in *Consumer Advocate*, BOZA correctly held that the use of “Guest Room” in phrasing by Town Council as compared to the phrase “lodging unit”, which is used in other code sections, must be read as an intentional difference with significance. Thus, BOZA correctly held that “Guest Room” means “bedroom” rather than “lodging unit”.

Appellant’s argument in this appeal ignores that the court must place significance on the fact that Town Council chose an entirely separate phrase for determining off-street parking – “Guest Room”, than other parts of the code. The fact that Town Council already uses “lodging unit” as a unit of measurement in the Ordinance is definitive proof that they did NOT intend for “lodging unit” to be the unit of measurement for off-street parking. If they had intended to count off street parking by lodging unit, they simply would have used the phrase “lodging unit” as the

unit of measurement for determining off-street parking in the ordinance. Their use of “Guest Room” instead of “Lodging Unit” shows that those terms are not synonymous in the Ordinance.

Appellant also attempts to analogize “Guest Room” with “Dwelling Unit”, which is another unit of measurement for the residential portion of the code. “Dwelling Unit” is the unit of measurement for determining off-street parking for “Residential Uses” such as single-family and multi-family homes, as well as townhomes. (See Exhibit R, Mt. Pleasant Code of Ordinances §156.170- 176 as of September 21, 2021). Appellant claims that because some of the Hotel’s proposed accommodations will be “townhouse-style suites, the Court should synonymize “Guest Room” with “Dwelling Unit”.

However, Appellant’s Hotel is a “Commercial Use” and **NOT** a “Residential Use”:

Use Category	Use	Space Required	Unit of Measure	Notes
Residential	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.
<i>Commercial</i>	Accommodations and lodging	1 to 2	<i><u>Guest room</u></i>	

(See Exhibit R, Mt. Pleasant Code of Ordinances §156.170- 176 as of September 21, 2021). Appellant has also ***admitted*** that the Hotel is a “Commercial Use”. (See Exhibit L, Letter/Memorandum from Colin Colbert, “The Mill Street Hotel is not a residential project. It has been designed to meet all commercial building codes.” “Our parcels are not residentially zoned, they are commercially zoned.”) (Emphasis in Original); (Exhibit S, Transcript of BOZA

September 27, 2021 Hearing (Colin Colbert [CKC Owner] “The claim that this project is a short-term rental property is not accurate since the definition of an STR requires it to be a rental or lease of a residential dwelling unit for 28 days or less in a residentially zoned area. *This boutique hotel is located on a commercially zoned parcel* surrounded by commercially designated parcels used for restaurants, offices, boat storage, and recreational facilities.”). The “Residential Use” section and its “Dwelling Unit” measurement are therefore, inapplicable to the proposed hotel at issue.

Further, just as with “lodging unit”, “Dwelling Unit” is already used in the Ordinance as a unit of measurement. Had Town Council intended to use “Dwelling Unit” for determining off-street parking for Commercial Uses such as Appellant’s Hotel, it would have used that phrase but it did not. Town Council used “Guest *Room*” instead.

In addition, BOZA found the difference in the “units of measurement” significant because “Guest Room”, meaning bedroom, better serves the parking demand of the Hotel. Four bedroom Townhouse units in a Hotel are going to need more parking spaces than single one room hotel units. Thus, by calculating the parking spaces by bedroom, the Town can better serve the parking needs of the commercial development.

Therefore “Guest Room” meaning “bedroom” comports with the rest of the Ordinance as it is clearly an independent unit of measurement from “Lodging Unit” or “Dwelling Unit”. This Court should uphold BOZA’s interpretation and find that the Hotel lacks sufficient off-street parking to comply with the then-applicable Ordinance.

(c) The Town’s prior determinations and recently enacted changes to the Ordinance do not support Appellant’s interpretation.

Appellant argues without support in the Record on Appeal that Town staff’s prior interpretation of off-street parking for other hotel suites matches Appellant’s desired

interpretation.¹³ Initially, the court should ignore this argument because there is no factual support in the record for this assertion.

Further, Mr. Lucey's appeal was the first time the Town's BOZA had the opportunity to interpret the parking calculation provisions at issue. Town staff parking determinations at other Town hotels are therefore irrelevant to this analysis. BOZA did not have the opportunity to opine on the meaning of "Guest Room" until Lucey's appeal. Accordingly, Appellant's attempt to establish an alleged inconsistency in BOZA's ruling has no merit.

Appellant also argues that because the Town enacted changes to the Ordinance months after BOZA's decision, including providing a definition for the previously undefined phrase "Guest Room" acknowledged that BOZA lacked legal support for its interpretation of "Guest Room" in this case. Appellant is wrong. Initially, the court should ignore this argument because the newly enacted Ordinance is not part of the record on appeal in this matter (because it did not exist at the time BOZA ruled), and is not properly before this Court. But if the Court decides to consider it, the enactment of the new Ordinance supports BOZA's position. By creating a definition of "Guest Room" where there was no definition before, Town Council sought to clarify its previous intention and use of the phrase. Town Council clarified with an explicit definition that BOZA was correct in holding that the phrase "Guest Room" means bedroom and not "keyed lodging unit". Thus, Town Council conclusively acknowledges the legislative intent behind using the phrase "Guest Room" as a unit of measurement. The amendment merely provides clarification of Council's original intent, to resolve any possibly ambiguity.

¹³ See, Appellant's Memorandum p. 12 referencing without support in the record as follows: ("This approach corresponds to prior off-street parking plan approvals for other suite-style hotels in the Town including, but not limited to, the Staybridge Suites, Residence Inn on the Isle of Palms Connector, and the Homewood Suites").

Finally, Appellant incorrectly argues that the Court should give deference to the Town Administrator's interpretation over BOZA's interpretation. However, by law, the deference is to be given to BOZA, not the Town Zoning Administrator. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995) (granting deference to BOZA's interpretation and application of local zoning ordinances – and NOT those of the Town's Zoning Administrator as Appellant alleges)). “The local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities” *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001); See also, S.C. Code 6-29-800(E) (“In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, ***has all the powers of the officer from whom the appeal is taken*** and may issue or direct the issuance of a permit.”).

This Court should not disturb BOZA's decision, that “Guest Room” means bedroom, and that Appellant's Hotel, therefore, lacks sufficient off-street parking to comply with the Ordinance.

II. BOZA correctly determined that Mr. Lucey timely filed his appeal and that Mr. Lucey constituted an aggrieved party as an adjacent property owner.

Appellant argues that this Court should reverse BOZA because Appellant contends that Mr. Lucey lacked standing to challenge Appellant's zoning compliance to BOZA, and that Mr. Lucey's appeal to BOZA was untimely. Appellant is wrong.

BOZA addressed these issues directly in its Order.

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.

(See Exhibit A, October 26, 2021 Final Order).

BOZA's determination of the evidence that Lucey timely filed his appeal, and constituted an aggrieved party as an adjacent landowner should not be disturbed by this Court. "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." S.C. Code Ann. §6-29-840(A)(Emphasis Added). See also, *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 36, 606 S.E.2d 209, 213 (Ct. App. 2004)(holding that in reviewing decisions by the zoning board, *the Circuit Court imposes a "no evidence" standard whereby to reverse the zoning board, the Circuit Court must find that the zoning board's decision was supported by "no evidence"*). Because the record contains evidence supporting BOZA's decisions that Mr. Lucey's appeal was timely filed and that Mr. Lucey had standing as an aggrieved party, this Court must reject the Appellant's arguments on both accounts.

(A) This Court should not disturb BOZA's decision on standing.

- i. Mr. Lucey had statutory standing to appeal to BOZA as an "aggrieved party" because he is adjacent property owner, and the record contains evidence of traffic and parking concerns presented to BOZA at the hearing.**

BOZA correctly concluded Mr. Lucey had standing to bring his appeal as an aggrieved party. Mr. Lucey's property is directly adjacent to Appellant's proposed hotel. (See diagram on p. 8 of Appellant's Memorandum – Lucey's property indicated in yellow). In the first instance, it is hornbook zoning law that an adjacent property owner, such as Lucey here, is presumed to be an aggrieved person with standing to appeal zoning compliance. See, 3 Rathkopf's The Law of Zoning and Planning § 57:35 (4th ed.) ("It has been held that on the face of it, without proof of special

injury or damage to his or her property, an owner of property has a sufficient interest to enable him or her to appeal a determination by an administrative official which permits use of adjoining property which may be unauthorized and persons owning property within 500 feet from that for which permits were issued have standing to appeal to the board of appeals. While a board of appeals would apparently be authorized to require an offer of proof as to the claim of aggrievement, they seldom, if ever, do so.”); 4 Rathkopf’s *The Law of Zoning and Planning* § 63:18 (4th ed.) (“An adjoining or nearby property owner, on the face of it, has a sufficient interest to enable him to appeal a determination of a board regarding the zoning usage of adjacent property without proof of special injury or damage.”).

Courts have held that individual adjacent land owners have sufficient standing to challenge zoning decisions made on neighboring properties. *Bevivino v. Town of Mount Pleasant Bd. Of Zoning Appeals*, 402 S.C. 57, 737 S.E.2d 863 (Ct. App. 2013); *Helicopter Solutions, Inc. v. Hinde*, No. 2012CP2606987, 2013 WL 12080422, at *2 n.2 (S.C.Com.Pl. Jan. 16, 2013) (Circuit Court found adjacent property owner to helicopter sight-seeing business had standing to challenge business’s compliance with zoning code); *see also Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 32, 606 S.E.2d 209, 211 (Ct. App. 2004) (The Court treated Austin as an “aggrieved party”, who was a neighboring property owner in analyzing the dispute in her appeal regarding the sufficiency of the record among other matters.)

In *Bevivino v. Town of Mount Pleasant Bd. Of Zoning Appeals*, the court found that five abutting property owners had standing to challenge SCANA’s approval from the Town zoning administrator, Kent Prause, to build a communication tower at 937 Whipple Road in Mount Pleasant (SCANA Property). *Bevivino*, 402 S.C. at 60. The SCANA property was “adjacent to the Candlewood subdivision”. *Id.* Prause “contacted property owners in Candelwood whose

properties abutted the Whipple Road site” (Bevivino, Lincolns, Buckman, Hallmand and Freemans) to notify them of his decision “as a courtesy because of your proximity to the site.” *Id.* at 60-61. The Lincolns and Bevivino challenged Prause’s decision to the Board of Zoning Appeals. *Id.* at 61. Buckmand Halman and Freemans voiced their concerns at the hearing but did not join in on the appeal at BOZA. *Id.* BOZA voted to affirm the Zoning Administrator’s determination, and thereafter the Lincolns and Bevivino and the remaining three neighboring property owners all filed an appeal with the Circuit Court challenging BOZA’s decision. *Id.*

The Circuit Court held “Bevivino and the Lincolns had standing to pursue their appeal because of the close proximity of their homes to the tower site” and held that “the remaining Appellants’ attempt to appeal were barred.” *Id.* at 62. The Court of Appeals analyzed the standing question, and without reference to any evidentiary requirement to show injury, held that all the appellants had standing to file the appeal. *Id.* at 62-64.¹⁴ “All appellants, having satisfied the perquisites for statutory standing, were entitled to maintain this action in the circuit court.” *Id.* at 64. The Court of Appeals further held that because the neighboring property owners had standing conferred by statute they did not need to address constitutional standing. *Id.*, citing, *Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012) (“The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.”).

The same reasoning applies here. Mr. Lucey, as the owner of property directly adjacent to the Hotel, had standing to challenge misapplication of zoning ordinances on his neighboring property. As an adjacent property owner the court Lucey would be aggrieved by a misapplication

¹⁴ The Court of Appeals also reversed the Circuit court’s holding that the three appellants that failed to join in to the appeal before BOZA lacked standing to join in the appeal in the first instance before the circuit court. *Id.* at 63-64.

of the zoning code on the abutting property where the hotel is proposed. Mr. Lucey, therefore, had statutory standing to appeal to BOZA as an “aggrieved party”.

BOZA’s order, however, did not only rely on Mr. Lucey’s ownership of property immediately adjacent to the Hotel, BOZA also cited to evidence of traffic concerns in the record. (See Exhibit A, October 26, 2021 Final Order) (“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.”). The record contains evidence supporting the traffic and parking concerns cited by BOZA in its Order:

- See, Transcript (Exhibit S).
 - o Page 16 = Christine Reilly (neighbor) = “I’m concerned about the parking and the drainage” ln 22-23.
 - o Page 17 = Ashely Woody (neighbor) = “my issue with is the parking” they don’t have enough (ln 7-25, pg. 18 ln. 1)
 - o Page 19 = Mr. Charles Lucey (neighbor) = complaining that his mom cannot take a walk near the property except at 4:00 or 5:00 in the morning because the traffic is so bad by 7:30 am.
 - o Page 28 & 29 = Kevin Berry – Civil Engineer for Project = referencing that people already park illegally on the street (which shows there is a parking problem already).

This evidence is sufficient and this court should not disturb BOZA’s determination based on the evidence. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 36, 606 S.E.2d 209, 213 (Ct. App.

2004)(holding that the Circuit Court imposes a “no evidence” standard whereby to reverse the zoning board, the Circuit Court must find that the zoning board’s decision was supported by “no evidence”). *See also, Venture Eng’g for DT LLC v. Horry Cnty. Zoning Bd. of Appeals*, 433 S.C. 419, 429, 858 S.E.2d 638, 644 (Ct. App. 2021), reh’g denied (June 25, 2021) (reversing the circuit court’s holding that the Board’s determination in that case was arbitrary because the Court should infer from the record the Board’s factual basis for making a determination, and holding that ***“testimony of residents in the surrounding community expressing concerns about particulates, noise, and traffic” was sufficient to support the Board’s determination***).

Further, BOZA’s logic on the harms to Mr. Lucey is sound. The Hotel proposes sixty-four (64) bedrooms. BOZA was correct to anticipate that those guests will drive cars and increase the traffic flow and parking demand in and around Mr. Lucey’s property, which the evidence showed is already overburdened with parking and traffic.

Appellant attempts to apply a heightened “competent evidence” standard to standing, claiming Mr. Lucey was required to submit a traffic expert with technical knowledge of traffic concerns to BOZA to prove he was an aggrieved party. This is false. Appellant cites two cases that have **nothing to do with standing**. *See Wyndham Enterprises, LLC v. City of N. Augusta*, 401 S.C. 144, 145, 735 S.E.2d 659, 660 (Ct. App. 2012); *see also Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 203, 516 S.E.2d 439, 439 (1999). In both *Wyndham* and *Bannum* the Courts examined whether there was competent evidence to support the zoning board’s denial of special exemptions. *Id.* Stated another way, the Courts in *Wyndham* and *Bannum* were ruling on the **merits** of the appeal – whether exemptions should have been granted, and **NOT** whether the challenging party had standing. *Id.* No such competent/technical evidence requirement exists to confer standing, and Mr. Lucey did not need to bring an expert to the BOZA hearing to confer

standing. Rather, Mr. Lucey's testimony, and the neighbors' testimony before BOZA about the parking and traffic concerns, and Mr. Lucey's status as an adjacent property owner, all suffice to confer standing.

Appellant further contends that Mr. Lucey's alleged harms are too hypothetical and/or prospective because the Hotel has not been constructed yet. However, it is absurd to suggest that Mr. Lucey should have to wait for the Hotel to be built and the traffic and parking issues to manifest before he has standing to challenge Appellant's compliance with the Ordinance.

Also, Appellant argues that BOZA erred in conferring standing because Mr. Lucey's concerns "are wholly commercial and competitive in nature". Appellant cites to a case wherein a cell phone company sought to rezone its property to construct a cell phone tower, and their competitor challenged the re-zoning. *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 340 (2008). The Court in that case held that the challenger lacked standing because the only potential harm was an increase in business competition between the two cell phone companies and that competitive interests alone are not enough to confer standing. *Id.* This case is completely irrelevant as BOZA did not rely on any competitive issue between Mr. Lucey and the Appellant (because there is none, a law firm and a Hotel are not competitors) in conferring standing. Rather, BOZA conferred standing based on Mr. Lucey being an adjoining property owner and the traffic and parking issues caused by the Hotel.

For these reasons, the Court should uphold BOZA's decision on standing.

(B) BOZA correctly determined that Mr. Lucey timely filed his appeal.

The Town's Ordinance provides a 30 day time period to file an appeal with BOZA:

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.

(Exhibit P, Mt. Pleasant Code of Ordinances §156.410 – 413, as of September 27, 2021). 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, 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."

BOZA concluded Mr. Lucey's August 12, 2021 letter constituted a timely appeal submitted within 30 days of actual notice. (See Exhibit A, October 26, 2021 Final Order). This Court should not disturb BOZA's factual determination regarding the timeliness of Mr. Lucey's appeal. "The findings of fact by the board of appeals must be treated in the same manner *as a finding of fact by a jury . . .*" S.C. Code Ann. §6-29-840(A).

The earliest Mr. Lucey could have received actual notice of the Hotel appearing before the DRB for approval of Site, Landscape, and Architecture was on the date the Town posted the DRB agenda – July 19, 2021. Taking July 19, 2021 as the actual notice date, Lucey's August 12, 2021 appeal was timely submitted to the Town Attorney within thirty (30) days of July 19, 2021.

After receiving Lucey's appeal, the Town Attorney informed Lucey that the Town accepted his August 12, 2021 letter as his appeal, but requested that he prepare the form and pay the \$200 fee, which Lucey submitted. (BOZA Record, Exhibit I, Response Accepting Lucey Appeal). Appellant contends that only when Mr. Lucey responded to this request and submitted his two page processing form on August 23 did he "perfect" his appeal. (See Exhibit N, Processing Form for Lucey's Appeal).

Appellant's argument asks this court to elevate form over substance. Courts have repeatedly rejected technicality based arguments that ignore substance. *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184 (Ct. App. 2017) (reversing the ALC's holding that a terminated employee's grievance was untimely because he failed to submit the designated cover form, and finding that the employee submitted the substance of his grievance before the expiration of the deadline via letter from his attorney); *Gordon v. Busbee*, 367 S.C. 116, 120-21 (Ct. App. 2005) (reversing the circuit court's dismissal of an action for failure to file a probate court form because the appellant's filing contained the necessary information and holding the Circuit Court's ruling elevates form over substance). *See also, Pierce v. Ocwen Loan Servicing, LLC*, 987 F.3d 577, 579–80 (6th Cir.2021) (notice of appeal was timely filed when placed in court's drop box despite local rule requiring electronic filing; failure to comply with local rule did not render notice of appeal untimely); *GBJ, Ltd. v. Redman*, 521 F.Supp.2d 1000, 1001–02 (D.Ariz.2007) (notice of removal constructively delivered to clerk; clerk cannot refuse notice when not filed by electronic means as required by local rule); *U.S. v. Harvey*, 516 F.3d 553, 556 (7th Cir. 2008) (notice of appeal that was filed electronically was timely even though local rules required hard copy; difference between hard copy and electronic copy is mere error of form).

Appellant offers no authority holding that failure to file a cover form with a BOZA appeal letter constitutes an ineffective appeal for purposes of timeliness. Instead, Appellant argues that the Ordinance commands “complete applications” and that “incomplete applications will be returned to the applicant”. (See Mt. Pleasant Code of Ordinances §156.413(D)(1)-(2)). However, this provision states that an incomplete application will be returned if it remains incomplete “prior to consideration by the Board.” It is undisputed that Lucey filed his cover form on August 23,

2021 many weeks prior to BOZA's hearing on September 27, 2021. Appellant's arguments based on code §156.413(D) has no merit.

The governing statute S.C. Code Ann. § 6-29-800(B) regarding the requirements to submit a zoning appeal contains no reference to a cover form requirement in order to perfect a zoning appeal. This Court should not add a requirement that is not contained in the governing statute.

Finally, Appellant's argument on timeliness relies on Lucey receiving actual notice on July 19, 2021. Appellant argues Lucey is charged with notice as of July 19, 2021 because DRB posted its agenda that included the Hotel on that date. This argument, however, mistakes actual notice and constructive notice. The Supreme Court of South Carolina has held that there are different standards for actual and constructive notice. *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 64, 504 S.E.2d 117, 122 (1998). Actual notice requires "express notice" which is communicated by direct information either written or oral, from those cognizant of the fact communicated. *Id.* (holding that "implied actual notice" as opposed to express actual notice blurs the lines between actual and constructive notice and should no longer constitute actual notice). As such, actual notice for Mr. Lucey would have occurred when he received direct communication about the Hotel being up for approval by the Town, and NOT when the Town merely posted information publically about it. While Mr. Lucey may have had "constructive notice" on July 19, 2021, he likely did not have actual notice until much later – possibly as late as the date of his letter on August 12, 2021. S.C. Code Ann. 6-29-800(B) (requiring an appeal to the Board be taken within thirty (30) days of when the aggrieved party received **actual notice** of the action from which the appeal is taken). If Mr. Lucey receive actual notice after July 23, 2021, his appeal would be timely even if the processing form was required to "perfect" his appeal as Appellant alleges.

Regardless, BOZA correctly determined that Mr. Lucey timely filed his appeal. This Court should not disturb BOZA's factual finding on notice and timeliness. Thus, this Court should reject Appellants arguments and deny the appeal.

III. FOIA allegations are irrelevant to this appeal and BOZA did not violate FOIA at the September 27, 2021 BOZA hearing.

(a) Appellant's FOIA arguments are irrelevant to this appeal.

Appellant erroneously asserts that an alleged technical error in announcing executive session to receive legal advice constitutes "an error of law" or an "abuse of discretion" justifying reversal of BOZA's decision. Appellant relies the South Carolina Freedom of Information Act, but the remedies for FOIA violations are limited by statute, and do not include invalidation of Board actions:

A citizen of the State may apply to the circuit court for a *declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter* in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

S.C. Code Ann. § 30-4-100(A)(Emphasis Added). The appropriate avenue for relief based on an alleged FOIA violation, is to file a declaratory judgment action. Further, Appellant cites no authority allowing a Circuit Court in a zoning appeal to reverse the decision of the zoning board

for violating FOIA. As such, FOIA is completely irrelevant to this appeal. This Court should uphold BOZA's decisions in this matter.

(b) BOZA properly announced the "Specific Purpose" of its executive session.

FOIA requires that public business be performed in an open and public manner so that citizens shall be advised of public officials' performance and decisions. S.C. Code Ann. §30-4-15. However, the South Carolina FOIA statute provides for certain exceptions wherein a public body may hold a meeting closed to the public. S.C. Code Ann. § 30-4-70. One of these enumerated exceptions is as follows:

Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, *the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege*, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

S.C. Code Ann. § 30-4-70(a)(2)(Emphasis Added). Before a public body, such as BOZA in this case, can move into a closed session (called "executive session"), they must announce the *specific purpose* of the session:

Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer *shall announce the specific purpose of the executive session*. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

S.C. Code Ann. § 30-4-70(b)(Emphasis Added).

In this case, BOZA announced the specific purpose of the executive session as follows:

Mr. Wood: Mr. Chairman, I would move the board move into executive session to receive the advice of counsel on this matter.

(See Exhibit S, Transcript of BOZA September 27, 2021 Hearing). There is no question that BOZA moved into executive session for a proper purpose – to receive legal advice related to the numerous legal issues presented by Lucey’s appeal. Lucey asserted at least six different legal grounds to challenge the Zoning Administrator’s determinations regarding the hotel, and the developer’s counsel likewise presented numerous legal arguments in response to Lucey’s appeal. BOZA’s decision to receive legal advice regarding these legal arguments was, of course, appropriate.

South Carolina case law is clear, that the specificity requirement is met when the public knows what dispute the legal advice will pertain to in the closed session. (*See Brock v. Town of Mount Pleasant*, 411 S.C. 106, 121, 767 S.E.2d 203, 210 (Ct. App. 2014), *aff’d as modified*, 415 S.C. 625, 785 S.E.2d 198 (2016) (finding specificity requirement met when Mayor stated “legal advice pertaining to O.K. Tire Store” and that he did not need to state “settlement offer for O.K. Tire Store” noting that “FOIA does not require such specificity”). Here, there is absolutely no question that the matter Mr. Wood refers to is the legal issues raised by Mr. Lucey in his appeal to BOZA – as that was what the meeting agenda item concerned. To the extent Appellant contends that Mr. Wood should have included language clarifying that the legal advice would concern the legal issues presented by Mr. Lucey’s appeal and not simply “on this matter”, FOIA does not require such specificity. Therefore, BOZA’s announcement of the specific purposes satisfies FOIA.

(c) BOZA held all deliberations and votes in public session

Appellant baselessly alleges, without any evidence whatsoever, that BOZA conducted the “entirety of its substantive deliberations on the Lucey appeal behind closed doors in executive session” and that BOZA “polled” its members in executive session. Appellant argues that this “must have happened” despite the fact that BOZA moved, **in public, by public vote**, to deny all grounds of Mr. Lucey’s appeal except off-street parking, after returning from executive session. (See Exhibit S, Transcript of BOZA September 27, 2021 Hearing). Further, Mr. Wood confirmed, in **public session** that “no votes were taken” and “no decisions were made” in executive session. (See Exhibit S, Transcript of BOZA September 27, 2021 Hearing). Appellant asks this Court to infer FOIA violations, without any evidence whatsoever, based solely on the amount of time between BOZA returning from executive session and publically voting to deny the appeal on all grounds except off-street parking. The Court should reject this baseless argument.

CONCLUSION

Respondent request this Court deny this appeal and uphold BOZA’s determination that Appellant’s proposed Hotel has insufficient parking under Section 156.171 of the Mt. Pleasant Code of Ordinances, and grant Respondents such other relief as the Court deems appropriate.

CLEMENT RIVERS, LLP

By: s/ Brian L. Quisenberry
 Brian L. Quisenberry, Esq., SC Bar #73637
 E-mail: bquisenberry@ycrlaw.com
 Stephanie N. Ramia, Esq., SC Bar #100217
 E-mail: sramia@ycrlaw.com
 Zachary M. Kern, Esq., SC Bar #103731
 E-mail: zkern@ycrlaw.com
 P.O. Box 993, Charleston, SC 29402-0993
 25 Calhoun Street, Suite 400, Charleston, SC 29401
 Telephone: (843) 724-6641
 Fax: (843) 579-1325

Attorneys for Respondents The Town of Mount Pleasant, South Carolina, and The Town of Mount Pleasant Board Of Zoning Appeals.

Charleston, South Carolina

Dated: May 5, 2023

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.	)	APPELLANT’S REPLY
	)	MEMORANDUM IN SUPPORT OF
	)	APPEAL PETITION
The Town of Mount Pleasant, South	)	
Carolina; The Town of Mount Pleasant	)	
Board of Zoning Appeals; Michael	)	(BOZA Appeal)
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 submits this Reply Memorandum in Support of its Appeal Petition in the above BOZA Appeal.

ARGUMENT

I. Timeliness of the Lucey Appeal

a. Whether the Lucey Appeal was timely is question of law subject to *de novo* review – not a factual finding entitled to deference.

The Town/BOZA argue “[t]his Court should not disturb BOZA’s *factual determination* regarding the timeliness of Mr. Lucey’s appeal.” (Town/BOZA Memo, p. 22) (Emphasis added). The timeliness of a zoning appeal is not a factual determination. It is fundamentally a **jurisdictional issue**. Therefore, the Court need not defer to the BOZA on this issue pursuant to S.C. Code Ann. § 6-29-840(A). Rather, the Court may have a fresh look and determine “whether the decision of the board is correct as a matter of law.” *Id.*

The timeliness of a zoning appeal is a jurisdictional requirement and, as such, may be raised at any time by either party or *sua sponte* by the court. *Vulcan Materials Co. v. Greenville County*

Bd. of Zoning Appeals, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000). “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) (finding the failure to appeal the Board of Adjustment’s zoning decision within the fifteen days allowed for filing an appeal divested the Board of Adjustment of jurisdiction to hear the appeal), *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) (“This Court has consistently stated that service of Notice of Appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the Notice of Appeal must be served.”); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (“Service of the notice of intent to appeal is a jurisdictional requirement, and [an appeals court] has no authority to extend or expand the time in which the notice of intent to appeal must be served.”); *S.C. Coastal Conservation League v. S.C. Dep’t of Health and Envtl. Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008) (“Coastal failed to comply with the filing deadlines for requesting a review before the DHEC Board.”).

Given the foregoing, the Court should view the timeliness issue raised in the Appeal Petition as a jurisdictional, legal matter, entitled to non-deferential, *de novo* review by this Court.

b. The Zoning Code and BOZA Rules of Procedure must be strictly followed to perfect a zoning appeal.

The Town/BOZA ask this Court to accept Lucey’s untimely appeal under a substantial compliance theory, citing South Carolina cases and foreign authority having nothing to do with zoning appeals and mischaracterizing CKC’s argument as “elevat[ing] form over substance.” (Town/BOZA Memo, p. 23). This neglects the jurisdictional nature of zoning appellate procedure

and, if accepted, would allow the BOZA to disregard clear, procedural mandates set forth in the Zoning Code and the BOZA Rules of Procedure.

The Town has specific and detailed legal procedures governing zoning appeals, which must be strictly followed. Town staff, including the Zoning Administrator and the Town Attorney, and the BOZA itself lack the authority to make substantial compliance determinations or hand-waive away clear legal mandates.

Section 156.411(A)(5)(a) governs the appeals procedure to the BOZA as follows:

(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.**"

(Emphasis added). Section 156.413(D) goes on to state:

The **burden of proof for the relief sought is upon the applicant.**

- (1) In this regard, **a complete application of forms and information is required.**
- (2) **Prior to consideration by the Board, incomplete applications will be returned to the applicant.**

(Emphasis added). Finally, Article II, Section 3 of the BOZA Rules of Procedure contain the following additional requirements:

3. Applications

- A. 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 ...
- B. Applications **may require a submittal and review fee** in an amount specified by the schedule of fees established by the Town.

- C. **Failure to submit required information or forms and applicable fees may be grounds for rejection of the application.**
- D. **Requests not permitted or prohibited according to the Mount Pleasant Code of Ordinances shall be rejected unless relief has been sought from the appropriate governing body or appellate body.**

(Emphasis added).

As an initial matter, the BOZA Order does not contain any specific information substantiating the timeliness of the Lucey Appeal. It merely states in conclusory form “[t]he Board finds that the Appeal is timely ...” (BOZA Record, Exhibit A, p. 2). Lucey did not provide the BOZA any details as to when he obtained “actual notice” of the decisions being appealed, despite the fact **it was his burden to do so**. Section 156.413(D) (the “burden of proof for the relief sought is upon the applicant”). Lucey’s appeal letter is completely devoid of when he claims to have obtained actual notice, and nothing appears in the transcript on this issue. (BOZA Record, Exhibits I and S). In fact, there is evidence in the record that Lucey had knowledge of the project’s off-street parking plan as early as April 2021.¹ Therefore, there is no evidence in the record supporting the BOZA’s determination that the appeal was timely filed.

Assuming the BOZA implicitly considered July 19, 2021 to be the date Lucey obtained actual notice,² which CKC disputes, the Lucey Appeal was still untimely and jurisdictionally improper due to multiple violations of the Zoning Code and the BOZA Rules of Procedure. The Town/BOZA concedes Lucey did not complete the necessary application and file his appeal

¹ On April 26, 2021, Lucey sent a letter to the Town and BOZA objecting to the Project. (BOZA Record, Exhibit J; Exhibit B). The letter, among other things, objects to the off-street parking plan for the project, alleging “this small neighborhood has extreme parking problems” and “the parking plan for this project is misleading.” By all accounts, Lucey had notice of the Project and its off-street parking plan in April of 2021 – several months prior to August 23, 2021, when his appeal was filed with the Town.

² “The [DRB] agenda [including the Project] was posted to the Town website on July 19, 2021, at 11:35 am.” This was the Zoning Administrator’s position regarding when Lucey obtained actual notice, according to the Staff Report. (BOZA Record, Exhibit C, p. 5.)

through the Town's online portal until August 23, 2021. (Town/BOZA Memo, p. 23). **This was more than thirty (30) days after July 19, 2021.** However, the Town/BOZA would have this Court view the filing on August 23, 2021 as merely completing "a cover form." (Town/BOZA Memo, p. 23). This mischaracterizes the nature of the official application process and violates the Town's own ordinances and the BOZA's own procedures.

Exhibit N in the BOZA Record is the "Board of Zoning Appeals Appeal From Decision of Zoning Official Application" filed by Lucey on August 23, 2021. It states on the top of the page that "A Property Owner Acknowledgement Form must be submitted with the application." It also requires the payment of a \$200.00 fee. None of these required steps took place until, at the latest, August 23, 2023 when Exhibit N was filed. **These requirements are not just a mere "cover form." These filings and submissions contain material information required by the Zoning Code and the BOZA Rules of Procedure, which were not included in Lucey's August 12, 2021 letter.** The Lucey Appeal was not perfected until the official form was completed and submitted along with the Property Owner Acknowledgement Form and the required fee. This is required by Section 156.413(D) and Article II, Section 3 of the BOZA Rules of Procedure.³

The record fails to establish the timeliness of the Lucey Appeal. Therefore, Lucey Appeal and the ensuing BOZA Order are jurisdictionally infirm as a matter of law.

II. Statutory Standing

- a. **Whether Lucey possessed statutory standing to appeal the Zoning Administrator's decision to the BOZA is question of law subject to *de novo* review – not a factual finding entitled to deference.**

³ The word "may," as it appears in Article II, Sections 3(B) and 3(C) of the BOZA Rules of Procedure does not alter this analysis. Section 3(B) simply says an application fee "may" be required, which it clearly was based on the face of Exhibit N. Section 3(C) says an application "may" be returned if incomplete, but this cannot be read to modify the statutory and ordinance derived thirty (30) day jurisdictional requirement for perfecting an appeal and allow a defective appeal to be cured passed the jurisdictional appeal period. The BOZA also hears variances and special exception requests, neither of which have jurisdictional appeal deadlines.

As with the timeliness issue, the Town/BOZA attempts to portray the statutory standing issue raised by CKC as a factual finding entitling the BOZA to significant deference. (Town/BOZA Memo, pp. 19-20). This fundamentally misapprehends the nature of standing and its relationship to the doctrine of justiciability. Our courts will not address the merits of any case unless it presents a justiciable controversy. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996).

This Court must review *de novo* the BOZA's determination that Lucey possessed statutory standing to initiate this appeal. See *Ex parte State ex rel. Wilson*, 391 S.C. 565, 570, 707 S.E.2d 402, 405 (2011). Standing is a threshold legal question bearing on justiciability. See *Peoples Fed. Sav. & Loan Ass'n v. Res. Plan. Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy" (quoting *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998))); *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010) (stating appellate courts have "the inherent authority to consider justiciability"); *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999) (raising the issue of standing *sua sponte* in a declaratory judgment action and affirming the grant of summary judgment under Rule 56(c) because the appellant lacked standing).

Therefore, as with the timeliness issue, the Court need not defer to the BOZA on this issue pursuant to S.C. Code Ann. § 6-29-840(A). Rather, the Court may have a fresh look and determine "whether the decision of the board is correct as a matter of law." *Id.*

b. Adjacency is not enough, in and of itself, to establish statutory standing to appeal a zoning administrator decision to the BOZA.

With respect to zoning administrator appeals, S.C. Code Ann. § 6-29-800(B) and Section 156.411(A)(5) limit standing to appeal zoning administrator decisions to “any person **aggrieved**...” (emphasis added). Neither speaks to physical adjacency. Notably, this is to be contrasted with two other appellate procedures found in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 that do expressly refer to adjacency in the standing context. S.C. Code Ann. § 6-29-760(C) (standing to appeal a rezoning decision limited to “[a]n **owner of adjoining land** or his representative”) (emphasis added); S.C. Code Ann. § 6-29-950(A) (standing to enforce a zoning ordinance limited to “an **adjacent or neighboring property owner** who would be specially damaged”) (emphasis added).

Courts must assume that legislative bodies are “aware of the common law, and where a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense.” *State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997); *see also Beck v. Prupis*, 529 U.S. 494, 500-01, 120 S.Ct. 1608, 146 L.Ed.2d 561 (2000). From a strict statutory construction perspective, it is impermissible to read into S.C. Code Ann. § 6-29-800(B) and Section 156.411(A)(5) an adjacency test. Both the General Assembly and Town Council certainly knew how to provide for an adjacency requirement, but chose not to do so.

The Town/BOZA rely heavily on *Bevivino v. Town of Mt. Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 64, 737 S.E.2d 863, 867 (Ct. App. 2013), but this case does not stand for the proposition that a party is “aggrieved” simply by virtue of being physically adjacent. Rather, the case simply stands for the proposition that one need not participate at a BOZA hearing to appeal a BOZA decision to circuit court.

Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001) remains the leading case in South Carolina that defines the meaning of “aggrieved” in the context of zoning appellate litigation. There, the Court 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.

Id. at 301, 551 S.E.2d at 589-90. That case clarified that being “aggrieved” requires demonstration of an “actual injury” not a “purely conjectural and hypothetical” one. Clearly, more is needed than mere adjacency.

CKC’s Memorandum in Support of its Appeal Petition details why the record fails to demonstrate any “actual injury” suffered by Lucey via “competent evidence.” *See, Wyndham Enters., LLC v. City of N. Augusta*, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct. App. 2012) (requiring “competent evidence” on technical subjects in zoning appeals); *see, also Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 206, 516 S.E.2d 439, 441 (1999) (reversing a zoning board’s denial of a special exception permit and holding that although neighboring residents testified they felt a proposed halfway house would increase traffic, there was no factual evidence presented to support that allegation).

The Town/BOZA would have the Court limit the “competent evidence” requirement to special exception applications, but that is not what these cases hold. Rather, these cases stand for the general proposition that “competent evidence” is required in zoning appeals, generally. The policy behind this makes sense, particularly in the context of a zoning administrator appeal. A third-party seeking to challenge another’s entitlement to zoning approvals, especially in by-right situations like this one, must do so through “competent evidence,” not bald allegations or “purely

conjectural and hypothetical” statements. This is consistent with the above statutory analysis regarding the definition of “aggrieved.” More is needed than mere adjacency.

The Lucey Appeal claims the Zoning Administrator erred when he concluded that the specific plans for the Project met the applicable use, off-street parking, height, and curb-cut regulations. Essentially, the Lucey Appeal, in shotgun style, suggests that every decision made by the Zoning Administrator was in error. This demonstrates his motivation was not genuinely about parking in this park of Mt. Pleasant – **it was stopping the project at all costs to protect his own commercial (not residential) interests.**

Speaking of which, Lucey has 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. (BOZA Record, Exhibit J, p.4.) These are all commercial properties, including his law firm, not his or anyone else’s residence. **In fact, Lucey has in recent years attempted to purchase the Properties themselves.** (*Id.* at Exhibits E and F, therein.) This was echoed by the attorney for the owner of the Properties at the BOZA hearing. These business competition factors cannot be ignored in the standing analysis.

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). Lucey need not be in the hotel business to be a competitor of CKC. He is a competitor, as demonstrated by his actions to control this entire block. By his own admission, Lucey opposes the Project due to perceived parking and other impacts to *his businesses and significant real estate holdings* in the area.

Therefore, Lucey Appeal and the ensuing BOZA Order are infirm as a matter of law and the latter must be reversed.

III. Definition of “Guest Room”

- a. The interpretation of an undefined term in a zoning ordinance is a question of law subject to *de novo* review – not a factual finding entitled to deference.**

The Court need not defer to the BOZA’s interpretation of “Guest Room.” This interpretative issue is unquestionably a question of law – not fact. Therefore, the Court must take a *de novo* look at the record prior to ruling on the proper interpretation of “Guest Room.”

Issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact. *Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008). Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, “a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* 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.*

Therefore, as with both the timeliness and standing issues, this Court’s review of the BOZA’s interpretation of “Guest Room” is a question of law and subject to *de novo* review.

- b. Undefined terms in zoning ordinances must be liberally construed in favor of the property owner – not the government or commercial neighbors.**

The BOZA Order produces an interpretation of “Guest Room” that turns on its head the interpretation of not one, but two, Zoning Administrators for the Town (Kent Prause and his successor Mike Robertson). In so doing, the BOZA itself failed to grant deference to these officials statutorily charged with interpreting and applying 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.”).

CKC will not repeat here its robust, substantive defense of the Zoning Administrator’s interpretation of “Guest Room.” **CKC agrees with the Zoning Administrator’s interpretation that “Guest Room” means a keyed unit – not a bedroom within a unit.** This common sense and longstanding interpretation finds robust support in the record, especially the Zoning Administrator’s briefs submitted to the BOZA. Here, CKC will boil down the essence of this interpretive dispute and highlight the law that swings this issue clearly in CKC’s favor.

“Guest Room” is undefined in the Zoning Code.⁴ Town Council could have, but chose not to, define the term. This is significant because **undefined terms in zoning ordinances must be liberally construed for the benefit of the property owner – as a matter of law.** The South Carolina Court of Appeals has held as follows:

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) (emphasis added) (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

⁴ Notably, after the BOZA hearing the Town Council adopted Ordinance No. 21071 on December 15, 2021. This ordinance, among other things defines “Guest Room” for the first time and substantially increases the off-street parking required for suite-style hotel rooms. This, however, was not the law at the time the BOZA Order was issued. The Court must interpreted the phrase “Guest Room” as it existed on September 27, 2021.

“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.”) Put simply, this means that zoning ordinances must be strictly construed in favor of the property owner – not the government, neighbors, or others.

The Town/BOZA makes much of various dictionary definitions of “Guest Room” (none of which appear in the certified record, by the way) in support of the BOZA’s reversal of the Zoning Administrator’s interpretation. However, the Court of Appeals has repeatedly cautioned against the use of dictionaries in the zoning context. *See Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 409, 552 S.E.2d 42, 46 (Ct. App. 2001) (“[W]e are reluctant to rely upon either a dictionary or cases that have relied upon a dictionary for a definitive answer as to the definition ...”). The zoning ordinance, as drafted, controls this case – not the dictionary.

Therefore, to the extent there are two reasonable competing interpretations of “Guest Room,” which CKC denies,⁵ South Carolina law compels the interpretation favoring the property owner. This is particularly the case where the property owner’s interpretation is consistent with not just one, but two, Zoning Administrators’ interpretations and the Town’s longstanding and well-founded interpretation.

The BOZA Order commits an abuse of discretion by bending over backwards and going out on a limb to interpret the phrase “Guest Room” in a manner antagonistic to the project. For that reason, the BOZA Order must be reversed and the Zoning Administrator’s interpretation reinstated.

⁵ CKC respectfully submits that the BOZA’s interpretation of “Guest Room” is an absurd one that would require an enormous amount of unnecessary and wasteful off-street parking.

IV. The FOIA

The Town/BOZA claim that CKC's arguments regarding FOIA violations are irrelevant to this appeal. (Town/BOZA Memo, pp. 25-28). This is not the case. The Court's role in a zoning appeal is to determine whether the proceedings complied with the law from both a procedural and substantive perspective. S.C. Code Ann. § 6-29-840(A). This naturally implicates the FOIA because it governs everything from how BOZA meetings are noticed to how they are conducted.

The transcript from the BOZA hearing reveals that **the BOZA members engaged in zero public discussion or deliberation about the appeal generally or the issues of timeliness, standing, and the interpretation of "Guest Room" specifically.**

As soon as the floor was closed to presentations and public comments, the BOZA immediately moved to go into executive session to receive legal advice. After approximately thirty (30) minutes, the BOZA members returned. Without any public discussion, a scripted and prepared motion was made to reverse the Zoning Administrator on the "Guest Room" issue only. No discussion followed the motion and a second. Ultimately, a unanimous vote was taken.

These facts, confirmed by the BOZA Transcript (which the Town/BOZA objected to even including in the record) speak for themselves. Since no public deliberation took place, it logically follows that the entirety of the BOZA's deliberation took place behind closed doors. *They had to take place somewhere.* Having all such deliberations behind closed doors is a clear violation of the FOIA and fundamentally polluted the proceedings before the BOZA. This further reveals a fundamentally tainted process not to mention an abuse of discretion and arbitrary decision by the BOZA.

CONCLUSION

All three issues in this appeal: timeliness, statutory standing, and the definition of “Guest Room” are questions of law for this Court’s *de novo* review. The law does not compel this Court to defer to the BOZA on any of these issues. This Court must take a fresh look at all three issues and render a decision based on the certified record in this case.

For the reasons set forth in CKC’s Memorandum in Support of its Appeal Petition and the instant Reply, this Court should reverse the BOZA Order and award the additional relief requested by CKC.

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 CKC Properties, LLC

May 12, 2023

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CKC Properties, LLC,

Case No. 2021-CP-10-05211

Plaintiff,

**DEFENDANT/RESPONDENT JUSTIN
O. LUCEY'S NOTICE OF MOTION
AND MOTION TO RECONSIDER**

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,

Defendants.

TO: PLAINTIFF CKC PROPERTIES, LLC, AND ITS ATTORNEY(S) OF RECORD:

YOU WILL PLEASE TAKE NOTICE THAT Defendant/Respondent Justin O'Toole Lucey ("Lucey"), by and through his undersigned counsel, respectfully moves this Court, pursuant to Rule 59(e), SCRCP, to reconsider its Order Reversing BOZA Order in Part and Affirming in Part entered July 14, 2023 (the "Order"), a copy of which is attached as **Exhibit A** hereto, on appeal of the final order of the BOZA, dated October 25, 2021 (the "BOZA Order"). Specifically, the Order reversed the BOZA Order and granted Petitioner CKC Properties, LLC's ("Petitioner") appeal on the issue of the interpretation of "Guest Room," as that term related to off-street parking requirements for 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 "Project"). Lucey respectfully requests that this Court reconsider and alter or amend its Order as specified herein, based upon the grounds set forth below.

1. Lucey respectfully requests that the Court reconsider its finding and conclusion that the term “Guest Room” applies to “keyed units” as opposed to the number of rooms within those units.

2. Lucey respectfully requests that the Court reconsider its finding and conclusion that “the BOZA Order affirming the Zoning Administrator’s approval of the Project, in all other respects, was not not (sic) appealed and are final decisions binding on all parties.”

3. Lucey respectfully requests that the Court reconsider its finding and conclusion 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.”

4. Lucey respectfully requests that the Court reconsider its finding and conclusion 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.”

5. As support for paragraphs 2, 3, and 4 of this Motion, Lucey submits that the Order should have mentioned, considered and decided additional sustaining grounds, *i.e.*, the grounds for appeal asserted by Lucey in his August 12, 2021 appeal of the Zoning Administrator’s decisions published on July 19, 2021, namely:

- a. that the Project is not a permissible use under the current zoning of these parcels, and that the plans reflected a disguised short-term rental facility rather than a boutique hotel.

- b. that the Project violated § 156.101 of the Town of Mt. Pleasant Code of Ordinances, including use inconsistent with zoning and detracting from character, value and attractiveness of the surroundings.
- c. that the Project would impermissibly allow residential uses in a building exceeding three (3) stories.
- d. That the Project violated § 156.108 of the Town of Mt. Pleasant Code of Ordinances, relating to driveway spacing, curb cuts and intersection visibility.

6. In accordance with the holding in *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 231-33, 603 S.E.2d 605, 611 (Ct. App. 2004), an appellate court must affirm the trial court's ruling if there is any evidence that supports it. *See also* Rule 220, SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."

7. In this case, Lucey, as the prevailing party in his BOZA Appeal, and respondent in the instant appeal, was not required to present all issues and arguments in order to preserve them for appellate review, by this Court or the Court of Appeals. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417-23, 526 S.E.2d 716, 721-25 (2000) ("it is not always necessary for a respondent-as the winning party in the lower court to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review.") However, Lucey requests that this Court consider and rule upon the additional sustaining grounds in the record on appeal, in order to determine whether the BOZA Order should be affirmed on other grounds.

8. Lucey respectfully suggests that once this Court decided to reverse the BOZA Order by reinstating the Zoning Administrator's determination on the definition of "Guest Room,"

it should have allowing briefing and oral arguments on the additional sustaining grounds, as requested in status conferences prior to the final Order. Lucey requests the opportunity to present these issues to the Court for consideration in conjunction with a hearing on this Motion.

9. In the event that the BOZA Order is affirmed on other grounds, and while the issues presented in this Motion remain outstanding for reconsideration, Lucey asks this Court to suspend its rulings relating to allowing the Project to proceed, and declaring that Petitioner has vested rights for the Project.

10. Lucey also incorporates herein any grounds for reconsideration that may be asserted by any other defendant/respondent in this case.

This Motion is supported by the grounds set forth herein, governing South Carolina statutory and common law and Rules of Civil Procedure, and such other matters as the Court deems appropriate, including, but not limited to, any memoranda in support of this Motion that may be filed prior to the hearing. The instant motion is timely filed under Rule 59(e), SCRCPP, and the undersigned hereby certifies and affirms, pursuant to Rule 11, SCRCPP, that consultation with opposing counsel would serve no useful purpose.

s/Jeffrey S. Tibbals

Jeffrey S. Tibbals S.C. Bar No. 72628

jst@bybeetibbals.com

Evan P. Williams S.C. Bar No. 101981

ewilliams@bybeetibbals.com

BYBEE & TIBBALS, LLC

735 Johnnie Dodds Blvd., Suite 104 (29464)

P.O. Box 1542

Mt. Pleasant, SC 29465

843.881.1623

COUNSEL FOR

DEFENDANT/RESPONDENT

JUSTIN O'TOOLE LUCEY

July 24, 2023

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

Respondents Town of Mount Pleasant, South Carolina and Town of Mount Pleasant, South Carolina Board of Zoning Appeals (hereinafter "Respondents", "Town" or "BOZA") hereby move this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider, alter, and amend its Order reversing BOZA's ruling on Appellant's compliance with off-street parking requirements in the Town's then-applicable Ordinance.

PROCEDURAL HISTORY

On September 27, 2021, BOZA held a public hearing on a zoning appeal filed by Justin Lucey ("Lucey") concerning Appellant CKC Properties, LLC's ("Appellant") proposed boutique hotel in the Town of Mount Pleasant. On October 26, 2021, BOZA granted Lucey's appeal on the ground that Appellant's proposed hotel lacked sufficient off-street parking to comply with the Town's then-applicable Ordinance and denied Lucey's appeal on all other grounds. On November 16, 2021, Appellant appealed BOZA's decision to this Court.

On May 26, 2023, this Court held a hearing on Appellant’s appeal. On July 14, 2023, this Court entered an Order reversing in part and affirming in part BOZA’s decision. This Court found that BOZA’s erred in reversing the Zoning Administrator’s interpretation of “Guest Room” and by finding that Appellant’s proposed hotel lacked sufficient off-street parking under the then-applicable Ordinance. This Court affirmed BOZA’s determination that Lucey had standing to challenge Appellant’s compliance with the then-applicable Ordinance and that Lucey’s appeal was timely. Respondents respectfully request that this Court withdraw the portion of its Order reversing BOZA, and remove the errors identified below and issue a new Order affirming BOZA in full.

A. This Court’s Order misinterprets the “1-2” parking space requirement as a “discretionary range,” and erroneously reasons that the “discretionary range” supports the reversal of BOZA’s Order.

The Court’s Order errs in two critical ways interpreting the “1-2” parking space requirement as providing a discretionary range in the then applicable ordinance:¹

i. The Court description of the Zoning Administrator’s determination is factually incorrect.

The Court’s Order states that the Zoning Administrator required that the smaller “units” in Appellant’s proposed hotel provide one (1) off-street parking space and the larger “units” provide two (2). (Order, p. 14). This is a factually incorrect description of the Zoning Administrator’s determination. For support of this factually erroneous holding, the Order cites to the Staff Brief as follows: “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 Building B and C (16).” (Order p. 14,

¹ Appellant did not raise this argument in its Petition nor in its Memorandum of Law in Support, but did so in its proposed order adopted by this Court. As such, Respondents take this opportunity to dispose of the factually incorrect argument here, for the first time.

n. 6, citing to BOZA Record, Exhibit E, p. 4). The Order does not cite any other support. The Staff Report cited by the Order is describing a *summary of the developer's presentation* concerning the plans with this break down (one space for units in Building A, and two spaces for units in Building B and C). Nothing in the record supports a holding that the Zoning Administrator required certain number of parking spots by building or size of the various units. He did not do so.

In fact, the Zoning Administrator argued before BOZA that the 1-2 range did not provide him any discretion. In his appeal to BOZA, Lucey argued that the Zoning Administrator had discretion and should allot two spaces as the minimum per unit in this development instead of one space as the minimum per unit. The Zoning Administrator's Staff Brief *rejects* that the "1-2" provides him with discretion to require one or two spots per "Guest Room" on a case by case basis. (BOZA Record, Exhibit E, p. 4 ("Staff is granted no authority by Town Council to set the minimum ratio"))).

Accordingly, the description in the Order that the Zoning Administrator required Appellant to provide one spot for certain units and two spots for other units is not factually correct, and should be removed from the Order.

- ii. **The Court's Order misinterprets the "1-2" parking space requirement as providing the Zoning Administrator discretion to require either one or two parking spaces on a case by case basis, and erroneously concludes that the "1-2" parking space requirement has no meaning otherwise.**

The Court's Order cites to the "1-2" parking space requirement as follows:

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."

(Order, p. 13). The Order's interpretation of the "1-2" parking space requirement is flat wrong.² The parking requirement is expressed in a "1-2" range because accommodation developments must have *at least* one spot per "Guest Room" and *no more than two spots* per "Guest Room" as a paved impervious surface. The Ordinance states the parking requirement as "1-2" so as to designate *the maximum amount of impervious paved parking* allowed on a given development. See Ordinance §156.171(B) which states for commercial properties any spaces above the minimum range *must be surfaced with "pervious" materials*. (See Exhibit R, Mt. Pleasant Code of Ordinances §156-.170-176, as of September 27, 2021 ("in commercial zoning districts, all parking spaces provided above the minimum amount shall be surfaced with pervious materials"). Thus, the purpose of the "1-2" parking requirement is to set the range of impervious paved parking allowed, and to require that any additional parking added to the development beyond two spaces per "Guest Room" must be of a pervious material such as gravel.

The "1-2" has nothing to do with "discretion" in the Zoning Administrator to require either one or two spaces per "Guest Room" on a "case by case basis" as the Order erroneously concludes. As long as the proposed number of paved parking spaces is at least one space per guest room and no more than two spaces per guest room, the Zoning Administrator *must* approve

² Again, Appellant did not raise this erroneous argument in its Petition nor in its Memorandum of Law in Support, and this is the Respondents first opportunity to brief the argument to the Court.

it. There is no discretion. The Court's Order has no support in the Town Code or in the Record on Appeal for the holding that the "1-2" parking space requirement provides the Zoning Administrator with "discretion" to require one space for certain "Guest Rooms" and two spaces per "Guest Room" for others on a "case by case basis".

The Court's Order continues and erroneously reasons that the "1-2" parking space discretion would have no meaning if Town Council intended for parking space requirements to be counted per bedroom rather than lodging unit. As stated above, the "1-2" parking space requirement provides no discretion to the Zoning Administrator to require more or less spots depending on the size of the units, and the Court's whole reasoning in the Order on this point is error. (Order, p. 13). Accordingly, the Court should withdraw the Order and remove this reasoning, and reconsider the holding, and issue a new Order affirming BOZA in full.

B. This Court's Order erroneously disregards the customary and popular definition of "Guest Room".

This Court's Order defines "Guest Room" synonymous with "Lodging Unit" and rejects BOZA's definition of "Guest Room" as "bedroom". In doing so, this Court improperly disregards the customary and popular definition of "Guest Room", which is "bedroom".

This Court agrees that "Guest Room" is undefined in the then-applicable Ordinance. However, this Court improperly disregards long-standing South Carolina law on statutory construction, which holds: "when faced with an undefined statutory term, the court *must interpret the term in accord with its usual and customary meaning.*" *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) (citing *Branch v. City of Myrtle Beach*, 340 S.C. 405, 532 S.E.2d 289 (2000); *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998)) (Emphasis Added). There is no question that the usual and customary meaning of "Guest Room" is bedroom.

Respondents cited to numerous dictionary definitions showing that “Guest Room” means “bedroom” and not “lodging unit”. Dictionaries are routinely utilized by Courts in determining the usual and customary meaning of a word or phrase. *See Abdo v. City of Charleston*, No. 2019-001910, 2023 WL 34431, at *1 (S.C. Ct. App. Jan. 4, 2023); *see also Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 62, 766 S.E.2d 707, 733 (2014).

This Court’s Order discredits the dictionary definitions cited by Respondents on erroneous grounds. This Court’s Order states “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*.” (Order p. 13, n. 5) (emphasis added). The Order, however, is incorrect. Two of the definitions cited by Respondents explicitly state that “Guest Room” means “bedroom” *in the context of a hotel*. *See Macmillan*: defining “Guest Room” as “a *bedroom* for a visitor in someone’s home *or in a hotel*” (emphasis added); *see also Collins*: “A guest room is a *bedroom* in a house *or hotel* for visitors or guests to sleep in” (emphasis added). Thus, the Court’s Order relies on erroneous grounds to discredit the multiple dictionary sources showing the usual and customary meaning of “Guest Room”. By ignoring the usual and customary usage of the term “Guest Room” this Court erred.

The Court further errs in finding that Town Council’s 2014 amendment to the parking table to change the term “Sleeping Room” to “Guest Room” shows that “Guest Room” means “Lodging Unit” rather than bedroom. (Order, p. 14). In making the 2014 amendment, Town Council selected the phrase “Guest Room”, which, as argued above, is repeatedly defined in multiple dictionaries as meaning a “bedroom” within a “hotel”. Moreover, if Town Council had intended to change “Sleeping Room” to “Lodging Unit” it would have done so directly, rather than using the term “Guest Room” to mean “Lodging Unit”. Therefore, the Court erred in

reasoning the 2014 amendments support reversing BOZA's determination, and the Court should issue a new order affirming BOZA in full.

C. The Court's Order fails to consider that "Guest Room" is a separate term from "Lodging Unit" in the Town's then-applicable Ordinance, and ignores Town Council's intent for the two different terms to have different meanings.

This Court's Order fails to read "Guest Room" in its statutory context. The Court reasons that "Guest Room" should be read synonymously with "Lodging Unit" rather than "bedroom". The Court fails to follow Town Council's intent that "Guest Room" is a different term from "Lodging Unit," which is used directly elsewhere in the ordinance. The Court improperly substitutes its own judgment for that of Town Council. "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." *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003).

In interpreting ordinance terms, South Carolina courts must construe terms in the context of the overall ordinance in which they are contained. *Georgia-Carolina Bail Bonds, Inc.*, 354 S.C. at 24, 579 S.E.2d at 337 (Ct. App. 2003) ("Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. . . . Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction"). The usage of terms in an Ordinance must be considered intentional. *Consumer Advocate for State v. South Carolina Dept. of Ins.*, 397 S.C. 599, 603, 725 S.E.2d 708, 710 (Ct. App. 2012) (finding that the undefined term "increase" did not mean "overall increase" because the legislature uses the phrase "overall increase" expressly elsewhere in the statute, and therefore the omission of "overall" must be

presumed to be intentional). *See also*, *S.C. Coastal Conservation League v. SCDHEC*, 380 S.C. 349 (2008) (refusing to interpret an undefined term in a statute as synonymous with another term because the legislature expressly used that term in other sections of the statute, and holding that this showed the legislature was able to use that specific term if that is what it meant by the undefined term).

Town Council uses the specific term “Lodging Unit” within the Ordinance at issue. Town Council uses the term “Lodging Unit” to determine what is, and what is not, a “boutique hotel”. (See Exhibit Q, Mt. Pleasant Code of Ordinances §156.007, as of September 27, 2021). However, for determining off-street parking, the Town Council uses the term “Guest Room” and NOT “Lodging Unit”. This Court’s Order errs in finding that the term “Guest Room” is synonymous with “Lodging Unit”. Why would Town Council use the term “Guest Room” to mean “Lodging Unit” when it could have easily used “Lodging Unit” directly as it did in other parts of the ordinance? This Court must view Town Council’s use of both terms as intentional, and the two terms cannot be synonymous. “Guest Room” cannot mean “Lodging Unit”. Therefore, the Court should withdraw its Order and issue a new Order affirming BOZA in full.

D. The Court’s reliance on *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015) is misplaced.

The Court’s reliance on *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015) is misplaced. This Court cites to *Helicopter Sols., Inc. v. Hinde*, for the point that this Court should liberally construe the Ordinance for the benefit of the property owner. *Helicopter* is distinguishable from the present case. In *Helicopter*, the Board of Zoning Appeals improperly limited the undefined term of “sight-seeing depot” to only “ground vehicles” (and not aerial vehicles), when based on a review of the ordinance, that limitation was not supported or contemplated by the legislature.

The principle of liberal construction for the benefit of the property owner referenced in *Helicopter* is subservient to “the intent of the legislature.” *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003) (“All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used.”). Here, BOZA based its ruling on specific language in the ordinance at issue. BOZA concluded that Town Council’s use of the term “Guest Room” and “Lodging Unit” within the same ordinance must be read that the two terms have different meanings. BOZA’s interpretation of Guest Room as “bedroom” is based on Town Council’s intent as ascertained from the language in the ordinance. Therefore, *Helicopter*, where the Board ignored the intent of the legislature, is distinguishable from the present case.

The Order also ignores that BOZA’s interpretation is consistent with the overall purpose of the off street parking requirements. See *Georgia-Carolina Bail Bonds, Inc.*, 354 S.C. at 23, 579 S.E.2d at 336 (Ct. App. 2003) (“[L]anguage must be construed in the light of the intended purpose of the statute”). Municipalities require off street parking from developments to limit the burdens on public street parking. Requiring additional off street parking for large multiple bedroom units is consistent with reducing the public street parking burdens. Requiring the same parking for a one bedroom and a four bedroom hotel units, as the Court’s Order holds, is inconsistent with the purpose of the ordinance to limit on-street parking burdens.

Further the notion within the Order that undefined terms must always be construed in favor of the property owner is misplaced. (Order, p. 11-12). Courts in South Carolina often interpret undefined terms within zoning ordinances in favor of municipalities if that interpretation is consistent with the intent of the legislature. See, e.g., *Abdo v. City of Charleston*, No. 2019-001910, 2023 WL 34431 (S.C. Ct. App. Jan. 4, 2023) (interpreting the undefined term

“monument” to restrict the property owners rights); *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 96, 791 S.E.2d 305, 311 (Ct. App. 2016) (interpreting the term “stable” to restrict the property owners rights).

In *Arkay, LLC v. City of Charleston*, a private property owner wished to operate a horse carriage business out of a portion of his building at 45 Pinkney Street in Charleston, however, the City’s zoning ordinance prohibited “stables” within 100 feet of a residential district. *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 89, 791 S.E.2d 305, 307 (Ct. App. 2016). The Circuit Court ruled in favor of the property owner holding the building, which had offices and other rooms was not a “stable”, but the Court of Appeals reversed. *Id.* at 96, 791 S.E.2d 305, 311. The term “stable” was not defined in the City’s zoning code, but the Court of Appeals looked to the tourism code for guidance. The Court found the “stable” meant the entire building located at 45 Pinkney, including the offices and other rooms in the building, and not just the portion of the back of the building where the horses would be kept. The Court noted that “stable” and “stall” are different terms in the tourism ordinance, thus the legislature must intend for those terms to have different meanings. The Court of Appeals in *Arkay* thus interpreted the zoning restriction against a property owner because that was consistent with the intent of the legislature.

Arkay is directly analogous to the case at bar. The legislative intent behind “Guest Room” was for it to mean “bedroom”. This is clear through the common usage of “Guest Room” in dictionaries and through Town Council’s specific differentiation between “Guest Room” and “Lodging Unit” within the same Ordinance. Therefore, this Court erred in reliance on the distinguishable *Helicopter* holding and should look to the analogous case in *Arkay* for guidance instead. This Court should issue a new Order affirming BOZA in full.

CONCLUSION

For the reasons stated herein, the Respondents Town of Mount Pleasant and Town of Mount Pleasant Board of Zoning Appeals respectfully request that this Court withdraw its Order and issue a new Order affirming BOZA's determination in full.

CLEMENT RIVERS, LLP

By: s/ Brian L. Quisenberry
Brian L. Quisenberry, Esq., SC Bar #73637
E-mail: bquisenberry@ycrlaw.com
Stephanie N. Ramia, Esq., SC Bar #100217
E-mail: sramia@ycrlaw.com
Zachary M. Kern, Esq., SC Bar #103731
E-mail: zkern@ycrlaw.com
P.O. Box 993, Charleston, SC 29402-0993
25 Calhoun Street, Suite 400, Charleston, SC 29401
Telephone: (843) 724-6641
Fax: (843) 579-1325

Attorneys for Respondents The Town of Mount Pleasant, South Carolina, and The Town of Mount Pleasant Board Of Zoning Appeals.

Charleston, South Carolina

Dated: July 24, 2023

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.	)	APPELLANT’S MEMORANDUM IN
	)	OPPOSITION TO JUSTIN O’TOOLE
The Town of Mount Pleasant, South	)	LUCEY’S MOTION TO RECONSIDER
Carolina; The Town of Mount Pleasant	)	
Board of Zoning Appeals; Michael	)	(BOZA Appeal)
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”) submits this Memorandum in Opposition to Justin O’Toole Lucey’s (“Lucey”) Motion to Reconsider this Court’s order entered on July 14, 2023 (the “Order”). For the reasons below, as well as the arguments presented to the Court by CKC to date,¹ CKC respectfully requests the Court deny the Motion to Reconsider.

ARGUMENT

I. The Motion to Reconsider fails to state with particularity any reason why the Court should reconsider its interpretation of “Guest Room” and thus violates Rule 7(b)(1), SCRPC.

Paragraph 1 of the Motion to Reconsider asks this Court to “reconsider its findings and conclusion that the term ‘Guest Room’ applies to ‘keyed units’ as opposed to the number of rooms within those units.” However, the Motion to Reconsider fails to advance any specific argument as to why the Court erred. It simply asks the Court to reconsider its ruling. Such vagueness and opacity violate the pleading requirements of Rule 7(b)(1), SCRPC, and thus fails to provide any

¹ CKC incorporates by reference its Appeal Petition filed on June 28, 2022, its Memorandum in Support of the Appeal Petition filed on April 21, 2023, and its Reply Memorandum filed on May 12, 2023.

basis for the Court to reconsider its Order under Rule 59, SCRCP. For this reason, the Court should reject Lucey's request to reconsider its "Guest Room" interpretation, as a matter of law.

Rule 7(b)(1), SCRCP provides that all motions "shall state with particularity the grounds" for the requested relief. This rule applies to Rule 59, SCRCP motions. *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010), *overruling*, 378 S.C. 237, 662 S.E.2d 458 (Ct. App. 2009) (holding a motion to reconsider failed to satisfy Rule 7 and, therefore, did not stay the time for appeal although subsequent memorandum of law on issues were exchanged); South Carolina Civil Procedure § 59.H.1 (2014). Furthermore, a motion to reconsider must specifically raise the issue on which a ruling is sought; merely arguing the matter is not sufficient. *Id.* (citing *Goddard v. Fairways Dev. General P'ship*, 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993)).

The Motion to Reconsider lacks any specific argument, factual or legal, to support Lucey's request that the Court reconsider its interpretation of "Guest Room." To the extent Lucey seeks to bootstrap into his Motion to Reconsider *the Town's and the BOZA's* arguments on the "Guest Room" issue, asserted in their motion to reconsider, that is nonetheless improper under Rule 7(b)(1), SCRCP and the aforementioned authorities. Furthermore, Lucey may not resurrect his deficient Motion to Reconsider by way of a more detailed memorandum in support. *See, Camp v. Camp, supra.*

Notwithstanding the foregoing and to support the Order's findings and conclusions on the "Guest Room" interpretation, CKC incorporates herein by reference its memorandum filed in response to the Town's and the BOZA's motion to reconsider the Order as well as CKC's Appeal Petition, prior memoranda, and arguments at the Appeal Petition hearing.

II. The Order correctly found that the unappealed zoning interpretations contained in the BOZA Order are final decisions binding on all parties.

Lucey asks this Court – through a motion to reconsider, no less – to take up and rule on zoning interpretations contained in the BOZA Order *which neither he nor the Town or the BOZA ever appealed*. Lucey’s portrayal of himself as the “prevailing party”² before the BOZA is not only inaccurate (he lost three (3) of the four (4) zoning interpretation appeals he brought), it also demonstrates a fundamental misunderstanding of zoning appellate procedure (from the quasi-judicial board to circuit court level) and how it differs markedly from the appeals process governed by the South Carolina Appellate Court Rules (“SCACR”).

The Motion to Reconsider cites Rule 220, SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”) and various cases decided thereunder, namely, *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417-23, 526 S.E.2d 716, 721-25 (2000) (“it is not always necessary for a respondent-as the winning party in the lower court to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review”). The Motion to Reconsider hinges entirely on arguments based on the Appellate Court Rules or cases decided thereunder.

Lucey’s reliance on these authorities is fatally misplaced for a very simple reason. “The Appellate Court Rules do not apply in circuit court.” *S.C. Dep’t of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 185 n.6, 700 S.E.2d 468, 469 (Ct. App. 2010). In zoning appeals, the Appellate Court Rules apply only *after a circuit court order is appealed* – not on a motion to reconsider a circuit court’s ruling. S.C. Code Ann. § 6-29-850 (“A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal *may appeal* in the manner

² Citing *I’On, L.L.C. v. Town of Mt. Pleasant*, Lucey would have this Court view him as the “prevailing party” before the BOZA and excuse his failure to appeal the BOZA’s rejection of three (3) out of the four (4) issues he challenged. The “prevailing party” concept does not apply to appeals from the BOZA to the circuit court. The statutes are silent on the “prevailing party” concept and *I’On, L.L.C. v. Town of Mt. Pleasant* does not govern this case because it was decided under the Appellate Court Rules, which do not apply. Regardless, CKC disputes Lucey was the “prevailing party” seeing as though he lost three (3) out of the four (4) issues he presented to the BOZA.

provided by the South Carolina Appellate Court Rules.”) (emphasis added). The Motion to Reconsider relies exclusively on authorities having no bearing on first-level zoning appeals like this case. This, alone, is sufficient to deny Lucey’s request that the Court take up and rule on unappealed aspects of the BOZA Order. CKC respectfully requests the Court do so.

Even assuming Lucey’s arguments are proper before this Court, which they are not, the Order nonetheless lacks reversible error.

The case before this Court is an appeal from the Town of Mount Pleasant Board of Zoning Appeals (the “BOZA”). Zoning appeals are strictly and exclusively governed by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994. S.C. Code Ann. §§ 6-29-310, *et seq.* The procedure governing appeals from the board of zoning appeals to the circuit court is set forth in sections 6-29-820 through -850. Section 6-29-820(A) reads as follows:

A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, 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. **The appeal must be filed within thirty days after the decision of the board is mailed.**

(Emphasis added). Section 6-29-840(A) outlines the circuit court’s standard of review as follows:

The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. ... **In determining the questions presented by the appeal**, the court must determine only whether the decision of the board is correct as a matter of law.

(Emphasis added).

Lucey’s administrative appeal challenged four (4) distinct zoning interpretations with respect to CKC’s project. The BZA Order specifies Lucey’s challenges as follows:

- 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).

(BOZA Record, Exhibit A, p. 2). The BOZA Order granted Lucey’s appeal in connection with the off-street parking interpretation, and that ruling alone was appealed by CKC. The BOZA Order affirmed the Zoning Administrator and denied Lucey’s appeal “in all other respects.” (*Id.* at p. 4) (“We reject the Appellant's additional grounds for the Appeal and deny the Appeal in all other respects.”). The BOZA order’s rejection of Lucey’s three (3) other challenges was never timely appealed by Lucey, the Town, the BOZA, or anyone else.

The BOZA Order was mailed to all parties in interest, including Lucey, on October 26, 2021 (BOZA Record, Exhibit A). Only CKC filed an appeal to the circuit court within the thirty (30) day statutory window established by section 6-29-820(A) (“The appeal must be filed within thirty days after the decision of the board is mailed.”). Section 6-29-840(A) makes clear that the circuit court’s jurisdiction in a zoning appeal is limited to “the questions presented by the appeal.” CKC’s appeal did not challenge the entirety of the BOZA Order. It clearly and unequivocally challenged *only the BOZA Order’s ruling on off-street parking*. CKC, at all points in this litigation, has maintained the BOZA Order properly denied all other aspects of Lucey’s appeal.

The Order granted CKC’s appeal on the off-street parking issue and concluded “the BOZA Order affirming the Zoning Administrator’s approval of the Project, in all other respects, was not

appealed and are final decisions binding on all parties.” This conclusion is anchored to clear legal precedent.

Lucey never appealed the BOZA Order even though it rejected three (3) out of the four (4) zoning interpretation challenges he brought. For this Court to have jurisdiction to hear and rule on these remaining issues, Lucey was statutorily obligated to appeal the BOZA Order within thirty (30) days of mailing. *In re Cretzmeyer*, 365 S.C. 12, 14, 615 S.E.2d 116, 116 (2005) (the circuit court has appellate jurisdiction over only those matters which are properly appealed); *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004) (“A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case.”). This, he failed to do.

By failing to appeal the BOZA Order’s rejection of the three (3) out of four (4) zoning interpretation challenges he brought, Lucey abandoned his right to further litigate these interpretative issues before this Court. These unappealed conclusions in the BOZA Order are the law of the case since they were never appealed. *See, e.g. Richland County v. Palmetto Cablevision*, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating an unchallenged ruling, right or wrong, becomes the law of the case). “Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case.” *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010).

Citing *I’On, L.L.C. v. Town of Mt. Pleasant*., Lucey would have this Court view him as the “prevailing party” before the BOZA and excuse his failure to appeal the BOZA’s rejection of three (3) out of the four (4) issues he challenged. The “prevailing party” concept does not apply to appeals from the BOZA to the circuit court. The Planning Act is silent on the “prevailing party” concept and *I’On, L.L.C. v. Town of Mt. Pleasant* does not govern this case because it was decided

under the SCACR, which do not apply to first-level zoning appeals like this one. Regardless, CKC disputes Lucey was the “prevailing party” seeing as though he lost three (3) out of the four (4) issues he presented to the BOZA. *Commissioner, Immigration and Naturalization, et al. v. Marie Lucie Jean*, 496 U.S. 155, 160, 110 L. Ed. 2d 140, 143 S. Ct. 2316 (1990) (“A court determines the prevailing party by evaluating the degree of success obtained.”). While the BOZA Order granted Lucey’s appeal on one (1) of the four (4) grounds presented, the Zoning Administrator’s (and by extension, CKC’s) success before the BOZA far exceeds Lucey’s. Going (1) for (4) does not make one a “prevailing party.” It makes one a 75% loser.

Furthermore, an issue may not be raised for the first time in a motion to reconsider. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 693 (2014); *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992), *cert. denied*, 113 S. Ct. 1302 (1993); *Smith v. Fedor*, 422 S.C. 118, 809 S.E.2d 612 (Ct. App. 2017); *Lewin v. Lewin*, 396 S.C. 349, 721 S.E.2d 1 (Ct. App. 2012), *cert. denied*, March 6, 2013. Lucey never argued before this Court any of the three (3) out of four (4) zoning interpretation challenges he brought. This was due to his mistaken view that since he was the “prevailing party” he did not have to appeal these matters. Lucey’s view in this regard has always been misinformed.

Therefore, the Court should deny the relief requested by Lucey in Paragraphs 2 through 8 of the Motion to Reconsider.

III. The Order properly directed CKC’s site specific development plan proceed to the DRB for Preliminary Approval of Site, Landscape, and Architecture and confirmed it is vested against any conflicting ordinance amendments adopted since the BOZA hearing.

Paragraph 9 of the Motion to Reconsider asks the Court “to suspend its rulings relating to allowing the Project to proceed, and declaring that the Petitioner has vested rights for the Project.”

Once more, Lucey fails to offer any specific reason why the Court erred in violation of Rule 7(b)(1), SCRCP. For this reason alone, the Court should reject Lucey's request. *Camp v. Camp*, *supra.*; South Carolina Civil Procedure § 59.H.1 (2014).

Even assuming Lucey's arguments are proper before this Court, which they are not, the Order nonetheless lacks reversible error.

After reversing the BOZA Order's "Guest Room" interpretation, the Court was well within its power to order the project proceed through the development review process, where it left off, under the ordinances in effect at the time of the BOZA hearing. CKC's Appeal Petition specifically requested this relief (Appeal Petition, pp. 29-30) because, among other things, the Town adopted Ordinance No. Ordinance No. 21071³ after the BOZA hearing took place and the BOZA Order was issued. CKC, therefore, properly requested judicial confirmation that the project be deemed vested against this Ordinance No. 21071 should the Court grant CKC's appeal and the Court ruled on this request in a manner consistent with South Carolina law.

The vesting issue was properly raised for this Court's review and decision pursuant to section 6-29-840(A). Therefore, neither Lucey nor the Town and the BOZA can claim any surprise as to the relief ordered by the Court. *See, Amisub of S.C. v. S.C. Dep't of Health and Envir. Ctrl.*, 423 S.C. 50, 813 S.E.2d 719 (2018) (per curiam); *In re Timmerman*, 331 S.C. 455, 502 S.E.2d 920 (Ct. App. 1998); *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859 (Ct. App. 1993). Furthermore, "[t]he adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Renaissance Enters., Inc. v. Summit Teleservices*,

³ Ordinance No. 21071 eliminated "Boutique Hotel" as an allowed use in the Neighborhood Commercial (NC) district and dramatically altered the off-street parking requirements for accommodations uses. The Order correctly found that the Court could properly take 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).

Inc., 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999) (citing *Williams v. Bordon's, Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980)). The Court possessed jurisdiction to make a ruling on these issues, as they are necessary to carry out the Court's order in reversing the BOZA Order on the "Guest Room" issue.

On the merits, the Order's relief finds ample support under South Carolina law. First, under the "time of application rule," CKC was entitled to resume the development review process under the ordinances existing at the time it submitted its development plans to the DRB. *Pure Oil Div. v. City of Columbia*, 254 S.C. 28, 173 S.E.2d 140, 143 (1970) (holding, where there is "good faith reliance by the owner on the right to use his property as permitted under the Zoning Ordinance in force at the time of the application for a permit," a subsequently enacted ordinance cannot deprive the owner of a use that was permitted under the then existing ordinance.).⁴ Second, CKC's development plan approved by the Zoning Administrator and appealed to the BOZA qualifies as a "site specific development plan" entitled to vested rights under the Vested Rights Act. S.C. Code Ann. § 6-29-1520(9) (defining "site specific development plan" as "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" to include a "preliminary or general development plan"). Third, CKC's development plan is vested under the Town's vested rights ordinance. Section 156.049(E)(1)(e) of the Town's Zoning Code provides that "Final Planning staff approvals" are considered "site specific development plans" and sufficient for establishing vested rights. Fourth, and finally, CKC's development plan, approved by the Zoning Administrator, qualifies for common law vested rights. *Boehm v. Town of Sullivan's Island Bd. of*

⁴ *Ani Creation, Inc. v. City of Myrtle Beach* (Op. No. 28151) (filed April 19, 2023 and re-filed June 28, 2023) confirms, at footnote 11, that the "time of application rule" and *Pure Oil Div. v. City of Columbia*, 254 S.C. 28, 173 S.E.2d 140, 143 (1970) has not been overruled.

Zoning Appeals, 423 S.C. 169, 186-87, 813 S.E.2d 874, 883 (Ct. App. 2018), summarizes common law vested rights as follows:

The majority rule regarding vested rights, as recognized by this court, provides:

A landowner will be held to have acquired a vested right to continue and complete construction of a building or structure, and to initiate and continue a use, despite a restriction contained in an ordinance or an amendment thereof where, prior to the effective date of the legislation and in reliance upon a permit validly issued, he has, in good faith, (1) made a substantial change of position in relation to the land, (2) made substantial expenditures, or (3) incurred substantial obligations.

The record in this case confirms CKC devoted significant time, financial resources, and investment-backed expectations in pursuing its development plans.

Finally, Lucey's reference (in Paragraph 10 of the Motion to Reconsider) to the Town's and the BOZA's motion to reconsider provides no help on the vested rights issue. This is because the Town's and the BOZA's motion to reconsider is silent on vested rights and the Order's relief. In fact, neither the Town nor the BOZA (or Lucey, for that matter) ever addressed the issue of vested rights in response to the Appeal Petition, prior to the hearing on the Appeal Petition, or at the hearing on the Appeal Petition. It goes without saying that an issue cannot be raised for the first time in a Rule 59, SCRCP motion. *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). This includes any belated challenge to CKC's arguments and this Court's relief regarding vested rights. Therefore, the issue of vested rights is not even properly before this Court.

For the above reasons, the Order's findings and conclusions regarding vested rights are the law of the case, well rooted under South Carolina law, and ought not be disturbed.

CONCLUSION

For the reasons contained herein, CKC respectfully requests the Court deny the Motion to Reconsider.

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 CKC Properties, LLC

August 25, 2023
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-10-05211
CKC Properties, LLC,	)	
	)	
Appellant,	)	
	)	
vs.	)	APPELLANT’S MEMORANDUM IN
	)	OPPOSITION TO THE TOWN OF
The Town of Mount Pleasant, South	)	MOUNT PLESANT AND THE TOWN
Carolina; The Town of Mount Pleasant	)	OF MOUNT PLEASANT BOARD OF
Board of Zoning Appeals; Michael	)	ZONING APPEALS’ MOTION TO
Robertson, in his official capacity as Zoning	)	RECONSIDER
Administrator; Justin O’Toole Lucey; 415	)	
Mill St., Inc.; and 69 Scott Street, LLC,	)	(BOZA Appeal)
	)	
Respondents.	)	

Appellant CKC Properties, LLC (“CKC”) submits this Memorandum in Opposition to the Town of Mount Pleasant’s (“Town”) and the Town of Mount Pleasant Board of Zoning Appeals’ (“BZA”) (collectively “Respondents”) Motion to Reconsider this Court’s order entered on July 14, 2023 (the “Order”). For the reasons below, as well as the arguments presented to the Court by CKC to date,¹ CKC respectfully requests the Court deny the Motion to Reconsider.

ARGUMENT

I. The Order correctly reversed the BOZA’s reinterpretation of “Guest Room” and reinstated the interpretation of both current Zoning Administrator Michael Robertson and the former Zoning Administrator Kent Prause.

The Motion to Reconsider focuses exclusively on relitigating this Court’s ruling on the definition of “Guest Room.” This is the sole substantive zoning interpretation issue raised in CKC’s Appeal Petition. Section 156.171, titled “Schedule of Off-Street Parking Space Requirements” provides a “minimum number of required parking spaces” for various proposed

¹ CKC incorporates by reference its Appeal Petition filed on June 28, 2022, its Memorandum in Support of the Appeal Petition filed on April 21, 2023, and its Reply Memorandum filed on May 12, 2023.

uses. For “accommodations and lodging” uses, the code requires “1 to 2” off-street parking spaces per “Guest Room.” Both the current Zoning Administrator Michael Robertson and the former Zoning Administrator Kent Prause interpreted “Guest Room” in the accommodations context to mean an individually keyed lodging unit. After an approximately thirty (30) minute executive session and no public discussion whatsoever, the BOZA voted to reverse this interpretation. The BOZA’s new interpretation of “Guest Room” is a bedroom or sleeping room within an individually keyed lodging unit.

This issue has been thoroughly litigated by the parties. The Order correctly reaffirmed both Zoning Administrator’s interpretations, which CKC embraces, based on the record on appeal. The Motion to Reconsider offers nothing new to undermine the Order; therefore, the Court should deny the Motion to Reconsider.

a. The Order correctly found that the Zoning Administrator’s interpretation of “Guest Room” was supported by the fact that the applicable off-street parking minimums are expressed in terms of a *range*.

Respondents object to the Order’s characterization of the off-street parking requirement as a “discretionary range” applied by the Zoning Administrator. Respondents submit that the developer, not the Zoning Administrator, decides whether to supply one (1) or two (2) off-street impervious parking spaces for each “Guest Room” under Section 156.171. In other words, the discretion is in the hands of the developer – not the Zoning Administrator. Even if this characterization is accurate, which it is not, it is beside the point and irrelevant to the disposition of this appeal.

This appeal is not about *who* gets to decide how many off-street parking spaces must be supplied for each “Guest Room.” As is always the case, developers design and propose plans for review, but ultimately the Zoning Administrator is charged by law with interpreting and applying

the zoning ordinances. S.C. Code Ann. § 6-29-950(A) (“It is unlawful for other officials to issue any permit for the use of any land ... without the approval of the zoning administrator.”). The Order properly concludes the Zoning Administrator approved CKC’s site-specific development plan, containing an off-street parking plan consistent with Section 156.171. For the purposes of this appeal, the Motion to Reconsider’s arguments about *who* gets to decide how many parking spaces for each Guest Room is a technical distinction without a meaningful difference.

This appeal concerns the correct interpretation of the phrase “Guest Room.” That is the only substantive legal issue before the Court. The Order correctly finds that the expression of the off-street parking requirement in terms of a *range* supports the Zoning Administrator’s interpretation that a “Guest Room” means an individually keyed lodging unit. The Order correctly found as follows:

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.

(Order, p. 13).

This is because under the common and ordinary meaning of the term “Guest Room,” as painstakingly detailed in the Zoning Administrator’s memorandum presented to the BOZA (BOZA Record, Exhibit E), lodging units come in various different sizes and configurations (single rooms, suites, etc.). If the term “Guest Room” was narrowly limited to a sleeping room or a bedroom, as the BOZA Order suggests, *there simply would be no reason whatsoever for the minimum parking requirements to be expressed in terms of a range*. If a “Guest Room” is restricted to being a bedroom or sleeping room only, no range would be necessary. The range demonstrates that there are many different types of “Guest Room” each with their own unique configuration. The range

itself is what is legally significant to sorting out this interpretative dispute - not who gets to ultimately apply it.

Whether the Zoning Administrator or the developer gets to apply the range set forth in Section 156.171 – the end result is the same for the purposes of this appeal. Town Council, by expressing the off-street parking requirements for a “Guest Room” in terms of a range supports the current Zoning Administrator’s and his predecessor’s interpretation of “Guest Room” and the approval of CKC’s site-specific development plan.² The Order’s findings and conclusions are well supported and should not be disturbed.

b. The Order correctly found that the “usual and customary” meaning of “Guest Room” supports the Zoning Administrator’s and CKC’s interpretation – not the BOZA’s.

Respondents argue the Court erred by failing to appreciate certain dictionary definitions of “Guest Room.” This argument fails for two primary reasons. First, none of the dictionary definitions argued by Respondents were never considered by the BOZA and, therefore, none are part of the certified record in this case. Second, our courts have recognized dictionary definitions have limited utility in the zoning context, and they are not the exclusive adjudicator of a term’s “usual and customary” meaning.

The Zoning Administrator’s five-page memorandum, which is part of the record and was submitted at the BOZA hearing, (BOZA Record, Exhibit E) provides extensive support, going far

² The Motion to Reconsider seems to suggest that the Zoning Administrator did not, in fact, approve the site-specific development plan for the project and that the plan was merely the “developer’s presentation.” (Motion to Reconsider, p. 3). This is inaccurate for, at least, three reasons. First, the record contains two memoranda from the Zoning Administrator that detail a thorough review and approval of CKC’s site-specific development plan. (BOZA Record, Exhibits E and F). Second, the record reflects that CKC’s project appeared on a DRB agenda for Preliminary Approval of Site, Landscape, and Architecture. A project cannot appear before the DRB unless the Zoning Administrator has reviewed a site-specific development plan and confirmed it satisfied all applicable zoning requirements. Third, if the Zoning Administrator had not issued a final approval of CKC’s site-specific development plan, Lucey’s appeal would not have been ripe and justiciable before the BOZA. Respondents’ allowing Lucey’s appeal to proceed to the BOZA hearing, it demonstrates that the Zoning Administrator did, in fact, approved CKC’s project.

beyond what a mere dictionary provides, for the determination that a “Guest Room,” in the accommodations use context, is an individually keyed unit – not a bedroom. The Zoning Administrator’s detailed, professional technical memo, which is in the record, ought to trump out of context dictionary definitions that are not part of the record and cannot be considered by the Court.

This Court’s review in a zoning appeal is limited to the material in the certified record and “the court may not take additional evidence.” S.C. Code Ann. § 6-29-840(A). This includes the dictionary definitions offered by Respondents. None of the dictionary definitions cited by Respondents appear in the certified record prepared and filed by Respondents in this case. S.C. Code Ann. § 6-29-830. The BOZA never reviewed and relied on any of these dictionary definitions at the BOZA hearing prior to ruling. Local zoning ordinances³ themselves must be included in the record as part of a zoning appeal for the Court to consider them. *Harkins v. Greenville Cty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000). If the ordinances at issue in the interpretive dispute must be included in the record, it follows that the dictionary definitions must be as well. Given the foregoing, Respondents’ proffered definitions constitute improper “additional evidence” and must be rejected by the Court without even reaching the merits.

Even assuming Respondents’ proposed dictionary definitions can be considered by this Court, which they cannot, they fail to convincingly unseat the Court’s reversal of the BOZA and reinstatement of the Zoning Administrator’s interpretation of “Guest Room.” This is because dictionaries have limited utility in zoning appeals.⁴ The Court of Appeals has ruled as follows:

³ CKC requested the Court take judicial notice of Ordinance No. 21071. This ordinance was adopted on December 15, 2021, several months after the BOZA hearing at issue in this appeal. As such, that particular ordinance could not have been properly included in the record. All of the dictionary definitions cited by Respondents could have, but were not, presented to the BOZA and are therefore not part of the certified record.

⁴ Respondents cite *Abdo v. City of Charleston*, No. 2019- 001910, 2023 WL 34431, at *1 (S.C. Ct. App. Jan. 4, 2023) and *Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Env’t Control*, 411 S.C. 16, 62, 766 S.E.2d 707, 733 (2014) for the proposition that “[d]ictionaries are routinely utilized by Courts in determining the usual and customary meaning

Dictionaries can be helpful tools during the initial stages of legal research. However, we are reluctant to rely upon either a dictionary or cases that have relied upon a dictionary for a definitive answer as to the definition of “use” when extensive case law exists that provides an accurate and reliable definition for the term. Our disinclination to adopt a dictionary definition is based, in part, upon persuasive commentary found in the literature.

Heilker v. Zoning Bd. of Appeals, 346 S.C. 401, 409, 552 S.E.2d 42, 46 (Ct. App. 2001). The “persuasive commentary” referenced by the Court of Appeals is as follows:

In their recent law review article, Samuel A. Thumma & Jeffrey L. Kirchmeier critique the efficacy of turning to common-usage and law dictionaries as the principal authority for defining legal terms:

Regarding common-usage dictionaries, Thumma and Kirchmeier state:

[A court cannot] definitively rely on [common-usage] dictionaries as an end point in defining a word. A descriptive dictionary sets forth definitions showing what a word may mean generally, not what a word does mean in context. Accordingly, although a descriptive dictionary may set forth possible alternative definitions for a term, it cannot provide the definitive definition for what that term actually means in a specific context. Differing definitions for a word in different dictionaries and alternative definitions of a word in the same dictionary would further confound an attempt to use a descriptive dictionary as an end point in defining a word.

47 Buff. L. Rev. at 293 (emphasis added).

The authors additionally caution against a reliance upon a law dictionary as the ultimate source for defining key terms:

Definitive reliance on law dictionaries to define terms suffers from defects similar to such reliance on general usage dictionaries. In addition, many terms in a law dictionary are legal terms and, frequently, terms of art. Thus, the definitions provided in a law dictionary are either: (1) based on case law or usage (such as statutory terms) or (2) created anew by the dictionary's editorial board. If based on case law or usage, the best source for a definition is the decision or usage in context. **Prior decisions and usage, defining the term in context, should be far more instructive than the definitions in a law dictionary, which are general**

of a word or phrase.” These cases, however, are not persuasive. First, the *Abdo* decision states: “THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.” The *Kiawah Dev. Partners, II* case is not a zoning case. As discussed herein, special rules apply in zoning appeals with respect to both the need for dictionary definitions to be included in the record to be considered by a reviewing court and the limited utility of dictionary definitions in the zoning context.

paraphrases that lack any context. And if, rather than being based on case law or usage, the law dictionary definition was created anew, one might ask whether that definition should be afforded any weight at all.

....

Although perhaps a good resource for law students and lawyers unfamiliar with a term in the abstract, law dictionaries are not particularly helpful to [a court] in determining the precise meaning of a term in context. *Id.* at 294 (footnotes omitted) (emphasis added).

Id. at 409-10, 552 S.E.2d at 46-47 (emphasis in original).

The Order finds its support not on the back of dictionary definitions, but 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). This memorandum performed not only a customary and ordinary meaning analysis in painstaking detail, but it also offered detailed analysis addressing legislative intent and internal consistency. These are important rules of statutory construction in addition “customary and ordinary meaning” and must not be ignored.

The Order found the Zoning Administrator’s memorandum “to be well-reasoned and consistent with the applicable rules of statutory interpretation in the zoning context.” (Order, p. 12). CKC agrees. The record is devoid of compelling, countervailing authority to contradict the Zoning Administrator’s memorandum. This Court’s Order should stand.

c. The Court gave proper weight and consideration to the fact that the phrase “Lodging Unit” is used when defining the “Boutique Hotel” use while “Guest Room” is used to regulated its off-street parking requirements.

Respondents argue “Guest Room” *must* mean something distinct from “Lodging Unit” because they are different terms. This has been and remains Respondents’ core argument in this appeal. Respondents have briefed and argued this point extensively. After careful consideration, the Court correctly found that this argument, on its own, fails to support the BOZA’s reversal of the Zoning Administrator’s interpretation of “Guest Room.”

As an initial matter, the structure of Respondents' argument – that the use of different terms evidences a legislative intent that these terms carry distinct meanings – supports the Zoning Administrator's, CKC's, and the Court's interpretation of "Guest Room." The Zoning Administrator's memorandum (Exhibit E, BOZA Record) addresses the legislative history on how the term "Guest Room" came to appear in the off-street parking regulations as follows:

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's interpretation of "Guest Room" – to mean a separate bedroom – is far more consistent with the term "sleeping room," but that is the old language. The new phrase "Guest Room" must be given a more expansive meaning to honor well established rules of statutory construction. *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (courts must presume the Legislature intended its statutes to accomplish something and did not intend a futile act). The Order correctly found that "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." (Order, p. 14).

Had the legislative history regarding the 2014 off-street parking regulations amendments not been included in the record, the Respondents' argument may have been more compelling. But this is not the case. The record clearly demonstrates that the most recent act of the Town Council is to expand, rather than to contract, the off-street parking rules at issue in this case. This is why not one, but two, Zoning Administrator's reviewed and approved CKC's off-street parking plan. There is no evidence in the BOZA Record challenging the Zoning Administrator's legislative history analysis. As such, the Court's Order should remain intact.

- d. The Court properly considered the special rule of statutory construction in the zoning context found in *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015).

“Guest Room” is undefined in the Zoning Code.⁵ The Town Council could have, but chose not to, define the term at issue in this zoning appeal. Faced with adjudicating a dispute over the correct meaning of this undefined phrase, the Court correctly invoked and relied on this state’s special rule of statutory construction in the zoning context.

In *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015), the Court held as follows:

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.**”

(emphasis added) (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.”) Put simply, this means that zoning ordinances must be strictly construed in favor of the property owner – not the government, neighbors, or others.

⁵ Notably, after the BOZA hearing the Town Council adopted Ordinance No. 21071 on December 15, 2021. This ordinance, among other things defines “Guest Room” for the first time and substantially increases the off-street parking required for suite-style hotel rooms. This, however, was not the law at the time the BOZA Order was issued. The Court must interpret the phrase “Guest Room” as it existed on September 27, 2021.

Respondents maintain the rule in *Helicopter Sols., Inc. v. Hinde, supra.* must yield to legislative intent. Assuming this is a correct statement of the law, which CKC disputes,⁶ the Zoning Administrator's, CKC's, and this Court's interpretation of "Guest Room" is consistent with legislative intent as it appears in the record. As previously mentioned, in 2014 Town Council amended the off-street parking regulations for accommodations uses from "sleeping room" to "Guest Room." (BOZA Record, Exhibit E, p. 3). This demonstrates the intent to move to a more expansive term. Moreover, as referenced in the Zoning Administrator's memorandum, calculating off-street parking requirements based on the number of units, as opposed to the number of interior rooms, is internally consistent with how other uses, including residential uses, are treated. (*Id.*). Furthermore, the BOZA's narrow interpretation of "Guest Room" would require an enormous amount of off-street parking for accommodations uses and violate sound planning practices, which discourage excessive off-street parking particularly for accommodations uses in the age of Uber.

The Zoning Administrator's and the BOZA's interpretation of "Guest Room" are in direct conflict in this case. In sorting out this appeal, the Court properly invoked and relied on the special rule of statutory construction found in *Helicopter Sols., Inc. v. Hinde, supra.* The Court's ruling did not hinge entirely on this rule of statutory construction, however. Rather, the Court's ruling is properly supported by the record as a whole. For these reasons, the Order should stand and Respondents' Motion to Reconsider should be denied.

II. The Order properly directed CKC's site specific development plan proceed to the DRB for Preliminary Approval of Site, Landscape, and Architecture and confirmed it is vested against any conflicting ordinance amendments adopted since the BOZA hearing.

⁶ The rule in *Helicopter Sols., Inc. v. Hinde, supra.* is in tension with the general rule of statutory construction that holds legislative intent as paramount. This special rule of statutory construction in the zoning context stands for the proposition that, regardless of legislative intent, zoning ordinances must always be "strictly construed" and "the terms limiting the use of the property must be liberally construed for the benefit of the property owner." Put another way, legislative intent must be expressed by way of clear, unambiguous regulations – or the interpretation will subordinate legislative intent (whatever that may have been) in favor of a more expansive view of property rights.

The Motion to Reconsider focuses entirely on relitigating the “Guest Room” issue. It lacks any challenge or specific argument regarding the Order’s language directing CKC’s project to resume the development review process where it left off under the zoning ordinances in effect at the time. If, for whatever reason, Respondents belatedly decide to raise these issues prior to or at the hearing on the Motion to Reconsider, they should be rejected by the Court.

Rule 7(b)(1), SCRCF provides that all motions “shall state with particularity the grounds” for the requested relief. This applies to Rule 59, SCRCF motions. *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010), *overruling*, 378 S.C. 237, 662 S.E.2d 458 (Ct. App. 2009) (holding a motion to reconsider failed to satisfy Rule 7 and, therefore, did not stay the time for appeal although subsequent memorandum of law on issues were exchanged); South Carolina Civil Procedure § 59.H.1 (2014). Furthermore, a motion to reconsider must specifically raise the issue on which a ruling is sought; merely arguing the matter is not sufficient. *Id.* (citing *Goddard v. Fairways Dev. General P’ship*, 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993)).

The Motion to Reconsider fails to offer any specific arguments as to why the Court erred by directing CKC’s project proceed to the DRB for review in a vested manner and under the ordinances in effect at the time of the BOZA hearing. For this reason alone, the Court should deny any belated attempt by Respondents to litigate the vesting issue.

Additionally, neither the Town nor the BOZA (or Lucey, for that matter) ever raised or argued the vested rights issue prior to the issuance of the Order. CKC’s Appeal Petition specifically requested this relief (Appeal Petition, pp. 29-30) because, among other things, the Town adopted Ordinance No. 21071⁷ after the BOZA Order was issued. CKC, therefore, requested

⁷ Ordinance No. 21071 eliminated “Boutique Hotel” as an allowed use in the Neighborhood Commercial (NC) district and dramatically altered the off-street parking requirements for accommodations uses. The Order correctly found that

judicial confirmation that the project be deemed vested against this Ordinance No. 21071 should the Court grant CKC's appeal. Despite being on notice of the vested rights issue since June 28, 2022 when the Appeal Petition was filed, neither the Town, the BOZA, nor Lucey ever challenged the vested rights issue prior to the issuance of the Order. It goes without saying that an issue cannot be raised for the first time in a Rule 59, SCRCF motion. *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). Should Respondents be tempted to do so, the Court should reject such a belated attempt to litigate this issue.

Finally, even if the issue of vested rights was properly before this Court, which it is not, the Order nonetheless contains no reversible error.

After reversing the BOZA Order's "Guest Room" interpretation, which was the sole substantive issue appealed by CKC (or any other party), the Court was well within its power to order the project proceed through the development review process, where it left off, under the ordinances in effect at the time of the BOZA hearing. As previously discussed, CKC raised the vesting issue in its Appeal Petition filed on June 28, 2022. As such, this issue was properly raised for this Court's review and decision pursuant to section 6-29-840(A). Furthermore, "[t]he adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999) (citing *Williams v. Bordon's, Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980)). The Court, therefore, possessed jurisdiction to make a ruling on the vesting issue, as it was necessary to carry out the Court's disposition of the appeal.

the Court could properly take 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).

On the merits, the relief contained in the Order finds support under South Carolina law. First, under the “time of application rule,” CKC was entitled to resume the development review process under the ordinances existing at the time it submitted its development plans to the DRB. *Pure Oil Div. v. City of Columbia*, 254 S.C. 28, 173 S.E.2d 140, 143 (1970) (holding, where there is “good faith reliance by the owner on the right to use his property as permitted under the Zoning Ordinance in force at the time of the application for a permit,” a subsequently enacted ordinance cannot deprive the owner of a use that was permitted under the then existing ordinance.).⁸ Second, CKC’s development plan approved by the Zoning Administrator and appealed to the BOZA qualifies as a “site specific development plan” entitled to vested rights under the Vested Rights Act. S.C. Code Ann. § 6-29-1520(9) (defining “site specific development plan” as “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” to include a “preliminary or general development plan”). Third, CKC’s development plan is vested under the Town’s vested rights ordinance. Section 156.049(E)(1)(e) of the Town’s Zoning Code provides that “Final Planning staff approvals” are considered “site specific development plans” and sufficient for establishing vested rights. Fourth, and finally, CKC’s development plan, approved by the Zoning Administrator, qualifies for common law vested rights. *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 186-87, 813 S.E.2d 874, 883 (Ct. App. 2018), summarizes common law vested rights as follows:

The majority rule regarding vested rights, as recognized by this court, provides:

A landowner will be held to have acquired a vested right to continue and complete construction of a building or structure, and to initiate and continue a use, despite a restriction contained in an ordinance or an amendment thereof where, prior to the

⁸ *Ani Creation, Inc. v. City of Myrtle Beach* (Op. No. 28151) (filed April 19, 2023 and re-filed June 28, 2023) confirms, at footnote 11, that the “time of application rule” and *Pure Oil Div. v. City of Columbia*, 254 S.C. 28, 173 S.E.2d 140, 143 (1970) has not been overruled.

effective date of the legislation and in reliance upon a permit validly issued, he has, in good faith, (1) made a substantial change of position in relation to the land, (2) made substantial expenditures, or (3) incurred substantial obligations.

The record in this case confirms CKC devoted significant time, financial resources, and investment-backed expectations in pursuing its development plans.

For the above reasons, the Order's findings and conclusions regarding vested rights are the law of the case, well rooted under South Carolina law, and ought not be disturbed.

CONCLUSION

For the reasons contained herein, CKC respectfully requests the Court deny the Motion to Reconsider.

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 CKC Properties, LLC

August 25, 2023
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-
CKC Properties, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	
The Town of Mount Pleasant, South Carolina;	)	
Michael Robertson in his capacity as Zoning	)	(JURY TRIAL DEMANDED)
Administrator for the Town of Mount	)	
Pleasant, South Carolina,	)	
	)	
Defendants.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 2036 eWall Street, Mount Pleasant, South Carolina 29464, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

Respectfully Submitted,

s/Ross A. Appel
 Ross A. Appel, Esq. (SC Bar #79149)
 Clayton B. McCullough, Esq.
 Jamie A. Khan, Esq.
McCULLOUGH ▪ KHAN ▪ APPEL
 2036 eWall Street
 Mount Pleasant, SC 29464
 (843) 937-0400
 ross@mklawsc.com
 clay@mklawsc.com
 jamie@mklawsc.com
Counsel for CKC Properties, LLC

October 14, 2021
 Charleston, 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-
CKC Properties, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Complaint
	)	
The Town of Mount Pleasant, South Carolina;	)	<i>Declaratory Judgment</i>
and Michael Robertson in his capacity as	)	<i>FOIA Violation</i>
Zoning Administrator for the Town of Mount	)	
Pleasant, South Carolina,	)	(JURY TRIAL DEMANDED)
	)	
Defendants.	)	

Plaintiff CKC Properties, LLC, complaining of the Defendants, would respectfully show unto this Court the following:

PARTIES

1. Plaintiff CKC Properties, LLC (“CKC”) is a limited liability company organized and existing under the laws of the State of South Carolina.
2. Defendant the Town of Mount Pleasant, South Carolina (the “Town”) is a municipal corporation organized and existing under the laws of the State of South Carolina.
3. Defendant Michael Robertson (the “Zoning Administrator”) is the Zoning Administrator for the Town. The Zoning Administrator is named in this action in his official capacity— not his personal capacity.

JURISDICTION AND VENUE

4. The Court of Common Pleas for Charleston County has jurisdiction over the parties and the subject matter of this action.
5. Venue is proper in the Court of Common Pleas for Charleston County.

THE FACTS

6. CKC is the developer of the twenty-seven (27) unit “Shem Creek Boutique Hotel” located in the Town along Mill St. on TMS Nos. 517-16-00-058, -057, -034, and -035 (the “Properties”).

7. CKC has been under contract to purchase the Properties since October 2020.

8. CKC and its design and engineering team have been working closely and collaboratively with TOMP staff on plans for the Shem Creek Boutique Hotel since November 2020.

9. 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.

10. A “Boutique Hotel or Inn” is a use permitted by-right in the NC District and nothing in the BOD alters this analysis. Hotels were permitted in the NC District for decades until 2014 when Town Council amended the NC District regulations to replace “Boutique Hotel” with “Hotel.”

11. Town planning and zoning staff suggested CKC pursue the “Boutique Hotel” option for the Properties.

12. 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 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.

13. On or about June 9, 2021, the Town’s Design Review Team (“DRT”) granted final planning staff approval on all zoning matters including, but not limited to, use and parking. This enabled the CKC to apply for Preliminary Approval of Site, Landscape, and Architecture from the Design Review Board (“DRB”). The Shem Creek Boutique Hotel was placed on the DRB July 28, 2021 agenda for Preliminary Approval of Site, Landscape, and Architecture.

14. However, less than twenty-four (24) hours before the DRB hearing, Town staff informed CKC 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.

15. Contemporaneously, Mayor Haynie gave the following statement to Live 5 News: “I have a history of not supporting this type of development.” Upon information and belief, political interference caused the Shem Creek Boutique Hotel to be removed from the July 28, 2021 agenda.

16. Internal e-mail correspondence between and amongst the Town’s planning and zoning staff reveal political pressure directed at slowing down, impeding, and otherwise frustrating the project.

17. On August 2, 2021, the Planning and Development Committee met and considered 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

“room,” adjust the parking requirements for this use, and alter the lot consolidation process for projects of this kind.

18. These proposed zoning text amendments are aimed specifically at the Shem Creek Boutique Hotel. These zoning text amendments have not been approved by Town Council, but they remain under consideration as of this filing.

19. The Shem Creek Boutique Hotel appeared before the DRB at its August 25, 2021 meeting, again for Preliminary Approval of Site, Landscape, and Architecture. The TOMP 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.

20. During the public comment period, a handful of nearby property owners and businesses raised a series of non-germane objections to the Shem Creek Boutique Hotel. For instance, these objections were aimed at use, parking, and other zoning related issues. None of these issues are relevant to the DRB’s preliminary review of site, landscape, and architecture. Appellant and its representatives 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 Town staff.

21. 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.¹

¹ CKC Properties, LLC appealed this DRB decision (Civil Action No. 2021-CP-10-04416).

22. On August 23, 2021, Justin Lucey, 415 Mill St., Inc., and 69 Scott Street, LLC filed a Zoning Administrator Appeal (the “Zoning Administrator Appeal”) with the Town’s Board of Zoning Appeals (the “BOZA”). Both 415 Mill St., Inc. and 69 Scott Street, LLC are Justin Lucey affiliated real estate holding companies.

23. The Zoning Administrator Appeal alleges the Zoning Administrator erred in granting final planning staff approval of the Shem Creek Boutique Hotel on a variety of zoning issues including, but not limited to, use and parking.

24. Final planning staff approval, regarding compliance with all applicable zoning ordinances, is a requirement for, among other things, a matter to appear on a DRB agenda for Preliminary Approval of Site, Landscape, and Architecture.

25. On September 27, 2021, the BOZA heard the Zoning Administrator Appeal.

26. Prior to the BOZA hearing, the Zoning Administrator prepared multiple memoranda and supporting documents defending his interpretation of the Town’s zoning ordinance with respect to the Shem Creek Boutique Hotel on matters including, but not limited to, use and parking.

27. Counsel for CKC submitted a memorandum prior to the BOZA hearing attacking the timeliness of the Zoning Administrator Appeal and alleging neither Justin Lucey, 415 Mill St., Inc., nor 69 Scott Street, LLC possessed standing to maintain the Zoning Administrator Appeal.

28. After hearing presentations from both the Zoning Administrator, Justin Lucey, and CKC and its representatives, the BOZA immediately moved to go into executive session to receive “legal advice.” The executive session lasted more than thirty minutes.

29. After returning, the BOZA – without any deliberation whatsoever – moved to reverse the Zoning Administrator on the parking issue only. This motion was seconded and then

unanimously approved. The BOZA engaged in zero public deliberation on the parking issue before or after going into executive session. The BOZA member who made the motion read it off a sheet of paper, which was clearly prepared behind closed doors and brought into the public portion of the hearing.

30. While the BOZA reversed the Zoning Administrator's interpretation of the applicable parking requirements for the Shem Creek Boutique Hotel, the BOZA upheld the Zoning Administrator on all other zoning interpretations associated with the Shem Creek Boutique Hotel that were part of the Zoning Administrator Appeal.

31. It appears the BOZA disagreed with the Zoning Administrator's interpretation of "Guest Room" in the context of Boutique Hotels. The Zoning Administrator applied the Town's longstanding interpretation of "Guest Room" to mean an individually keyed unit. This longstanding interpretation has been used to permit numerous other hotels in the Town over the years. The BOZA's interpretation of "Guest Room" appears to be each separate bedroom within a unit, which represents a major departure from the Town's practices over the years and the Zoning Administrator's handling of the Shem Creek Boutique Hotel since November 2020.

32. The BOZA's newfangled parking rule, which goes against years of precedent in the Town, means that numerous hotels throughout the Town are in violation of the Town's parking requirements.

33. On September 29, 2021, counsel for CKC wrote the Town's attorneys a letter requesting the Town appeal the BOZA's decision to grant the Zoning Administrator Appeal on the issue of parking only;² seeking confirmation of CKC's vested rights under Section 156.049 of the Town's Zoning Code; and notifying the Town of certain Freedom of Information Act ("FOIA")

² As of this filing, the BOZA has not mailed its order concerning the Zoning Administrator Appeal. CKC reserves the right to appeal this decision.

violations, regarding the conduct of the BOZA hearing. CKC's attorney had previously requested vested rights confirmations regarding the Shem Creek Boutique Hotel on several prior occasions, which have never been answered by either the Town or the Zoning Administrator.

34. The letter requested the Town respond to, among other things, CKC's request for vested rights confirmation by October 13, 2021. Confirming the scope of CKC's vested rights with respect to the Shem Creek Boutique Hotel is of critical importance, considering the Town's efforts to amend NC District regulations to eliminate Boutique Hotels and change the parking requirements.

35. The Town has refused to respond to CKC's request for vested rights confirmation. The Town and the Zoning Administrator have traditionally opined upon request on whether and to what extent certain development projects are considered vested under the Town's Zoning Code.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment

36. Plaintiff repeats all of the allegations of the above paragraphs as if they were repeated verbatim here.

37. For the purpose of determining a question of actual controversy between the parties, Plaintiffs seek a declaration of their contractual and other rights pursuant S.C. Code Ann. § 15-53-30.

38. Under S.C. Code Ann. § 15-53-30, a party whose rights, status, or other legal relations are affected by contract, state statute, municipal ordinance, or other instrument may have those rights determined by a declaratory judgment.

39. Plaintiffs seek a declaratory judgment from this Court that CKC and the Shem Creek Boutique Hotel possess vested rights under Section 156.049 of the Town's Zoning Code and the South Carolina Vested Rights Act.

40. Section 156.049(E)(1)(e) of the Town's Zoning Code provides that "Final Planning staff approvals" are considered "site specific development plans" and sufficient for establishing vested rights.

41. On September 27th, the BOZA affirmed all the Zoning Administrator's "[f]inal planning staff approvals" regarding the Shem Creek Boutique Hotel's compliance with the Town's Zoning Code – other than parking.

42. The Zoning Administrator's "[f]inal planning staff approvals" related to the Shem Creek Boutique Hotel's zoning compliance are based on detailed and thoroughly reviewed plans submitted by CKC and its consultants. These plans were developed at great cost to CKC and in close coordination with the Zoning Administrator and his staff since November 2020.

43. Given the foregoing, CKC respectfully requests a declaratory judgment from this Court that the Shem Creek Boutique Hotel possesses vested rights on all zoning related issues other than parking.³ CKC further respectfully requests an Order from this Court requiring both the Town and the Zoning Administrator recognize CKC's vested rights with respect to the Shem Creek Boutique Hotel and allow the project to proceed notwithstanding future legislative action by the Town to eliminate Boutique Hotels as an allowed use in the NC District and other zoning amendments designed to target and derail the Shem Creek Boutique Hotel.

FOR A SECOND CAUSE OF ACTION
FOIA Violation

44. Plaintiff repeats all of the allegations of the above paragraphs as if they were repeated verbatim here.

45. S.C. Code Ann. § 30-4-100 provides CKC standing to enforce the FOIA and authorizes, among other things, injunctive relief, costs, and attorney's fees.

³ CKC reserves the right to challenge the BOZA's decision regarding parking compliance.

46. S.C. Code Ann. § 30-4-70(a)(2) authorizes the invocation of executive session only for legal advice on the following specific matters:

[R]eceipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

47. It was improper, as a matter of law, for the BOZA to enter into an executive session to deliberate any aspect of the Zoning Administrator Appeal.

48. The BOZA is a quasi-judicial body, not a legislative body. When sitting in its appellate capacity, the BOZA has the power “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.” S.C. Code Ann. § 6-29-800(A)(1).

49. The BOZA is a forum – not a party with any interest of its own, adversary or otherwise. The Zoning Administrator Appeal is not a “pending, threatened, or potential claim” against the BOZA or the Town. The BOZA is not the Town, and the entities have separate roles and interests – as demonstrated by each having their own counsel.

50. A quasi-judicial hearing must be held in public – not behind closed doors. Judges cannot go into executive session, and it follows that quasi-judicial boards should not be afforded the ability to enter into an executive session either. If the opposite were true, it means the BOZA could hold all deliberations on a zoning administrator appeal secret and behind closed doors.

51. That is precisely what happened with respect to the Zoning Administrator Appeal. The BOZA’s deliberations, if there were any deliberations, were conducted behind closed doors. The BOZA engaged in no public deliberation whatsoever. In the BOZA appeal, there will be no transcript whatsoever that explains the BOZA’s thought process in reaching its decision. The FOIA cannot sanction such a result.

52. FOIA violations were similarly committed during the August 25, 2021 DRB meeting when the body attempted to move into executive session without stating a purpose for same. By failing to properly move into executive session, the DRB conducted a public meeting behind closed doors.

53. Given the foregoing, CKC respectfully requests this Court award all remedies available under the FOIA and South Carolina law for the aforementioned FOIA violation. This includes, among other things, injunctive and equitable relief to include, but not be limited to, vacating the BOZA's September 27, 2021 decision on the issue of parking only and compelling the BOZA to produce all documents and communications related to the unlawful executive session. CKC similarly seeks all documents and communications related to the DRB's unlawful executive session held on August 25, 2021. CKC also demands its attorney's fees and costs under the FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court issue a declaratory judgment confirming CKC's vested rights with respect to the Shem Creek Boutique Hotel and awarding CKC all appropriate remedies under the FOIA.

Respectfully Submitted,

s/Ross A. Appel
 Ross A. Appel, Esq. (SC Bar #79149)
 Clayton B. McCullough, Esq.
 Jamie A. Khan, Esq.
McCULLOUGH ▪ KHAN ▪ APPEL
 2036 eWall Street
 Mount Pleasant, SC 29464
 (843) 937-0400
 ross@mklawsc.com
 clay@mklawsc.com
 jamie@mklawsc.com
Counsel for CKC Properties, LLC

October 14, 2021
 Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2021-CP-10-04761
CKC Properties, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CONSENT STIPULATION OF
	)	DISMISSAL WITHOUT PREJUDICE
The Town of Mount Pleasant, South Carolina	)	
and Michael Robertson, in his official	)	
capacity as Zoning Administrator for the	)	
Town of Mount Pleasant, South Carolina,	)	
	)	
Defendants.	)	

The above-named parties hereby consent to dismiss the above case without prejudice pursuant to Rule 41(a)(1)(B), SCRCF. All named parties in this case consent; therefore, no court order is required.

This dismissal without prejudice shall not in any way dismiss or prejudice the following zoning appeals or any claims or arguments contained therein: C/A No. 2021-CP-10-04416 and C/A No. 2021-CP-10-05211. The litigation of those appeals shall continue.

The parties further consent that Plaintiff CKC Properties, LLC's ("Plaintiff") declaratory judgment claim seeking a vested rights determination shall relate back to October 14, 2021 (the date the above action was filed) should that claim and any other civil causes of action that arise out of the same conduct, transaction, or occurrence be subsequently reasserted by Plaintiff.

[SIGNATURES APPEAR ON NEXT PAGE]

WE SO MOVE AND CONSENT:

McCULLOUGH ▪ KHAN ▪ APPEL

s/ Ross A. Appel

Ross A. Appel (SC Bar #79149)
2036 Wall Street, Suite 200
Mt. Pleasant, SC 29464
(843) 937-0400
(843) 937-0706 (fax)
ross@mklawsc.com

Attorneys for Appellant CKC Properties, LLC

CLEMENT RIVERS, LLP

s/ Brian L. Quisenberry

Brian L. Quisenberry, Esq., SC Bar#73637
E-mail: bquisenberry@ycrlaw.com
Stephanie N. Ramia, Esq., SC Bar#100217
E-mail: sramia@ycrlaw.com
Zachary M. Kern, Esq., SC Bar #103731
E-mail: zkern@ycrlaw.com
P.O. Box 993, Charleston, SC 29402-0993
25 Calhoun Street, Suite 400, Charleston, SC 29401
Telephone: (843) 724-6641
Fax: (843) 579-1325

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

October 18, 2022
Charleston, South Carolina

**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

CKC Properties, LLC,

Respondent (Appellant Below),

v.

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

Respondents Below.

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

Appellants.

NOTICE OF APPEAL

CLEMENT RIVERS, LLP

Stephen L. Brown (SC Bar No. 66468)

Stephanie Ramia Sandifer (SC Bar No. 100217)

Brian Lee Quisenberry (SC Bar No. 73637)

Zachary M. Kern (SC Bar No. 103731)

Russell G. Hines (SC Bar No. 72100)

25 Calhoun Street, Suite 400

P.O. Box 993 (29402)

Charleston, South Carolina 29401

(843) 720-5488

Attorneys for Appellants

Other Counsel of Record:¹

Ross A. Appel (SC Bar No. 79149)

ross@mklawsc.com

MCCULLOUGH KHAN APPEL

2036 eWall Street

Mount Pleasant, South Carolina 29464

(843) 937-0400

Attorneys for Respondent (Appellant Below)

CKC Properties, LLC

Justin O Lucey (SC Bar No. 15438)

jlucey@lucey-law.com

JUSTIN O'TOOLE LUCEY, P.A.

415 Mill Street

Mount Pleasant, South Carolina 29464

(843) 849-8400

Attorneys for Respondents Below

Justin O'Toole Lucey; 415 Mill St., Inc.; and

69 Scott Street, LLC

Jeffrey S. Tibbals (SC Bar No. 72628)

jst@bybeetibbals.com

Evan P. Williams (SC Bar No. 101981)

ewilliams@bybeetibbals.com

BYBEE & TIBBALS, LLC

735 Johnnie Dodds Boulevard, Suite 104

Mount Pleasant, South Carolina 29464

P.O. Box 1542 (29465)

(843) 881-1623

Attorneys for Respondent Below

Justin O'Toole Lucey

¹ Although the case caption has not been amended to reflect it, Michael Robertson, in his official capacity as Zoning Administrator, is no longer a party to this matter, having been dismissed by order filed May 4, 2023.

The Town of Mount Pleasant, South Carolina, and The Town of Mount Pleasant Board of Zoning Appeals (collectively, “Appellants”) hereby appeal the following orders of the Honorable Mikell R. Scarborough, Master-in-Equity, Charleston County:

- **Order Reversing BOZA Order in Part and Affirming in Part**, filed July 14, 2023; and
- **Order [Denying Motions to Reconsider]**, filed September 21, 2023.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on September 21, 2023.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Stephen L. Brown (SC Bar No. 66468)
Stephanie Ramia Sandifer (SC Bar No. 100217)
Brian Lee Quisenberry (SC Bar No. 73637)
Zachary M. Kern (SC Bar No. 103731)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488
Attorneys for Appellants

Charleston, South Carolina

October 13, 2023

RECEIVED

Jul 22 2024

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

CKC Properties, LLC,

Respondent (Appellant Below),

v.

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

Respondents Below.

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

Appellants.

PROOF OF SERVICE

CLEMENT RIVERS, LLP

Stephen L. Brown (SC Bar No. 66468)

Stephanie Ramia Sandifer (SC Bar No. 100217)

Brian Lee Quisenberry (SC Bar No. 73637)

Zachary M. Kern (SC Bar No. 103731)

Russell G. Hines (SC Bar No. 72100)

25 Calhoun Street, Suite 400

P.O. Box 993 (29402)

Charleston, South Carolina 29401

(843) 720-5488

Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that Appellants' **NOTICE OF APPEAL** was served on all parties to this matter on October 13, 2023, by emailing (see attached email) a copy of the same to counsel of record:

Ross A. Appel, Esquire
ross@mklawsc.com
MCCULLOUGH KHAN APPEL
Mount Pleasant, South Carolina

*Attorneys for Respondent
(Appellant Below)
CKC Properties, LLC*

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

*Attorneys for Respondents Below
Justin O'Toole Lucey; 415 Mill St., Inc.;
and 69 Scott Street, LLC*

Jeffrey S. Tibbals, Esquire
jst@bybeetibbals.com
Evan P. Williams, Esquire
ewilliams@bybeetibbals.com
BYBEE & TIBBALS, LLC
Mount Pleasant, South Carolina

*Attorneys for Respondent Below
Justin O'Toole Lucey*

I also certify that a copy of Appellants' **NOTICE OF APPEAL** was today, October 13, 2023, E-Filed with the lower court (see attached NEF), which also, i.e., in addition to service by email, effected service of the notice today on the above-identified counsel of record via the E-Filing System.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorneys for Appellants

Charleston, South Carolina

October 13, 2023

From: [Hines, Russell](#)
To: ["ross@mklawsc.com"](#); [Lucey, Justin](#); ["jst@bybeetibbals.com"](#); ["ewilliams@bybeetibbals.com"](#)
Cc: [Quisenberry, Brian](#); [Kern, Zachary \(Zach\)](#); [Sandifer, Stephanie](#); [Justman, Barbara](#); [Justman, Aimee](#); [Bell, Pollyana \(Polly\)](#); [Brown, Stephen L.](#)
Subject: CKC Properties v. Mt. Pleasant (BOZA Appeal) (Case No. 2021-CP-10-05211) -- Notice of Appeal
Date: Friday, October 13, 2023 5:37:30 PM
Attachments: [image001.png](#)
[CKC v. Town \(Case No. 2021-CP-10-05211\) -- Notice of Appeal.pdf](#)
[2023 07-14 -- BOZA Appeal -- Order Reversing BOZA in Part and Affirming in Part.pdf](#)
[2023 09-21 -- BOZA Appeal -- Order Denying Mot. to Reconsider.pdf](#)

Attached for service please find our **Notice of Appeal** (and copies of the **Appealed Orders** attached thereto) in the above-referenced matter.

Russell G. Hines
CLEMENT RIVERS, LLP
www.ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
Phone: (843) 720-5488
Fax: (843) 579-1327
Email: rhines@ycrlaw.com



CLEMENT RIVERS, LLP
25 Calhoun Street • Suite 400 • Charleston, SC 29401
ycrlaw.com



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2021CP1005211

Official File Stamp: 10-13-2023 05:42:46 PM
Court: CIRCUIT COURT
Common Pleas
Charleston
Case Caption: Ckc Properties Llc VS Mount Pleasant South Carolina Town Of The , defendant, et al
Event(s): Notice/Notice of Appearance

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
Filed by or on behalf of: Russell Grainger Hines

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Justin O'Toole Lucey for 69 Scott Street Llc, 415 Mill St Inc, Justin O'Toole Lucey
Jeffrey Scott Tibbals, Sr. for Justin O'Toole Lucey
Brian Lee Quisenberry for Mount Pleasant South Carolina Town Of The, Mount Pleasant Board Of Zoning Appeals Town Of The
Ross A. Appel for Ckc Properties Llc
Zachary Meade Kern for Mount Pleasant South Carolina Town Of The, Mount Pleasant Board Of Zoning Appeals Town Of The
Stephanie Ramia Sandifer for Mount Pleasant South Carolina Town Of The, Mount Pleasant Board Of Zoning Appeals Town Of The

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Stephen L. Brown (SC Bar No. 66468)
Stephanie Ramia Sandifer (SC Bar No. 100217)
Brian Lee Quisenberry (SC Bar No. 73637)
Zachary M. Kern (SC Bar No. 103731)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488

*Attorneys for Appellants
The Town of Mount Pleasant, South
Carolina, and The Town of Mount Pleasant
Board of Zoning Appeals*

Charleston, South Carolina

July 22, 2024

Respectfully submitted,
BYBEE & TIBBALS, LLC

By: s/Evan P. Williams
Jeffrey S. Tibbals, Sr. (SC Bar No. 72628)
Evan P. Williams (SC Bar No. 101981)
880 Johnnie Dodds Boulevard, Suite 2
Mount Pleasant, South Carolina 29464
(843) 881-1623

*Attorneys for Appellants
Justin O'Toole Lucey; 415 Mill St., Inc.; and
69 Scott Street, LLC*

Mount Pleasant, South Carolina

July 22, 2024