THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Scott Sprouse,
Circuit Court Judge

Case No. 2023-000953

West Street Farms, LLC and
Mix Farms, LLC,

Appellants,

v.

City of Beaufort, Beaufort
Inn, LLC, and 303 Associates, LLC,

Respondents.

RECORD ON APPEAL
VOLUME III OF III

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 2021-CP-07-01231
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Petitioners,	)	
v.	)	
	)	
City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC,	)	
	)	
Respondents.	)	

MEMORANDUM IN SUPPORT OF PETITIONERS' APPEAL

INTRODUCTION

The City of Beaufort's Historic District Review Board ("HRB") had no basis upon which to grant the applications of the owner of the proposed parking garage and hotel in the historic district. Both structures that would tower over the city as its largest buildings are out of scale and character for the district and would violate the most fundamental measures the HRB has to make its decisions. But, the HRB should never have even gotten to a decision on the merits of these structures. The earlier approvals that were the necessary predicates to these applications were either never obtained or had long expired under the City's ordinances. Additionally, the size and type of the buildings by definition require a Special Exception from the Board of Zoning Appeals before these applications can proceed, and the applicants never sought that approval. As a result, the HRB erred in granting both of these applications, and this Court should reverse the actions of the HRB and deny the applications: first, because they are premature, and second, if reached, because the applications do not satisfy the statutory criteria for approval.

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FACTS

Procedural History

The Beaufort Inn, LLC ("**Applicant**") seeks to develop two properties that are the subject of this action:

- 812 Port Republic Street and 212 Scott Street, identified as R120, Tax Map 4, Parcel 984, as a 77-unit hotel building, with retail/commercial space on the ground floor and the hotel on the upper floors ("**Hotel**"); and
- 918 Craven Street for which it has sought approval of plans for a parking garage ("**Parking Garage**").

On June 9, 2021, the Applicant appeared before the HRB seeking two approvals: (a) Agenda Item No. IV(C) 812 Port Republic Street: Change after Certification for the Hotel, and (b) Agenda Item No. IV(D) 918 Craven Street, New Construction for the Parking Garage.

West Street Farms, LLC ("**West Street**") owns 205, 207, 209, and 221 West Street and Mix Farms ("**Mix Farms**") owns 211 Scott Street, all in the historic district of Beaufort and located adjacent to the proposed Hotel and Parking Garage. West Street and Mix Farms appeared and objected to the applications at the June 9, 2021, hearing, and a letter from their counsel detailing the basis of the objections was submitted as part of the record for both applications.

After the HRB's decisions, West Farms and Mix Farms timely appealed pursuant to S.C. Code Ann. § 6-29-900 and The Beaufort Code Section 9.10

Expiration Dates for Approvals under the UDO and The Beaufort Code

The current ordinance in the City of Beaufort that governs development and building approvals is The Beaufort Code, which was adopted effective June 27, 2017, and was updated on July 10, 2018. The Beaufort Code repealed and replaced the Unified Development Ordinance ("**UDO**") which governed development and building prior to that date.

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Under the UDO, Section 3.1 (M)(3)(c) specifically outlines expiration dates for City approvals: conceptual and preliminary approvals expire after 18 months and cannot be renewed beyond 18 months.

Likewise, under The Beaufort Code, a conceptual or preliminary approval is valid only for eighteen months.

Application Chronology

Parking Garage

On August 17, 2016, the HRB granted conceptual approval with conditions for the Parking Garage.

On July 12, 2017, the HRB approved a motion for the Parking Garage to undergo significant revision and come back to the HRB with a simpler design. By this point, The Beaufort Code had already been approved and was in effect.

On September 20, 2017, the HRB gave preliminary approval for the Parking Garage plan with various conditions. The then current drawings were approved as submitted and the Applicant was tasked with refining the design details in order to receive final approval. Lauren Kelly, acting for the City described that preliminary approval in a letter dated October 9, 2017, referencing September 20, 2017, HRB meeting.[1]

Under either the UDO or The Beaufort Code, preliminary approval for the Parking Garage expired on March 20, 2019, 18 months after the September 20, 2017, preliminary approval date.

David Prichard, on behalf of the City, in two letters dated June 20, 2019, and July 21, 2020[2], erroneously issued an extension of a "Certificate of Appropriateness" for the Parking Garage that had

[1] Ms. Kelley's letter was included on page 195 of the June 9, 2021, HRB meeting agenda documents and is part of the record of this appeal.

[2] On pages 196 and 197 respectively of the June 9, 2021's HRB meeting agenda.

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never been issued and did not exist. The Parking Garage never received a "Certificate of Appropriateness" from the HRB, a requirement under both the UDO and The Beaufort Code. Under either ordinance, a Certificate of Appropriateness could only be issued after final approval.

Also, in those two letters, David Prichard referenced The Beaufort Code section 9.1.4 as the governing code. Mr. Prichard did not reference the UDO.

Hotel Project.

Applicant made a preliminary submission of the Hotel Project in some form to the City in 2016, then made a new submission of the project to the City in 2017.

Lauren Kelly, representing the City, originally presented the Hotel Project in a July 12, 2017, HRB meeting, approximately two weeks after the Beaufort Code was adopted. The approved official July 12, 2017, minutes quote Lauren Kelly saying, "this project (the Hotel) is being evaluated under the new Beaufort Code," confirming that the Hotel was considered under the Beaufort Code, and not the UDO.

During this July 12, 2017, meeting, the Hotel received preliminary approval. According to the Beaufort Code, such preliminary approval expired on January 12, 2019, i.e., 18 months after the issuing of such preliminary approval.

The Applicant's next request for approval for the Hotel, however, was almost 27 months later on October 9, 2019, for a "Certificate of Appropriateness." Notably, the "Certificate of Appropriateness," dated October 9, 2019, and signed by John Dickerson, the current chairman of the HRB, specifically referenced the Beaufort Code and its Section 9.4.1 as the governing authority. It did not reference the UDO at all.

Large Footprint Buildings

The Hotel Project and the Parking Garage are located in the Downtown Core District (T5-DC) zoning district under the Beaufort Code. In the T5-DC transect zoning district, buildings are

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restricted to 100 feet building width at the frontage. Beaufort Code Sec. 2.4.1(D)(3). Buildings that exceed 100 feet building width must comply with the Large Footprint Building standards in Beaufort Code Sec. 4.5.10. Beaufort Code Sec. 2.4.1(D)(3), footnote 9.

The Beaufort Code defines Large Footprint Buildings as "a type often used by big-box, national retailers. In the T4 and T5 transect zones, they shall be integrated into the streetscape or screened with Liner Buildings (see Section 4.5.9)." Beaufort Code Sec. 4.5.10(A).

Large Footprint Buildings have various specific development requirements under Beaufort Code Sec. 4.5.10 (B)(1)-(7). One preliminary and fundamental requirement for Large Footprint Buildings is that in the Historic District, except along Boundary Street, Large Footprint Buildings "are permitted by Special Exception only." Beaufort Code Sec. 4.5.10 (B)(5).

The Hotel Project and the Parking Garage Project are located within the Beaufort Historic District (HD) Overlay as defined by Beaufort Code Sec. 2.7.1 and as shown on the official Zoning Map of the City of Beaufort.

Special Exceptions to the Beaufort Code may only be granted by the City of Beaufort Zoning Board of Appeals ("**ZBOA**") Beaufort Code Sec. 10.3.1(C)(3). The ZBOA has not considered or issued Special Exceptions to either the Hotel Project or the Parking Garage.

The Hotel Project as currently submitted has a 179-foot building width and, as such, must follow the Beaufort Code requirements for Large Footprint Buildings as specified in Sec. 4.5.10. The Hotel Project has not applied for or received a Special Exception by the ZBOA.

When the applications for preliminary approval of the Hotel Project was presented to the HRB in 2017, neither the City staff members nor the Applicant's agents presenting these plans for approval made the members of the HRB aware that these projects as planned were Large Footprint Buildings or of the requirement for Special Exception approval by the ZBOA of Large Footprint Buildings before further planning approval could be obtained. In fact, the HDRB was told at the 2017

meeting when that version of the Hotel Project was presented that "no zoning issues existed."

Like the Hotel Project, the Parking Garage is also a Large Footprint Building, having a frontage of 300 feet. Like the Hotel Project, the Applicant for the Parking Garage has sought or received a Special Exception from the ZBOA.

STANDARD OF REVIEW

In reviewing a decision by a board of architectural review, the circuit court should act when the board abuses its discretion by committing errors of law or bases its decision on findings of fact that are not supported by the evidence. *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (Ct. App. 2005), citing *Gurganious v. City of Beaufort*, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct. App. 1995).

ARGUMENT

I. THE HRB LACKED THE LEGAL AUTHORITY TO CONSIDER THESE APPLICATIONS.

Under either the UDO or The Beaufort Code, any approvals which the City may have granted the Parking Garage or the Hotel in the past have expired. As a result, neither of these applications had the requisite legal approvals to proceed before the HRB.

A. Any approval that the HRB may have granted the Parking Garage under the UDO had expired by June 9, 2021, and the HRB erred in acting on this application.

According to the UDO, such preliminary approval expired on March 20, 2019, i.e., 18 months after the issuing of the preliminary approval. The Parking Garage's preliminary approval under the UDO had expired long before the June 9, 2021, HRB meeting. The Parking Garage was therefore not eligible to proceed to final approval on June 9, 2021, almost 45 months after the issuing of the preliminary approval and almost 27 months after the preliminary approval's expiration.

It was error for the HRB to consider the application for a change after certification for the Parking Garage, since the prior action under the UDO no longer had any effect, and any further action

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relating to the parking garage would have had to have proceeded under The Beaufort Code. The Parking Garage was not eligible to proceed to final approval on June 9, 2021. Rather, the approval process had to begin again as the Parking Garage has no valid current approval.

B. Any application that the HRB had previously granted the Hotel was granted under The Beaufort Code, not the UDO, and that approval had expired by the terms of the ordinance.

Lauren Kelly, representing the City at the time, originally presented the Hotel Project in a July 12, 2017, HRB meeting, approximately two weeks after the Beaufort Code was adopted. The approved official July 12, 2017, minutes quote Lauren Kelly saying, "this project (the Hotel) is being evaluated under the new Beaufort Code," confirming that the Hotel is being considered under the Beaufort Code and not the UDO. During this July 12, 2017, meeting, the Hotel received preliminary approval. According to the Beaufort Code, such preliminary approval expired on January 12, 2019, i.e., 18 months after the issuing of such preliminary approval.

The next approval, however, for the Hotel was almost 27 months later on October 9, 2019, for a "Certificate of Appropriateness." Therefore, the Hotel's preliminary approval expired prior to the purported approval of the Hotel's "Certificate of Appropriateness". As a consequence, the Hotel's "Certificate of Appropriateness" issued on October 9, 2019, is null and void. Notably, though, the "Certificate of Appropriateness", dated October 9, 2019, and signed by John Dickerson, the current chairman of the HRB, specifically referenced the Beaufort Code and its Section 9.4.1 as the governing authority. It did not reference the UDO.

The Hotel had no approval under either the UDO or the Beaufort Code on June 9, 2021, and it was clear legal error for the HRB to proceed on the application.

C. Neither application could proceed before the HRB without each of these Large Footprint Buildings having first obtained a special exception from the City of Beaufort

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Board of Zoning Appeals.

Neither the Hotel nor the Parking Garage could proceed at all before the HRB without having first received a special exception from the City of Beaufort Zoning Board of Appeals, which neither had received. Each project is a Large Footprint Building under the Beaufort Code and neither has received a Special Exception as required by Beaufort Code Sec. 4.5.10 (B)(5).

The Beaufort Code controls both of these projects, as neither the Hotel nor the Parking Garage have vested rights under state law that would make the UDO the governing law for these applications. Rather, The Beaufort Code applies. Under the Vested Rights Act, a "vested right is established for two years upon the approval of a site-specific development plan." S.C. Code Ann. § 6-29-1530. A "Site specific development plan" means 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. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used by a county or municipality." S.C. Code Ann. § 6-29-1520(9).

There is no evidence in the record that any such site-specific development plan was ever submitted or approved for either of these projects. Further, even if a submission in 2016 or 2017 for one or the other was considered a site-specific development plan, there is no indication in the record that the Applicant either sought or was granted an extension of that two-year vested right under the statute. S.C. Code Ann. § 6-29-1530(A)(2)(b).

The applicants, not having received Special Exceptions from the City of Beaufort Zoning Board of Appeals for either the Hotel or the Parking Garage, could not proceed to obtain approval for either of these applications from the HRB, and the HRB had no jurisdiction to consider those

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applications.

II. THE HRB COMMITTED LEGAL ERROR IN GRANTING THESE APPLICATIONS WHERE THE APPROVALS LACK ANY LEGAL BASIS AND ARE NOT SUPPORTED BY THE FACTUAL RECORD.

The Applicant failed to present any evidence bringing the Hotel or Parking Garage projects within the parameters of the guidance documents that control the HRB's decision-making as a matter of law, as provided in The Beaufort Code, Section 9.10.2 (B). In the absence of such evidence, the HRB erred as a matter of law in granting the relief requested by the applications.

The Parking Garage is four stories tall with a front façade of over 300 linear feet, square footage of over 160,000 square feet, volumetric mass approaching 3 million cubic feet, and accommodates over 475 vehicles. The Hotel has a proposed fourth-story roof-top bar, a front façade of over 170 linear feet, square footage of approximately 50,000, and volumetric mass of over 1 million cubic feet. Each of these structures individually are multiple times larger across all dimensions and metrics than any other building in historic downtown Beaufort. As already stated, these two projects are so large that each individually is classified as a "Large Footprint Building" under The Beaufort Code and is specifically prohibited in downtown historic Beaufort unless a Special Exception is issued by the City of Beaufort Zoning Board of Appeals. Neither of these projects has a Special Exception.

By comparison and for context, the Verdier House, which itself is immediately adjacent to the proposed Hotel, has square footage of approximately 5,500 square feet and volumetric mass of 50,000 cubic feet. The Parking Garage is 60 times larger, and the Hotel is 20 times larger in volumetric mass than the Verdier House.

The Parking Garage and the Hotel are both infill projects. Section 4.1 of the Beaufort Code specifically addresses infill projects and dictates the following purpose and intent of infill projects:

4.1.1 PURPOSE

The purpose of this section is to:

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A. protect and enhance Beaufort's unique aesthetic character
B. support high quality streets and public spaces
C. encourage architecture that blends harmoniously with the natural surroundings and neighboring development
D. safeguard property values and long-term economic assets
E. carefully preserve the character of Beaufort's National Historic Landmark District while permitting appropriate growth.

The Parking Garage and the Hotel, even in the absence of the Hotel's proposed fourth story rooftop bar, are each individually incongruous with all five of the points of 4.1 Purpose and Intent of Infill Projects given their outsized proportions and are completely out of character in Beaufort's National Historic Landmark District.

Section 4.2.3 of the Beaufort Code goes on to address specifically for infill projects:

4.2.3 RELATIONSHIP TO HISTORIC DISTRICT STANDARDS

a. Applicability: In addition to the standards and guidelines in this article, any development located within the Beaufort Historic District is subject to the standards, guidelines, and procedures established in Section 9.10.
b. Conflicts: In the event of a conflict between the requirements of this article and the requirements and guidance provided by the documents listed in 9.10.2.B, the later shall take precedence.

In Section 9 of the Beaufort Code, **9.10: CERTIFICATE OF APPROPRIATENESS** outlines, for the HRB, the specific criteria that infill projects in the Historic District must meet in order to be approved to include: a) Compatibility; b) No Adverse Impact; and c) Consistency with Adopted Plans. Furthermore, the Approval of a Certificate of Appropriateness requires that the HRB "consider, among other things, the historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, the use of such structure and its importance to the city, the character and appropriateness of design, scale of buildings, arrangement, texture, materials and color of the structure in question, and the relations of such elements to similar features of structures in the immediate surroundings" (9.10.2.C).

Neither the Parking Garage nor the Hotel are compatible in downtown historic Beaufort given

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their size, scale, and mass; they will each individually have irreparable adverse impact on the character of downtown Beaufort and have already triggered the National Parks Service's intervention; and they are not consistent with adopted plans for the Beaufort historic district.

9.10.2.B.1 specifically requires that the HRB utilize the "Beaufort Preservation Manual," August 1979, and the "Beaufort Preservation Manual, Supplement," August 1990 in evaluating infill projects. These manuals dictate that infill buildings must interrelate with surrounding buildings. The manual specifically mandates that new construction have appropriate scale, absolute size, massing, and proportions to the surrounding buildings and townscape. The manual also provides drawings which show very clear examples of prohibited buildings such as those that are significantly taller and/or wider and/or have a significantly larger footprint and/or have a significantly larger mass than surrounding buildings and within the townscape.

Sections 4, 9, and the Beaufort Preservation Manual all clearly prohibited HRB approval of the Parking Garage and prohibited a fourth story rooftop bar for the Hotel. The UDO, which has been superseded by The Beaufort Code, also required that the HRB evaluate infill buildings and structures in exactly the same manner as the Beaufort Code to ensure their: Compatibility, No Adverse Impact, and Consistency with Adopted Plans. The UDO also required that the HRB abide by the "Beaufort Preservation Manual."

Because of the threat that each of these structures poses to the Beaufort National Historic Landmark District, the National Parks Service "NPS" has undertaken an "Integrity and Condition Study for the Beaufort National Historic Landmark District" and the South Carolina Department of Archives and History, in a letter from the director of its State Historic Preservation Office "SHPO", W. Eric Emerson, Ph.D., discouraged the approval of the Parking Garage. Dr. Emerson stated, "When we refer to the established design guidelines for the City of Beaufort, (Beaufort Preservation Manual dated 1979, and the 1990 Supplement), we see more inconsistencies with the guidelines than

consistencies." The contents of the NPS notification to the City and the SPHO's letter were part of the record before the HRB.

The Applicant did not present evidence before the HRB, or make arguments to the HRB, establishing even a minimum compliance with any of the guidelines the HRB is required to apply in its decision-making under The Beaufort Code (or the UDO, even if it were to apply). Based on this dearth of evidence before the HRB, the Board erred in granting the relief requested by the applicants in the absence of even a minimum threshold of evidence by the applicant.

SUMMARY

Neither the Parking Garage nor the Hotel had the requisite valid approvals from the City of Beaufort for the HRB to proceed to consider these applications. Beyond that, the merits of each of these structures fails to meet even the minimal threshold of requirements for approval in Sections 4 and 9 of The Beaufort Code and the Beaufort Preservation Manual. The HRB failed as a matter of law to fulfill its responsibility under The Beaufort Code in approving these applications, and, as a result, those approvals must be reversed by this Court.

Respectfully Submitted,

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November 12, 2021
Charleston, South Carolina

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ELECTRONICALLY FILED - 2022 Jan 28 5:40 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701231

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-07-01241
Historic Beaufort Foundation, Petitioner, v. City of Beaufort and City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	**NOTICE AND PETITIONERS' MOTION TO RECONSIDER**
West Street Farms, LLC, and Mix Farms, LLC, Petitioner, v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, Respondents.	CASE NO.: 2021-CP-07-01231

PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon as the parties may be heard, Petitioners Historic Beaufort Foundation, West Street Farms, LLC, and Mix Farms, LLC ("Petitioners"), by and through undersigned counsel, will move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure before the Honorable Bentley Price for reconsideration of the January 20, 2022 order of this Court denying Petitioners' Appeal of the Decision of the June 9, 2021 decision of the Beaufort Historic District Review Board.

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The grounds for this motion are that the January 20 order fails to consider the merits of all Petitioners' grounds for the Appeal. In particular, the order does not address the following arguments presented by the Petitioners:

- That the Board erred in granting final approval under the UDO because any prior approvals had expired by the terms of the ordinance;
- Any approval of the Parking Garage under the UDO expired before June 9, 2021;
- The Board never issued a Certificate of Appropriateness for the Parking Garage;
- Neither application should have been considered in the absence of a Special Exception from the City of Beaufort Board of Zoning Appeals;
- The approvals were arbitrary and capricious and contrary to law because there is no supporting evidence in the record;
- That the petitioners' claims are not barred by laches, waiver or estoppel; and
- That the developer did not have a vested right to develop/continue the projects.

Petitioners urge that neither the Parking Garage nor the Hotel had the requisite valid approvals from the City of Beaufort for the Board to consider these applications. Furthermore, the structures failed to meet even the minimal threshold requirements for infill projects as clearly defined in Sections 4 and 9 of The Beaufort Code and the Beaufort Preservation Manual. The Board failed as a matter of law to fulfill its duties under The Beaufort Code in evaluating these applications. The approvals must be reversed by this Court and these issues should be remanded to the Board for further action and grant such other, further, or different relief as may be just and proper. In addition, the January 20 order, as written, exceeds the scope of the Court's ruling at the hearing on this matter and includes factual inconsistencies.

For these reasons, Petitioners respectfully request this Court reverse the January 20 order denying the Appeal and enter an order granting the Appeal. This motion is further supported by all pleadings, any evidence, and any memorandum of law to be filed as well as all applicable law and further proof and testimony as may hereafter be offered at a hearing on this motion.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

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AND MIX FARMS, LLC

CHARLESTON, SC

January 28, 2022

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-00663
WEST STREET FARMS, LLC, and, MIX FARMS, LLC,	)	
Plaintiffs,	)	
v.	)	**PLAINTIFFS' PRETRIAL BRIEF**
CITY OF BEAUFORT, BEAUFORT INN, LLC, and, 303 ASSOCIATES, LLC,	)	
Defendants.	)	

The Plaintiffs, West Street Farms, LLC, and Mix Farms, LLC (collectively "Plaintiffs") through their undersigned counsel, submit their Pre-Trial Brief Pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure.

1. **A concise, non-argumentative statement of the facts of the case.**

The Plaintiffs are two property owners in the historic district of Beaufort, S.C. that own real property adjacent to the two projects that are the subject of this action. The Defendants 303 Associates, LLC and the Beaufort Inn, LLC (collectively "**Developer**") are companies that own and seek to develop the properties that are the subject of this action:

- 812 Port Republic Street and 212 Scott Street, identified as R120, Tax Map 4, Parcel 984, as a 77-unit hotel building, with retail/commercial space on the ground floor and the hotel on the upper floors ("**Hotel Project**"); and
- 918 Craven Street for which it has sought approval of plans for a parking garage ("**Parking Garage Project**").

a. <u>The Beaufort Code and Large Footprint Buildings</u>

The Hotel Project and the Parking Garage Project are located in the Downtown Core District (T5-DC) zoning district under the Beaufort Code and must adhere to the T5-DC Development Standards as presented in Beaufort Code Sec. 2.4.1: DISTRICT DEVELOPMENT STANDARDS. Additionally, The Hotel Project and Parking Garage Project are located within the Beaufort Historic District (HD) Overlay as defined by Beaufort Code Sec. 2.7.1 and within the Preservation District as shown on the official Zoning Map of the City of Beaufort. Beaufort Code Sec. 13.3.2

In the T5-DC transect zoning district, buildings are restricted to 100 feet building width at the frontage. Beaufort Code Sec. 2.4.1(D)(3). Buildings that exceed 100 feet building width at frontage shall comply with the Large Footprint Building standards in Beaufort Code Sec. 4.5.10. Beaufort Code Sec. 2.4.1(D)(3), footnote 9.

The Beaufort Code defines Large Footprint Buildings as "a building that has a footprint greater than 20,000 square feet. It is a type often used by big-box, national retailers. In the T4 and T5 transect zones, they shall be integrated into the streetscape or screened with Liner Buildings (see Section 4.5.9)." Beaufort Code Sec. 4.5.10(A).

Large Footprint Buildings have various specific development requirements under Beaufort Code Sec. 4.5.10 (B)(1)-(7). One preliminary and fundamental requirement for Large Footprint Buildings is that in the Historic District, except along Boundary Street, Large Footprint Buildings "are permitted by Special Exception only." Beaufort Code Sec. 4.5.10 (B)(5).

Special Exceptions to the Beaufort Code can only be granted by the City of Beaufort Zoning Board of Appeals ("**ZBOA**") Beaufort Code Sec. 10.3.1(C)(3).

b. The Hotel Project

Lauren Kelly, the City planner at the time, originally presented the Hotel Project in a July 12, 2017, Historic Design Review Board ("HDRB") meeting, approximately two weeks after the Beaufort

Code was adopted. The HDRB granted the Hotel Project preliminary approval at that meeting. Furthermore, the July 12, 2017, minutes quote Lauren Kelly saying, "this project (the Hotel) is being evaluated under the new Beaufort Code," confirming that the Hotel was being considered under The Beaufort Code and not the prior zoning code, the Unified Development Ordinance ("UDO")[1].

Lauren Kelly originally contended the preliminary approval lasted 12 months, until July 12, 2018. Thereafter, in May 2018, at the request of the Developer, Kelly purported to extend the Hotel project preliminary approval for 24-months, with approval expiring July 12, 2019.

The next approval, however, for the Hotel was not granted until almost 27 months after preliminary approval, on October 9, 2019, when the HDRB purported to issue the applicant for the Hotel a "Certificate of Appropriateness."

Though the Hotel Project received a Certificate of Appropriateness in October 2019, Developer made additional subsequent substantial changes to the plans in February 2021. On June 9, 2021, the HDRB granted the Developer's request for "Changes after Certification."

The Hotel Project as currently submitted has a 173-foot building width at frontage and, as such, if governed by the Beaufort Code, is a "Large Footprint Building" subject to the requirements of Sec. 4.5.10.

The Hotel Project, despite receiving some development approvals from the City, has not applied for or received a Special Exception by the ZBOA. When the applications for preliminary approval of the Hotel Project was presented to the HDRB in 2017, neither the City staff members nor the Developer's agents presenting these plans for approval made the members of the HDRB aware that these projects as planned were Large Footprint Buildings or of the requirement for Special Exception approval by the ZBOA of Large Footprint Buildings before further planning approval

[1] The Beaufort Code was adopted on June 27, 2017, and replaced the UDO as of that date.

could be obtained. In fact, the HDRB was told at the 2017 meeting when that version of the Hotel Project was presented that "no zoning issues existed."

c. <u>The Parking Garage Project</u>

On September 20, 2017, the HDRB gave preliminary approval for the Parking Garage plan with various conditions. The then current drawings were approved as submitted and the Developer was tasked with refining the design details in order to receive final approval. According to the UDO and the Beaufort Code, such preliminary approval expired twelve months later on September 20, 2018, with a potential six-month extension if requested to March 20, 2019, i.e., 18 months after the issuing of such preliminary approval.

On June 21, 2019, David Prichard, the City planning director at the time, purported to extend a Certificate of Appropriateness for one year, though no Certificate of Appropriateness had been issued, only preliminary approval, nearly 2-years earlier. A year later, on July 1, 2020, David Prichard issued another extension to a Certificate of Appropriateness that had never been issued.

On March 4, 2021, the Developer submitted for final approval.

On June 9, 2021, the HDRB granted final approval for new construction for the Parking Garage.

Like the Hotel Project, if governed by The Beaufort Code, the Parking Garage Project is also a Large Footprint Building, having a width at frontage of 300 feet.

Like the Hotel Project, the Parking Garage Project has not applied for or received a Special Exception from the ZBOA.

2. **An objective statement of the facts in controversy**.

There is no substantial dispute about the facts in this case. The controversy lies in which local zoning ordinance applies (the Uniform Development Ordinance (UDO) or The Beaufort Code, and the implications of that applicable law on the facts.

3. **The legal issues involved. This includes the law applicable to the cause of action and the defense.**

   a. **Does the UDO or The Beaufort Code apply to the Certificates of Appropriateness for the Hotel and Garage approvals by the HDRB?**

The Beaufort Code applies to the COA applications for both projects. The Beaufort Code provides that only pending applications that have been accepted as complete as of the effective date of the Code (June 27, 2017) have the option of being approved under either the Code or the prior governing UDO.

1.4.2 - COMPLETE APPLICATIONS
If an application for a Project Permit or Design Review is accepted as complete before the effective date of this chapter or any amendment thereto, but is still pending final action as of that date, the application shall be reviewed and decided, at the applicant's option, wholly in accordance with the development standards in effect when the application was accepted, or wholly in accordance with the standards put into effect by this Code (but not in accordance with a mix of provisions from both sets of standards).

There is no indication that the City regarded the application for either COA as "complete" as of June 27, 2017. The first preliminary approval of the Hotel occurred on July 12, 2017, and the final COA was not issued until October 9, 2019. Lauren Kelly, the City's planner, presenting the preliminary approval application to the HDRB on July 12, 2017, stated that the then new Beaufort Code applied to the Hotel application.

The Garage was considered by the HDRB for preliminary approval at that same July 12, 2017, meeting, but the HDRB determined that more work needed to be done on the design and it was not until September 20, 2017, that the preliminary approval was issued for the Garage. The Garage then did not receive a final COA until June 9, 2021. Though the City and the Developer now content the UDO applies to both projects, it is clear that under the provisions of Beaufort Code 1.4.2, the applications for the COA were not complete until they were presented for final COA on October 9, 2019 (Hotel) and June 9, 2021 (Garage). Under the terms of Code Sec. 1.4.2, the Beaufort Code clearly applies.

b. If the Beaufort Code applies to the Hotel and Garage projects, do they require Special Exceptions from the BZA as Large Footprint Buildings prior to obtaining Certificates of Appropriateness from the HDRB?

Under the Beaufort Code, the Hotel and the Garage are "Large Footprint Buildings" and the Developer needed to obtain a Special Exception from the ZBOA to bring it into compliance with zoning BEFORE a preliminary approval of a COA could be issued.

The Hotel Project and the Parking Garage Project are located in the Downtown Core District (T5-DC) zoning district and within the Beaufort Historic District (HD) Overlay as defined by Beaufort Code Sec. 2.7.1 and as shown on the official Zoning Map of the City of Beaufort. In the T5-DC transect zoning district, buildings are restricted to 100 feet building width at the frontage. Beaufort Code Sec. 2.4.1(D)(3). Buildings that exceed 100 feet building width shall comply with the Large Footprint Building standards in Beaufort Code Sec. 4.5.10. Beaufort Code Sec. 2.4.1(D)(3), footnote 9.

The Beaufort Code defines Large Footprint Buildings as "a building that has a footprint greater than 20,000 square feet. It is a type often used by big-box, national retailers. In the T4 and T5 transect zones, they shall be integrated into the streetscape or screened with Liner Buildings (see Section 4.5.9)." Beaufort Code Sec. 4.5.10(A).

The Developer agrees that if The Beaufort Code applies (which it contests) the Hotel and the Garage are Large Footprint Buildings under the Code.

c. If the Beaufort Code applies to the Hotel and Garage projects, did the projects have viable preliminary approvals at the time their Certificates of Approval were granted, or had those approvals expired, making the grant of the COAs invalid?

Certificates of Appropriateness (COA) are granted by the HDRB. Beaufort Code Sec. 10.7(1)-(2). The HDRB may only grant a COA if the property is compatible and properly zoned. Beaufort Code Sec. 9.10.

Large Footprint Buildings have various specific development requirements under Beaufort Code Sec. 4.5.10 (B)(1)-(7). One preliminary and fundamental requirement for Large Footprint Buildings is that in the Historic District, except along Boundary Street, Large Footprint Buildings "are permitted by Special Exception only." Beaufort Code Sec. 4.5.10 (B)(5).

Special Exceptions to the Beaufort Code can only be granted by the City of Beaufort Zoning Board of Appeals ("**ZBOA**") Beaufort Code Sec. 10.3.1(C)(3).

Neither the Hotel Project, nor the Parking Garage Project have applied for or received a Special Exception from the ZBOA.

d. Under either the UDO or the Beaufort Code, did the Hotel and Garage projects have viable preliminary approvals at the time their Certificates of Approval were granted, or had those approvals expired, making the grant of the COAs invalid?

Under both the UDO and the Code, applications and preliminary approvals expire if final approvals are not obtained within a certain period of time. After that time expires, the applicant must submit a new application and begin again.

Under the UDO, preliminary approvals such as those granted by the HDRB before issuance of a final COA were limited in duration to 12 months, with a possible 6-month extension if requested, in the discretion of the HDRB. UDO Sec. 3.1(M)(3).

Both the Developer and the City contend that the UDO applies to both the Hotel and the Garage projects. Under the UDO, the preliminary approvals for both the Hotel and the Garage projects expired prior to the issuance of a COA.

The preliminary approval for the Hotel was issued on July 12, 2017. The COA was issued on October 9, 2019. Though the City planner purported to give the Developer an extension to 24 months, that extension expired on July 12, 2019, short of the COA issuance date.

The preliminary approval for the Garage was issued on September 20, 2017. The COA was issued on June 9, 2021. Though the City planner purported to extend the "Certificates of Appropriateness" (none had been issued) on June 21, 2019, and July 1, 2020, for one year each, both exceeded the twelve-month expiration period that ended on September 20, 2018.

If the Code applies, the City planner contended that the preliminary approval for the Hotel lasted 24 months. In that case, the COA issuance exceeded 24 months, as stated above, and for both projects, under either zoning ordinance, the preliminary approvals expired.

That being the case, there was no pending viable application for the HDRB to consider when it was asked to issue a COA and the issuance of the COA for both projects is invalid, null, and void.

e. Did the Developer have a vested right in either the Hotel or Garage project prior to obtaining a Certificate of Appropriateness, excusing the expiration of the deadlines for obtaining final approval after obtaining preliminary approval under either the UDO or the Beaufort Code?

The Developer and City will argue that the Developer's various activities with the City, including the granting of easements, entry into parking sharing agreements, demolition permits, and other activity gave the Developer "vested rights" to issuance of the Certificate of Appropriateness under the UDO, without regard to the timing of the applications and approvals.

This argument is not supported by the City's ordinances or state law. "Vested rights" under local and state law are narrowly defined to arise after the "final approval of a development plan, plat, or phased development plan," Beaufort Code Sec. 9.1.9, or a site-specific development plan or phase development plan. S. C. Code Ann. Sec. 6-29-1520(10) (Supp.2021).

None of the activity cited by the Developer or City rises to the definition of a vested right under local or state law. Rather, the "vested right" provision of the Code provides time limits for

matters that are not vested rights as defined in the ordinance at 9.1.9(C)(1), and that section refers specifically to a chart at 9.1.2 that provides that permits for COAs for Major Projects have a 24-month duration, with 5 possible one-year extension. Those will only apply after the issuance of an approval, however, and as described above, the preliminary approvals granted by the HDRB were more than 24 months old when the COA was finally issued.

The activity between the Developer and City before the preliminary approvals were granted does not meet the statutory definition of a "vested right" and does not make the UDO applicable to the Hotel or Garage applications or extend the time between the preliminary approvals and final COA issuance.

f. <u>Does the Circuit Court's decision in an appeal of the HDRB decision of June 2021 collaterally estop the Plaintiffs from obtaining declaratory relief in this case?</u>

This issue was argued by the City before the Court as the basis of a motion for summary judgment. That motion was denied by the Court.

The issues of whether the Hotel or Parking Garage were Large Footprint Buildings under The Beaufort Code and required obtaining Special Exceptions prior to seeking further city approvals or whether the time for converting the preliminary approvals to final COAs were neither actively litigated nor directly determined in the circuit court's limited appeal hearing and was not necessary to support the decision in the board of architectural review appeal.

Under South Carolina law, "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Kunst,* 404 S.C. at 653-54, 746 S.E.2d at 362 citing *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit

was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Id., citing Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008).

In *State v. Bacote*, 331 S.C. 330-31, 503 S.E. 2d 161, 162-163 (1998), the court stated "We have previously adopted the general rule of collateral estoppel as set forth in the Restatement (Second) of *Judgments* § 27 (1982) in *South Carolina Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). *Kunst*, 404 S.C. at 654. Section 27 states: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim." *Id., citing Palm v. General Painting Co., Inc.*, 302 S.C. 372, 396 S.E.2d 361 (1990) (citations omitted) ("Under the doctrine of collateral estoppel, . . . the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues 'actually and necessarily litigated in the first suit.'"). *Id.*

In this case, there is no issue that was actively litigated or directly determined that was essential to the result in prior litigation (in this case, the appeal) that would collaterally estop the Plaintiffs from seeking the declaratory judgment on the issues pled in this case.

The issue was not actively litigated in the HDRB appeal.

The board of architectural review proceeding from which the Order emanated that the Defendants are relying on is not a proceeding that allows for the active litigation of this issue necessary to support collateral estoppel.

The proceeding is an appeal, not litigation on the merits. By statute, review in this appeal is limited only to the certified record below. There is no discovery, and no additional facts can be submitted.

The hearing, too, is expedited and scheduled as soon as possible after the board decision. It does not allow for development of the issues, discovery of facts or other aspects of normal civil litigation under our Rules of Civil Procedure.

This case is akin to the line of cases involving default judgment hearings and administrative hearings that our courts have determined cannot support collateral estoppel.

In *Kunst,* the Court of Appeals firmly adopted the rule in South Carolina first enunciated in *State v. Bacote* that a default judgment proceeding could not support a later offensive use of collateral estoppel because there is no opportunity for active litigation of the issues in that limited proceeding. *Kunst,* 404 S.C. at 658, 746 S.E.2d at 364 (the doctrine of collateral estoppel cannot be applied to default judgments because the essential element requiring the claim sought to be precluded have been litigated in the earlier action is not met). The Court noted that though a litigant in default can at the damages hearing participate in a limited way, it is not a full and fair litigation of the issues allowing for the imposition of offensive collateral estoppel:

> [I]t appears he [Kunst] was not afforded the opportunity to testify or to call witnesses to testify on his behalf. Kunst was also not allowed to participate in any discovery on this matter. In addition, because Kunst was in default, the circuit court "start[ed] with the premise that all facts relating to the pertinent causes of action [were] admitted." Accordingly, we hold Kunst was not presented with a fair opportunity to "actually litigate" the veracity of Loree's alleged statements to others.
>
> *Kunst,* 404 S.C. at 657-58, 746 S.E.2d at 364.

Similarly, even if the issue purportedly ruled on by the circuit court in the HDRB appeal is identical to the issue that is the subject of this declaratory judgment action, an appeal from a board of

architectural review appeal hearing cannot support an offensive use of collateral estoppel because it cannot meet the active litigation prong of the collateral estoppel test.

The parties did not and could not conduct discovery on this issue in the appeal proceeding. No witnesses could be deposed in discovery or was proffered or cross-examined at trial. No documentary evidence (other than the HDRB record below) could be submitted. In fact, there is less active litigation in the appeal than was found to be inadequate in the default hearing in *Kunst.*

The board of architectural review appeal meets no reasonable definition of active litigation under the *Kunst* and *Bacote* decisions and the law upon which they rely, and findings in an order based on that prior proceeding cannot support a finding of collateral estoppel.

The issue was not directly determined in the HDRB appeal and was not necessary to support the decision in that appeal decision by the circuit court.

It is clear from reviewing the briefing of the City of Beaufort and the developer Defendants and from the court's Order written by them that the issue of whether these buildings met the definition of Large Footprint Buildings under The Beaufort Code and required a prior Special Exception from the ZBOA before proceeding with other approvals was not a necessary issue squarely presented for decision to the Court. The City and Developers' arguments centered on whether the approvals for these projects had already occurred, and the appeal was therefore not timely or waived, and whether the Developer already had vested rights in the projects such that the HDRB could not deny them approval. Secondarily, the City and the Developers argued that the decisions on the merits were supported by the evidence before the Board. Only lastly, as if in an afterthought, the City (not the Developer) argued and the Court included in its Order, language addressing this issue.

The decision denying the appeal and upholding the HDRB's decision clearly does not rest on the ruling on this issue and this issue, again, was not directly determined in this appeal proceeding, which, as has already been argued, was necessarily limited in scope, and did not allow such a determination.

The circuit court had insufficient evidence in the record before it to make any of these determinations. They were likewise not necessary for the circuit court to rule on the appeal of the Certificate of Appropriateness. For these reasons, as well, the appellate ruling by the circuit court cannot support an offensive use of collateral estoppel to support a motion for summary judgment in this case.

4. **A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.**

   See proposed Stipulation of the Parties regarding the exhibits.

5. **Any unusual problems relating to evidence to be introduced, such as "Business Records as Evidence Act," hearsay, use of depositions, etc.**

   a. The parties will stipulate that the Exhibits proffered by both sides are in evidence at the start of the trial, without the need to introduce them through testimony.

   b. The parties have stipulated that the Plaintiffs have standing the bring this action.

   c. The parties have stipulated that if the Beaufort Code controls the Hotel and Garage projects (which the Developer and City contest) both the Hotel and Garage buildings are Large Footprint Buildings under the Code.

6. **Any unusual question or matter which should be brought to the attention of the court.**

   None

7. **A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.**

   The parties have not been able to resolve the case. There are no active settlement negotiations.

Respectfully Submitted,

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May 9, 2023,
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
Nov 14 2022
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-000300

Historic Beaufort Foundation, ... Appellant,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC, ... Respondents,

AND

West Street Farms, LLC and Mix Farms, LLC, ... Appellants,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and the Beaufort Inn, LLC ..... Respondents.

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HISTORIC REVIEW BOARD

September 21, 2022
Columbia, South Carolina

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STATEMENT OF THE CASE

These appeals arise from two long-pending development projects in the Historic District in the City of Beaufort ("City"): a hotel project ("Hotel Project") and associated parking garage project ("Parking Garage Project") (collectively, the "Projects") by Respondent Beaufort Inn, LLC ("Beaufort Inn"), and the latest decisions of the City of Beaufort Historic District Review Board ("HRB") (an architectural review board) approving certain aspects of those projects.

Notwithstanding years of approvals of the Projects at various stages by the HRB, Petitioners waited until after the Parking Garage Project approvals were nearly complete, and years after the Hotel Project was *finally* approved, to file an appeal of the last and latest HRB decisions regarding the Projects. Simply put, if Petitioners wanted to protest the height, mass and scale issues involved with the Projects, as they attempt to do in their petitions, Petitioners waited far too late, and are not statutorily permitted to do so now.

These appeals of the HRB decisions are but one part of a recent fight by Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively, the "Trask Petitioners"), two entities owned or controlled by Graham Trask, and the Historic Beaufort Foundation, Inc. ("HBF"), which for years sat on the sidelines as the Projects were developed without complaint.[1] (R. 038) Circuit Court Order Denying Appeal, p. 2; p. 18, fn. 9 ("Order").[2] Prior to these petitions by the Trask Petitioners and HBF, the Trask Petitioners began a broad attack on the Projects by a lawsuit filed on April 5, 2021 in the Beaufort County Court of Common Pleas captioned "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates*," Civil

[1] Indeed, during the years of conceptual and preliminary approvals of these projects, HBF had a designated seat on the HRB, which voted unanimously in favor of these earlier applications. (R. 024) Circuit Court Order Denying Appeal, p. 4.

[2] The Circuit Court issued two nearly identical Orders Denying Appeal in the two cases that are jointly before this Court. Rather than recite to the two Orders, Respondents will simply refer to "Order" for the sake of simplicity.

Action No. 2021-CP-07-00663 ("Lawsuit"), which seeks to attack these two projects and another, claiming that the three projects did not comply with the City of Beaufort's development code, primarily on the basis that the three projects each required a special exception by the City's Zoning Board of Appeals to move forward. (R. 038) Order, p. 18, fn. 9.[3]

The appeals before this Court are appeals pursuant to S.C. Code Ann. § 6-29-900(A) of the decisions of the City of Beaufort Historic District Review Board on June 9, 2021 that granted a final approval to the Parking Garage Project and granted a Change after Certification to the already approved Hotel Project. The Honorable Bentley D. Price heard the two appeals on January 9, 2022 and denied the appeals each by a separate Order Denying Appeal filed on January 20, 2022. The Circuit Court denied Petitioners' motions to reconsider on February 11, 2022. This joint appeal by both Petitioners followed.

The Development Agreement between Beaufort Inn and the City

Beaufort Inn for years has discussed a parking garage project and hotel project with the City. The City was cooperative as it needs downtown parking, and Beaufort Inn was able to offer a portion of the garage parking available to the public.

The Projects were complex and would take years to bring to fruition, as Beaufort Inn had to navigate the many requirements of the City of Beaufort, recognizing the historic context in which the Projects would exist. Indeed, after the Projects were introduced to the City, the City

[3] The City and Beaufort Inn, LLC each answered the Complaint in the Lawsuit, and each asserted in their respective Answers that both the Hotel Project and the Parking Project were begun, and work progressed under various permits issue under a prior development code, (the UDO as defined below) and therefore Beaufort Inn, LLC had vested rights under that prior development code, so that no special exception by the ZBOA was needed for those two projects. The voluminous Answer of Beaufort Inn, LLC to the Lawsuit ("BI Answer") was also filed with the HRB for its June 9, 2021 hearing and is part of the Record here. (R. 429-607). See Exhibit 3 to Record. Although the Lawsuit concerns matters outside the purview of the HRB, and are not properly part of these appeals, the BI Answer and its exhibits, which are part of the Record here, provide background and context to the decisions of the HRB and the Circuit Court that are part of the current appeals.

and Beaufort Inn entered into a Memorandum of Understanding on March 22, 2017 ("MOU")[4] that contained provisions demonstrating the commitment of the City and Beaufort Inn to the process.

Specifically, the MOU envisioned that Beaufort Inn would eliminate a private parking lot, construct a parking garage which had some spaces dedicated for public use, and thereafter construct a hotel. (R. 433-434; 438-439; 526-528.) The MOU recognized that "relocating the parking spaces from the current Easement area (i.e., the Subject Property) to the parcel contemplated herein will contribute to and assist with the successful implementation of the City of Beaufort Master Civic Plan." (R. 433.) The MOU further provided in pertinent part:

> The parties agree that both the City as well as the City of Beaufort Historic Review Board have the authority to approve any and all construction on the projected project site, to include specifically the overhanging balconies/porches, supporting columns and other design features fronting on Scott's Street and Port Republic Street referenced herein. The City, for itself, and in recognition of the extensive project design and planning expenses / costs that have been and will be incurred by Owner, agrees that it will grant such approvals, without exception, following the approval thereof by the City of Beaufort Historic Review Board.

(R. 434.) And later the MOU provides:

> The parties agree to communicate and cooperate with one another in good faith to facilitate the planned construction of the hotel on the Subject Property / project site herein, and the relocation of the City's parking spaces to the projected parking garage facility to be constructed on another parcel of property of Beaufort Inn, LLC, in Block 70, City of Beaufort.

(R. 439; 528.)

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[4] The MOU was entered into when the Unified Development Code ("UDO") was in effect, prior to the adoption of the Beaufort Code ("Code") on June 27, 2017. (R 022). Order, p. 2. The MOU is in the Record as part of Beaufort Inn's Answer ("Answer") that was filed in the Lawsuit. (R. 429-607.) The Answer tracks all of the development efforts of Beaufort Inn for the Parking Garage Project and the Hotel Project, from the inception of the Projects under the UDO to their current status after the June 9, 2021 HRB meeting.

The Parking Garage Project

Consistent with the Development Agreement, Beaufort Inn engaged in a substantial investment of time and money into the project for the Parking Garage Project. The timeline of such investments and efforts below is contained in Beaufort Inn's Answer to the Lawsuit (with exhibits) ("Answer") which was before the HRB for its decision:

1. On **October 9, 2007,** Beaufort Inn and the City entered into an Easement Agreement whereby Beaufort Inn granted the City a permanent easement for vehicle parking for twenty-seven (27) specifically designated individual parking spaces located on real property owned by Beaufort Inn.

2. On **December 28, 2012**, Beaufort Inn acquired title to the Parking Garage Project parcel.

3. On **August 17, 2016,** the City's Historic Review Board ("HRB") held a meeting where conceptual approval for the Parking Garage Project was provided. The HRB also discussed the possible demolition of 918 Craven and 310 West being required for Beaufort Inn to pursue development of the Parking Garage Project.

4. On **September 16, 2016**, based on the input received at the HRB meeting, Beaufort Inn submitted applications to the City to demolish two (2) structures required to pursue development of the Parking Garage Project, one located on 918 Craven, and the other located on 310 West.

5. On **November 9, 2016** at a meeting of the HRB, City staff advised the HRB that the 918 Craven demolition was <u>required</u> in order to develop the Parking Garage Project; however, the 918 Craven demolition project was delayed because the HRB expressed a preference that the building at 918 Craven be relocated rather than demolished. Beaufort Inn accommodated this preference and later received approval on **June 20, 2017** to relocate 918 Craven as opposed to demolishing it. The 310 West Street demolition project was approved at this meeting under the UDO.

6. On **November 11, 2016**, the HRB provided a Certificate of Appropriateness ("COA") approval for the 310 West demolition project (which was only a project because it was required for Beaufort Inn' Garage Parking Project.)

7. On **February 15, 2017**, the 918 Craven Street building relocation project approval was obtained (which was only a project because relocation or demolition was required for Beaufort Inn' Garage Parking Project.)

8. On **June 20, 2017,** Beaufort Inn obtained "Final Approval" for the demolition of the existing structure on 918 Craven Street. (However, as noted below, that structure was eventually relocated, not demolished.)

9. At the HRB Meeting on **July 12, 2017**, for the Parking Garage Project, the HRB approved "all height requirements." The meeting minutes state that the removal of two structures on the property was approved by the HRB and also provide that the "garage is being reviewed under the old UDO" (the Prior City Code), (ii) "all setback requirements are met" and (iii) "the removal of two structures on the property has been approved by the HRB."

10. Based on the HRB's expressed preference for relocation as opposed to demolition, on **August 31, 2017**, Beaufort Inn entered into a Property Relocation Agreement with BW Bale and Associates ("BW") whereby Beaufort Inn agreed to pay $9,000 for the relocation of the building located at 918 Craven Street.

11. On **November 11, 2017**, the City issued a Relocation Permit to allow Beaufort Inn to move 918 Craven to 1012 Newcastle Street.

12. On **September 20, 2017**, the HRB at its meeting provided preliminary approval for the Parking Garage Project effective that date ("Preliminary COA"). Per the meeting minutes, the HRB provided "preliminary" approval to ensure that the mass, scale and size for the structure would remain unchanged in future HRB discussions, however the preliminary approval identified certain details which had not yet received approval, such as the color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborists plan for the treatment of trees. The meeting minutes also state that "all setbacks in this zone are zero feet." The minutes also state that "the proposal requires the removal of the two structures, 918 Craven Street… and 310 West Street.

13. The HRB sent a letter dated **October 9, 2017** stating that drawings for the Parking Garage Project were approved as submitted.

14. On **August 7, 2018**, as required by the HRB, Beaufort Inn entered into a Construction Agreement for the demolition of the building located at 310 West Street and a portion of 905 Port Republic Street with JoCo Construction, LLC ("JoCo") and JoCo pulled the building permit for the demolition project. JoCo was paid $20,700 for this work.

15. On **June 19, 2019**, Beaufort Inn requested from the HRB an extension of the Preliminary COA issued on September 20, 2017 relating to the Parking Garage Project. Beaufort Inn' request letter references "work, including demolition and removal of structures, as well as additional studies, has been ongoing." The HRB provided a one-year extension to the Preliminary COA on **June 21, 2019**.

16. On **July 1, 2020**, a second one-year extension was granted by the City. The City granted many such extensions for projects due to the interference in City functions caused by the pandemic.

(R. 431-436; 438-440). See Answer.

Thus, the City and Beaufort Inn were obviously in regular contact for all approvals necessary for the development of the Parking Garage Project and the Hotel Project. Unlike many projects, Beaufort Inn had to secure demolition and relocation approvals for existing buildings on the project sites from the City. Each such approval was part of the overall process and connected to the Projects.

For example, although the Parking Garage Project received preliminary approval from the HRB at the **September 20, 2017** meeting, the HRB had required Beaufort Inn to obtain a Certificate of Appropriateness ("COA") for each of the demolition of buildings located at 918 Craven and 310 West Streets; these COAs were approved at the **November 9, 2016** HRB meeting.[5] (R. 024) Order, p. 4.

As stated above, at the request of the HRB, Beaufort Inn agreed to relocate rather than demolish 918 Craven, so on **February 15, 2017**, the 918 Craven Street building relocation project approval was obtained from the HRB. (R. 024) Order, p. 4.

To elaborate on the above timeline, the Parking Garage Project was first presented by Beaufort Inn to the HRB at its **August 17, 2016** meeting. This was prior to the enactment of the Beaufort Code. After a lengthy meeting with much discussion, the HRB gave unanimous conceptual approval of the Parking Garage, calling it a "496 space, 186,000 square foot parking garage." (R. 023-024) Order, pp. 3-4.

As noted in the HRB meeting minutes, the mass, scale and height of the proposed Parking Garage were discussed and approved. (R. 023-024) Order, pp. 3-4. The Executive Director of the

[5] These COAs were granted under the UDO. Pursuant to the UDO, these COAs were good for two years each and could be extended five times in one-year increments. See UDO, § 3.1.M.2.

HBF, Maxine Lutz, was present at the meeting and expressly stated that "this seems like a wonderful way to develop this parcel," but then qualified that statement that the HBF was "primarily interested in the height, mass, and scale of a parking garage." (R. 024) Order, p. 4, n. 3. The HRB then unanimously gave conceptual approval of the mass, height and scale. (R. 024) Order, p. 4.

No party appealed the decision of the HRB granting conceptual approval of the mass, height and scale of the Parking Garage Project, including the HBF, which had its Executive Director present.[6] (R. 024) Order, p. 4.

The HRB then at its **November 9, 2016** meeting advised Beaufort Inn that a condition of further development of the Parking Garage was the demolition of structure at 310 West Street. The HRB voted unanimously to allow this demolition, and issued a Certificate of Appropriateness dated **November 14, 2016** granting Beaufort Inn permission for the demolishing of 310 West Street, for the specific purpose of building the Parking Project in that space. (R. 024) Order, p. 4.

By follow up hearing on **February 8, 2017**, and letter dated **February 15, 2017**, the HRB issued a COA to Beaufort Inn, LLC to relocate the building at 918 Craven Street, again as part of the Parking Garage Project. (R. 024) Order, p. 4. The City issued permits for both this demolition and building relocation, which were completed by Respondent Beaufort Inn. (R. 024) Order, p. 4. There was no appeal of either of these decisions by the HRB, or of the Certificates of Appropriateness that were issued. (R. 024-025) Order, p. 4.

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[6] Petitioners in their Statement of Issues on Appeal No. 7 argue that the Circuit Court erred by finding laches, estoppel or waiver. Petitioners are apparently referring to the HBF representative's participation in the decisions granting earlier approvals to Beaufort Inn, but the Court did not rule that there was an estoppel, waiver or laches in its Order and thus that issue is not addressed by Respondents in this Brief.

On **September 20, 2017**, the HRB met and unanimously voted to grant preliminary approval to the Parking Garage Project as memorized by the City's **October 9, 2017** letter. (R. 024) Order, p. 4. The preliminary approval did not change the height, mass and scale issues which had previously received conceptual approval. (R. 024) Order, p. 4. Many members of the public, and representatives of HBF, were present and participated in this September 20, 2017 HRB meeting. (R. 024) Order, p. 4. There was similarly no appeal of this preliminary approval of the Parking Garage Project. (R. 024-025) Order, pp. 4-5.

The Parking Garage Project was submitted to the HRB for final approval at its **June 9, 2021** meeting. The final approval did <u>not</u> involve any elements of mass, scale or height but dealt with the architectural and aesthetic details set forth in preliminary approval. (R. 025) Order, pp. 5-6. As noted the HRB's October 9, 2017 preliminary approval letter, the *only things that needed to be addressed* by Beaufort Inn for final approval were:

> the type and color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborist report and plan for the 'treatment of trees.' The HRB clarified that the current drawings were approved as submitted, and that the applicant was tasked with refining the details listed in order to receive final approval.

(R. 025) Order, p. 5. Thus, for all practical purposes, the hearing on final approval of Garage Parking Project had a very limited agenda and list of items to be considered.

After a four and one half hour meeting, the HRB issued final approval of the Parking Garage Project. (R. 025) Order, p. 5.

The Hotel Project

The Hotel Project matter currently being appealed is different from the appeal of the Parking Garage Project, as the Hotel Project was before the HRB requesting a change <u>after</u> certification. That is, the Hotel Project already had final approval and a COA two years before

that meeting and Beaufort Inn by its current application was simply requesting several changes to the original HRB approval to construct the Hotel Project. (R. 025-026) Order, pp. 5-6.

However, in their appeal, Petitioners attempt to reargue matters decided years ago by the HRB, and seek to vastly expand the scope of what was actually heard at the **June 9, 2021** HRB meeting. The issues complained of now by the Petitioners involve elements of the Hotel Project which were approved in 2019, and which were not challenged or appealed at that time. The Hotel Project was first presented to the HRB and received unanimous HRB conceptual approval on **September 14, 2016**. (R. 026) Order, p. 6. This was prior to the enactment of the Beaufort Code in 2017. Therefore, the Hotel Project began under the UDO. (R. 026) Order, p. 6. (Indeed, at the HRB meeting of June 9, 2021, the chair of the HRB recognized that the UDO governed this matter. (R. 026) Order, p. 6.) There was no appeal of the HRB's conceptual approval. (R. 026) Order, p. 6.

The Hotel Project's preliminary approval was issued unanimously by the HRB on **July 25, 2017**. (R. 026) Order, p. 6. There was no appeal of the preliminary approval of this COA approving the Hotel Project design. (R. 026) Order, p. 6. The Hotel Project was granted a final approval and Certificate of Appropriateness at the HRB's **October 9, 2019** meeting. (R. 026) Order, p. 6. The HRB issued its Certificate of Appropriateness by letter dated October 9, 2019, and there was no appeal of this COA. (R. 026) Order, p. 6.

The HRB also required that Beaufort Inn demolish the building at 812 Port Republic Street in order to build the Hotel Project, per the HRB meeting minutes for the **November 13, 2019** meeting; the HRB granted Beaufort Inn a COA demolish this building on **November 13, 2019**. (R. 026) Order, p. 6. n. 4. As there was no appeal or other challenge from this decision, Beaufort

Inn obtained a demolition permit from the City per this COA on **December 17, 2020** and completed this demolition. (R. 026) Order, p. 6. n. 4.

The only reason this matter involving the Hotel Project is before the Court now is that Beaufort Inn determined that it wanted to make certain changes to the approved COA for the Hotel Project. To that end, it applied for a "Change After Certification" for the Hotel Project on **December 25, 2020**. (R. 025) Order, p. 5.

Notwithstanding Petitioners' claims, the HRB felt that the prior approvals of the Hotel Project were final and could not be changed by the HRB. At the beginning of the June 9, 2021 HRB meeting under appeal, the Chair noted:

> I will explain, also, at this point that we are at final, which means mass, scale, and all of those items have all been dealt with and voted upon in advance. We will not be relitigating them, we will not be going back over all of those details today. We're only here today to review the last details for this project and then to make a decision to approve or not.

(R. 027) Order, p. 7. This is consistent with the view the HRB took of prior approvals of the Parking Garage Project as well, see *supra*. The Change after Certification for the Hotel Project was then approved by a 3-1 vote of the HRB. (R. 027) Order, p. 7.

Thus the HRB meeting concluded with final approval of the Parking Garage Project and approval of the Change after Certification of the Hotel Project.

These appeals followed.

The Two City Development Ordinances at Issue

The applicability of the City's prior and current development ordinances permeates the issues in these cases. As noted by the Circuit Court:

> The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code Ann. § 6-29-710 *et seq*. Prior to the enactment of the Beaufort Code, the City's development code was known as the Unified

Development Ordinance ("UDO") which had been adopted on January 28, 2003 (last revised September 14, 2012.) The Beaufort Code superseded the UDO when enacted. The UDO provided for a Historic District Review Board ("HRB") at Section 2.7 which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*. The Beaufort Code, when enacted, similarly provided for the HRB at Section 10.7.

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. Code § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort Historic District and "will seek to preserve and protect the historic character and architectural integrity of Beaufort's National Landmark Historic District." Code § 10.7.1.B. Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. Code § 10.7.2.B.1. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. Code § 9.10.A.1.

On large projects that can take years to develop, the HRB under both the UDO and the Code follows a stepped procedure of conceptual approval, preliminary approval, and final approval

(R. 022-023) Order, p. 2.[7]

The UDO required any appeal of the HRB to be within thirty (30) days of the decision. See UDO, ¶ 3.20.I.[8] (R. 029). See S.C. Code Ann. § 6-29-900(1)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.") The same is now true of the Beaufort Code; under the Code, there is still only a thirty-day window to appeal decisions of the HRB. See Code, ¶ 9.10.I.[9] (R. 029).

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[7] See Code Section 9.10.2 at diagram stating "HRB Review and Decision (Approved, Approved with Conditions, Denied) 2-3 Phases (Conceptual, Preliminary, and Final are Typical)." Also see, Appendix I to the UDO, which has similar descriptions. (R. 0827-828).

[8] UDO Section 3.20.I stated: "A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked." (R. 029).

[9] Beaufort Code § 9.10.I states: "Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision." (R. 029).

STANDARD OF REVIEW

"On appeal, the findings of fact by the [HRB] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8–9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enterprises, LLC v. City of N. Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code Ann. § 6-29-840(A) ("The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.").

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Solutions, Inc.*, 414 S.C. at 9 (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 147–48). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014) (quoting *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 [HRB] 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.* (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 148).

"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 *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010)). The party challenging a

governmental body's decision bears the burden of proving the decision is arbitrary." *Pressley v. Lancaster Cnty.*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001).

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY FOUND THAT THE PETITIONERS' APPEALS WERE UNTIMELY.

The issues raised by Petitioners in their appeals concern claimed violations by the HRB of the mass, height and scale of each of the two Projects. Under both the UDO and the Beaufort Code, a person aggrieved by a "decision" of the HRB has thirty days to appeal that decision. See UDO Section 3.20.I; Beaufort Code § 9.10.I. (R. 029). Also see S.C. Code Ann. § 6-29-900(1). The Circuit Court properly found that it far too late for Petitioners to appeal the mass, height and scale of the Projects as such matters had been decided in prior HRB meetings and Petitioners failed to appeal from those decisions. (R. 029-033) Order, pp. 9-13. Should the Court uphold the Circuit Court on this issue, all of Petitioners' Issues on Appeal are mooted.[10]

Parking Garage Project. There had been multiple levels of approvals by the HRB of the Parking Garage Project prior to the June 9, 2021 HRB meeting. The June 9, 2021 meeting only covered certain limited additions that were not material to mass, scale or height of the Parking Garage. Any complaint with the mass, scale or height of the Parking Garage could and should have been made as an appeal of the HRB decisions on such on many prior occasions.

There was no appeal of any of the following decisions of the HRB regarding the Parking Garage Project:

- August 17, 2016 HRB Meeting grants conceptual approval (mass, height and scale) of Garage Parking Project.
- November 9, 2016 HRB Meeting grants COA for demolition (and later relocation) of 918 Craven Street and the demolition of 310 West Street for Parking Garage Project.

[10] The lack of timeliness of the appeals is the subject of Appellants Issue No. 6.

- September 20, 2017 HRB Meeting grants preliminary approval (mass, height and scale) for Parking Garage Project with October 9, 2017 City letter.

Because there were no appeals of these prior decisions of the HRB, Petitioners are barred from appealing them at the final approval stage. (R. 029-033) Order, pp. 9-13.

Hotel Project. Likewise, there was no appeal of the HRB's final approval for the Hotel Project that was granted at the HRB **October 9, 2019** meeting. Indeed, there was no appeal from that decision or from the conceptual or preliminary design approval decisions of the HRB beforehand. Petitioners could and should have appealed these decision if they did not agree with the COA or the issues that were approved. Their failure to so appeal renders the Court without jurisdiction to hear an appeal of any issue decided at that HRB meeting, including the issuance of the Hotel Project COA. *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117, 122, 1998 WL 433642 (1998) n. 6.

Further, the HRB determined that the only issues that could be discussed properly at the June 9, 2021 HRB meeting with respect to the Change after Certification Request for the Hotel Project were the changes under consideration by the HRB *at that meeting*, not any prior approvals granted. The Court should defer to the HRB's determination of the scope of its agenda. *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912, 916 (Ct. App. 1995). Thus, the appeals of the Petitioners to the extent they address any complaint about the Hotel Project other than the matters raised only in the Change after Certification application are untimely and should be denied.

The Circuit Court provided a through explanation of its reasoning held in its Order at page 9-12 with respect to those reasons why the appeals as to both Projects were time barred:

The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")*

"Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). These UDO and Beaufort Code deadlines are of critical importance to the Appeal, as it is well settled that the failure to appeal within the ordinance timelines renders a circuit court with no subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't,* 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and S.C.R.C.P. Rule 74.

Each conceptual, preliminary, and final approval by the HRB for both projects was indisputably a "decision" under the UDO and the Beaufort Code. Thus, if any party was aggrieved by the subject matter of any of those decisions, the time to appeal was with within thirty days of that decision per both the UDO and the Beaufort Code. The Petitioner has attacked both process (for example, contesting that extensions were not properly granted) and substance (whether or not the HRB decisions complied with the substantive requirements for the projects) with respect to approvals for these projects.

However, to the extent the matters they attack were decided at an HRB meeting prior to the June 9, 2021 meeting, the time for appealing those decisions has expired and those decisions cannot be challenged now. Nor can Petitioner use the final approval stage to reach back to prior approvals that were not appealed. Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.

The requirement of immediate appeal of HRB decisions on conceptual, preliminary and final approval is consistent with how the HRB itself views its processes. For example, the Petitioner attacks the Parking Garage Project and Hotel Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Petitioner claim are relevant. However, the HRB members specifically discussed whether or not the HRB could revisit prior approvals given to Beaufort Inn for the Parking Garage Project and the HRB specifically decided it could not revisit those approvals, as three of the four HRB members specifically stated that it was not their position to revisit approvals given by the HRB at prior meetings. Therefore, the HRB

specifically discussed and rejected Petitioner's claims that the HRB could revisit matters already decided favorably to Beaufort Inn in prior HRB meetings. "We give 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).

This requirement for timely appeals is also consistent with the common law and avoids problematic situations where a property owner has relied on an HRB approval and created vested rights in the HRB approval by expending resources. It is axiomatic that when a government entity makes a land use decision regarding property, the property owner is entitled to rely on that decision and the government cannot later change that decision to the detriment of the property owner. *See e.g., Nuckles v. Allen,* 250 S.C. 123, 130, 156 S.E.2d 633, 637 (1967).

The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given. The record is replete with evidence that Beaufort Inn, for both the Hotel Project and the Parking Project, obtained HRB conceptual approvals under the UDO, then obtained later preliminary approvals from the HRB, and were granted demolition and relocation permits from the HRB necessary for Beaufort Inn to proceed with the projects.

It is well established in South Carolina that a project that is begun under one ordinance cannot be stopped or limited by a subsequent change in that ordinance. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). If HRB conceptual and preliminary approval decisions could be challenged at the final approval stage, the City Defendants could face legal challenges by property owners of interference with the property owner's vested rights.**

Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals. As the City Defendants cannot revoke the approvals, the Petitioner by the Appeal cannot force the City Defendants to do what they are otherwise legally prohibited from doing.

For these reasons, the Petitioner is precluded from appealing any matter that was the subject of the conceptual, preliminary, or final approvals of the Hotel Project, as final approval was granted to that project in October 2019. Likewise, Petitioner is precluded from appealing any matter that was the subject of the preliminary approval of the Change after Certification of the Hotel Project on February 10, 2021.

(R. 029-032). Order, pp. 9-13. The Circuit Court in footnote 6 (R. 029) also stated "Both time periods are as authorized by South Carolina law. See S.C. Code Ann. § 6-29-900(A)("The appeal

must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")"[11] (R. 029) Order, p. 9, n. 6.

Thus, the failure of any party to appeal any of the prior approvals by the HRB of the Parking Garage Project means that the Court is without jurisdiction to hear an appeal of any matter decided at a prior HRB meeting. As the Petitioners attack the existence of the Parking Garage Project itself (based on mass, scale and size-matters decided long ago), and nothing specifically with respect to those minor issues reviewed for final approval by the HRB at its June 9, 2021 meeting, their appeals are untimely and must be denied.[12]

II. THE CIRCUIT COURT AND THE HRB PROPERLY REJECTED PETITIONERS' CLAIMS THAT APPROVAL OF THE PROJECTS WAS PROCEDURALLY BARRED.

Petitioners' First, Second, and Third Issues on Appeal all rely on broad based allegations that the HRB failed to comply with procedural requirements of either the UDO or Beaufort Code with respect to extensions for the Parking Garage Project and Hotel Project they claim were either not granted at all or were not timely granted.

A. The Hotel Project.

The Circuit Court expressly rejected this contention in its Orders at pp. 14-17. (R. 034-037.)

As an initial matter, as noted *supra*, the time to appeal any such argument for the Hotel Project had long passed since final approval of that project occurred in October of 2019, which

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[11] There was a footnote 7 in the Order (R. 032) more specifically addressing the vesting of the projects that is addressed *infra*.

[12] As noted, the only item at the June 9, 2021 HRB meeting that Petitioners timely challenged with respect to the Hotel Project was the change to the rooftop design. The Circuit Court found that there was sufficient evidence in the Record to support the HRB's approval of the Change after Certification. (R. 033-034) Order, pp. 13-14. The Appellants failed to challenge this finding. Therefore, it is the law of the case. *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 714 S.E.2d 869 (2011).

disposes of any argument by Petitioners that extensions should not have been granted. As stated by the Circuit Court:

> The only issues that can be subject to any appeal by Petitioner are those matters before the HRB for the first time at the June 9, 2021 meeting and were additional design changes required by the HRB after preliminary approval of the Change after Certification request of Beaufort Inn. That included the proposed roof deck that was contested at the June 9, 2021 HRB hearing. As noted, the only matter at issue in the HRB June 9, 2021 hearing was final approval of the design changes to the roof and other parts of the Hotel Project, but Petitioner only challenges the roof design changes from that hearing—something that the HRB had already granted preliminary approval for at its February 10, 2021 hearing. Therefore, all of Petitioner's Appeal with respect to the Hotel Project is time barred.

(R. 033) Order, p. 13. This defeats any arguments made by Appellants in their Issue Nos. 1, 5 and 6 specifically.

B. The Parking Garage Project

The Circuit Court also expressly rejected the contention that the Parking Garage Project did not have proper extensions in its Order as follows:

> Petitioner only advance two arguments with respect only to the Parking Garage Project. First, it argues that the time period for a final approval by the HRB had run, and so final approval should not have been granted. Second, it disagrees with the HRB's decision almost entirely on matters that were conclusively established at the conceptual and preliminary approval stages—that is the scale, size, height and mass of Parking Garage Project.

1. There was no error in the HRB accepting the extensions.

> Petitioner argues that the prior approvals granted to Beaufort Inn for the Parking Garage Project expired before the June 9, 2021 HRB meeting, and thus the application for final approval was not properly before the HRB. Petitioner asserts that the UDO did not allow for an extension totaling more than 18 months, and there was more than an 18 month gap between the preliminary approval of the HRB on September 20, 2019 and the June 9, 2021 HRB meeting. Petitioner claims that the approvals granted previously on the Parking Garage Project had thus expired, and so Beaufort Inn was required to start the Parking Garage Project approval process again.
>
> However, the City granted two extensions to Beaufort Inn, one by letter of June 21, 2019 and one by letter of July 1, 2020, pursuant to § 9.1.4 of the Beaufort Code, which allows up to five one-year extensions. There are no time limitations on extensions for

conceptual, preliminary, or final approvals for COAs other than those stated in § 9.1.4. See B.C. § 9.1.9.C. Thus, the City was within its discretion to provide such extensions, and such extensions were accepted by the HRB in its discretion. See *Gurganious v. City of Beaufort*, 454 S.E.2d at 916

Petitioner cites to § 1.4.2 (B) of the Beaufort Code stating that the City Defendants and Beaufort Inn were required to follow the UDO time limits on extensions. However, that is not what § 1.4.2(B) requires. This section does not address extensions of the application process other than to say the City "shall review and decide the application in good faith and in accordance with any time frame established by the prior standards." This language clearly requires the City not to use the crossover of applicable codes to delay a project; otherwise, there would be no need to reference a "good faith" requirement.

Cleary the HRB did not construe § 1.4.2 (B) to bar final approval of the Parking Garage Project. Given the many interrelated acts by the City requiring approvals on this Project at various stages, as well as interconnected approvals needed for existing structure demolition and relocation, it would be inequitable and patently unfair for the HRB to give Beaufort Inn written extensions and then have this Court vacate those extensions. Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal, supra.* The application of timelines in the UDO that do not exist or are no longer in the ordinance clearly would impair such rights. Simply put, § 1.4.2 (B) cannot be construed to make a project *harder* to develop simply because of a crossover of codes. That would not be the "good faith" required of the City.

Further, Petitioner ignores B.C. § 1.4.4.A: "Other Approved Development Permits and Approvals." Section 1.4.4.A provides:

> Any other development that has received approval of a development permit or approval of a portion of a development—including any required Traffic Impact Analysis and/or Archaeology Survey—before the effective date of this chapter or any amendments thereof **may** be carried out in accordance with the terms and conditions of the development permit or approval and the procedures and standards in effect at the time of the approval, provided the permit or approval does not expire and otherwise remains valid. If significant changes are made to the development, associated studies and surveys required as part of the development process shall be redone. If the development permit or approval expires, is revoked (e.g., for failure to comply with time limits or terms and conditions), or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

(Emphasis added.) In statutory construction, the use of the word "may" means the action is permissive. *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980)("The use of the word 'may' signifies permission and generally means that the action spoken of is

optional or discretionary."); *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 276, 834 S.E.2d 209, 212 (Ct. App. 2019).

B.C. § 1.4.4.A clearly gives the HRB the *discretion* to apply the UDO or the Code with respect to timelines it applied to the Parking Garage Project. Thus, the HRB staff was free to apply the Beaufort Code timelines per this section of the Code, and was not required to follow the UDO. There was no error in the HRB allowing the extensions to stand and the Parking Project to move to final approval.

(R. 034-037) Order, pp. 14-17. In footnote 8, the Circuit Court also noted:

To the extent that B.C. § 1.4.4.A may be interpreted to conflict with § 1.4.2 (B), the interpretation of the HRB giving precedence to § 1.4.4.A must be given great weight. "We give 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). "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), quoting *Purdy v. Moise*, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

(R. 036-037) Order, p. 16, n. 8.

Petitioners quibble with the characterization of extensions by City staff, arguing that staff issued extensions for COAs that did not exist. Additionally, Petitioners also argue City staff erred in their interpretations of the applicable ordinance bind the City and HRB. However, staff comments and characterizations do not bind the City or HRB. Only the HRB itself, not its staff, has the authority to decide if approvals are proper. The HRB obviously determined that extensions (no matter what they were called) were properly given as the HRB proceeded with the approvals. There was evidence in the Record to support the HRB's decision. Clearly both the City and Beaufort Inn understood that the extensions were more generally for the Projects and part of the ongoing cooperation between Beaufort Inn and the City in furtherance of Beaufort Inn's vested rights.

C. Beaufort Inn's Vested Rights Defeat Petitioners' Procedural Arguments.

1. The Vested Rights Act did Not Preempt Common Law Vesting of Rights.

Both Beaufort Inn and the City agree that Beaufort Inn has vested rights in the Parking Garage Project and the Hotel Project as stated *supra*. The vested rights argument eviscerates the Petitioners' claims of procedural defects in the HRB process as once Beaufort Inn was vested in the approvals given by the City, such vested rights could not be taken away by the City unilaterally. The Circuit Court concurred.

However, Petitioners in their Eighth Issue on Appeal claim that Beaufort Inn could have no rights vested in the Projects unless Beaufort Inn and the City had a special agreement pursuant to Vested Rights Act, S.C. Code Ann. § 6-29-1510, *et. seq*. ("VRA"). There was no such agreement pursuant to the VRA.

The Circuit Court expressly rejected this argument:

> Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986). However, Petitioner argues that Beaufort Inn may not claim a vested right, even though the City Defendants concede it has vested rights in the application of the UDO to the project, because Beaufort Inn has failed to comply with the Vested Rights Act, S.C. Code § 6-29-1510, *et. seq*. ("VRA"), and therefore it obtained no vested rights. This is incorrect for several reasons. First, the VRA nowhere states that it is the exclusive method of establishing vested rights by a property owner in South Carolina. It is well settled in South Carolina that a statutory scheme creating a remedy of some type is not deemed to create an exclusive remedy unless the statute expressly so provides. *See e.g., Tilley v. Pacesetter Corp*., 333 S.C. 33, 40–41, 508 S.E.2d 16, 20 (1998)(creation of specific remedy by statute did not mean it was the sole one at law); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986)(Collection of Rent by Distraint Statute not exclusive remedy); and *Wimberly v. Barr*, 359 S.C. 414, 419, 597 S.E.2d 853, 856 (Ct. App. 2004)(timber cutting statute not the exclusive remedy). Conversely, where the legislature intends a statute to create an exclusive remedy, it has expressly said so. *See e.g., Dickert v. Metro. Life Ins. Co.,* 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993)(workers compensation is exclusive remedy); *Wimberly v. Barr*, 597 S.E.2d at 857 (S. C. Tort Claims Act is exclusive remedy.) North Carolina, with its similar vested rights act, has recognized that its vested rights act is not meant to be the sole method of establishing vested rights, and that the traditional framework of substantial reliance on municipal actions is still an avenue of relief for

> property owners. *Simpson v. City of Charlotte*, 115 N.C. App. 51, 56, 443 S.E.2d 772, 776 (1994). The same reasoning applies here; the South Carolina Supreme Court has recognized "the purpose of the Act was to protect, preserve, and create vested rights in development permits." *Grays Hill Baptist Church v. Beaufort Cty.*, 431 S.C. 630, 640, 850 S.E.2d 29, 34 (2020). Limiting the ability of a property owner to acquire vested rights to those under a statutory scheme is anathema to the purpose for the VRA. The VRA merely provides another vehicle by which a property owner and developer can achieve some certainly in the development process—but it is not the only method.
>
> (R. 032) Order, p. 12, fn. 7

The Circuit Court clearly explained why it rejected Petitioners' argument that Beaufort Inn was required to follow the VRA and did not do so. However, Petitioners fail to challenge the Circuit Court's reasoning.[13] Petitioners have not made any argument why the Circuit Court's Order was incorrect in its holding. Petitioners only make a half-page, conclusory argument that the VRA applies and they do not even state *why* the VRA should be the exclusive method for assertion of vested rights. Therefore, that issue must be determined to be abandoned on appeal. *Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281 (2003).

The reasoning behind this abandonment rule is sound. All issues and arguments must be made in the Initial Brief. SCACR 211(b). If Petitioners for the first time argue why the Circuit Court was wrong in its rejection of the VRA in their Reply, Respondents will have been precluded from making arguments in support of the Court's holding. Because of this, an appellant may not make new arguments in its Reply Brief as a method to circumvent SCACR 211(b). *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

[13] Nor did Petitioners contest the Circuit Court's logic in the Order in any filing before the Circuit Court, including their Motions to Reconsider. (R 811--812). It is axiomatic that a litigant is required to raise an issue fairly to the trial court, thereby giving the trial court an opportunity to rule on the issue. *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595–96 (2010).

Thus, Petitioners have abandoned any argument contesting the Court's holding and should not be allowed to proceed further on this issue. Given that Beaufort Inn's approval rights in the Projects are vested as the law of the case, Petitioners' procedural arguments are moot.

2. If Petitioners Lose Their Vested Rights Act Exclusivity Argument, the Law of the Case is that Beaufort Inn had Vested Rights.

If Petitioners lose their VRA exclusivity argument, Petitioners nowhere else contest the Circuit Court's determination that Beaufort Inn's rights in the two Projects are vested under South Carolina law. Thus, the Circuit Court's holdings that Beaufort Inn was vested in the Projects moots any argument by Petitioners that procedural steps were not properly followed. Specifically, the Petitioners nowhere challenged the Circuit Court's holdings in several places that Beaufort Inn had vested rights:

- "The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given." (R. 031) Order, page 11.
- "Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals." (R. 032) Order, page 12.
- "Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights." (R. 035) Order, page 15.
- "Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply." (R. 038) Order, page 18.

The failure of Petitioners to challenge these findings of the Circuit Court binds them to these findings as the law of the case (as long as they do not prevail on their Eighth Issue on Appeal.) It is fundamental that an appellate court should affirm a lower court's ruling if the appealing party does not challenge that ruling. *Biales v. Young*, 315 S.C. 166, 432 S.E.2d 482 (1993). The failure to challenge is considered an abandonment on the issue on appeal. *Id.* It does not matter if the

ruling is right or wrong, if not appealed, it nonetheless becomes the law of the case. *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 714 S.E.2d 869 (2011). If a court's decision can be upheld 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. *Anderson v. Short*, 323 S.C. 522, 476 S.E.2d 475 (1996).

The failure of the Petitioners to challenge these holdings means the vested rights in the approvals of the Projects are the law of the case, which effectively disposes of any argument Petitioners make on procedural deficiencies in the approval process for the Projects.

III. THE CIRCUIT COURT AND HRB PROPERLY REJECTED PETITIONERS' CLAIM THAT THE PROJECTS REQUIRED PRIOR ZONING BOARD OF APPEALS APPROVAL BEFORE THE HRB ACTED ON THE PROJECTS.

Petitioners claim that the HRB should not act on either the Parking Garage Project or the Hotel Project because they argue that both require a Special Exception issued by the City's Zoning Board of Appeals ("ZBOA") for a Large Footprint Building pursuant to the Beaufort Code. The Circuit Court expressly and properly rejected this contention in its Order. Specifically, the Circuit Court stated:

> Petitioner, citing no authority, claims that the HRB was precluded from hearing the Hotel Project matter and the Parking Garage Project matter because it alleges that neither project should be permitted under the Beaufort Code because both buildings are allegedly "Large Footprint Buildings" as defined at B.C. § 4.510 (B)(5). Large Footprint Buildings under this section of the Beaufort Code are required to have a Special Exception from the City of Beaufort's Zoning Board of Appeals ("ZBOA") to go forward. Thus, Petitioner reasons, the two projects do not qualify under applicable zoning and so should not be considered by the HRB. The Court rejects this argument.
>
> First, as noted, the Parking Project and the Hotel Project were initiated under the UDO, not the Beaufort Code. As held by the HRB, and admitted by City Defendants, these two projects were to be assessed under the UDO, not the Beaufort Code. The Beaufort Code also provides that these projects are grandfathered under the UDO as they were initiated when the UDO was in effect. B.C. § 1.4.2.A. Critically, the UDO did not have a section like the Large Footprint Building in the Beaufort Code. Consequently, no Special Exception by the ZBOA was required for either the Hotel Project or the Parking Garage

Project. Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal, supra.*

Second, there is no provision in Beaufort Code requiring ZBOA approval of any project prior to HRB approval. Indeed, B.C. § 9.2.5 allows an applicant to apply for approvals concurrently at its own risk. Further, B.C. § 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioner's position that one must come before the other.

Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall 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 Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official" as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to the arguments by Petitioner that the HRB was without jurisdiction over these projects or otherwise should have abstained from deciding anything because of its allegation that they needed Special Exceptions from the ZBOA.

(R. 037-039) Order, pp. 17-19. (Footnote omitted.)

Once again, the Petitioners provide no analysis explaining why the Circuit Court's Order is incorrect. Therefore, Petitioners have abandoned that any argument contesting these findings. *Jinks*, 355 S.C. 341. Regardless, as correctly noted by the Circuit Court, there is no validity to the arguments by Petitioners regarding Special Exceptions before the HRB, and the HRB properly disregarded such arguments.

CONCLUSION

Each Order Denying Appeal should be affirmed.

This 14th day of November, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This final brief complies with Rule 211(b), SCACR.

s/ *Benjamin E. Nicholson, V*

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Scott Spouse, Circuit Court Judge

Appellate Case No. 2023-000953
Civil Case No. 2021-CP-07-00663

West Street Farms, LLC and Mix Farms, LLC, ... Appellants,

v.

City of Beaufort, City of Beaufort Inn, LLC,
and 303 Associates, LLC ..... Respondents.

NOTICE OF THE INCORPORATION BY REFERENCE OF THE RECORD ON APPEAL FILED IN APPELLATE CASE NO. 2022-000300

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February 5, 2024
Columbia, South Carolina

Come now the appellants, West Street Farms, LLC and Mix Farms, LLC (collectively, "Appellants") and the respondents, City of Beaufort, City of Beaufort Inn, LLC, and 303 Associates, LLC (collectively, "Respondents") (together, the "Parties"), and notify this Court that the two-volume Record on Appeal filed on November 29, 2022, in South Carolina Appellate Case No. 2022-000300, the consolidated appeal of *Historic Beaufort Foundation v. City of Beaufort, et seq.* and *West Street Farms, LLC v. City of Beaufort, et seq.* (the "HRB Appeal" or "incorporated record"), has been incorporated by reference into the Record on Appeal filed in the present matter as if the documents have been resubmitted to this Court in duplicate, allowing the Court to consider the facts appearing in the incorporated record in the present appeal. *See* Rule 210(h), SCACR.

The Parties have included a copy of this notice in the Record on Appeal filed in the present appeal. In a manner consistent with Rule 211, SCACR, the Parties have used the following format when citing the incorporated record in their final briefs: (R. _____; I.R. _____). The first record reference is to the page number of this notice in the Record on Appeal filed in this appeal (referred to as "R"), and the second record reference is to the page number of the portion of the incorporated record being cited (referred to as "I.R.").

The Parties brought this request to the attention of the Court in their Joint Motion for Court Guidance as to the Compilation of the Record on Appeal filed December 21, 2023. To date, the Court has not ruled on this motion. If the Court subsequently notifies the Parties that it desires the refiling of the entire Record on Appeal filed in the HRB Appeal, the Parties will supplement the record in the manner requested by the Court.

Respectfully submitted,

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Columbia, South Carolina

2. Final Plats

The Technical Review Committee shall approve, approve with conditions or deny major subdivision final plats.

2.7 Historic District Review Board

A. Creation

A Historic District Review Board is hereby established as a board of architectural review pursuant to Section 6-29-870 of the South Carolina Code of Laws, 1994, as amended.

B. Purpose

The Historic District Review Board shall review and approve new construction and changes to the exterior of any structure located within the Beaufort Historic District. It shall preserve and protect this historic and architecturally significant district.

C. Territorial Jurisdiction

The Historic District Review Board shall have jurisdiction throughout the Beaufort Historic District. The Board shall also have jurisdiction to review the demolition or removal of all structures listed in the Beaufort County Historic Sites Survey – 1997, that are located within the City limits, but outside the Historic District.

D. Membership, Terms and Compensation

1. Number, Composition

~~The Historic District Review Board shall consist of five members with an interest, competence or knowledge in historic preservation. Except for the Historic Beaufort Foundation representative established below, a~~All Board members ~~shall be residents of the City except as noted below. Two members shall, to the extent that such is available in the community, be professionals in the disciplines of architecture, history, architectural history, planning, archeology, or related disciplines, including urban planning, American studies, American civilization, cultural geography, cultural anthropology, engineering, real estate, law, banking or construction. None of the members of the Board shall hold any other public office or position in the City.~~

~~**a. Board Composition**~~

~~(1) One person representing the Beaufort Preservation Neighborhood. The priority order for appointments to this position are:~~

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~~(a)A person who resides in the Preservation Neighborhood and owns property there;~~

~~(b)A person who lives in the city and owns property in the Preservation Neighborhood;~~

~~(c)A person who lives in the Preservation Neighborhood but does not own property there; or~~

~~(d)A person who lives in the city but does not own property in the Preservation Neighborhood.~~

~~(2)One person representing the Beaufort Conservation Neighborhood. The priority order for appointments to this position are:~~

~~(a)A person who resides in the Conservation Neighborhood and owns property there;~~

~~(b)A person who lives in the city and owns property in the Conservation Neighborhood;~~

~~(c)A person who lives in the Conservation Neighborhood but does not own property there; or~~

~~(d)A person who lives in the city but does not own property in the Conservation Neighborhood.~~

~~(3)One person recommended by Main Street Beaufort U.S.A. This person shall either be a resident of the City or own or operate a business in the City.~~

~~(4)One person recommended by the Historic Beaufort Foundation who is a member of its board of directors. This person shall either be a resident of the City or own or operate a business in the City.~~

~~(5)~~(1) ~~One person selected at large.~~The Historic District Review Board shall consist of five members with an interest competence or knowledge in historic preservation. All Board members shall be residents of the City, own property in the City, or own or operate a business in the City. Two members shall, to the extent that such is available in the community, be professionals in the disciplines of historic preservation, architecture, history, architectural history, planning, archeology, or related disciplines, including urban planning. Three of the members shall either live or own property in the Historic District. One of the five members shall be a person recommended by the Historic Beaufort Foundation who is a member of its board of directors.

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2. Terms, Appointment

All members shall be appointed by the City Council for terms of two years. All terms shall end on June 30 of the applicable year and members must continue to serve until their successors are appointed. The City Council, upon recommendation of the City Manager, may also appoint annually an architect or individual with demonstrated architectural or historic preservation expertise to serve as a professional advisor to the Board. The professional advisor shall not be a voting member of the Board. Appointments to the Board shall comply with the City Council's resolution establishing the guidelines for appointments to City

Boards/Committees as adopted on November 9, 1993 and revised from time to time.

3. Current Members

Members of the Historic District Review Board on the effective date of this UDO shall continue to serve until their respective terms expire.

4. Term Limits

No member may serve for more than two successive terms, except for extraordinary circumstances where the City Council believes it to be in the best interest of the community to have a continuation for a specific period of a particular member of the Board. This limitation shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than 1½ years shall not constitute a term of service for purposes of this Section.

5. Vacancies

Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

6. Removal

The City Council may remove any member appointed by the City of Beaufort for cause by majority vote of the Council.

7. Compensation

Members shall serve without pay. Members may be reimbursed for actual expenses incurred in the performance of their duties from available funds approved in advance by the Administrator.

E. Officers, Meetings, Quorum

1. Officers

The Board shall elect a Chairperson and Vice-Chairperson from its voting members, who shall serve for one year and may be reelected to an additional one year term. The Board shall also appoint a secretary who may be an employee of the City. The maximum terms of office for each officer shall be two consecutive years.

2. Meetings

Meetings of the Historic District Review Board shall be held ~~monthly and at such other times as a majority of the Board may determine.~~at the call of the Chairperson and at such other times as the Board may determine. All meetings shall be open to the public ~~and all minutes of the proceedings shall be maintained and open to the public for inspection~~.

3. Quorum

At least three of the members of the Historic District Review Board must be present to constitute a quorum.

4. Notice of Meetings

Reasonable notice of the time, place and agendas of the meetings shall be given to the public. The news media shall be contacted in accordance with state law.

5. Rules of Proceeding

a. The Historic District Review Board shall adopt and adhere to rules of procedure for the conduct of business.

b. An abstention from voting shall be considered a vote to deny the motion.

6. Minutes

The Historic District Review Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.

F. Powers and Duties

1. It shall be the function of the Historic District Review Board to pass upon the appropriateness of altering, constructing or demolishing any building or structure within the Beaufort Historic District in accordance with Section 3.20~~3.203.203.203.19~~, Certificate of Appropriateness, except for those applications where that authority has been delegated to the Administrator.~~.~~
2. In exercising the authority granted the Historic District Review Board under this article, the Board may call upon the advice of any professionals it deems appropriate and any costs incurred for such consultation may be paid for with funds approved for such use by the City Council.
3. The Historic District Review Board shall maintain an inventory of historic properties within the City of Beaufort and make such information available to the public.
4. The Historic District Review Board shall have the opportunity to comment on National Register nominations proposed for any building within its jurisdiction at its discretion.

G. Conflicts of Interest

Any member of the Historic District Review Board who shall have a direct financial interest in any property which is subject matter of, or affected by, a decision of the Historic District Review Board shall be disqualified from participating in the discussion, decision, or proceedings of the Historic District Review Board in connection therewith.

H. Staff

The Historic District Review Board shall use the Department of Planning and Development Services when appropriate.

2.8 Design Review Board

A. Creation

There is hereby created the Design Review Board for the purpose of reviewing and taking action on the development applications subject to the ordinance, guidelines, and standards established in Section ~~7.6B.2,~~6.6 Design Districts.

B. Territorial Jurisdiction

The Design Review Board shall have jurisdiction over all lands within the Design Districts.

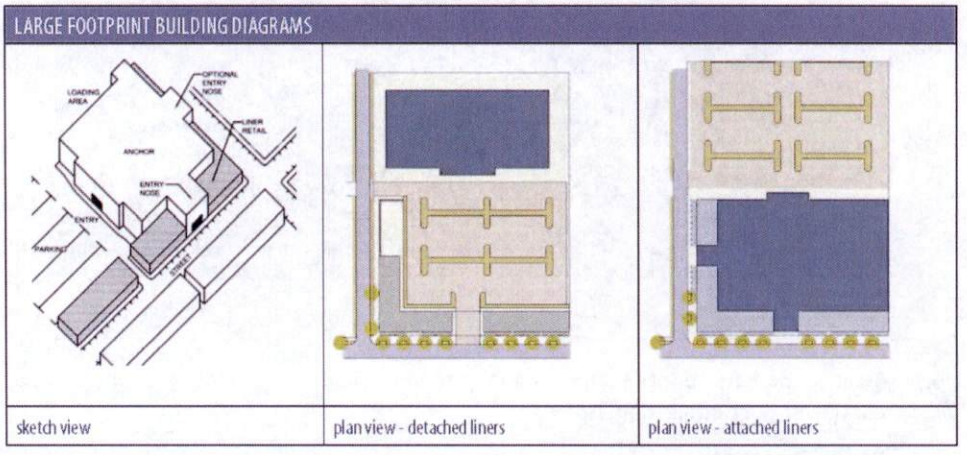
1.4.2 COMPLETE APPLICATIONS

A. If an application for a Project Permit or Design Review is accepted as complete before the effective date of this chapter or any amendment thereto, but is still pending final action as of that date, the application shall be reviewed and decided, at the applicant's option, wholly in accordance with the development standards in effect when the application was accepted, or wholly in accordance with the standards put into effect by this Code (but not in accordance with a mix of provisions from both sets of standards).

B. If the applicant elects to have the pending application reviewed in accordance with the prior standards, the City shall review and decide the application in good faith and in accordance with any time frames established by the prior standards. If the application is approved, and the approval or subsequent authorization of the approved development expires or becomes invalid (e.g., for failure to comply with time limits or the terms and conditions of approval), any subsequent development of the site shall be subject to the procedures and standards of this Code.

C. To the extent a pending application is approved in accordance with the prior standards and proposes development that does not comply with this Code, the subsequent development, although allowed, shall be nonconforming and subject to the provisions of Article 11 (Nonconformities).

4.5.10 LARGE FOOTPRINT BUILDING



A. **Description:** This is a building that has a footprint greater than 20,000 square feet. It is a type often used by big-box, national retailers. In the T4 and T5 transect zones, they shall be integrated into the streetscape or screened with Liner Buildings (see Section 4.5.9).

B. **Special Requirements:**

1. **Frontage Types:** Shopfront/Awning, Gallery/Colonnade, Arcade — Balconies may be used if there is true habitable space on the upper floor(s).

2. **Liner Buildings:** Liner Buildings (Section 4.5.9) are required in the T4 and T5 districts between the Large Footprint Building and the Primary Street frontage. They may be used in other districts to fulfill the requirements of this Code, such as height, entrances on the street, and parking location.

    a. **Exceptions:** When a Large Footprint building provides an entry on the primary street frontage, and a minimum of 40% clear and unobstructed glazing along that street, liners are not required.

3. **Height:** Buildings may be 1 story in height on the interior of the block, but should be at least 2 stories in height along all Primary Street frontages (see Street Hierarchy Diagram in Appendix C). This may be accomplished with multi-story buildings, higher ceiling heights, parapets, and/or separate Liner Buildings. See Section 2.6.3 for more details on two-story building requirements.

4. **Entrances:** See Section 2.5.1 D.

5. **Location:** In the Historic District, except along Boundary Street, these are permitted by special exception only.

LARGE FOOTPRINT BUILDING EXAMPLE



The large footprint building in the photo above is sited close to the sidewalks and incorporates frequent windows and doors. These techniques help to reinforce the urban character of the street and encourage use by pedestrians.

6. **Size:** Building footprints shall not be larger than a single block. Floor area of buildings shall not cantilever over public rights-of-way.

7. **Parking Location:**

   a. **Specific to T4 and T5:** A minimum of 75% of all parking shall be located behind the primary building or a Liner Building.

   b. **All other districts:** The majority of the parking spaces shall be located to the side or rear of the building, or behind a Liner Building.

9.1.4 PERMIT/PROCESS TYPE TABLE

PERMIT/PROCESS TYPE	SECTION	PERMIT/PROCESS TYPE	REVIEWING AGEN	PUBLIC NOTIFICAT	APPROVING	APPEAL PROC	PERMIT PERIOD	PERMIT EXTENSIO
ADMINISTRATIVE PERMITS								
Zoning Permit	9.5	Administrative	Admin	None	Admin	ZBOA	6 months	6 months, 1 time
Building Permit	9.5	Administrative	Admin	None	Admin	ZBOA	6 months	Resubmit
Certificate of Compliance	9.5	Administrative	Admin	None	Admin	ZBOA	n/a	n/a
Certificate of Occupancy	9.6	Administrative	Admin	None	Admin	ZBOA	n/a	n/a
DEVELOPMENT DESIGN REVIEW								
Development Design Review, Minor	9.7	Administrative	Admin	None	Admin	PC	24 months	12 months, up to 5 times
Development Design Review, Major	9.7	Discretionary	Admin	None	PC	Court 30 days to appeal	24 months	12 months, up to 5 times
SUBDIVISION REVIEW								
Subdivision, Minor, Site Plan	9.8	Administrative	Admin	None	Admin	PC	24 months	12 months, up to 5 times
Subdivision, Major, Sketch Plan	9.8	Discretionary	Admin TRC	None	PC	Court	24 months	12 months, up to 5 times
Subdivision, Major, Site Plan	9.8	Administrative	Admin, TRC	None	Admin	PC	24 months	12 months, up to 5 times
Subdivision Final Plan	9.8	Administrative	Admin TRC	None	Admin	PC	24 months	12 months, up to 5 times
HISTORIC PRESERVATION								
Certificate of Appropriateness, Minor	9.9	Administrative	Admin	Demolition Only: Yes (1,2, 3)	Admin	HRB	24 months	12 months,

								up to 5 times
Certificate of Appropriateness, Major	9.9	Discretionary	Admin	Demolition & Design Exception only: Yes (1,2)	HRB	Court 30 days to appeal	24 months; no expiration for demolitions	12 months, up to 5 times
Local Historic District/Historic Sign Designation	9.10	Legislative	Admin, PC, HRB	None	CC	Court	n/a	n/a
RELIEF								
Administrative Adjustment	9.11	Administrative	Admin	None	Admin	ZBOA	24 months	12 months, up to 5 times
Special Exception	9.12	Discretionary	Admin	Yes (1, 2)	ZBOA	Court 30 days to appeal	24 months	12 months, up to 5 times
Variance	9.13	Discretionary	Admin	Yes (1, 2)	ZBOA	Court 30 days to appeal	24 months	12 months, up to 5 times
ADMINISTRATION APPEALS								
Administrative Appeal	9.14	Discretionary	Admin	Yes (1)	ZBOA	Court 30 days to appeal	12 months	6 months
AMENDMENTS								
Code Amendments	9.16	Legislative	Admin, PC	Yes (1, 2 & 3)	CC	Court 30 days to appeal	n/a	n/a
Admin-Administrator / PC-Planning Commission / CC-City Council / ZBOA-Zoning Board of Appeals / HRB-Historic District Review Board / TRC-Technical Review Committee / Court - Circuit Court Note: Any appeals that are assigned to Court are eligible for pre-litigation mediation pursuant to § SC ST 6-29-1155								

(Ord. No. O-14-23 , 9-26-2023)

9.2.5 CONCURRENT PROCESSING

Any applicant may submit an application for any sequential approvals (such as a zoning map amendment and site plan approval) required under this Code and request that such sequential approvals be processed concurrently; however, such concurrent processing shall proceed at the applicant's own risk, and shall have no implication in regard to the approval of any of the various approvals requested.

9.10: CERTIFICATE OF APPROPRIATENESS

9.10.1 APPLICABILITY

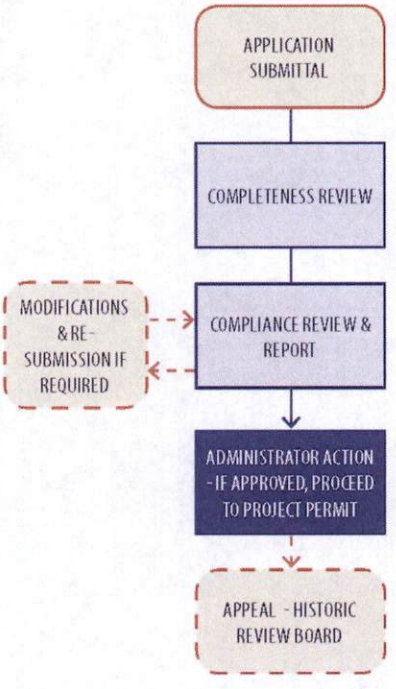
A. A Certificate of Appropriateness shall be required for any construction activity in any historic district, including:

1. New structures.
2. Modification to, or expansion of, existing structures, including those that apply for the Bailey Bill Special Tax Assessment for Rehabilitated Historic Properties.
3. Relocation of any existing structure.

B. Demolition or partial demolition of any structure.

9.10.2 PROCESS AND APPROVAL

A. **Process Type:** The review process required to approve Certification of Appropriateness is based on the following project types:



1. **Minor:** Administrative review shall apply to applications for Certification of Appropriateness for the following items. The Administrator may submit any applications that are subject to staff approval to the Historic District Review Board (HRB) for approval.

   a. Changes to a building or property, to include fences, paint color, roof materials, canopies and awnings, site changes, and window replacements on noncontributing structures.

b. New construction and building modifications to include construction of non-habitable accessory buildings in the Beaufort Preservation Neighborhood.

c. Modifications to non-contributing structures in the BCN.

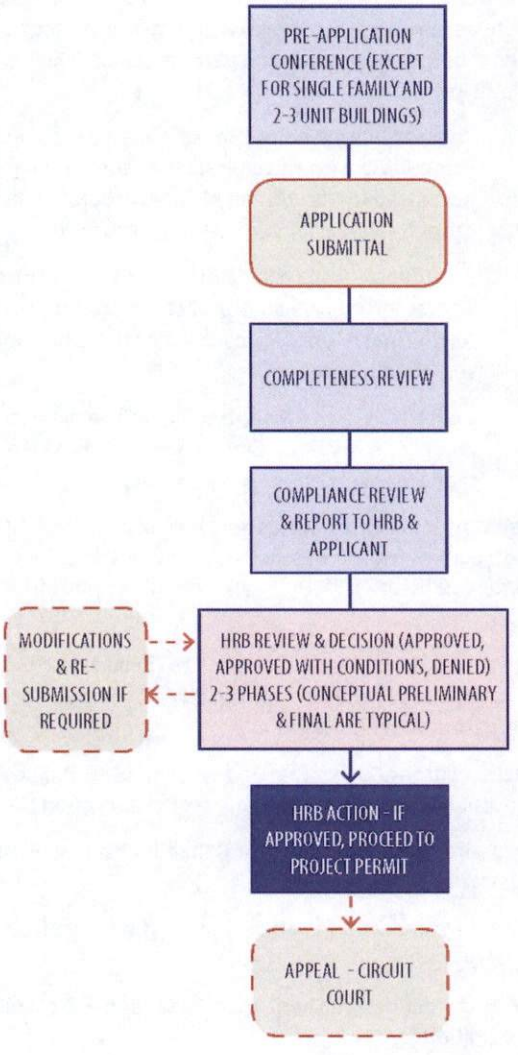
d. Demolitions of non-contributing structures in the BCN.

e. Demolition or partial demolition of a structure that is listed in the "1997 Beaufort County Historic Sites Survey," or the most recent historic sites survey, and lies outside the Beaufort Historic District.

f. Demolition of noncontributing accessory structures (e.g., sheds, carports, etc.).

Such approval shall follow the procedures for Development Design Review-Minor (Section 9.8.1).

2. **Major:** Discretionary review by the HRB shall apply to all other applications for Certificates of Appropriateness.



3. **Design Exception:** Design Exceptions shall be used to modify any dimensional standards or design requirements, found in Articles 2 and 4, for development projects that have unique characteristics that justify a deviation from the underlying standards. Such deviations are intended to provide flexibility from the underlying standards to permit compatible development patterns which are indicative of the surrounding area and/or use an innovative approach or technique. The process is intended to provide the minimum relief necessary to create a more innovative and context-sensitive development consistent with the City's adopted plans. This tool is not intended to circumvent the map amendment (rezoning) procedure where that tool would provide a similar modification of standards.

    a. **Applicability:** The HRB shall have the authority to authorize a variance of up to 35 percent from any numerical standard set forth in Article 2 (Maps and Districts) — except for Section 2.6, Height and Section 2.7.4, Air Installation Compatibility Use Zone (AICUZ) overlay district standards — and Article 4 (Building Design and Infill Standards).

    b. **Review Criteria:** The HRB may approve an application for a Design Exception where it reasonably determines that there will be no significant negative impact upon residents of surrounding property, or upon the general public. The board shall consider the following criteria in its review:

        i. **Compatibility:** The proposed exception is appropriate for its location. It is compatible with the character of surrounding properties and the development permitted by the zoning of the surrounding properties, and will not reduce property values of surrounding properties.

        ii. **No Adverse Impact:** The design of the proposed exception minimizes adverse effects including visual impacts of the proposed use on surrounding properties; furthermore, the proposed exception does not create a nuisance for surrounding properties.

        iii. **Consistency with Adopted Plans:** The proposed development is in general conformity with the City's Comprehensive Plan, Civic Master Plan and other plans officially adopted by the City.

B. **Guidance Standards, Maintenance of Consistent Policies:** In order to provide guidance and insight into desirable goals and objectives for the Beaufort Historic District, the documents described in this section are hereby adopted for use by the HRB in the exercise of its authority granted under Section 10.7 of this Code.

1. The "Beaufort Preservation Manual," August 1979, and the "Beaufort Preservation Manual, Supplement," August 1990, shall be utilized by the HRB for review of projects located within the Beaufort Preservation Neighborhood.

2. The "Northwest Quadrant Design Principles," May 1999 shall be utilized by the HRB for the review of projects located within the Beaufort Conservation Neighborhood.

3. The Secretary of Interior's "Standards for Rehabilitation" shall be utilized for review of all projects that modify a contributing structure.

4. The Building Design Standards, in Article 4 of this Code, shall be utilized for review of all new construction.

5. The Historic District Infill Design Guidelines, in Section 4.7 of this Code, shall be utilized for review of all new construction.

6. Any special area policies adopted by the HRB.

C. **Approval of Certificate of Appropriateness:** In reviewing an application, the HRB shall conduct a public meeting and consider, among other things, the historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, the use of such structure and its importance to the city, the character and appropriateness of design, scale of buildings, arrangement, texture, materials and color of the structure in question, and the relation of such elements to similar features of structures in the immediate surroundings. The HRB shall not consider the interior arrangement or interior design unless the interior arrangement or design affect the exterior appearance, nor shall it make requirements except for the purpose of preventing developments that are not in harmony with the prevailing character of the Beaufort Historic District, or that are obviously incongruous with this character.

D. **Demolitions:**

1. In all applications involving the demolition of a contributing primary structure or contributing accessory structure, provisions shall be made for a public hearing as set forth in Section 9.1.5. Demolition of non-contributing structures are approved by the Administrator.

2. In any case involving the demolition or partial demolition of a structure, before granting approval or requiring a postponement, the HRB may call on the Administrator to provide them with a report on the state of repair and structural stability of the structure under consideration.

3. Upon receiving an application for demolition or partial demolition of a structure that is listed in the "1997 Beaufort County Historic Sites Survey" and lies within the limits of the city but outside the Beaufort Historic District, the Administrator, within 30 days of receiving the application, shall either approve it, or find that the preservation and protection of historic places and the public interest will be best served by postponing the demolition for a designated period — this shall not exceed 60 days from the receipt of the application, and notify the applicant of such postponement. The application will be announced to the public in accordance with the notification standards set forth in Section 9.1.3. Within the period of postponement of demolition or alteration of any building, the Administrator shall take steps to ascertain what may be done to preserve the building, including consultation with private civic groups, interested private citizens and other public boards or agencies, including investigation of the potential use of the power of eminent domain when the preservation of a given building is clearly in the interest of the general welfare of the community and of certain historic and architectural significance.

E. **Denial of Certificate of Appropriateness:** The HRB may refuse any application that, in the opinion of the HRB, does not comply with the standards and guidelines listed in Section 9.10.2 B. and thus would be detrimental to the interests of the city. In case of disapproval, the HRB shall state the reasons therefore in a written statement to the applicant, and may give verbal advice to the applicant and make recommendations in regard to appropriateness of design, arrangement, texture, material, color, etc. of the property involved.

Among other grounds for considering a design inappropriate and requiring disapproval and resubmission are the following defects:

1. Arresting and spectacular effects.

2. Violent contrasts of materials or colors and intense or lurid colors.

3. A multiplicity or incongruity of details resulting in a restless and disturbing appearance.

4. The absence of unity and coherence in composition, that is not in consonance with the dignity and character of the present structure, in the case of repair.

5. Construction of, remodeling, or enlargement of an existing building in a manner not consistent with the prevailing character of the neighborhood.

F. **Issuance of Certificate of Appropriateness:** When a Certificate of Appropriateness and Building Permit have been issued, the Administrator shall, from time to time, inspect the alteration or construction approved by such certificate and may report such inspection to the HRB listing all work inspected and reporting any work that is not in accordance with such certificate, or that violates any ordinances of the city.

G. **Resubmittal:** After disapproval of an application, the applicant may make modifications to the plans and resubmit. The applicant may not resubmit the same proposal, without modifying it based on HRB comments, for 12 months from the date of the original submission. Reconsideration of an application for demolition that has been denied by the HRB may not be heard until 12 months from the date of the original public hearing, unless a major change has occurred in the property condition that is attributable natural causes.

H. **Appeal—Minor:** Appeals of the decisions of the Administrator shall be heard by the HRB. The application for appeal shall be made within 30 days of the decision.

I. **Appeal—Major:** Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.

10.3: ZONING BOARD OF APPEALS

10.3.1 POWERS AND DUTIES

A. **Authority:** The Zoning Board of Appeals (ZBOA) is hereby established, pursuant to the authority of S.C. Code § 6-29-780 et seq., as amended, and shall hereafter be referred to as the Board.

B. **Territorial Jurisdiction:**

1. The ZBOA shall have jurisdiction over all lands within the City.
2. The City Council may expand the jurisdiction of the ZBOA by ordinance and/or intergovernmental agreement, in accordance with the provisions of S.C. Code § 6-29-330.

C. **Powers and Duties:**

1. **Appeals:** The ZBOA shall 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 this Code.
2. **Variances:**
   a. The ZBOA shall hear and decide requests for Variance from the requirements of this Code when strict application of the provisions of the Ordinance would result in unnecessary hardship.
   b. The ZBOA shall hear and decide requests for Variance from the requirements of Chapter 4 of the City of Beaufort Code of Ordinances's "Flood Damage Prevention Ordinance."
3. **Special Exception:** The ZBOA shall permit uses by Special Exception subject to the terms and conditions set forth for such uses in this Ordinance.

10.3.2 MEMBERSHIP, TERMS, AND COMPENSATION

A. **Number:** The ZBOA shall consist of 5 members, appointed by the City Council. None of the members of the ZBOA shall hold any other public office or position in the city.

B. **Terms, Appointment:** All members shall be appointed by the City Council for overlapping terms of 3 years. All members shall be residents of the city, own property in the city, or own or operate a business in the city. All terms shall end on June 30 of the applicable year, and members must continue to serve until their successors are appointed.

C. **Term Limits:** No member may serve for more than 2 successive terms, except for extraordinary circumstances where the City Council believes it to be in the best interest of the community to have a particular member continue for a specific period of time. This limitation shall not prevent any person from being appointed to the ZBOA after an absence of 1 year. Service for a partial term of less than 1½ years shall not constitute a term of service for purposes of this section.

D. **Vacancies:** Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

E. **Removal:** The City Council may remove any member of the ZBOA for cause.

F. **Compensation:** Members shall serve without pay. Members may be reimbursed for actual expenses incurred in the performance of their duties from available funds approved in advance by the Administrator.

10.3.3 OFFICERS, MEETINGS, AND QUORUM

A. **Officers:** The ZBOA shall elect a chairperson and a vice-chairperson from its members who shall serve for 1 year or until reelected, or until a successor is elected. The board shall appoint a secretary, who may be an employee of the City.

B. **Meetings:** Meetings of the ZBOA shall be held at the call of the chairperson and at such other times as the ZBOA may determine. All meetings of the ZBOA shall be open to the public.

C. **Quorum:** At least 3 of the members of the ZBOA must be present to constitute a quorum.

D. **Notice of Meetings:** Public notice of all meetings of the ZBOA shall be provided at least 15 days in advance by publication in a newspaper of general circulation in the city. In cases involving Variances or Special Exceptions, conspicuous notice shall also be posted on or adjacent to the property affected, with at least 1 such notice being visible from each public thoroughfare that abuts the property. Such notice shall be posted continuously for at least 15 days in advance of the meeting at which the Variance or Special Exception request will be heard.

E. **Witnesses:** The chairperson, or in his or her absence, the vice-chairperson, may administer oaths and compel the attendance of witnesses by subpoena.

F. **Rules of Proceeding:**

1. The ZBOA shall adopt and adhere to rules of procedure for the conduct of business.

2. An abstention from voting shall be considered a vote to deny the motion.

G. **Decisions:** The concurring vote of 3 members of the ZBOA shall be necessary to: reverse any order, requirement, decision, or determination of the Administrator or building official, or to decide in favor of an applicant on any matter upon which it is required to pass judgement, or to affect any variation of this Code. On all appeals, applications and matters brought before the ZBOA, the ZBOA shall inform in writing all the parties involved of its decisions and the reasons therefore.

H. **Contempt Penalty:** In case of contempt by a party, witness, or other person before the ZBOA, it may certify this fact to the circuit court, and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

I. **Minutes:** The ZBOA shall keep minutes of its proceedings, showing the vote of each member upon each question, or indicating absence or failure to vote. The Board shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the ZBOA and shall be a public record.

J. **Staff:** The ZBOA shall use the staff of the Department of Community and Economic Development and the building official of the city.

(Ord. No. O-22-19 , 12-10-2019)

10.7: HISTORIC DISTRICT REVIEW BOARD

10.7.1 DESIGNATION

A. **Creation:** A Historic District Review Board (HRB) is hereby established as a board of architectural review pursuant to S.C. Code 1994 § 6-29-870, as amended.

B. **Purpose:** The HRB shall review and take action on projects located within the Beaufort Historic District, including changes to the exterior of any structure and new construction. The HRB will seek to preserve and protect the historic character and architectural integrity of Beaufort's National Landmark Historic District.

10.7.2 POWERS AND DUTIES

A. **Territorial Jurisdiction:** The HRB shall have jurisdiction throughout the Beaufort Historic District. The HRB shall also have jurisdiction to review the Special Property Tax Assessment for Rehabilitated Historic Properties (a.k.a. Bailey Bill) applications for any structure listed in the Beaufort County Historic Sites Survey - 1997, or most recent historic sites survey, that are located within the city limits, but outside the Historic District.

B. **Powers and Duties:**

1. It shall be the function of the HRB to review and take action on any Major Certificates of Appropriateness (Section 9.7.1).
2. It shall be the function of the HRB and for approving alterations to structures listed on the "1997 Beaufort County Above Ground Historic Sites Survey (or most recent historic sites survey) which have applied for the Bailey Bill in accordance with Section 9.10 (Certificate of Appropriateness).
3. In exercising the authority granted the HRB under this section, the HRB may call upon the advice of any professionals it deems appropriate; any costs incurred for such consultation may be paid for with funds approved for such use by the City Council.
4. The HRB shall maintain an inventory of historic properties within the City of Beaufort and make such information available to the public. This inventory shall be updated periodically to record structures and buildings that have gained historic or architectural significance, and buildings that no longer contribute to the character of the National Landmark Historic District due to demolition or loss of character.
5. The HRB shall have the opportunity to comment to the appropriate approving agency on National Register nominations proposed for any building within its jurisdiction at its discretion.

C. **Staff:** The staff of the City's Department of Planning and Development Services may provide support to the HRB from time to time.

10.7.3 MEMBERSHIP, TERMS, AND COMPENSATION

A. **Number, Composition:** The HRB shall consist of 5 members with an interest, competence, or knowledge in historic preservation. All HRB members shall be residents of the city, own property in the city, or own or operate a business in the city. To the extent that such is available in the community, 2 members shall, be professionals in the disciplines of historic preservation, architecture, landscape

architecture, history, architectural history, planning, archeology, or related disciplines. Three of the members shall either live or own property in the Historic District.

B. **Terms, Appointment:** All members shall be appointed by the City Council for terms of 3 years. All terms shall end on June 30 of the applicable year and members must continue to serve until their successors are appointed.

C. **Term Limits:** No member may serve for more than 2 successive terms, except for extraordinary circumstances where the City Council believes it to be in the best interest of the community to have a particular member continue for a specific period of time. This limitation shall not prevent any person from being appointed to the HRB after an absence of 1 year. Service for a partial term of less than 1½ years shall not constitute a term of service for purposes of this section.

D. **Vacancies:** Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

E. **Removal:** The City Council may remove any member of the HRB for cause.

F. **Compensation:** Members shall serve without pay. Members may be reimbursed for actual expenses incurred in the performance of their duties from available funds approved in advance by the Administrator.

(Ord. No. O-15-20 , 6-23-2020; Ord. No. O-10-23 , 9-26-2023)

10.7.4 OFFICERS, MEETINGS, AND QUORUM

A. **Officers:** The HRB shall elect a chairperson and a vice-chairperson from its members who shall serve for 1 year or until reelected, or until a successor is elected. The HRB shall appoint a secretary, who may be an employee of the City.

B. **Meetings:** Meetings of the HRB shall be held at the call of the chairperson and at such other times as the HRB may determine. All meetings shall be open to the public.

C. **Quorum:** At least 3 of the members of the HRB must be present to constitute a quorum.

D. **Rules of Proceeding:**

1. The HRB shall adopt and adhere to rules of procedure for the conduct of business.

2. An abstention from voting shall be considered a vote to deny the motion.

E. **Minutes:** The HRB shall keep minutes of its proceedings, as required by state law.

13.1: DEFINITIONS OF SPECIALIZED TERMS

Abutting Parcel. Any parcel that shares a lot line with another parcel.

Accessory Structure. A structure physically detached from, secondary and incidental to, and commonly associated with a primary structure and/or use on the same site. The use of the accessory structure must not change the character of the use for the site. Accessory Structures normally associated with a residential use property include, but are not limited to: garages (unenclosed or enclosed) for the storage of automobiles (including incidental restoration and repair), personal recreational vehicles and other personal property; studios; workshops; greenhouses (noncommercial); enclosed cabanas and pool houses; storage sheds; and outdoor saunas. Accessory structures normally associated with a non-residential use property include, but are not limited to: garages (unenclosed or enclosed) for the storage of automobiles and work related vehicles and equipment (including incidental restoration and repair); storage structures; workshops; and studios.

ACI (Aggregate Caliper Inch). A measure of the total combined number of inches of existing and proposed trees used to meet landscaping requirements. Caliper inch sizes for individual proposed trees are measured as indicated in the American Standard for Nursery Stock (ANSI 260.1-2004). Caliper inch sizes for existing trees are measured in diameter at breast height (DBH).

Agriculture and Crop Harvesting. A nursery, orchard, or farm primarily engaged in the growth, processing, and packaging of fruits, vegetables, plants, trees, or fish (aquaculture) for the distribution of vegetation, seafood, wine, or dry goods. The premises may include agricultural accessory structures, plant nurseries, and secondary retail or wholesale sales. See also "Community Garden."

1. **Agricultural Accessory Structure.** A building for sheltering animals or agricultural equipment, hay, feed, etc. These structures include, but are not limited to: barns, non-commercial greenhouses, coops, corrals, and pens. Does not include pasture fencing.
2. **Plant Nursery.** A commercial agricultural establishment engaged in the production and sale of ornamental plans and other nursery products, grown under cover (e.g. greenhouses) either in containers or in the soil on the site, or outdoors in containers.
3. **Produce Stand.** A temporary business established and operated for a specific time, selling raw, unprocessed fruits, vegetables, nuts, and other produce in its raw or natural state, and that is accessory to an on-site or adjacent agricultural operation.

Agricultural Support Services. Nursery, orchard, or farm supply and support services including, but not limited to: equipment dealers, support uses for agricultural, harvesting, and/or animal rearing, seasonal packing sheds, etc.

Administrator. The City Manager, or any person or persons designated by the City Manager to fulfill the duties outlined in Section 10.5 of this Development Code.

AICUZ (Air Installations Compatible Use Zone). The area surrounding MCAS—Beaufort as identified on the Zoning Map (Airport Overlay District/MCAS—Beaufort).

AICUZ Buffer. The quarter-mile area surrounding the AICUZ for MCAS—Beaufort.

Airport/Aviation Services. An airport, runway, landing strip, seaport, or heliport providing accommodations by public, private, or not-for-profit entities for the conveyance of persons from one location to another by airplane, seaplane, helicopter, or other means of aviation. Includes facilities for loading and unloading areas.

Alcoholic Beverage Sales. The retail sale of beer, wine, and/or spirits for on-site or off-site consumption, either as part of another retail use or as a primary business activity.

Animal Keeping. The raising, breeding, feeding, and/or keeping of a limited number of animals kept wholly or partially outside of a residential structure, including, but not limited to: horses, bees, rabbits, fowl, and poultry. Does not include animals normally considered as household pets (as determined by the Administrator).

1. **Livestock and Sales Yards.** The raising, breeding, feeding, or keeping of animals for purposes of dairy manufacturing, processing, slaughter, or sales, kept wholly or partially outside of a residential structure, including, but not limited to: horses, mules, llamas, bison, elk deer, cattle, swine, sheep, ostrich and goats. Does not include animals normally considered as household pets (as determined by the Administrator).
2. **Large Lot Feed Operations.** The raising, breeding, feeding, and/or keeping of confined animals in production operations that are separate from standard agricultural activities (i.e. crops, vegetation, or pasture foraging are not sustained over any portion of the facility), and that sustain activities for a minimum of 45 days during any 12-month period.

Animal Keeping, Small. The raising or keeping of small animals kept wholly or partially outside of a residential structure, including, but not limited to: rabbits, fowl, and poultry. Does not include animals normally considered as household pets (as determined by the Administrator).

Animal Services: Animal Clinic, Boarding, and Animal Hospital.

1. **Animal Clinic.** An establishment used by a veterinarian where animals are treated.
2. **Animal Boarding.** A commercial facility for the grooming, keeping, boarding or maintaining of five or more animals (four months of age or older) in an enclosed facility, except for dogs or cats for sale in pet shops or in animal hospitals. Includes pet day care.
3. **Animal Hospital.** An establishment where a veterinarian treats animals of any size and where there may be functions and facilities that are not completely enclosed within a structure.
4. **Animal Kennel.** A commercial facility for the grooming, keeping, boarding or maintaining of ten or more animals (four months of age or older), except for dogs or cats for sale in pet shops or in animal hospitals. Includes outdoor runs and open-air facilities.

Approved Phase. An phase of development that has been approved through the subdivision or site plan approval process, or a phase thereof approved by the Administrator prior to a request for an inspection for a certificate of compliance.

Arborist Report. See Appendix A.

Archaeological Resources. As defined in the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa—470mm) Section (1): The term "archaeological resource" means any material remains of past human life which are of archaeological interest. Such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under this definition, unless found in an archaeological context. No item shall be treated as an archaeological resource under this definition unless such item is at least 100 years of age.

Archaeological Site. The area of the development identified as being listed in or having the potential for listing in the National Register of Historic Places.

Architectural Features. Exterior building elements intended to provide ornamentation to the building massing, including, but not limited to: eaves, cornices, bay windows, window and door surrounds, light fixtures, canopies, and balconies.

ATM. An automated teller machine (computerized, self-service machine used by banking customers for financial transactions, including deposits, withdrawals and fund transfers, without face-to-face contact with financial institution personnel), located outdoors at a bank or in another location. Does not include drive-up ATMs.

Bank/Financial Services. See "General Services."

Bar/Tavern/Night Club.

1. **Bar, Tavern.** A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May also include beer brewing as part of a micro brewery ("brew-pub"), and other beverage tasting facilities.
2. **Night Club.** A facility serving alcoholic beverages for on-site consumption, and providing entertainment, examples of which include live music and/or dancing, comedy, etc. Does not include adult-oriented businesses.

Basement. Any area of the building having its floor subgrade (below ground level) on all sides. A raised basement is a basement story with a floor level that is subgrade and ceiling level that is above grade.

Bed and Breakfast. See "Lodging."

Block Face. The span from one street to another street. When reference "block face development/redevelopment" blocks must be a minimum of 150 feet wide to meet this standard. If blocks are longer than 600', or located along a waterfront, the dimension which constitutes development/redevelopment is defined as a minimum of 300 feet.

Boat Sales and Service. See "Vehicle and Boat Sales and Rental."

Brew Pub. A pub or restaurant that also contains a microbrewery (see definition).

Buildable Area. The area of a lot that remains after removing the required front, side and rear yards for individual lots, as set forth for the particular zone.

Building Footprint. The total area of a structure under roof, regardless of whether it is heated or unheated.

Building Supplies/Lumber Yard. An establishment in which building or construction and home improvement materials are offered or kept for retail sale, which may also include the fabrication of certain materials related to home improvement and/or the outdoor storage of such materials designated for retail sale.

Building Type. A structure defined by its combination of configuration, disposition and function.

Build-to Line (BTL). A line parallel to a property line or right-of-way where a building facade must be placed. The BTL may appear graphically on the regulating plan or be stated as a dimension from the property line or right-of-way. Minor deviations from the BTL are allowed for architectural features, recessed entries, and recessed balconies and do not count against the calculations of % of BTL Defined by a building or Building at the BTL.

Bungalow Court. See Division 5.1 (Building Type Standards).

Caliper. A horticultural method of measuring the diameter of a tree trunk for the purposes of determining the tree's size. The caliper of the trunk is measured six inches above the ground for trees with a diameter of four inches or less, twelve inches above the ground for trees with diameters more than four and less than ten inches, and at breast height (4½ feet) for trees with diameters of ten inches or greater.

Campground. An area of land utilized for temporary occupation by travelers in recreational vehicles, campers, tents, and camping cabins not exceeding three hundred seventy-five (375) square feet. Does not include mobile home parks.

Canopy Tree. A tree that has an expected height at maturity greater than 30 feet and produces significant shade because it has a crown that is oval, round, vase-shaped, or umbrella-shaped.

Ceiling Height, Ground Floor. Height from finished floor to finished ceiling of primary rooms on the ground floor, not including secondary rooms such as bathrooms, closets, utility rooms and storage spaces.

Ceiling Height, Upper Floor(s). Height from finished floor to finished ceiling of primary rooms on the floor(s) above the ground floor, not including secondary rooms such as bathrooms, closets, utility rooms and storage spaces.

Charrette. A multiple-day collaborative design and planning workshop held on-site and inclusive of all affected stakeholders.

Civic Building. A structure operated by governmental or not-for-profit organizations and limited to civic and related uses. Civic Buildings may include the following:

1. **Library, Museum.** Public or quasi-public facilities, examples of which include: aquariums, arboretums, art galleries and exhibitions, botanical gardens, historic sites and exhibits, libraries, museums, planetariums, and zoos. May also include accessory retail uses such as a gift/book shop, restaurant, etc.
2. **Theater (Cinema or Performing Arts).** An indoor facility for group entertainment, other than sporting events. Examples of these facilities include: Civic theaters, facilities for "live" theater and concerts, and movie theaters.
3. **Public Service Buildings.** These are municipal buildings which include City Hall, Courthouse, Police Stations, and Fire Stations. May also be considered "Community/Public Safety Facilities."
4. **Religious Institutions.**

Civic Institution. A term defining not-for-profit organizations that are dedicated to arts, culture, education, religious activities, recreation, government, and transportation.

Civic Space. An outdoor area, dedicated for community activities. These areas may be reserved for use by a specific neighborhood or community or group, or open for public use. See Section 7.4 for more information and examples.

Colleges and Universities. A facility for post-secondary education that grants associates, bachelors, masters, or doctoral degrees, and may include research functions. Includes professional schools (e.g. law, medicine, etc.) and technical colleges.

Commercial. A term defining workplace, office and retail uses collectively.

Common Courtyard. An entry court, forecourt or courtyard shared by multiple residential units or commercial spaces.

Community Based Farmer's Market. The temporary use of a site for the outdoor sales of food and farm produce items.

Community Care Facilities. Facilities that provide living, sleeping, and sanitation accommodations for institutional purposes in coordination with the provision of social services. The facilities may include facilities for eating and cooking. This category does not include Group Homes, or Community Residences; see "Group Home."

1. **Custodial Care Facility.** A facility providing care and treatment in a protective living environment for persons residing voluntarily, by court placement, or under protective control of federal, State, county, or City governance including, without limitation, post-correctional facilities, temporary detention facilities, chronically ill tenants, domestic violence victims, outpatient clients, and developmentally disabled.

2. **Homeless Shelter.** A supervised publicly or privately operated shelter and services designed to provide temporary living accommodations to individuals or families who lack a fixed, regular and adequate nighttime residence.

    a. **Emergency Shelter.** A facility that provides temporary housing on a first-come, first-served basis where clients must leave in the morning and have no guaranteed bed for the next night OR provide beds for a specific period of time, regardless of whether or not clients leave the building. Facilities that provide temporary shelter during extremely cold weather (such as churches) are also included.

    b. **Short-Term Housing.** A facility that provides housing for individuals or families (not to exceed 6 months) with a continued identified bed space. The facility would also provide personal assistance to indigent, needy, homeless or transient persons who lack a fixed, regular, and adequate nighttime residence. Such personal assistance must include food and/or shelter, and in addition may include needed and necessary supportive services.

    c. **Transitional Housing.** A structure or a group of structures providing housing for clients with a maximum stay of two years and offer supportive services to promote self-sufficiency and to help obtain permanent housing.

Community Garden. A site used for growing plants for food, fiber, herbs, and flowers and shared and maintained by community residents.

Community/Public Safety Facility. A facility operated by a public agency including fire stations, other fire preventive and fire fighting facilities, police and sheriff substations and headquarters, including interim incarceration facilities. May include ambulance dispatch on the same site. May also be considered "Civic Facilities."

Contributing Structure. Any structure within the Historic District that was indicated on the 1997 Beaufort County Above Ground Historic Sites Survey, or subsequent historic sites survey, that is deemed to have qualities that exemplify the character of the Historic District.

Critical Area. All saline waters and related lands which are subject to the ebb and flood of the tide including coastal waters, tidelands, coastal wetlands, mudflats, marshes and shallows. The critical area is seaward of the critical line, as delineated by the Department of Ocean and Coastal Resources Management of the South Carolina Division of Health and Environmental Control.

Critical Line. The line defining the edge of a Critical Area. This border is delineated by the Department of Ocean and Coastal Resources Management of the South Carolina Division of Health and Environmental Control.

Day Care, Child or Adult. A state-licensed facility that provides non-medical care and supervision for adult clients or minor children for periods of less than 24 hours per day for any client. Each individual receiving care is considered one "client." These facilities include the following, all of which are classified and required to be licensed by the South Carolina Department of Health and Environmental Control and the South Carolina Department of Social Services.

1. **Family Day Care Home.** A licensed facility in a private home where an occupant of the residence provides family day care for up to 6 adult clients or minor children for periods of less than 24 hours per day for any client. Facilities include but are not limited to: infant centers, nursery schools, preschool, after-school or extended day care, and school age child care centers. See "Home Occupation - Minor."

2. **Group Care Home.** A licensed day care facility that provides non-medical care and supervision to 7-12 adult clients or minor children for periods of less than 24 hours per day for any client. Facilities include, but are not limited to: infant centers, nursery schools, preschools, after-school or extended day care, and school age child care centers.

3. **Commercial Care Center.** A licensed day care facility licensed that provides non-medical care and supervision to more than 12 adult clients or minor children for periods of less than 24 hours per day for any client. Facilities include, but are not limited to: infant centers, nursery schools, preschools, after-school or extended day care, and school age child care centers. Conditional Use. These uses that require Administrator approval for conditional uses allowed within a zone.

DBH (Diameter at Breast Height). A standard measure of tree size for existing trees. The tree trunk diameter is measured, in inches, at a height of four and one-half (4.5) feet above the ground. If a tree splits into multiple trunks below four and one-half (4.5) feet, but adjacencies of trunks clearly show sharing of a singular rootball, then diameters of trunks below four and one-half feet to be totaled as a single number indicating DBH.

Density. Density refers to the number of dwelling units per unit of land area. Density is calculated by dividing the number of dwelling units on a site by the gross area (in acres) of the site on which the dwelling units are located. The number of dwelling units allowed on a site is based on the presumption that all other applicable standards will be met. The maximum density established for a zone, including Planned Unit Development districts, is not a guarantee that such densities may be obtained, nor shall the inability of a development to achieve the stated maximum density be considered sufficient justification for varying or otherwise adjusting other density, intensity or dimensional standards.

Depth, Ground-Floor Commercial Space. The distance from the street-facing facade to the rear interior wall of the ground-floor space available to a commercial tenant.

Design Review Authority. The person or group that has the authority to review projects, as specified in Article 9 of this Code.

Detention Facility. A facility operated by a public agency that provides protective care for the region in which it is located. Such facilities include: prisons, detention facilities, temporary detention facilities, work camps, etc.

Development. Any man-made change in improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, diking, berming, excavation, drilling operations, or storage of equipment or materials.

Diseased Trees. Those trees that may constitute a hazard to life and property or harbor insects or disease which represent a potential threat to other trees within the city.

Dooryard. See Section 4.4 (Private Frontage Types).

Drive-Through Facility. Facilities where food or other products may be purchased or services may be obtained by motorists without leaving their vehicles. Examples of drive-through sales facilities include fast-food restaurants, drive-through coffee, photo stores, pharmacies, bank teller windows and ATMs, dry cleaners, etc., but do not include gas station or other vehicle services which are separately defined under "Vehicle Sales and Services."

Dwelling/Dwelling Unit/Housing Unit. A room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.

1. **Accessory.** An auxiliary dwelling unit located within an accessory structure of a primary dwelling unit on the lot. Includes, but is not limited to dwelling units in guest houses, carriage houses, pool houses, and above or beside a garage.
2. **Single-Family.** A structure containing one primary dwelling unit on a single lot.
3. **Family.** A structure containing two dwelling units on a single lot.
4. **Three-Family.** A structure containing three dwelling units on a single lot.

5. **Multi-Family.** A structure containing four or more dwelling units on a single lot.
6. **Multi-Family Development.** One parcel that contains multiple buildings containing housing units, either as apartments, or condominium. Each building may have one or more units.

Eave/Parapet. Building height to eave/parapet shall be measured from the eave or top of parapet to natural grade or finished grade at the lowest point adjacent to the building exterior, whichever yields the greatest height.

Effect and Adverse Effect.

1. Effect means an undertaking has an impact on a historic resource when the undertaking may alter the characteristics of the resource that may qualify the resource for inclusion in the National Register of Historic Places.
2. Adverse effect means an undertaking in which the effect on a historic resource may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Encroachment. Any architectural feature, structure or structural element, such as a gallery, fence, garden wall, porch, stoop, balcony, bay window, terrace or deck, that breaks the plane of a vertical or horizontal regulatory limit extending into a setback, beyond the build-to-line, into the public frontage, or above a height limit.

Engaged. See Section 4.4 (Private Frontage Types).

Facade. The vertical surface of a building.

Facade Zone. The area between the minimum and maximum setback lines.

Fair Market Value. The value of a structure or parcel based upon one of the following, at the discretion of the owner:

1. The value listed in the Beaufort County's tax assessor data.
2. The value listed in a professional appraisal not older than 1 year.

Fenestration. The arrangement of windows and doors on the exterior of a building.

Finish Level, Ground Floor. Height difference between the ground floor finished floor of residential or commercial space, excluding lobbies and common-use areas, and the adjacent public walk. In the case of a loading dock frontage that serves as the public right-of-way, the floor finish level is the height of the walk above the adjacent street.

Flex Space. A room or group of internally connected rooms designed to accommodate an evolution of use over time in response to an evolving market demand. Typically designed to accommodate future commercial uses, while accommodating less intense short-term uses, such as residential or live/work, until the full commercial demand has been established.

Forestry. Perpetual management, harvesting and enhancement of forest resources for ultimate sale or use of wood products, requiring replanting, and subject so South Carolina Forestry Commission Best Management Practices (BMPs).

Formalized On-Street Parking. see "Parking, On-Street."

Formally Disposed. Composed in a formal arrangement, in a regular, classical, and typically symmetrical manner.

Front. The primary frontage(s) of a lot, determined as follows:

1. For lots with frontages along multiple thoroughfares, the Primary Frontage is determined by the Street Hierarchy Diagram in Appendix C. All other frontages may be considered to be side street frontages.

2. For lots with frontages along a thoroughfare and a civic space, the Front may be the frontage along either the thoroughfare or the civic space, or both frontages may be treated as Fronts, with the following exception: the frontage along certain Civic Spaces may be required to be a Front, as per the standards in Section 7.4 (Civic and Open Space).
3. For lots with a single frontage along a thoroughfare or a Civic Space, but not both, that frontage is the Front.
4. Frontages along alleys, service drives, and parking drives may never be a front.

Frontage. A strip or extent of land abutting a thoroughfare, civic space or other public right-of-way.

Frontage, Primary. The elevation(s) of a structure that fronts a Primary Street. See also "Primary Street."

Frontage, Private. The area between the edge of the public right-of-way and the front or side facade.

Frontage, Public. The area between the curb of the vehicular lanes and the frontage line.

Frontage Line. The property line(s) of a lot fronting a thoroughfare or other public way, or a civic space.

Garage. A structure, or part thereof, used or intended to be used for the parking and storage of motor vehicles.

Garage/Carport, Detached. A garage or carport that is separated from the main body of the house. It may be physically connected to the house with a covered walk if that walk is unconditioned and does not exceed ⅔ the width of the garage.

General Retail. Stores and shops intended to serve as destination retail, convenience shopping, and provision of general services. Examples of these stores, lines of merchandise, and services include: Art galleries; retail; art supplies, including framing services; books, magazines, and newspapers; cameras and photographic supplies; clothing, shoes, and accessories; collectibles (cards, coins, comics, stamps, etc.); drug stores and pharmacies; dry goods; fabrics and sewing supplies; furniture and appliance stores; hobby materials; home and office electronics; jewelry; luggage and leather goods; musical instruments; neighborhood markets; parts; accessories; small wares; specialty grocery store; specialty shops; sporting goods and equipment; stationery; toys and games; variety stores; videos, DVDs, records, and CDs, including rental stores. May include sales of materials produced on the premises.

General Services. Professional, commercial and public activities conducted in offices and storefronts, without outdoor storage needs, including, but not limited to, business and financial services, advanced technology uses that are compatible in terms of noise/vibration impacts and hazards with adjoining buildings, minor repair services, health services, social services, legal services, educational services and cultural services. Does not include industrial or medical services.

1. **Bank/Financial Services.** Financial institutions, including, but not limited to: banks and trust companies, credit agencies, holding (but not primarily operating) companies, lending and thrift institutions, other investment companies, securities/commodity contract brokers and dealers, security and commodity exchanges, and vehicle finance (equity) leasing agencies. Includes ATM facilities (see "ATM").
2. **Business Services.** Establishments providing direct services to consumers. Examples of these uses include employment agencies, insurance agent offices, real estate offices, travel agencies, utility company offices, elected official satellite offices, etc. This use does not include "Bank, Financial Services," which is separately defined.
3. **Business Support Service.** An establishment within a building that provides services to other businesses. Examples of these services include, but are not limited to: Computer-related services (rental, repair) (see also "Maintenance Service - Client Site Services"), copying, quick printing, and blueprinting services, film processing and photofinishing (retail), mailing and mailbox services.

4. **Personal Services.** Establishments that provide non-medical services to individuals as a primary use. Examples of these uses include: barber and beauty shops, body piercing facilities, clothing rental, dry cleaning pick-up stores with limited equipment, home electronics and small appliance repair, laundromats (self-service laundries), locksmiths, massage (licensed, therapeutic, non-sexual), nail salons, pet grooming with no boarding, shoe repair shops, tailors, tanning salons, tattoo parlors. These uses may also include accessory retail sales of products related to the services provided.

5. **Professional, Administrative Services.** Office-type facilities occupied by businesses that provide professional services, or are engaged in the production of intellectual property. Examples of these uses include: Accounting, auditing and bookkeeping services, advertising agencies, attorneys, business associations, chambers of commerce, commercial art and design services, construction contractors (office facilities only), counseling services, court reporting services, design services including architecture, engineering, landscape architecture, urban planning, detective agencies and similar services, educational, scientific and research organizations, financial management and investment counseling, literary and talent agencies, management and public relations services, media postproduction services, news services, photographers and photography studios, political campaign headquarters, psychologists, secretarial, stenographic, word processing, and temporary clerical employee services, security and commodity brokers, writers' and artists' offices.

Ground Cover. Low-growing plants that grow in a spreading fashion to form a more or less solid mat of vegetation, generally planted to provide decorative landscaping or permeable cover for bare earth that prevents soil erosion.

Group Dwelling. A residential facility for unrelated persons providing living facilities, sleeping rooms, and meals. This category does not include homes for the developmentally disabled or other institutional uses such as protective living or sheltered care facilities; see "Community Care Facilities."

1. **Eight or Fewer Residents, in a Home.** Residential facility for eight or fewer unrelated persons providing living facilities, sleeping rooms, and meals. This use shall be considered as a single-family dwelling, in terms of applicable building form standards. The number listed does not include the operator, members of the operator's family, or persons employed by the operator as staff, except that the total number of persons living in a group home shall not exceed 10. This category does not include a home for the developmentally disabled or other institutional uses such as protective living or sheltered care facilities, see "Community Care Facilities."

2. **More than 8 Residents, in a Community Residence.**

    a. **Dormitories.** A building or portion thereof which contains living quarters for nine or more students, staff, or members of a college, university, primary or secondary boarding school, theological school, or other comparable organization, provided that such building is either owned or managed by such organization. Single family and two-family dwellings are defined separately. See "Rooming and Boarding Facilities."

    b. **Convent or Monastery.** The living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.

    c. **Congregate Care Facility.** A facility for long-term residence exclusively by persons 62 years of age or older, and which may include, without limitation, common dining and social and recreational features, special safety and convenience features designed for the needs of the elderly, such as emergency call systems, grab bars and handrails, special door hardware, cabinets, appliances, passageways, and doorways designed to accommodate wheelchairs, and the provision of social services for residents which must include at least two of the following: meal services, transportation, housekeeping, linen, and organized social activities.

d. **Nursing Home.** A health care institution other than a hospital or sheltered care home which provides inpatient or resident beds and is licensed by the South Carolina Department of Health and Environmental Control as a skilled nursing facility for two or more unrelated persons. A nursing home provides services to those who need continuous care but do not require hospital care or direct daily care from a physician.

Hedge. A group of shrubs planted in line or in groups that forms a compact, dense, living barrier that demarcates an area from on-site or off-site views.

Height, Overall. Overall building height shall be measured vertically from the natural grade or finished grade adjacent to the building exterior to the highest point of coping of a flat roof, the top of a mansard roof, or the highest point of the highest pitched roof. In general, this Code measures heights in stories rather than feet. See Section 2.4.1 and 2.6 for more standards and description.

Historic Resources. According to the National Historic Preservation Act of 1966, as amended through 1992 (16 U.S.C. 470 et seq.) Section 101(a)(1)(A). Any district, site, building, structure, or object that is at least 50 years of age and is significant in American history, architecture, archaeology, engineering, and culture may be considered for inclusion on the National Register of Historic Places.

Home Occupation—Major. Residential premises used for the transaction of business, the supply of professional services, and the limited supply of retail by the resident thereof. Major Home Occupations may include agent, architect, artist, broker, consultant, draftsman, dressmaker, engineer, family daycare home, interior decorator, lawyer, notary public, teacher, and other similar occupations, as determined by the Administrator. The Home Occupation use shall not disrupt the general character of the neighborhood.

Home Occupation—Minor. Residential premises used for the transaction of business or the supply of professional services. Home Offices shall be limited to the following: agent, architect, artist, broker, consultant, draftsman, dressmaker, engineer, interior decorator, lawyer, notary public, teacher, and other similar occupations, as determined by the Administrator. Such use shall not simultaneously employ more than 1 person in addition to the residents of the dwelling. The Home Office use shall not disrupt the generally residential character of the neighborhood.

Household. A group or family living in a single Dwelling Unit. A single household may include up to 5 unrelated people.

Impervious Surface Coverage. The percent of a property that is covered with non-infiltrating material. This includes all structures, slabs and paving material.

Infill. The development of vacant land that is now largely surrounded by developed land. It is typically served by existing infrastructure, particularly roads, and may include properties which were previously developed but have been vacant for a number of years.

Infrastructure and Utilities. Installations or facilities or means for furnishing to the public, electricity, gas, steam, communications, water, drainage, sewage disposal, or flood control, irrespective of whether such facilities or means are underground or above ground; utilities may be owned and operated by any person, firm, corporation, municipal department or board, duly appointed by state or municipal regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments, or boards; however it does not include Maintenance Yards (see "Maintenance Yard") or utility offices (see "General Service and Office").

Intensive Level Survey. A survey that will be based on a systematic approach to the entire tract, usually at 100-foot intervals, that are differentiated between having high or low potential for containing archaeological and historic resources. Topography and soil types are also taken into consideration to help determine the areas of high and low potential. In addition, subsurface activity, such as shovel tests, are done, unless surface exposure is evident, and

the materials are sifted. All of the findings, as well as a determination of eligible sites, will be compiled into a final report.

Landmark Tree. Any existing broad-leaved overstory tree with a DBH of 36 inches or greater. Additional standards for specific trees, including cone-bearing trees, are as listed in the chart in Section 5.3.2.

Landscape Strip, Perimeter. Vegetative material associated with the perimeter landscaping required for a parking lot area.

Laundry, Dry Cleaning Plant. A service establishment engaged primarily in high volume laundry and garment services, including: carpet and upholstery cleaners; diaper services; dry cleaning and garment pressing; commercial laundries; and linen supply. These facilities may include accessory customer pick-up facilities. These facilities do not include coin-operated laundries or dry cleaning pick up stores without dry cleaning equipment, see "Personal Services."

Liner Building. An occupiable structure specifically designed to mask a separate interior use from a frontage.

Live/Work Unit. An integrated housing unit and working space, that accommodates both residential occupancy and work or commercial activity. Typically the commercial space is below or in front of the residential space.

Lodging. (Syn. Overnight Guest Accommodation)

1. **Bed and Breakfast Inn (B&B).** (10 or Fewer Rooms) The use of a single residential structure for commercial lodging purposes, with up to ten bedrooms used for the purpose of the lodging transient guests and in which meals may be prepared for them, provided that no meals may be sold to persons other than such guests except as provided for in Section 3.6.2 C.1.e.
2. **Hostel.** A facility for residence of under twenty-nine (29) days that provides simple dormitory or sleeping rooms and common rooms for cooking, meeting, recreational, and educational use; that is chartered or approved by the International Hostel Federation or its national or regional affiliates, or similar organizations; and that is supervised by resident house-parents or managers.
3. **Hotel/Motel (25 or more rooms).** A lodging establishment of 25 or more rooms in a building or group of buildings offering transient lodging accommodations on a daily rate to the general public. Additional services may include a restaurant, meeting rooms, and recreational facilities.
4. **Inn (6 to 24 rooms).** A building or group of buildings used as a lodging establishment having six to 24 guest rooms providing overnight accommodations and breakfast to transient guests.
5. **Resort.** Lodging that serves as a destination point for visitors, located and designed with some combination of recreational uses or natural areas, such as marinas, beaches or pools, tennis, golf, equestrian, other special recreation opportunities, and/or a variety of restaurants and shops to serve the guests. Buildings and structures in the resort shall complement the scenic and natural qualities of the location and area where it is situated.
6. **Rooming and Boarding Facility.** A residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent, or rental agent is in residence. Includes dormitories, single room occupancy, fraternities, and sororities.
7. **Short-Term Rental.** A single-family dwelling, individual two-family or three-family dwelling, multifamily dwelling, or boat docked in approved marina, or any portion thereof, that is available for use or is used for accommodations or lodging of guests paying a fee or other compensation for a period of less than 30 days. When a portion of a dwelling unit is being rented, only one rental party may rent space at one time. If separate parties are renting rooms simultaneously, the use is considered a Bed and Breakfast.

Lot Area. Lot area refers to the horizontal land area within lot lines, excluding any wetlands.

Lot Width. Lot width is measured between side lot lines along a line that is parallel to the front lot line or its chord and located the minimum front setback distance from the front lot line. On cul-de-sac lots existing on the date of adoption of this Development Code, the required lot width will be 80% of that required by this Development Code.

Maintenance Yard. An outdoor storage area for large equipment, vehicles, and/or other common materials used by the City and/or master developer for maintenance of public/private infrastructure; storage of scrap materials used for repair and maintenance; and buildings or structure for uses such as repair facilities. May include an accessory office.

Manufacturing, Processing, Packaging: Light. A facility accommodating manufacturing processes involving less intense levels of fabrication and/or production such as the assembly, fabrication, and conversion of already processed raw materials into products, where the operational characteristics of the manufacturing processes and the materials used are unlikely to cause significant impacts on surrounding land uses or the community. The premises may include secondary retail or wholesale sales. Examples of light manufacturing/assembly uses include:

1. **Artisan/Craft Product Manufacturing.** An establishment that manufactures and/or assembles small products primarily by hand, including jewelry, pottery and other ceramics, as well as small glass and metal art and craft products, where any retail sales are incidental to the manufacturing activity.
2. **Clothing and Fabric Product Manufacturing.** An establishment that assembles clothing, draperies, and/or other products by cutting and sewing purchased textile fabrics, and related materials including leather, rubberized fabrics, plastics and furs. Does not include custom tailors and dressmakers not operating as a factory and not located on the site of a clothing store (see "Personal Services"). Does not include the production of textile fabrics and related materials.
3. **Furniture and Fixtures Manufacturing, Cabinet Shop.** A business that manufactures wood and metal household furniture and appliances; bedsprings and mattresses; all types of office furniture and partitions, shelving, lockers and store furniture; and miscellaneous drapery hardware, window blinds and shades. Includes furniture re-upholstering businesses, and wood and cabinet shops, but not sawmills or planing mills.
4. **Handicraft Industries, Small-Scale Manufacturing.** Establishments manufacturing and/or assembling small products primarily by hand, including jewelry, pottery and other ceramics, as well as small glass and metal art and craft products, and taxidermists. Also includes manufacturing establishments producing small products not classified in another major manufacturing group, including: brooms and brushes; buttons, costume novelties; jewelry; musical instruments; pens, pencils, and other office and artists' materials; sporting and athletic goods; toys; etc.
5. **Media Production.** Facilities for motion picture, television, video, sound, computer, and other communications media production.
6. **Photo/Film Processing Lab.** A facility that provides high volume and/or custom processing services for photographic negative film, transparencies, and/or prints, where the processed products are delivered to off-site retail outlets for customer pick-up. Does not include small-scale photo processing machines accessory to other retail businesses.
7. **Printing and Publishing.** An establishment engaged in printing by letterpress, lithography, gravure, screen, offset, or electrostatic (xerographic) copying; and other establishments serving the printing trade such as bookbinding, typesetting, engraving, photoengraving and electrotyping. This use also includes establishments that publish newspapers, books and periodicals; establishments manufacturing business forms and binding devices. "Quick printing" services are included in the definition of "Business Support Services."

Manufacturing and Processing, Heavy. A facility accommodating manufacturing processes that involve and/or produce basic metals, building materials, chemicals, fabricated metals, paper products, machinery, textiles, and/or transportation equipment, where the intensity and/or scale of operations may cause significant impacts on surrounding land uses or the community. Examples of heavy manufacturing uses include the following:

1. **Chemical Product Manufacturing.** An establishment that produces or uses basic chemicals, and other establishments creating products predominantly by chemical processes. Examples of these products include: basic chemicals, including acids, alkalis, salts, and organic chemicals; chemical products to be used in further manufacture, including synthetic fibers, plastic materials, dry colors, and pigments; and finished chemical products to be used for ultimate consumption, including drugs/pharmaceuticals, cosmetics, and soaps; or to be used as materials or supplies in other industries including paints, fertilizers, and explosives. Also includes sales and transportation establishments handling the chemicals described above, except as part of retail trade.
2. **Concrete, Gypsum, and Plaster Product Manufacturing.** An establishment that produces bulk concrete, concrete building block, brick, and/or other types of precast and prefabricated concrete products. Also includes ready-mix concrete batch plants, lime manufacturing, and the manufacture of gypsum products, including plasterboard.
3. **Glass Product Manufacturing.** An establishment that manufactures glass and/or glass products by melting silica sand or cullet, including the production of flat glass and other glass products that are pressed, blown, or shaped from glass produced in the same establishment. Artisan and craftsman type operations of a larger scale than home occupations are instead included under ("Manufacturing—Light - Handcraft Industries and Small-Scale Manufacturing").
4. **Paving and Roofing Materials Manufacturing.** The manufacture of various common paving and petroleum-based roofing materials, including bulk asphalt, paving blocks made of asphalt, creosote wood, and various compositions of asphalt and tar.
5. **Petroleum Refining and Related Industries.** Industrial plants for purifying petroleum, and the compounding of lubricating oils and greases from purchased materials. Also includes oil or gas processing facilities, liquefied natural gas (LNG) facilities, the manufacture of petroleum coke and fuel briquettes, tank farms, and terminal facilities for pipelines. Does not include petroleum pipeline surge tanks and pump stations ("Public Services"), or petroleum product distributors ("Flammable Liquid, Gas, and Bulk Fuel - Storage and Sale").
6. **Plastics, Other Synthetics, and Rubber Product Manufacturing.** The manufacture of rubber products including: tires, rubber footwear, mechanical rubber goods, heels and soles, flooring, and other rubber products from natural, synthetic, or reclaimed rubber. Also includes establishments engaged primarily in manufacturing tires; products from recycled or reclaimed plastics or styrofoam; molding primary plastics for other manufacturers, manufacturing miscellaneous finished plastics products, fiberglass manufacturing, and fiberglass application services. Does not include establishments engaged primarily in recapping and retreading automobile tires (See "Vehicle Sales and Services").
7. **Primary Metal Industries.** An establishment engaged in: the smelting and refining of ferrous and nonferrous metals from ore, pig, or scrap; the rolling, drawing, and alloying of metals; the manufacture of castings, forgings, stampings, extrusions, and other basic metal products; and the manufacturing of nails, spikes, and insulated wire and cable. Also includes merchant blast furnaces and by-product or beehive coke ovens.
8. **Pulp and Pulp Product Manufacturing.** An establishment that manufactures pulp, paper, or paperboard. Includes pulp, paper, and paperboard mills. Does not include establishments primarily engaged in converting paper or paperboard without manufacturing the paper or paperboard, including

envelope manufacturing, converted paper products, paper coating and glazing, paper bags, assembly of paperboard boxes, wallpaper (See "Manufacturing—Light - Paper Product Manufacturing").

9. **Textile and Leather Product Manufacturing.** An establishment that converts basic fibers (natural or synthetic) into a product, including yarn or fabric, that can be further manufactured into usable items (See "Manufacturing—Light - Clothing and Fabric Product Manufacturing"), and industries that transform hides into leather by tanning or curing. Includes: Coating, waterproofing, or otherwise treating fabric; Manufacturing woven fabric, carpets, rugs from yarn; Dressed and dyed furs Preparation of fiber and subsequent manufacturing of yarn, threads, braids, twine cordage; Dying and finishing fiber, yarn, fabric, and knit apparel Scouring and combing plants; Leather-tanned, curried, and finished upholstery manufacturing; Manufacture of knit apparel and other finished products from yarn and thread mills; and Manufacture of felt goods, lace goods, non-woven fabrics and miscellaneous textiles.

Marine Industrial. A place of business serving marine-related needs including but not limited to: the loading and unloading of boats, boat storage (dry stack or boatyard), major boat repairs and servicing (engine, painting, body work, overhaul), commercial boat manufacturing, commercial fishing, the shipping of goods and containers, and other activities whose primary purpose is to facilitate the commercial maritime industry.

Maximum Lot Coverage. The percentage of a lot that is covered by roofs of the primary structure, and any accessory structures.

Medical Services: Clinic, Urgent Care; Doctor Office; and Extended Care.

1. **Clinic, Urgent Care.** A facility other than a hospital where medical, mental health, surgical and other personal health services are provided on an outpatient basis. Examples of these uses include: Medical offices with five or more licensed practitioners and/or medical specialties, outpatient care facilities, urgent care facilities, other allied health services. These facilities may also include incidental medical laboratories. Counseling services by other than medical doctors or psychiatrists are included under "Offices - Professional/Administrative."

2. **Doctor Office.** A facility other than a hospital where medical, dental, mental health, surgical, and/or other personal health care services are provided on an outpatient basis, and that accommodates no more than four licensed primary practitioners (for example, chiropractors, medical doctors, psychiatrists, etc., other than nursing staff) within an individual office suite. A facility with five or more licensed practitioners is instead classified under "Medical Services - Clinic, Urgent Care." Counseling services by other than medical doctors or psychiatrists are included under "Office - Professional, Administrative."

3. **Extended Care.** Residential facilities providing nursing and health-related care as a primary use with in-patient beds. Examples of these uses include: board and care homes; convalescent and rest homes; extended care facilities; and skilled nursing facilities. Long-term personal care facilities that do not emphasize medical treatment are included under "Residential Care."

Medical Services: Hospital. A major institution where people receive medical, surgical, or psychiatric treatment and nursing care.

Meeting Facility, Public or Private. A facility for public or private meetings, including: Community centers, religious assembly facilities (e.g., churches, mosques, synagogues, etc.), civic and private auditoriums, Grange halls, union halls, meeting halls for clubs and other membership organizations, etc. Also includes functionally related internal facilities such as kitchens, multi-purpose rooms, and storage. Does not include conference and meeting rooms accessory and incidental to another primary use, and which are typically used only by on-site employees and clients, and occupy less floor area on the site than the offices they support. Does not include: Cinemas, performing

arts theaters, indoor commercial sports assembly or other commercial entertainment facilities. Related on-site facilities such as day care centers and schools are separately defined and regulated.

Memorandum of Agreement. An agreement between the City and the applicant to avoid, reduce, or mitigate adverse effects on archaeological and historic properties, or to accept each effect in the public interest.

Microbrewery. (syn. Craft Brewery) A brewery that produces a small amount of beer (up to 10,000 barrels per year) for sale and consumption on or off premises. These establishments may be part of a brew pub (see definition).

Mining/Resource Extraction. Extractive uses such as surface mining for sand, gravel, clay and topsoil and any other such use. Quarrying is not permitted.

Mixed-Use. Multiple functions within the same building or the same general area through superimposition or within the same area through adjacency.

Mixed-Use Project. A development that combines both commercial and residential uses on the same site, typically with the commercial uses occupying the ground floor street frontage and the residential uses above.

Museum. See "Community Oriented Civic Facility."

National Historic Landmark District. A historic district that is officially recognized by the United States government for its outstanding historic significance.

National Register of Historic Places. The official list of the Nation's historic places worthy of preservation, as maintained by the National Parks Service.

Naturally Disposed. A preservation of the existing natural condition or a composition of elements arranged as they would appear in a nature, with irregular shapes and asymmetry.

Neighborhood Market. A neighborhood serving retail store, primarily offering food products, which may also carry a range of merchandise oriented to daily convenience shopping needs, and may be combined with food service (e.g., delicatessen).

Non-contributing Structure. Any structure within the Historic District that was indicated on the 1997 Beaufort County Above Ground Historic Sites Survey, or subsequent historic sites survey, that is not deemed to have qualities that exemplify the character of the Historic District. This also includes any structure that was not listed on the survey.

Office. See "General Services, Business Services, and Professional, Administrative Services."

Open Air Retail. A retail sales establishment operated substantially in the open air including, but not limited to: flea markets, trading posts, roadside stands, beach recreation and rental, and the like. Does not include community farmer's markets (see "Community Farmer's Market"), Vehicle Sales and Rental (see "Vehicle Sales and Rental"), industrial or agricultural equipment sales and rental (see "Agricultural Support Services"), home or garden supplies and equipment, or plant nurseries.

Outdoor Storage. Open yard area used for storage of materials or equipment associated with a primary use, excluding junk or other salvage. This is an accessory or primary use.

Outparcel. A small lot at the outer edge of a shopping center. Also called a pad site.

Parking Facility, Public or Commercial, Surface or Structure. Parking lots or structures operated by the jurisdiction or a private entity, providing parking either for free or for a fee. Does not include towing impound and storage facilities.

Parking, On-Street. On-street parking is parking constructed parallel or diagonal to the street right-of-way, defined by a ribbon or vertical curb, utilizing a durable surface material such as asphalt, concrete, pavers, or gravel, with appropriate stormwater controls.

Passive Recreation. Recreation requiring little or no physical exertion focusing on the enjoyment of one's natural surroundings.

Pedestrian Shed. An area centered on a major destination. Its size is limited by an average distance that may be traversed at an easy walking pace in a given amount of time from its center to its edge. Pedestrian sheds are useful for planning walkable areas. See Section 2.8.1 G.

Perimeter Buffer. The required installation of landscaping and screening materials between specified Districts. See Section 5.3.1, Perimeter Buffer Requirements.

Personal Storage Facility, Indoor. Structures containing generally small, individual, compartmentalized stalls or lockers offered for rent or lease to the general public as individual storage spaces and characterized by low parking demand. Premises may include retail or wholesale sales related to storage (e.g. boxes, locks, tape, protective material, etc.).

Planting Strip. Areas intended for the placement of vegetation within the interior of parking lot areas or along street right-of-way edges, typically between the back of the curb and the inside edge of the sidewalk.

The Point Neighborhood. The neighborhood of the Historic District bounded by Carteret Street on the West and the marshes of the Beaufort River on the North, East and South. See Section 13.3 for the Map of City Neighborhoods.

Prevailing Setback. Specific to the Historic District - the average setback of Contributing Structures, or new structures that are built in accordance with the historic building pattern.

Primary Facade. The elevation(s) of a structure fronting a street. When located on a corner, this may be the elevation fronting only the Primary Street, if applicable. See Appendix C for the Street Hierarchy map.

Primary Street. The most significant street that a building fronts. When a structure only fronts one street, that street is considered the Primary Street. When a building is on a corner, the Street Hierarchy map in Appendix C shall determine which streets are Primary Streets. Certain design elements, as discussed in Articles 2—4, apply only to those streets designated as Primary on the Street Hierarchy map.

Public Right-of-Way. The entire area between property boundaries which is owned by a government, dedicated to public use, or impressed with an easement for public use; which is primarily used for pedestrian or vehicular travel; and which is publicly maintained, in whole or in part, for such use, and includes without limitations the street, curb, shoulder, sidewalk, parking or parking strip, planting strip, and any public way.

Public Right-of-Way Line. The line where the property meets the public right-of-way at a public street or public waterway, provided that this definition shall not include unimproved alleys, easements or other similar dedicated uses.

Public Way. Any street, highway, road, path or right-of-way, whether privately or publicly owned, which is designed, or used for vehicular or pedestrian traffic or access.

Qualified Personnel. Professional consultants meeting the criteria set forth by the Secretary of the Interior, as well as the state historic preservation office and published in their Guidelines and Standards for Archaeological Investigation.

Recreation Facility, Commercial or Institutional.

1. **Indoor.** An establishment providing indoor amusement and entertainment services for a fee or admission charge, including: Bowling alleys, coin-operated amusement arcades, electronic game arcades (video games, pinball, etc.), ice skating and roller skating, pool and billiard rooms as primary uses. Any establishment with four or more electronic games or amusement devices (e.g., pool or billiard tables, pinball machines, etc.) or a premises where 50 percent or more of the floor area is occupied by electronic games or amusement devices is considered a commercial recreation facility; three or fewer machines or devices are not considered a use separate from the primary use of the site. Does not include adult-oriented businesses.
2. **Golf Course and Country Club.** This land use consists of golf courses and accessory facilities and uses including: clubhouses with bar and restaurant; locker and shower facilities; "pro shops" for on-site sales of golfing equipment and clothing; and golf cart storage and sales facilities.
3. **Health/Fitness Facility.** A fitness center, gymnasium, or health and athletic club, which may include any of the following: Exercise machines, weight facilities, group exercise rooms, sauna, spa, hot tub, or swimming facilities, indoor tennis, handball, racquetball, archery and shooting ranges and other indoor sports activities. Does not include adult-oriented businesses.
4. **Outdoor.** A facility for outdoor recreational activities where a fee may be charged for use. Examples include amusement and theme parks; campgrounds, recreational vehicle (RV) parks, and picnicking areas; go-cart tracks; golf driving ranges; miniature golf courses; outdoor pools, and water slides. May also include commercial facilities customarily associated with the above outdoor commercial recreational uses, including bars and restaurants, video game arcades, etc. Does not include golf courses.

Recreational Vehicle Park. See "Recreation Facility, Commercial or Institutional - Outdoor."

Redevelopment Area. For purposes of this Code, the following areas are defined as Redevelopment Areas:

1. The area defined by the lots on the north side of Calhoun Street, the lots on the east side of Carteret Street, the centerline of Bay Street, and the lots on the west side of Ribaut Road.
2. Boundary Street Redevelopment District.
3. Any lot within one-quarter mile of the intersection of Ribaut Road and Mossy Oaks Road.

Reserved Strip. A piece of land in a subdivision that is reserved, held or controlled for the purpose of prohibiting access to streets and roads.

Residential. Premises used primarily for human habitation.

Restaurant, Cafe, Coffee Shop. A retail business selling ready-to-eat food and/or beverages for on- or off-premise consumption. These include eating establishments where customers are served from a walk-up ordering counter for either on- or off-premise consumption ("counter service"); and establishments where customers are served food at their tables for on-premise consumption ("table service"), that may also provide food for take-out, but does not include drive-through services, which are separately defined and regulated.

Root Flare. (syn. Trunk Flare). The outwardly curving base of a tree where it joins the roots.

SCDHEC (South Carolina Department of Health and Environmental Control). South Carolina's public health and environmental protection agency.

School, Private or Public. Includes the following facilities:

1. **Elementary, Middle, Secondary.** A public or private academic educational institution, including elementary (kindergarten through 6th grade), middle and junior high schools (7th and 8th grades),

secondary and high schools (9th through 11th grades), and facilities that provide any combination of those levels. May also include any of these schools that also provide room and board.

2. **Does not include pre-schools and child day care facilities (see "Day Care, Child or Adult").** See also the definition of "Studio - Specialized Education/Training" for smaller-scale facilities offering specialized instruction.

Setback. The mandatory clear distance between a property line and a structure.

Sexually Oriented Business. See Appendix B.

Shared Parking. Any parking spaces assigned to more than one user, where different persons utilizing the spaces are unlikely to need the spaces at the same time of day.

Sharrow. A marking on the road delineating travel lanes to be shared by bikes and cars.

Sign. The term "Sign" shall mean and include every sign, billboard, poster panel, freestanding ground sign, roof sign, projecting sign, pylon sign, illuminating sign, sign painted on a wall, window, marquee, awning or canopy, and shall include any announcement, declaration, demonstration, display, ribbon, banner, illustration or insignia used to advertise or promote the interests of any person when the same is placed in view of the general public, traveling along a public street right-of-way.

1. **Abandoned Sign.** A permitted sign which was erected on property in conjunction with a particular use which use has been discontinued for a period of 30 days or more, or a permitted temporary sign for which the permit has expired.
2. **Billboard.** A large board for displaying advertising of either on- or off-premises businesses or organizations. For the purposes of this Code, any sign over 125 SF is considered a billboard.
3. **Canopy Sign.** A sign which is suspended from, attached to, supported from or forms a part of a canopy.
4. **Changeable Copy Sign.** A sign on which message copy is changed manually in the field, through the utilization of attachable letters, numbers, symbols and other similar characters or changeable pictorial panels.
5. **Construction Sign.** Any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor or materials vendor upon which property such individual is furnishing labor, services or material.
6. **Dilapidated Sign.** Any sign which is structurally unsound, has defective parts or it in need of painting or maintenance.
7. **Directional Sign.** A sign used to guide vehicular and/or pedestrian traffic by using symbols and/or such words as "entrance," "exit," "parking," "one-way," or similar directional instructions.
8. **Easel Sign.** A sign or message board displayed on a portable open frame, the outline of which (the frame) is roughly pyramidal in shape.
9. **Flashing Sign.** Any lighted or electrical sign which emits light in sudden transitory bursts.
10. **Freestanding Sign.** Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure.
11. **Illuminated Sign, External.** Any sign which is directly lighted by an external source.
12. **Illuminated Sign, Internal.** Any sign which transmits light through its face or any part thereof.

13. **Incidental Sign.** A sign, generally informational, that has a purpose secondary to the use of the parcel on which it is located, such as "no parking," "loading zone," and other similar directives. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.
14. **Inflatable Sign.** A sign that is either expanded to its full dimensions or supported by gasses contained within the sign, or sign parts, at a pressure greater than atmospheric pressure.
15. **Monument Sign.** A sign constructed on the ground with a continuous footing or foundation with the base of the sign at grade.
16. **Off-premise Sign.** Any sign located or proposed to be located at any place other than within the same platted parcel of land on which the specific business or activity being promoted on such sign is itself located or conducted. For purposes of this UDO, easements and other appurtenances shall be considered to be outside such platted parcel of land and any sign located or proposed to be located in an easement or other appurtenance shall be considered an off-premises sign.
17. **On-premises Sign.** Any sign located or proposed to be located at any place, if otherwise permitted by this article, within the plat of record for the business or other activity identified on such sign.
18. **Painted Wall Sign.** A sign painted directly on any exterior building wall or door surface, exclusive of window and door glass areas on any outside wall or roof or on glass of any building.
19. **Political Sign.** A sign erected by a political candidate, group or agent thereof, for the purpose of advertising a candidate or stating a position regarding an issue upon which the voters of the city shall vote.
20. **Real Estate Sign.** A temporary sign erected by the owner, or his agent, advertising the real property upon which the sign is located for rent, for lease or for sale.
21. **Roof Sign.** A sign erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof in any way.
22. **Rotating Sign.** Any sign which revolves around one or more fixed areas.
23. **Sandwich Board Sign.** A portable sign shaped like an A-frame with a sign panel on one or both sides where the sign panel is integral to the structure of the sign.
24. **Snipe Sign.** A sign which is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes or fences, or to other objects.
25. **Special Event Sign.** A sign which carries message regarding a special event or function which is of general interest to the community.
26. **Suspended Sign.** A sign that is suspended from the underside of a horizontal plane surface and is supported by such surface.
27. **Temporary Sign.** Any sign or information transmitting structure intended to be erected or displayed for a limited period.
28. **Tenant Directory Sign.** A sign listing only the names and/or use, or location of more than one business, activity or professional office conducted within a building, group of buildings or commercial center. This sign is located on the interior of the lot.
29. **Time and Temperature Sign.** An electrical sign utilizing lights going on and off periodically to display the current time and temperature in the community.

30. **Vehicle Sign.** A permanent or temporary sign affixed, painted on or placed in or upon any parked vehicle, parked trailer or other parked device capable of being towed, which is displayed in public view under such circumstances as to location on the premise, time of day, duration, availability of other parking space on the premises where it is loaded, unloaded or otherwise carries out its principal function, which circumstances indicate that the primary purpose of the display is to attract the attention of the public rather than to serve the business of the owner thereof in the manner which is customary for the vehicle.
31. **Wall Sign.** A sign mounted parallel to or painted on a building facade or other vertical building surface. Wall signs shall not project more than 18 inches from the wall surface.
32. **Window Sign.** Any sign which is painted on, applied to, attached to or projected upon or within the exterior or interior of a building glass area, including doors, or located within 15 feet of the identification, message, symbol, insignia, visual representation, logotype, or any other form which communicates information, can be read from off-premises contiguous property or public right-of-way.
33. **Window Sign, Temporary.** A window sign of a temporary nature used to direct attention to the sale of merchandise, or a change in the status of the business, including, but not limited to, sign for sales, specials, going out of business, and grand openings.

Shrub. A woody plant, smaller than a tree, consisting of several small stems emerging from the ground, or small branches near the ground. Shrubs may be deciduous or evergreen.

Significant Resources. Historic resources eligible for listing in the National Register of Historic Places.

Single-Family/Unit House. See Division 5.1 (Building Type Standards).

Special Exception Permit. See Section 7.2.60 (Special Exception Permit). These permits are issued by the Zoning Board of Appeals (ZBOA) for special uses allowed within a zone.

Specimen Tree. Any existing broad-leaved overstory tree with a DBH of 24 inches or greater; any existing understory tree with a DBH of 12 inches or greater; and any Palmetto tree having a clear trunk height of at least 2 feet. Additional standards for specific trees, including cone-bearing trees, are as listed in the chart in Section 5.3.2.

Sports Complex. See Division 2.5 (Civic and Open Space Types).

Square. See Division 2.5 (Civic and Open Space Types).

Storage, Outdoor. See "Outdoor Storage."

Storefront. The portion of a frontage composed of the display window and/or entrance and its components, including windows, doors, transoms and sill pane, that is inserted into various frontage types, such as a shopfront or gallery, to accommodate retail uses.

Story. An above-grade habitable floor level within a building.

Studio—Specialized Education/Training, etc. Small-scale facilities that provide individual and group instruction, education and/or training, including tutoring and vocational training in limited subjects, such as:

1. **The Arts.** Production rehearsal; photography, and the processing of photographs produced only by users of the studio facilities; martial arts training studios; gymnastics instruction, and aerobics and gymnastics studios with no other fitness facilities or equipment. Also includes production studios for individual musicians, painters, sculptors, photographers, and other artists.
2. **Vocational and Professional Schools.** Business, secretarial, and vocational school, computers and electronics school, driver education school, establishments providing courses by mail, language school, professional school (e.g. law, medicine, etc.), religious ministry training facilities.

Structure. Anything constructed or erected, the use of which requires attachment to the ground, attachment to something located on the ground, or placement on the ground. The term "structure" shall include: Buildings; Walls or fences; Signs; Light fixtures; or anything else constructed or erected, the use of which requires a permanent or semi-permanent location on the ground or which is attached to something having a permanent or semi-permanent location on the ground.

Tandem Parking. A parking space deep enough to allow two cars to park, one behind the other.

Temporary Parking Lots. Parking lots that are not permanent, are only intended to fulfill a short-term need, and ultimately will be replaced by a permanent building or structure. Temporary Parking lots are not subject to the parking location regulations and liner requirements for above grade parking in the building form standards, but must comply with all landscaping standards.

Thoroughfare. A road, street, or path providing a connection between two places.

Traffic Impact Analysis (TIA). A study performed by professional engineers with expertise in traffic engineering principles and practice, which reviews development of a specific property and analyzes how it integrates into the existing and proposed city street network and ongoing traffic study. The analysis utilizes data and conclusions developed in previous studies, and identifies improvements needed to mitigate the impact of traffic generated by a development on the street network system.

Transect. A cross-section of the environment showing a range of different habitats. The rural-to-urban transect of the human environment is divided into multiple transect zones that describe the physical form and character of a place according to the intensity of its land use and urbanism. See Section 2.3.1 for more information.

Transit Station. A lot or structure used for the purpose of parking, loading and unloading freight and passengers from train or bus transportation. May include parking facilities and other commercial amenities to service transit passengers.

Transit Stop. A location where buses or other transit providers stop to load and unload passengers. A transit stop may or may not include a shelter or a pullout.

Transitional/Supportive Housing. A state licensed residential dwelling occupied with a 24-hour per day resident attendant directly employed for the temporary care, assistance and supervision of not more than eight (8) adults, with or without children, who require transitional housing accommodations made necessary due to conflict or threat of personal harm arising from the person's former living arrangement.

Transportation Terminal. Facilities for the embarkation and departure of surface transit facilities, including but not limited to: bus transit stations, rail transit stations, and ferry terminals. Does not include airports or related services (see "Airport, Aviation Services").

Tree, Deciduous. A tree that drops its foliage annually before becoming dormant.

Tree, Evergreen. A tree with foliage that is not dropped, or that remains green throughout the year.

Tree, Shade. See "Canopy Tree."

Tree, Street. See "Street Tree."

Tree Protection Zone. Area of no disturbance of organic layer or subsurface tree roots as measured from the furthest point of root emergence from ground to a minimum radius equal to one half of trunk diameter at breast height (DBH). See Section 5.2.2 D.

Understory Tree. A tree that has an expected height at maturity of no greater than 30 feet.

Unit. See "Dwelling Unit."

Utilities. See "Infrastructure and Utilities."

Does not include Maintenance Yards (see "Maintenance Yard") or utility offices (see "General Service and Office").

Vegetation, Native. Any indigenous tree, shrub, ground cover or other plant adapted to the soil, climatic, and hydrographic conditions occurring on the site.

Vehicle and Boat Sales and Rental. A retail or wholesale establishment selling and/or renting automobiles, trucks, vans, trailers, motorcycles, boats, and/or scooters with internal combustion engines. May also include repair shops and the sales of parts and accessories incidental to vehicle dealerships. Does not include businesses dealing exclusively in used parts, auto wrecking and/or salvage; the sale of auto parts/accessories separate from a vehicle dealership (see "General Retail"); or service stations (see "Vehicle Services").

Vehicle Services.

1. **Gas Station/Fuel Sales.** Where petroleum products are dispensed for retail sales to automobiles, and may include a canopy, car wash, and/or accessory retail. Does not include the repair or servicing of vehicles (see "Minor Maintenance and Repair").
2. **Minor Maintenance and Repair.** Incidental minor repairs to include replacement of parts and service to passenger cars, but not including any operation defined as "automobile repair, major," or any other operation similar thereto.
3. **Major Maintenance and Repair.** General repair, rebuilding or reconditioning of engines, motor vehicles or trailers; collision service including body or frame, straightening or repair, overall painting, or paint shop.

Vehicle, Wrecked. Any vehicle that has visible exterior damage to the extent that it cannot operate without substantial repair or reconstruction.

Warehousing. Facilities for the storage of furniture, household goods, or other commercial goods of any nature. May include an outdoor storage component, provided that the outdoor storage is not the primary use. Does not include warehouse, storage, or mini-storage facilities offered for rent or lease to the general public (see "Storage Facility: Personal Storage Facility, Indoor); warehouse facilities primarily used for wholesaling and distribution (see "Wholesaling and Distribution"); or terminal facilities for handling freight.

Water/Marine Oriented Facilities. A non-for-profit or for-profit marina for on-water storage, servicing, fueling, berthing, securing, loading and unloading of boats, and other marine related activities including: recreational and charter fishing, boat and watercraft rentals, and marine-related retail (bait and tackle, marine supplies, etc.)

Waterfront Lot. Any lot that is bound on one or more sides by a significant and naturally occurring body of water. This includes rivers, marsh, creeks, and tidal basins. This does not include retention or detention ponds, ditches, or pools.

Waste Transfer and Recycling Facility. A site, location, tract of land, installation, or building that is used for the purpose of transferring solid wastes and recyclables that are generated "off site" in the local community from vehicles or containers into other vehicles or containers for transport to a regional waste collection and recycling facility.

Wholesaling and Distribution. An establishment engaged in selling merchandise to retailers; to contractors, industrial, commercial, institutional, farm, or professional business users; to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Examples of these establishments include: agents, merchandise or commodity brokers, and commission merchants, assemblers, buyers and associations engaged in the cooperative marketing of farm products, merchant wholesalers, stores primarily selling electrical, plumbing, heating and air conditioning supplies and equipment.

Wireless Communications Facility. Public, commercial and private electromagnetic and photoelectric transmission, broadcast, repeater and receiving stations for radio, television, telegraph, telephone, data network, and wireless communications, including commercial earth stations for satellite-based communications. Includes antennas, commercial satellite dish antennas, and equipment buildings. Does not include telephone, telegraph and cable television transmission facilities utilizing hard-wired or direct cable connections.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Scott Sprouse,
Circuit Court Judge

Case No. 2023-000953

West Street Farms, LLC and
Mix Farms, LLC,

Appellants,

v.

City of Beaufort, Beaufort
Inn, LLC, and 303 Associates, LLC,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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