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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
The Honorable J. MARK HAYES, II, Circuit Court Judge

Appellate Case No. 2024-000735

Spartanburg County and Cole Alverson in his Official Capacity
as County Administrator, ...Respondent,

v.

The Spartanburg County Board of Zoning Appeals, and Adam Washington Ballenger Camp #68,
Sons of Confederate Veterans, Inc.,

Of which The Spartanburg County Board of Zoning Appeals is a Respondent and Adam
Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc. is the Appellant.

RECORD ON APPEAL
VOLUME I

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Planning and Development Department

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www.spartanburgcounty.org

February 28, 2023

Adam Washington Ballenger Camp #68 Sons of
Confederate Veterans Inc.
PO Box 26284
Greenville, SC 29616

**Re: Adam W. Ballenger, Memorial Park – 2294 Teaberry Road, Spartanburg
Tax Map Number: 7-01-00-062.01**

Certified Mail Receipt # 91 7199 9991 7035 1834 6423

To Whom It May Concern:

Our letter is to inform you that Spartanburg County's Board of Zoning Appeals met on January 31, 2023 to hear an appeal for your property located at 2294 Teaberry Road, Spartanburg.

Attached are the facts presented in this case and the conclusions reached by the Board of Zoning Appeals. The SC Code of Laws, Section 6-29-820 states that any appeal of a decision by the Board of Zoning Appeals shall be filed in the circuit court within thirty (30) days from the date of this letter. Aggrieved parties may also file appeals.

Please call me at (864) 598-7060 if you have any questions.

Respectfully,

Laurie B. Oakman

Laurie B. Oakman
Planner IV – Zoning Review Team Lead



Spartanburg County

BOARD OF ZONING APPEALS

ORDER ON APPEAL

The Spartanburg County Board of Zoning Appeals (hereafter "Board") held a public hearing on January 31, 2023 to consider the request of Mr. Robert K. Merting on behalf of the Adam W. Ballenger Camp #68, Sons of Confederate Veterans, Inc. (hereafter "Appellant") for an appeal of a decision by Spartanburg County Zoning Administrator concerning the strict application of the Unified Land Management Ordinance (Ordinance) as set forth in the written application submitted by the Appellant(s).

After consideration of the testimony, evidence, and arguments presented orally and in the application, the Board makes the following findings of fact and conclusions of law:

1. The affected property is located at 2294 Teaberry Road, Spartanburg (Tax Map Number: 7-01-00-062.01) as described on said application.
2. On some date prior to October 21, 2022 Appellant developed its property to include the erection of a flagpole and other improvements on the subject site.
3. Appellant did not apply for, nor receive a Minor Land Development permit from Spartanburg County Planning Department.
4. On October 21, 2022, Spartanburg County issued a Notice of Violation to Appellant for developing the site without a required permit.
5. The Application for Appeal was received on November 7, 2022. The notice of this meeting was posted on the bulletin board at the Spartanburg County Administrative Building (and posted on the county website).
6. A quorum of the Board was present for the hearing, including Chairman Jack Gowan, Vice-Chair Angela Geter, Glenda Brady, Thomas Davies, Kaye Fleming, James Langford, Michael Padgett, and Stephen Wunder.
7. The Board concludes that the Notice of Violation was issued in error based on the fact that Appellant obtained an Electrical Permit and that the Unified Land Management Ordinance does not specifically address permits for flagpoles.

THE BOARD, THEREFORE, OVERTURNS the October 21, 2022 Notice of Violation. The motion to overturn was approved 5-3. Brady, Fleming, Gowan, Langford, and Padgett voted to overturn the Notice of Violation, and Davies, Geter, and Wunder voted to uphold the Notice of Violation.



Jack Gowan, Chairman
Spartanburg County Board of Zoning Appeals

February 28, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2023-CP-42-01155
	)	
Spartanburg County and Cole Alverson	)	
in his Official Capacity as County	)	
Administrator,	)	
	)	
Petitioners/Appellants,	)	
	)	
v.	)	ORDER
	)	
The Spartanburg County Board of	)	
Zoning Appeals, and Adam Washington	)	
Ballenger Camp #68, Sons of	)	
Confederate Veterans, Inc.,	)	
	)	
Respondents/Appellees.	)	
	)	

This matter came before the Court on the Petitioners/Appellants ("Appellants") *Petition for Appeal to the Circuit Court from Decision of the Spartanburg County Board of Zoning Appeals* ("Appeal") filed on March 30, 2023. Respondent/Appellee Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc. ("landowner") filed a *Response to Petitioners Petition for Appeal* ("Response") on May 23, 2023.¹ After considering the pleadings and extensive records filed in this matter, as well as the oral arguments of counsel for the parties on November 27, 2023, the Court reverses the decision of the BZA, reinstates the Notice of Violation issued by Spartanburg County Planning and Development Staff, and hereby enters the following findings of fact and conclusions of law.

¹ The Spartanburg County Board of Zoning Appeals ("BZA") did not file a response to the Petition, despite having been properly served with the Petition.

FINDINGS OF FACT

Landowner acquired the property at issue on December 16, 2019, through a quit claim deed. The property is an approximately .87 acre tract of land located at 2294 Teaberry Road, Spartanburg, South Carolina, tax map # 7-01-00-062.01.

On April 22, 2022, the Federal Aviation Administration, pursuant to a request from the landowner, issued a *DETERMINATION OF NO HAZARD TO AIR NAVIGATION* pertaining to a “structure: Flagpole”. The FAA notice was addressed to the landowner. The “structure” referenced in the notice was described as the 120-foot flagpole to be “constructed” on the landowner’s property. The FAA letter was a pre-construction notice to the landowner of the FAA’s safety determination. The term “structure” is repeatedly used in the FAA notice. It expressly advises that the FAA’s pre-construction notice does not relieve compliance to any law, ordinance or regulation of any local government body. Clearance by the FAA for the construction of the 120-foot structure was for the purpose of the safety of air navigation in area. See *Exhibit C* to the landowner’s Response.

On June 3, 2022, G&S Electrical Services, LLC, an electrical contractor, applied for an Electrical Permit at the property. The only description provided on the permit’s application was for the work was “permanent power for decorative lights on pole.” The

electrical permit was issued by the Building Codes Department. See *Exhibit B* to the landowner's Response.²

In the Summer of 2022, a 120-foot tall flagpole was constructed on the property.³

A subsequent inspection of the landowner's property was conducted by the Spartanburg County Planning and Development Department. The inspection revealed that a 120-foot high standalone structure had been erected on the property, that structure being the flagpole at issue in this appeal. It was also determined that no development application was ever made by landowner to the Spartanburg County Planning and Development Department prior to the erection of the 120-foot flagpole on the property, and the landowner never received a permit to develop the property for any use or erect the 120-foot flagpole.

Subsequent to the inspection, on October 21, 2022, the Spartanburg County Planning and Development Department issued a *Notice of Violation* ("NOV") to the landowner. The NOV was issued pursuant to the applicable provisions of the Spartanburg County *Unified Land Management Ordinance* ("ULMO").

Section 1.07 of the ULMO, captioned *Required Permits/Certificates*, states in pertinent part as follows:

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.

² The landowner's construction project was of a scale, that the landowner anticipated, sought and obtained approval from the South Carolina Department of Health and Environmental Control related to storm water issues. DHEC also advised that the operator, Adam W. Ballenger Veterans Memorial Park, remained responsible for additional approval that may be necessary. See Exhibit "D" to Landowner's Response.

³ The Board did not limit development of the land to just the 120-foot flagpole. In paragraph #2 of the Order, the Board found, that the landowner, "developed its property to include the erection of a flagpole and other improvements." See Order on Appeal.

No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

As part of the NOV, staff made a recommendation to solve the violation. The *Corrective Action* to be taken before November 10, 2022 stated as follows: “AN ACCESSORY USE HAS BEEN ESTABLISHED WITHOUT A PRINCIPAL USE. REMOVE FLAGPOLE OR OBTAIN PERMIT FOR PRINCIPAL USE AND LOWER FLAGPOLE TO 30 FEET.”

On November 7, 2022, the landowner submitted its *Application for Appeal* to the Spartanburg County Planning and Development Department. In the landowner’s *Application for Appeal*, the “Project Name” listed was “Adam W. Ballenger, Memorial Park.” No application had ever been sought for a park on the landowner’s property.⁴ Landowner’s appeal was initially scheduled to be heard by the BZA at its scheduled meeting on December 20, 2022. However, on December 13, 2022, the landowner requested a continuance which was granted and the staff notified the landowner of the new meeting date of January 31, 2023. (Tr. 68 lines 14-27).⁵ The BZA considered the landowner’s appeal of the NOV on January 31, 2023.

⁴ Section 3.20 Accessory Buildings and Uses/Non-Residential applies to all accessory structures and all accessory uses. To determine whether all accessory structure is in compliance with 3.20, there is a direct correlation to the physical use of the property. Including compliance with Table 3 UMLO pgs. 10-11. In the present case, there has never been an application for a development permit, for a park or otherwise, for the property (TR, p. 69 lines 15-17).

As reflected in the proposed corrective action plan, the county’s position was not opposed to the landowner having a flagpole on its property as long as the applicable permits for a principal use was obtained and the flagpole was lowered to 30 feet. (Tr. p. 68 lines 7-9).

⁵ As will be discussed herein, a second continuance request to delay the hearing was made by the landowner due to a newly hired replacement being on vacation in Australia. The BZA denied the request for a second continuance.

At the BZA hearing, the landowner argued that it had been told by representatives of the Spartanburg County Building Codes Department that no permit was required to place a flagpole on the property⁶, that they had obtained an electrical permit for lighting the flagpole, and obtained correspondence from the FAA that the flagpole did not pose a hazard to air navigation. A representative of the landowner also testified that the whole flagpole project “is probably about \$100,000.00” (Tr. p. 27, lines 17-18) and that the flags it would fly are 20 by 30 feet (Tr. p. 29, lines 4-5). The landowner’s representative testified the flags only have a lifespan of two-to-three months, and that they have to be ordered ahead of time. (Tr. 29, lines 6-10).

Moreover, the landowner’s represented acknowledged his understanding was that it was not the flag or banner flown, what matters was the flagpole was in compliance with the county’s ordinance (Tr. p. 29, lines 24-25 and up p. 30, lines 1-3).

Spartanburg County Planning Department staff explained that the landowner never inquired to the Planning Department whether or not a permit to erect its flagpole was required. If the landowner had asked, the Planning Department would have told them a permit was required because the use of the property changed. It was explained that the landowner’s inquiries were made to the Building Code employees, the wrong department. The staff further explained that the landowners had been to the Planning Department before when they recorded their plat. (Tr. p. 79, lines 5-25, and p. 80, lines 1-7).⁷.

⁶ The landowner’s email was from the “building” official. The email was not from the County Planning and Development department which regulates ULMO compliance (Tr. p.35 lines 12-21).

⁷ Nowhere in the record before the BZA is there any indication that the landowner’s representatives ever revealed prior to construction to any County employee that the height of the flagpole to be erected would be 120-feet high.

After considering the landowner's appeal of the NOV, the BZA voted (5 to 3) to overturn the staff's October 21, 2022 NOV. In its *Order on Appeal*, the BZA concluded that the NOV was issued in error based on (1) the fact that landowner obtained an electrical permit, and (2) that the ULMO does not address permits for flagpoles.⁸ This Appeal followed.

CONCLUSIONS OF LAW

This Court has subject matter jurisdiction over appeals from a decision of the BZA based on S.C. Code Ann. § 6-29-820(A) contained within the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (S.C. Code Ann. § 6-29-310, et seq.). This section provides a right to appeal from the decisions of the BZA for any party who may have a substantial interest in any decision of the BZA. Appellants are parties in interest because they seek the orderly development of property and the enforcement of zoning ordinances within the unincorporated portions of Spartanburg County, and by virtue of the applicable provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

Because Spartanburg County enacted its planning and zoning ordinances in question pursuant to the enabling statutes, the scope of review is governed by statute.

In the landowner's question to a county employee, the height of the pole to be constructed is omitted. See Landowner's Exhibit A.

⁸ S.C. Code Section 6-29-840 governs appeals from the BZA. In compliance with S.C. Code Section 6-29-830, the transcript of the hearing and the Board's written decision were presented. The Board articulated two reasons why they reversed the NOV. The two findings that formed the bases for overturning the NOV were; (1) the landowner obtained an electrical permit, and (2) that the ULMO does not address permits for flagpoles. Similarly, to the jury's verdict issued through a special interrogatory, this Court does not have to speculate or guess as to the bases of the Board's decision.

See S.C. Code Sections 6-29-310 to 1200. Accordingly, as stated in Section 840 “the finding of fact by a board of appeals shall be treated in the same manner as a finding of fact by a jury.”⁹ *McCrowey v. Zoning Bd. Of Adjustment*, 360 S.C. 301, 599 S.E. 2d 617 (Ct. App. 2004).

Even though courts do not substitute its own judgment for that of the reviewing body, findings of the Board will be disturbed when the Board has acted arbitrarily, capricious, has no reasonable relationship to a lawful purpose, or in an obvious abuse of discretion. “An abuse of discretion occurs when [a decision] is based upon an error of law or, when based upon factual conclusions, is without evidentiary support.” *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). “To the extent the Board’s decision is unsupported by the evidence or is clearly erroneous, its decision is not fairly debatable but is instead arbitrary and an abuse of discretion.” *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (S.C. App. 1994), and *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E. 2d 892 (Ct. App. 2000), and *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E. 2d 161 (2013).

“All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Eagle Container Co.*,

⁹ When a zoning board serves as a fact finder in reviewing a NOV issued by staff, the Board takes on a role of a fact finder similar to a trial jury. In every trial conducted before a jury, the jury is explained the interplay of the facts and the law. The only law that may be considered is the law presented to them. The law must be accepted and followed even if a juror disagrees with the law. The Board’s charge does not include changing the law. As each member of a jury is instructed, if a board member has an idea of what the law ought to be and that idea does not agree with what the law is, that idea must be abandoned in favor of what the law actually is. To do otherwise is an abuse of discretion and is an error of law. Additionally, as every juror in a trial is instructed, the decisions a board reaches cannot be based on sympathy, passion, prejudice, bias or emotions. To do so, is an abuse of discretion and is an error of law. (See, Circuit Court Jury Instructions Manual).

LLC v. County of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 895 (2008). The rules of statutory construction apply to Board. A local board must be guided by standards which are specific in order to prevent ordinances being invalid and arbitrary. *Restaurant Row Assocs.v. Horry County*, 335 S.C. 209, 516 S.E. 2d 442 (1999).

The Court hereby finds the BZA's determination that the NOV was issued in error was without legal evidence to support it, was based on errors of law, and that the BZA acted arbitrarily and abused its discretion in overturning the NOV. Thus, as a matter of law, the decision is reversed. The Court bases this determination on the applicable provisions of the ULMO and the BZA's conclusions in its *Order on Appeal*. Pursuant to Article IV, Section 7 of the *Spartanburg County Land Management Board of Appeals Rules of Procedure* captioned Form of Decision, "[F]indings of fact and conclusions of law shall be separately stated in the decision." This is consistent with the provisions of SC Code Ann. §6-29-830 which requires the Board to file a copy of its "findings of fact and conclusions" in response to an appeal. Paragraph 7 of the BZA's *Order on Appeal* in this matter states: "The Board concludes that the Notice of Violation was issued in error based on the fact that (1) Appellant obtained an Electrical Permit and, (2) that the Unified Land Management Ordinance does not specifically address permits for flagpoles." These two grounds are the extent of the Board's "conclusions" as it relates to the appeal.

The fact that the Property Owner obtained an electrical permit has no bearing on the validity of the Notice of Violation (NOV) issued by the Spartanburg County Planning and Development Department. The electrical permit was obtained from the Spartanburg County Building Codes Department, which is separate and distinct from the Spartanburg County Planning and Development Department. There exists no reasonable relationship

of the electrical permit obtained by the landowners to the landowners' non-compliance with Section 1.07 of the ULMO. It's illogical and arbitrary to find in this case, that obtaining the electrical permit can excuse non-compliance with the applicable and appropriate licenses, certificates, and permits compliance of Section 1.07. This finding, without justification, shifts zoning regulation and compliance to a separate section of county government. This decision is also capricious.

Finding that the electrical permit obtained by the landowner's excuses Section 1.07 compliance materially and substantially effects the underlying purpose of Section 1.07 compliance, therefore, this conclusion, while factually true, is arbitrary, and is an abuse of discretion as a basis for overturning the staff's NOV. The staff's NOV decision was correct.

Moreover, the fact that flagpoles are not specifically referenced in the ULMO, as a matter of law, is erroneous, under facts of the present case, as a basis to overturn the staff's NOV decision. The ULMO does not and cannot expressly denote everything that requires permitting by the Spartanburg County Planning and Development Department. The ULMO can, and does, if not expressly, implicitly encompass the landowner's development of the property with the erection of the 120-foot flagpole. A plain reading of sections of the ULMO offered by staff clearly shows that a permit is required before a structure, such as a 120-foot high flagpole, can be constructed and erected on real property in the covered portions of Spartanburg County. Notably, Section 1.13 of the ULMO states: "No building, other structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part, to any other use, until a Development permit, certifying compliance with this Ordinance has been issued by the Planning

Department staff, other than for such uses specifically exempted by this Ordinance or meet the following conditions: Continued identical use(s) of any building or land in existence and occupied on the effective date of this ordinance.” The record establishes that the landowner never obtained a permit for the development of the property, despite the fact that it was clearly converted, at least in part, to some use other than vacant land.¹⁰

The BZA was tasked with determining if the NOV was issued erroneously pursuant to Section 1.07 of the ULMO. The Court finds, as a matter of law, the NOV was not erroneously issued. The 120-foot flagpole in this case is a structure, as a matter of law, for purposes of the ULMO. This decision is based on a clear reading of the ULMO and a common sense application of the language used therein, as well as a common sense application of the evidence presented by the landowner. In reviewing the documents presented to the BZA, it is clear that the landowner knew a 120-foot tall flagpole was a structure, and knew its \$100,000.00 construction project was an alteration to the property’s use as a vacant piece of land. It is disingenuous to contend otherwise and disingenuous to assert that this 120-foot flagpole construction project is similar to a more traditional flagpole. When the landowner made an application to the FAA for air navigation clearance to describe what it wished to be reviewed, and the 120-foot flagpole was listed as a “structure.” The flagpole is repeatedly referenced as a “structure” in the FAA documents before the BZA. Furthermore, Article 6 of the ULMO, captioned *Definitions*, addresses the word “structure” “[a]s defined by the Standard Building Code.” The Standard Building Code defines structure as “that which is built or constructed.” Any

¹⁰ Logically, since the term flagpole is not referenced in the ULMO, it cannot be exempted and thus a development permit was required.

object which costs approximately \$100,000.00 to erect and for which the landowner sought FAA approval for air traffic safety is a structure for FAA purposes and for ULMO purposes. As such, it was incumbent upon the landowner to seek and obtain a permit from the Spartanburg County Planning and Development Department prior to developing the property and erecting the massive flagpole thereon. Because the landowner did not avail itself of this clearly established permitting process, the NOV was proper and should have been upheld by the BZA.

A plain reading of the zoning ordinance demonstrates that the Board's decision reversing the staff's decision to issue NOV was erroneous, as a matter of law. Moreover, the Board's decision would limit staff to issue NOV's for "structures" that are only "expressly" listed. This is a clear abuse of discretion by the Board and a clear reason why the decision is an error of law. The Board's decision to reverse the staff's NOV based on the fact that "flagpole" is not expressly listed in LMO is erroneous, as a matter of law, under the facts of the present case, because the staff can no longer consider \$100,000 construction projects of structures of a height of 120-feet under its jurisdictional enforcement powers contained in the ULMO. This Board's decision is erroneous as a matter of law.

The landowner also raised a procedural be issued. At the beginning of the BZA hearing, counsel for the landowner requested for a second continuance of its appeal of the NOV (the landowner's first continuance request had previously been granted with the consent of staff). Therefore, this Court looked for procedural defects in the record and found none. The landowner's second continuance request, based on retaining

new/substitute counsel, was duly considered by the BZA, and was denied.¹¹ Based on the record before this Court, the landowner received proper notice of the hearing. Furthermore, the landowner's former lawyer was sworn in and allowed to give extensive testimony to the BZA at the hearing. Therefore, the Court finds no abuse of discretion by the BZA in denying the continuance request.

The originally scheduled hearing before this Court was also continued, by consent, based on a request by the landowner's attorney due to his work schedule. Nevertheless, only a few hours before the rescheduled hearing was to take place, the Court received an eighteen-page brief from the landowner's counsel setting forth arguments not previously raised in the Landowner's Response. The continuance request and this Court's agreement to continue the originally scheduled hearing was not based on a request or need to file additional arguments. This appeal was filed on March 30, 2023. The landowner responded in May by filing a response detailing its position. The landowner responded to appeal asserting the following positions: First Defense – General Denial, Second Defense – Failure to State a Claim, Third Defense – Decision Supported by Some Evidence, Fourth Defense – No New Evidence Allowed, Fifth Defense – Strict Construction, Sixth Defense – Violation of Procedural Due Process, and Seventh Defense – Laches.

Notwithstanding, the twelve-page brief raised issues not previously asserted in the landowner's original response. A review of the record indicates, the new issues were not

¹¹ The discussion and consideration of the continuance request consists of twelve (12) pages in the record (Tr. p. 5, line 4 to p. 17, line 16). This discussion was substantial. A reasonable conclusion is that the date of the hearing was known at the time newly retained counsel was hired and it was known that retained counsel was on a trip to Australia when he was hired.

considered by the Board (no reference to the issues are contained in the Board's decisions) and the Board was instructed by the landowner to disregard the issues. The landowner's attorney stated at the Board that those (free speech) issues were not "why we're here today". We're here as to whether or not 1.07 was violated. (Tr. p. 85, lines 20-23). (Also, see Tr. p. 45, lines 11-15). Additionally, after being questioned about his beautiful banners, the landowner's witness acknowledged they understood that what mattered was whether the flagpole was in compliance with the County's ordinances (Tr. p. 29 lines 24-25 and Tr. p. 30 lines 1-3). With the declaration to the BZA that the free speech issues were not being presented for consideration, it would be improper for this Court to consider those issues as part of this appeal. See *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013) (stating an issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review). See also *Shelton v. Bressant*, 312 S.C. 183, 439 S.E.2d 833 (1993) (stating acts of an attorney are directly attributable to and binding upon the client. The BZA decision has no reference to any free speech issues. Thus, acting in this Court's capacity as an appellate court, the new issues attempting to be raised are improper for this Court to consider. The logical and reasonable conclusion is that BZA did exactly what the landowner requested.

Based on the reasons set forth above, the Court finds that the BZA's bases for its ruling were arbitrary, unreasonable, and erroneous as a matter of law, and the Court therefore finds that the BZA abused its discretion in overturning the NOV. The staff's NOV was properly issued.

Therefore, the Appellants' appeal is hereby granted, and the staff's NOV issued against the landowner is hereby reinstated in its entirety.

IT IS SO ORDERED.

J. Mark Hayes, II, Presiding Judge
Judge's Electronic Signature Page to Follow



Spartanburg Common Pleas

Case Caption: Spartanburg County , plaintiff, et al VS The Spartanburg County Board Of Zoning Appeals , defendant, et al
Case Number: 2023CP4201155
Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2024-02-20 12:44:29 page 15 of 15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2023-CP-42-01155
	)	
Spartanburg County and Cole Alverson	)	
in his Official Capacity as County	)	
Administrator,	)	
	)	
Petitioners/Appellants,	)	
	)	
v.	)	ORDER
	)	
The Spartanburg County Board of	)	
Zoning Appeals, and Adam Washington	)	
Ballenger Camp #68, Sons of	)	
Confederate Veterans, Inc.,	)	
	)	
Respondents/Appellees.	)	
	)	

This matter came before the Court on Respondent Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.’s (“Respondent”) *Motion to Alter or Amend This Court’s February 20, 2024 Formal Order* (“Motion”) filed on March 1, 2024. Petitioners/Appellants filed a *Memorandum in Opposition to Respondent’s Motion to Alter or Amend* on March 25, 2024.

The Motion stated that Respondent was moving “under Rules 54, 59, including subpart (e), 60, and all other applicable Rules of the South Carolina Rules of Civil Procedure, to alter or amend the judgment entered February 20, 2024.” Because the standards for this Court’s consideration differ between the Rules of Civil Procedure cited by the Respondent, at the outset of the hearing the Court asked Respondent’s counsel to clarify which Rule the Respondent was proceeding under, and counsel for the Respondent stated that Respondent was moving solely under Rule 59(e).

After considering the Motion, the Memorandum in Opposition, this Court's prior Order, the pleadings and extensive records filed in this matter, as well as the oral arguments of counsel for the parties at the hearing on the Motion, the Court denies the Motion. The Court finds that Respondent has not shown any errors in the Findings of Fact and Conclusions of Law contained in the February 20, 2024 Order. Instead, Respondent merely express dissatisfaction with the Court's prior ruling, which is an insufficient ground for relief under Rule 59(e), SCRCP.

Rule 59(e), SCRCP, allows a court to alter or amend a judgment upon a party's timely motion. Under South Carolina law, a motion to reconsider is appropriate in two basic situations. First, "[a] party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, "[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* A party's dissatisfaction with the outcome of the underlying litigation is not grounds for relief under Rule 59. *Id.*

Respondent's Motion does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon in issuing its ruling on the merits. Rather, Respondent's Motion illustrates that this is nothing more than a situation where the Respondent is unhappy with the Court's ruling. Because Respondent's dissatisfaction with the ruling in this matter is not grounds for relief under Rule 59, the Motion must be, and is, denied.

IT IS SO ORDERED.

J. Mark Hayes, II, Presiding Judge
Judge's Electronic Signature Page to Follow



Spartanburg Common Pleas

Case Caption: Spartanburg County , plaintiff, et al VS The Spartanburg County Board Of Zoning Appeals , defendant, et al
Case Number: 2023CP4201155
Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2024-04-25 11:46:31 page 4 of 4



**Spartanburg County
Planning & Development Department**

366 N. Church St., Suite 700, Spartanburg SC 29303 Phone: (864) 596-3570 Fax: (864) 596-3018

Application for Appeal

Project Name: Adam W. Ballenger, Memorial Park Date Applied: Determination Delivered 10/26/22

Project Location & Directions: 2294 Teaberry Rd., Spartanburg, SC 29303

Tax Map #: 7-01-00-062.01 Subdivision: NA Lot #: NA

Information for Owner, Contact Person or Applicant (Person to be Notified of Meeting):

Name: Robert K. Merting, Attorney for Adam W. Ballenger Camp 68, SCV, Inc.

Address: P.O. Box 26284
Greenville, SC 29616

Phone: (843) 830-5227

Signature(s): _____
(Please note: We will only accept original signatures – no faxed copies. All property owners listed on the deed must sign this application)

☐ **Board of Zoning Appeals** ☐ **Planning Commission**

Ordinance Being Appealed: ULMO Section 1.07 and all Ordinances cited for support of EEZONEVIOL-1022-0339

Reason for appeal, with specific reference to action being appealed: See Attached

Section of the ordinance that is being appealed: ULMO 1.07 and all others cited

Is the tract or parcel of land restricted by any recorded covenant that is contrary to, conflicts with or prohibits the proposed activity? ___ Yes X No

I hereby certify and agree that all the information provided in this application is true and correct. I understand that falsifying any information on this application will result in the automatic denial of this application and nullification of any action applied herein

Robert K. Merting 11/17/22
Applicant's Signature Date

For Staff Use Only:	
Appeal Date: _____	Staff Decision Reversed?: ☐ YES ☐ NO

*Received
11/17/2022
JFH*

Spartanburg County Planning & Development Department

Acting Agent Authorization Form

If you are the acting agent for the property owner, we need written documentation granting you the authority to do so. Please have the Property Owner fill out the following form.

Date: November 3, 2022

I, Brian Motts, Commander, Ballenger # 68, am the owner of property in Spartanburg County,
located at address 2294 Teaberry Rd., Spartanburg, SC 29303
and having Tax Map # 7-01-00-062.01.

I hereby authorize:

Robert K. Merting, Attorney for Owner,
(Relationship)
_____, _____,
(Relationship)
_____, _____,
(Relationship)
_____, _____,
(Relationship)

to act as my agent for the subdivision, permitting, and/or development of the above mentioned property.

Brian Motts
(Property Owner Signature)

Brian Motts
(Printed Name and Telephone Number)

Tony McElroy
Witness

Wesley Atwood
Witness



Spartanburg County Planning and Development

366 N Church St, Suite 700

Spartanburg, SC 29303

Notice of Violation (EEZONEVIOL-1022-0339)

ADAM WASHINGTON BALLENGER CAMP # 68 SONS OF CONFEDERATE VETERANS INC
PO BOX 26284
GREENVILLE, SC 29616

Dear Property Owner,

An inspection has been made of your property location on parcel 7-01-00-062.01 We find that there exists on this property violations of County Regulations and/or Requirements. Those requirements are as follows:

Violation: ULMO Section 1.07: Required Permits/Certificates - REQUIRED PERMITS/CERTIFICATES

Description: No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.
No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

Corrective Action: AN ACCESSORY USE HAS BEEN ESTABLISHED WITHOUT A PRINCIPAL USE. REMOVE FLAG POLE OR OBTAIN PERMIT FOR PRINCIPAL USE AND LOWER FLAG POLE TO 30 FEET.

Compliance Date: 11/10/2022

Sincerely,

Jay Ford
Zoning Inspector
864-596-3570

Site Location: 2294 TEABERRY RD, SPARTANBURG, SC 29303

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Adam Washington Ballenger Camp #68,
Sons of Confederate Veterans, Inc.,
Plaintiff

v.

Spartanburg County, and
John Does, one or more unknown persons

Defendants.

IN THE BOARD OF ZONING APPEALS

CASE NO: _____

APPEAL OF NOTICE OF VIOALTION

NOW COMES the Plaintiff, by its undersigned attorneys, who would show unto the Court:

NATURE OF THE ACTION

1. Plaintiff seeks to declare the status of its Property in Spartanburg County including any grandfathered status as a non-conforming property, to estopp Spartanburg County from asserting that any further permits are needed for the work completed upon its Property, to seek damages for a civil conspiracy by John Doe and Spartanburg County to prevent Plaintiff from using its property, and to find that the Spartanburg County Zoning ordinance, as applied to Plaintiff's Property, is against the South Carolina Constitution.

JURISDICTION

2. The Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc. (Camp) is a non-profit, historical honor society which functions in Spartanburg County.

3. Camp owns real property at 2294 Teaberry Rd., Spartanburg, SC in the unincorporated area of Spartanburg County.
4. Defendants are Spartanburg County, its Officers, and John Doe, one or more unknown persons, administering the Building and Planning Departments.
5. The real property in question is located in and all actions alleged occurred in Spartanburg County.
6. The Common Pleas Court of Spartanburg County has jurisdiction over all torts, SC Constitution violations, and claims under equitably estoppel occurring in Spartanburg County.
7. To Camp's knowledge, South Carolina courts have not ruled on the declaratory issues that this action raises.
8. This Court possesses jurisdiction under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act, for the declaratory actions.
9. Venue is proper in Spartanburg County, where Defendants' actions have damaged Plaintiffs.

FACTS

10. Camp is the owner of real property located at 2294 Teaberry Road, Spartanburg, SC 29303 (the "Property").
11. Camp acquired this property from Chuck Berry whose residence and guest house are next door.
12. At the time of acquisition the Property was identified as "improved" by the Spartanburg County Tax Assessor.

13. The Property is located at the end of a seldom traveled state road and abuts the heavily used Interstate 85 (I-85).
14. Camp desired to exercise its right to free speech by placing a large flagpole upon the Property that would be visible by passersby on I-85.
15. At this location I-85 is used by approximately 80,400 cars a day. SCDOT, Average Daily Traffic for Spartanburg County, 2021, P. 19.
16. Teaberry Road is used by near zero cars a day.
17. Before acquiring the property, Camp, through its agents, enquired with Spartanburg County Officials about building permits necessary for this project and was informed none were required.
18. After acquisition of the property, but before starting upon the flagpole project, Camp again enquired with Spartanburg County Officials about what permits were needed to place a flagpole upon the property. Again Camp was told no permits were required and Camp, through its agent, did get such statement in writing. (Exhibit A.)
19. Prior to placing the flag pole upon the property, Camp enquired again with Spartanburg County Officials about what permits were required for the project and was again placing a flagpole required no permit.
20. Camp, through its agents, enquired with Spartanburg County no less than three times for permits to place a flag pole upon the Property.
21. At each enquiry Camp was informed that no permit was required to place a flagpole upon its property.
22. Camp, desiring to light its flagpole, enquired for the permits necessary to complete the flagpole project including establishing an electrical account.

23. Camp agents went to the Spartanburg County administrative building, went to the “Building /Planning” Department, and enquired in person for permits to complete the flag pole project.
24. The Spartanburg County “Building/Planning” Department is co-located and all customer service windows open into the same room.
25. After not being helped by the Spartanburg County employee at one of the service windows, Camp agents requested to meet with and did meet with an Officer in charge of the department.
26. Camp agents met with Spartanburg County Officials, thoroughly described all elements of the flagpole project and again asked for what permits needed to be issued.
27. After detailed discussions, Spartanburg County Officials identified a building permit for the electrical work as the only permit needed for the flagpole project.
28. Said permit, pursuant to S.C. Code Ann. § 62-9-950, could not legally issue unless the flagpole project was allowed under planning ordinances and approved by the zoning administrator. *Id.* (“It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator.”).
29. Spartanburg County Officials issued the electrical permit as the only required permit for the flagpole project.
30. Camp did rely upon the assertion that all required permits had been issued before beginning and completing the flagpole project.
31. Camp did comply with all issued permits.

32. Spartanburg County officials did inspect the Property and approve the work done pursuant to the issued permit.
33. At the time of inspection, Spartanburg County officials could clearly ascertain the condition of the property and the existence of any prior improvements or uses.
34. Spartanburg County Officials did not raise any issue that the permits issued and work completed would allow an accessory use without a principal use.
35. Spartanburg County Officials did not identify any additional permits that were necessary to authorize the flagpole project.
36. Upon information and belief, sometime after placing the flagpole and before September 27, 2022 John Doe did alert Spartanburg County to Camp's intent to erect a Confederate Naval Jack upon the flag pole.
37. The Spartanburg County 1999 ULMO defines a "private park" and a "public park."
38. The ULMO identifies permits necessary for a "public park" but does not identify any permits necessary for a "private park."
39. The Performance Zoning Ordinance defines a "Natural Reserves" as a principal use which "include passive parks with minimum equipment." No permits are identified for "Natural Reserves."
40. The Property is identified by the Spartanburg County Assessor's Office as "semi-improved."
41. "'Vacant land' means any parcel or combination of parcels of real property without industrial, commercial, and residential buildings." SC Code Ann. § 31-7-30 (11).
42. A flagpole is not a building and is not capable of being occupied.
43. The property is vacant even after placement of the flagpole.

COUNT I

Declaratory Judgment: Minor Improvement on Vacant Land Does Not Change the Use of Said Land

44. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
45. The SC Legislature defines “vacant land” in S.C. Code Ann. § 31-7-30 (11).
46. “Vacant land” excludes “industrial, commercial, and residential buildings” but other improvements thereon do not exclude land from meeting the definition of vacant.
47. “Vacant” land commonly contains minor or minimal improvements such as gate posts and gates, fence posts and fencing, signs, deer stands, feeders, property corners, security cameras, landscaping, wells, lighting, roads, parking, etc.
48. The Property was described as “improved” by the Spartanburg County Tax Assessor prior to Camp’s acquisition.
49. Said classification should follow the land to the new owner.
50. The Spartanburg County Tax Assessor, without consulting Camp, changed the description of the property to Semi-Improved.
51. Semi-Improved, vacant land bears some improvements.
52. A flagpole is a minor improvement suitable for vacant or semi-improved land.
53. A flagpole is not capable of being occupied and is not a building.
54. Spartanburg County Officials did consider the placement of a flagpole and lighting upon this property and did not identify such as changing the use of the property.
55. The property, with flagpole and light, still meets the definition of vacant land.

COUNT II

Declaratory Judgment: Camp’s Flag Project is a Grandfathered Non-conforming Use

56. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.

57. Camp, after acquiring all permits identified by Spartanburg County, and in compliance with said permits, did place the flagpole upon the property in July of 2022.
58. Camp did place the South Carolina flag and the Confederate Naval Jack upon the pole prior to September 27, 2022.
59. September 27, 2022 is the nonconforming date for the display of flags on flagpoles that do not meet the Spartanburg County Performance Zoning Ordinance requirements. *Id.* § 8.3.08.
60. The flying of either the South Carolina State Flag or the Confederate Naval Jack are allowable nonconforming uses under the Spartanburg County Performance Zoning Ordinance.

COUNT III

Equitable Estoppel and Detrimental Reliance: Spartanburg County Issued a Building Permit for the Flag Project and is Now Estopped From Alleging Prior or Other Permits Were Needed

61. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
62. Camp did not know what permits were needed for its project, and therefore enquired with Spartanburg County Officials for the same.
63. Camp, after thoroughly reviewing the ULMO, was incapable of knowing that a private park or a de minimis improvement on vacant lands required any planning permits.
64. Camp acquired all identified permits, complied with the same, and completed its project based upon the issuance and compliance with such permits.
65. Spartanburg County issued a building permit to Camp for the flagpole project.
66. Issuance of the building permit is prima facie evidence under S.C. Code Ann. § 6-29-950 that the land use was approved by Spartanburg County.
67. Camp rightfully relied upon the issuance of a permit for its project by Spartanburg

County.

68. Camp spent significant resources completing the flagpole project, and said resources are not now recoverable.
69. Camp, had Spartanburg County Officials identified additional permits, would have acquired such permits and completed such work as part of the flagpole project.
70. Due to Spartanburg County Officials failure to identify required permits and issuing a building permit, Camp has invested in and completed is flagpole project to its detriment.

COUNT IV

Civil Conspiracy: John Doe alerted Spartanburg County to the Flag Project Prior to the Nonconforming Date Expiring and the County, in conjunction with John Doe, Delayed Action to Purposefully Prevent the Camp from Meeting the Nonconforming Date.

71. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
72. Spartanburg County Officials were contacted by one or more persons who did not want a Confederate Flag flying upon I-85.
73. One or more Spartanburg County Officials also did not want a Confederate Flag flying upon I-85.
74. Said persons worked together with a purpose to prevent Camp from using its flagpole and Property on I-85.
75. Said persons allowed Camp to expend significant funds and energy on the flagpole project knowing that Spartanburg County would assert an additional permit was necessary.
76. Spartanburg County waited to assert that an additional permit was necessary until after the expiration of the nonconformity period in the Performance Zoning Ordinance.
77. By waiting, Camp was specially damaged by being denied the opportunity to cure the

defect of additional permits while preserving its investment in the flagpole project.

COUNT V

As Applied S.C. Constitution Violation: The Spartanburg County Performance Zoning Ordinance as applied to Camp violates Camp's Right to Free Speech under S.C. Constitution, Art. I, § 2.

78. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
79. Article I, Section 2 of the South Carolina Constitution protects the pre-existing right to free speech.
80. Camp did exercise their right to free speech by raising a flag pole and flag visible to approximately 80,400 cars a day passing by on I-85, and, being generous, approximately ten cars a day on Teaberry Road.
81. The flying of a flag is pure speech.
82. 99.99% of Camp's speech occurs to passersby on I-85.
83. The Spartanburg County Performance Zoning Ordinance would restrict Camp's flagpole to a height of 30 foot.
84. Due to the lay of the land and the proliferation of trees and other brush on the I-85 right of way, a 30 foot flag pole and allowed flag would not be visible to passersby on I-85.
85. Spartanburg County recognizes that "existing vegetation along the Interstate frontage may provide much" screening preventing the view of items placed beyond the existing vegetation. Spartanburg County Performance Zoning Ordinance P. 147.
86. The requirements of the Spartanburg County Zoning Ordinance for flag poles, as applied to the Property, reduces the effectiveness or reach of Camp's free speech by 99.99%.
87. Such reduction is the palpable prohibition of Camp's free speech and is patently unconstitutional under the S.C. Constitution.

COUNT VI

As Applied S.C. Constitution Violation: The Spartanburg County Unified Land Management Ordinance as applied to Camp violates Camp's Right to Free Speech under S.C. Constitution, Art. I, § 2.

88. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
89. The flying of a flag is pure speech: the core of the Art. I, § 2 right protected under the S.C. Constitution.
90. Spartanburg County does not require a permit for the placement of a flagpole nor the flying of a flag.
91. Camp has chosen to place a flagpole and fly a flag on unoccupied Property which it owns in Spartanburg County.
92. Camp has complied with all building codes and permits.
93. Camp has posted the property against trespass and does not invite the public to the property.
94. Camp has not erected any occupiable structures on the Property.
95. The restrictions which Spartanburg County would place upon Camp's free speech in the form of a land use permit do not serve a significant government interest.
96. The building codes and permits issued are sufficient to satisfy the government's interest in the safety of the structure and its suitability for the purpose.
97. Spartanburg County does not require a land use permit for the placement of a flagpole on any other type of land use.
98. The 1999 ULMO, as applied by Spartanburg County to Camp, violates the free speech right of Camp by requiring a land use permit and unnecessary development costs for the pure speech use of the Camp on unoccupied land.
99. A land development plan, landscaping, buffer yards, parking, and other such

requirements for a land use permit are unjustifiable costs which Spartanburg County would impose upon Camp for the solely pure speech activity on Camp's unoccupied lands.

100. Such requirements serve no significant purpose on vacant lands and only restrict the rights of Camp and increase Camp's cost to exercise its right to free speech upon its private property.

WHEREFORE, Plaintiff respectfully prays this Court to:

- a. Declare that the placing of a flagpole on Camp's Property does not change the use of said property and therefore does not require a use permit.,
- b. Declare that Camp acquired all permits identified and required by Spartanburg County, complied with the same, and placed its flagpole before the nonconforming date in the Spartanburg County Performance Zoning Ordinance,
- c. Grant temporary and permanent injunctions prohibiting Spartanburg County from enforcing any zoning or building ordinance against the Property as currently situated,
- d. Find that Spartanburg County is equitably estopped from asserting that any additional permits are necessary for the work completed on the Property,
- e. Find that Spartanburg County and John Doe(s) worked together to injure Camp and award Camp damages, treble damages or punitive damages, costs, and attorney fees as allowed,
- f. Find that the Performance Zoning Ordinance flag pole requirements, as applied to Camp's Property, are unconstitutional under the S.C. Constitution,
- g. Award Plaintiff its costs and attorney fees pursuant to S.C. Code Ann. § 15-53-100, and § 15-77-300 ff,
- h. And provide for such other relief as it deems just and proper.

Respectfully submitted,


/s/ Robert K. Merting

Robert Karl Merting (SC Bar No. 100181)

R.K. Merting, Attorney at Law
P.O. Box 26284
Greenville, SC 29616
Telephone: (843) 830-5227
robert@rkmerting.com

Attorney for the Plaintiff

November 7, 2022
Spartanburg County, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2023-CP-42-
	)	
Spartanburg County and Cole Alverson	)	
in his Official Capacity as County	)	
Administrator,	)	
	)	
Petitioner/Appellant,	)	PETITION FOR APPEAL TO THE
	)	CIRCUIT COURT FROM DECISION
v.	)	OF THE SPARTANBURG COUNTY
	)	BOARD OF ZONING APPEALS
The Spartanburg County Board of	)	
Zoning Appeals, and Adam Washington	)	
Ballenger Camp #68, Sons of	)	
Confederate Veterans, Inc.,	)	
	)	
Respondents.	)	
	)	

Spartanburg County and Cole Alverson in his Official Capacity as County Administrator ("Petitioner"), by and through its undersigned counsel, pursuant to S.C. Code Ann. § 6-29-820 (A) (1976, as amended), hereby appeals the decision of the Spartanburg County Board of Zoning Appeals ("Board"), granting the *Appeal of Notice of Violation* of the Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc. ("Property Owner"). A hearing on the Property Owner's appeal was heard by the Board on January 31, 2023. A copy of the transcript from that hearing is attached hereto as Exhibit "A". The *Order on Appeal* issued by the Board on February 28, 2023 is attached hereto as Exhibit "B".

In support of this appeal, Petitioner states as follows:

PROCEDURAL HISTORY

1. On December 13, 2019, a plat entitled Survey for William C. Berry was submitted to the Spartanburg County Planning and Development Department dividing property on Teaberry Road in Spartanburg County.
2. On December 16, 2019, a quitclaim deed was recorded transferring that same property to the Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.
3. On June 3, 2022, Mr. James Garrett of G&S Electrical Services, LLC applied for an Electrical Permit at the property, providing a work description as "permanent power for decorative lights on pole." A copy of the referenced Electrical Permit Application and Permit are attached hereto collectively as Exhibit "C".
4. At some point in time, Property Owner allowed a 120 foot flagpole to be constructed on the property. No development application was ever made by the Property Owner to the Spartanburg County Planning and Development Department prior to the erection of the flagpole on the property, and the Property Owner never received a permit to develop the property or erect the flagpole on the property.
5. On October 21, 2022, the Spartanburg County Planning and Development Department issued a *Notice of Violation* to the Property Owner. A copy of that violation notice is attached hereto as Exhibit "D".
6. On November 7, 2022, Property Owner submitted its *Application for Appeal* to the Spartanburg County Planning and Development Department, a copy of

which is attached hereto as Exhibit "E". The "Project Name" listed on the Application for Appeal is "Adam W. Ballenger, Memorial Park."

7. The Property Owner's appeal was scheduled to be heard by the Board at its scheduled meeting on December 20, 2022. However, on December 13, 2022, the Property Owner requested a continuance which was granted.

8. Therefore, the Board considered the Property Owner's appeal of the violation notice on January 31, 2023. Attached hereto as Exhibit "F" is a copy of the *Staff Report* of the Spartanburg County Planning and Development Department for use by the Board at the January 31, 2023 hearing.

9. After considering the Property Owner's appeal of the violation notice, the Board voted 5-3 to overturn the October 21, 2022 Notice of Violation.

JURISDICTION

10. S.C. Code Ann. § 6-29-820(A), contained within the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, provides a right to appeal from the decisions of a board of zoning appeals for any party who may have a substantial interest in any decision of the board of appeals.

11. Petitioner is a party in interest because it seeks the orderly development of property and the enforcement of zoning ordinances within the unincorporated portions of Spartanburg County, and by virtue of the applicable provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, including S.C. Code Ann. § 6-29-950.

12. This court has subject matter jurisdiction over appeals from a decision of the Board.

13. This court has personal jurisdiction over the parties due to their location, property ownership, or activities in Spartanburg County.

STANDARD OF REVIEW

14. Findings of the Board may be disturbed when the Board has acted arbitrarily or in an obvious abuse of discretion. "An abuse of discretion occurs when [a decision] is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). "To the extent the Board's decision is unsupported by the evidence or is clearly erroneous, its decision is not fairly debatable but is instead arbitrary and an abuse of discretion." *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (S.C. App. 1994).

ARGUMENT

15. The violation notice was issued to the Property Owner pursuant to the applicable provisions of the Spartanburg County *Unified Land Management Ordinance* ("ULMO"). Section 1.07 of the ULMO, captioned *Required Permits/Certificates*, states in pertinent part as follows:

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.

No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

16. A “zoning ordinance” [should be construed] to give it a ‘practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.’” *Vulcan Materials Co. v. City of Greenville Board of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App. 2000). “As with statutes, the lawmakers’ intent embodied in an ordinance ‘must prevail if it can be reasonably discovered in the language used.’” *Id.* at 490, 536 S.E.2d at 897 (quoting *Charleston Cty. Parks & Recreation Comm’m v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

17. “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Eagle Const. Co. v. Cty of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895 (2008). “If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” *Id.* at 570-571, 666 S.E.2d at 896 (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994)).

18. It strains credulity to argue that a 120 foot flagpole is not a structure. It clearly is and, as such, it was incumbent upon the Property Owner to seek and obtain a permit from the Spartanburg County Planning and Development Department prior to developing its property and erecting the massive flagpole on the property. The Property Owner did not avail itself of this clearly established permitting process. Therefore, the

Notice of Violation issued by the Spartanburg County Planning and Development Department was proper and should have been upheld by the Board.

19. Pursuant to Article IV, Section 7 of the *Spartanburg County Land Management Board of Appeals Rules of Procedure* captioned Form of Decision, “[F]indings of fact and conclusions of law shall be separately stated in the decision.” This is consistent with the provisions of SC Code Ann. §6-29-830 which requires the Board to file a copy of its “findings of fact and conclusions” in response to an appeal from one of its decisions.

20. Paragraph 7 of the Board’s Order on Appeal in this matter states: “The Board concludes that the Notice of Violation was issued in error based on the fact that Appellant obtained an Electrical Permit and that the Unified Land Management Ordinance does not specifically address permits for flagpoles.” That is the extent of the Board’s “conclusions” as it relates to the appeal, which shows the Board’s decision was obviously based on error. “A decision of a zoning board will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused its discretion.” *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997).

21. The fact that the Property Owner obtained an electrical permit has no bearing on the validity of the Notice of Violation issued by the Spartanburg County Planning and Development Department. The electrical permit was obtained from the

Spartanburg County Building Codes Department, which is separate and distinct from the Spartanburg County Planning and Development Department.

22. Additionally, the fact that flagpoles are not specifically referenced in the ULMO is irrelevant. The ULMO cannot possibly denote everything that requires permitting by the Spartanburg County Planning and Development Department. However, a plain reading of the pertinent portion of Section 1.07 of the ULMO set forth above clearly shows that a permit is required before a structure, such as a 120 foot flagpole, can be erected on real property in the covered portions of Spartanburg County.¹

23. Section 1.13 of the ULMO states: "No building, other structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part, to any other use, until a Development permit, certifying compliance with this Ordinance has been issued by the Planning Department staff, other than for such uses specifically exempted by this Ordinance or meet the following conditions: Continued identical use(s) of any building or land in existence and occupied on the effective date of this ordinance." The Property Owner never obtained a permit for the development of the property, despite the fact that it was clearly converted, at least in part, to some use other than vacant land. Furthermore, since the term flagpole is not referenced in the ULMO, it cannot be exempted and thus a development permit was required.

WHEREFORE, Petitioner prays that this Court reverse the decision of the Spartanburg County Board of Zoning Appeals to overturn the Notice of Violation issued

¹ Article 6 of the ULMO is captioned *Definitions*. When addressing the word "structure" therein, the terms of Article 6 state: "[a]s defined by the Standard Building Code." The Standard Building Code defines structure as "that which is built or constructed."

by the Spartanburg County Planning and Development Department, and for such other and further relief as is just and proper.

HOLCOMBE, BOMAR, P.A.

s/ William B. "Kip" Darwin, Jr.
William B. "Kip" Darwin, Jr.
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Attorneys for Spartanburg County

March 29, 2023
Spartanburg, South Carolina

EXHIBIT "A"

SPARTANBURG COUNTY
PLANNING AND DEVELOPMENT DEPARTMENT

BOARD OF ZONING APPEALS MEETING

DATE TAKEN: January 31, 2023

LOCATION: Spartanburg County Administration Building
County Council Chambers
366 North Church Street
Spartanburg, South Carolina 29303

TIME BEGAN: 4:30 p.m.

TIME ENDED: 6:17 p.m.⬆

2

APPEARANCES:

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.....On behalf of the Appellate

JOHN H. HARRIS, ESQUIRE
Spartanburg County attorney
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Spartanburg, South Carolina 29303
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.....On behalf of Spartanburg County▲

3

1 MR. GOWAN:

2 It's 4:30. I'd like to call to order the January 31
3 meeting of the Board of Zoning Appeals. If everyone, I
4 would remind you, to turn your microphones on. If
5 there's anyone here that's going to speak today, if you
6 would please sign in. First order of business is
7 approval of the December 20 meeting minutes. Has
8 everyone had a chance to review those? Okay. Any
9 questions? Comments?

10 MR. PADGETT:

11 Mr. Chairman, I make a motion we approve the minutes
12 as they were submitted.

13 MR. GOWAN:

14 Okay. We have a motion. Is there a second?

15 MR. DAVIES:

16 Second --

17 MS. FLEMING:

18 I'll second.

19 MR. GOWAN:

20 Okay, plenty of seconds. Those all in favor signify
21 by raising your right hand. All opposed, the same.
22 Okay. Is there any unfinished business that we need to
23 speak about? Hearing none we'll move to the new
24 business. New business is an appeal request for the Adam
25 W. Ballenger Memorial Park at 2294 Teaberry Road,▲

4

1 Spartanburg, South Carolina. Tax map 7-01-00-062.01.

2 The appeal of and issuance of the notice of violation of
3 the ULMO Section 1.07. So, when you get finished we'll
4 allow the appellant to make (inaudible) statements.

5 MR. JEDZINIAK:

6 Before we proceed, my name is Ethan Jedziniak. I'm
7 substitute counsel for Josh Hawkins who has been retained
8 as counsel on this case. Mr. Hawkins had a planned
9 vacation. He got protection with Spartanburg County for
10 that vacation. We have good cause, and we ask that
11 because we have good cause that we continue this hearing
12 until retained counsel is present and able to fully
13 present the merits of this appeal.

14 MR. GOWAN:

15 Okay, thank you. The appellate's counsel is a
16 replacement counsel and they have requested the
17 continuance of this matter.

18 MR. DAVIES:

19 So we're changing horses in the middle of the
20 stream?

21 MR. GOWAN:

22 No, sir, we have a replacement horse and we're
23 trying to get the original horse, to use your analogy.

24 MS. HOLLIDAY:

25 The staff would like to address the board members,▲

5

1 please.

2 MR. GOWAN:

3 Okay.

4 MS. HOLLIDAY:

5 As far as the continuance request goes, the first
6 request for a continuance was made on December 13,
7 and staff granted that on the 14th and let them know
8 that their case would be heard today. So they've
9 known about the case since December 14, and they
10 haven't done anything during the time, even since

11 the notice of violation was issued, to come into
12 compliance or to make (inaudible). So we would like
13 to see the case go on and be heard this evening.

14 MR. GOWAN:

15 Okay.

16 MR. JEDZINIAK:

17 If I may respond to that, Mr. Chairman.

18 MR. GOWAN:

19 Thank you, Ms. Holliday. Yes, sir.

20 MR. JEDZINIAK:

21 We actually have made numerous attempts to continue
22 the hearing. It's our position that improper notice
23 was given in the first place. I know County
24 Attorney Harris and I disagree on which part of the
25 rules apply. However, as we read the Board of

6

1 Zoning Appeals Appellate Rules, 15 days notice is
2 required in the newspaper of general circulation,
3 and seven days posted on property. Neither of those
4 happened.

5 Like I said, we're substitute counsel. Mr. Merting
6 retained Josh Hawkins. They sent a letter, they did
7 send a letter seven days before. As soon as we

8 received that letter, we put in written and verbal
9 requests for a continuance.
10 Now, Mr. Harris at one point seemed that if we
11 brought it up that he may or may not, you know, that
12 if we brought it up before the board that would be
13 the only way that we could do it. However, we did
14 request in writing, and we sent a letter to the
15 chairman through Mr. Harris and through Ms. Joan
16 Holliday requesting the continuance. I'm not sure
17 if y'all ever received that, but that was put in the
18 mail and sent via email.
19 MR. GOWAN:
20 That was the letter dated the 26th?
21 MR. JEDZINIAK:
22 There was a letter sent the 26th. There was also a
23 letter sent Friday.
24 MR. GOWAN:
25 Yes.♣

7

1 MR. JEDZINIAK:
2 Yes.
3 MR. GOWAN:
4 Yes, I have copies of both of those letters.

5 MR. JEDZINIAK:

6 And so I believe that's a mischaracterization that
7 we took no attempts as substitute counsel to attempt
8 to continue this hearing so retained counsel could
9 meaningfully present the merits of this appeal and
10 have his rights to procedural due process.

11 MR. GOWAN:

12 Noted.

13 MR. JEDZINIAK:

14 Yeah, and again, one more thing. Like I said, we
15 put this forward through the circuit court. He does
16 have protection in the circuit court and the court
17 of Spartanburg County. It's not like he's out of
18 town at the beach just avoiding this hearing. He's
19 out of state, (inaudible) to Australia for months
20 even before he was retained and as soon as he was
21 retained, Mr. Hawkins made efforts to try to
22 continue the hearing, and those efforts, up to this
23 point, we haven't had any cooperation from opposing
24 counsel. So we are asking the board for the
25 continuance. ♣

8

1 MR. DAVIES:

2 So are you referring to the like 100 points that are
3 on this that Mr. Merting sent me?

4 MR. JEDZINIAK:

5 No, no, sir. It's a different letter.

6 MR. DAVIES:

7 It's not a letter. It's just copies of the letter -
8 -

9 MR. GOWAN:

10 (Inaudible) please excuse my highlighting.

11 MR. DAVIES:

12 That's perfectly fine.

13 MS. GETER:

14 Why (inaudible).

15 MR. DAVIES:

16 Because this has been advertised for months.

17 MR. JEDZINIAK:

18 Right, we understand. Now, the advertising is a
19 different story. And again, I don't want to get
20 into the merits of our appeal here. This is simply
21 asking for a continuance so the retaining counsel
22 can get into the merits of the appeal. I think this
23 is one, we do have good cause, which is required by
24 the Board of Zoning Appeals rules. It says the
25 board may grant continuances if good cause is shown. ▲

1 I believe we have shown good cause and I believe it
2 is in the best interest for the actual merits of
3 this appeal to be heard to grant this continuance
4 instead of allowing substitute counsel to proceed.
5 And in that letter we do lay out where, although
6 notice may or may not have properly been given, it's
7 our contention notice was not properly given.

8 MS. HOLLIDAY:

9 May I address the board?

10 MR. GOWAN:

11 Understood. Yes, Ms. Holliday.

12 MS. HOLLIDAY:

13 So --

14 MR. DAVIES:

15 Your microphone, please. I'm semi-deaf here. There
16 you go. Thank you.

17 MS. HOLLIDAY:

18 So where it refers to giving notice and the Board of
19 Appeals, the Land Management Board of Appeals rules
20 is referring to variances. And the law, the
21 ordinance, actually does not require the notice --
22 and I have this application procedural chart --

23 MR. GOWAN:

24 I started to say is this the chart you're referring
25 to?▲

10

1 MS. HOLLIDAY:

2 Yes. And all steps of the appeals process land
3 development. This is an application for a relief
4 for change. So we are under all steps of the
5 appeals' process.

6 MR. GOWAN:

7 Page 3.

8 MS. HOLLIDAY:

9 It's minor land development, so it does not have --
10 the appeal does not have a public hearing or a
11 public notice. Does anybody need a copy of that?
12 So --

13 MR. GOWAN:

14 This is in the minor column that you're speaking of,
15 correct?

16 MS. HOLLIDAY:

17 Yes.

18 MR. GOWAN:

19 Okay.

20 MS. HOLLIDAY:

21 So, I guess it's a matter for the board is to
22 decide.

23 MR. GOWAN:

24 Okay. All right, thank you.

25 MR. JEDZINIAK:▲

11

1 Again, board, we just respectfully request that this
2 continue. The board may postpone an appeal or
3 variance for good cause shown. I believe we have
4 shown good cause. I believe preserving the status
5 quo for another month will serve no (inaudible).
6 And I believe we have shown good cause, and I
7 believe the board is within its right to continue
8 this hearing and allow retained counsel to present.

9 MR. GOWAN:

10 Thank you, sir. Mr. Harris, I have a question.

11 MR. HARRIS:

12 Yes, sir, Mr. Chairman?

13 MR. GOWAN:

14 It appears in all this documentation there's several
15 actual things going on or lawsuits or whatever going
16 on at this time. Where exactly does this body fit
17 in all of that?

18 MR. HARRIS:

19 So, you're correct. There are a couple of different
20 actions proceeding. One, there is the appeal by the
21 property owner, the notice of violation that county
22 staff issued. That is one item that is proceeding
23 forward, and there is an appeal process if a
24 property owner or the county disagrees with this
25 board's decision. There is a second and separate▲

12

1 lawsuit filed in the Court of Common Pleas here in
2 Spartanburg County that was filed by the property
3 owner that is separate and apart from the appeal
4 process that is before you this evening.

5 MR. GOWAN:

6 Thank you. Okay. We have the staff's position and
7 we have the appellate's position. Is there any
8 discussion about whether to grant an extension or
9 hear this or move on this tonight?

10 MR. DAVIES:

11 I think we should move forward with it.

12 MR. GOWAN:

13 Okay. Is that a motion?

14 MR. DAVIES:

15 Yeah, I -- I move to go forward with this tonight.
16 MR. GOWAN:
17 Okay. Is there a second? Okay. Hearing none then
18 I guess we need to -- I guess the opposite of that
19 is we grant a continuance.
20 MR. WUNDER:
21 May I ask a question before we vote?
22 MR. GOWAN:
23 Yes, sir.
24 MR. WUNDER:
25 Can we ask our counsel what is the legal

13

1 applications of a continuance for this board?
2 MR. HARRIS:
3 Mr. Wunder, I apologize. I didn't hear your --
4 MR. WUNDER:
5 I'm sorry.
6 MR. HARRIS:
7 -- your question. Just procedurally, Mr. Davies
8 motion since there was not a second, would fail for
9 a lack of seconds. So you might be back at this
10 point with no motion on the table. But I believe,
11 Mr. Wunder, you were trying to ask a question that I

12 didn't hear.

13 MR. WUNDER:

14 Yes, I -- just what is the legal ramifications of us
15 declining a continuance or accepting a continuance,
16 for this board?

17 MR. HARRIS:

18 For this board it's just a question of when this
19 case would be heard by this board, and then how the
20 appeal would move forward through the rest of the
21 process. The applicant or appellate in this case
22 has made their argument as to why they believe the
23 case should be continued. Staff has made their
24 argument of why they believe the case should go
25 forward tonight. And so the first decision the

14

1 board has is whether or not to move forward with the
2 case this evening.

3 MR. WUNDER:

4 Well, the question about continuance, the ruling of
5 this board on the appeal, what kind of legal effects
6 would it have on the other external cases?

7 MR. HARRIS:

8 I don't think this board needs to worry about the

9 common pleas case. That case will take care of
10 itself and have its own process where it would
11 proceed forward. And this one should solely focus
12 on this case that's before --

13 MR. WUNDER:

14 So none of the results of whether we had this
15 continuance or not, if we have a vote on appeal
16 today, would have bearing on those other cases?

17 MR. HARRIS:

18 I'm not going to say whether it does or doesn't have
19 bearing. But I think for the board's decision
20 tonight, they need to solely look at the issue
21 before them.

22 MR. JEDZINIAK:

23 Mr. Wunder, if I may, in the common pleas case a
24 temporary restraining order and a stay was moved.
25 It just has not been heard by Spartanburg County

15

1 Court.

2 MR. DAVIES:

3 Don't have anything to do with the Spartanburg
4 County Court. We have one item to figure out, if
5 they're in compliance or not.

6 UNKNOWN COUNCIL MEMBER:

7 Right.

8 MR. GOWAN:

9 Well, I think on the agenda is whether staff made an
10 error --

11 MS. GETER:

12 Yeah.

13 MR. DAVIES:

14 Exactly.

15 MR. GOWAN:

16 So --

17 MR. DAVIES:

18 See, that's why I said did everybody get a copy of
19 this, and you might have, I know counsel has, and
20 this is their case, but it's a court case. It's not
21 a zoning case.

22 MR. GOWAN:

23 I think a good portion of what was supplied was to
24 indicate what course the court case was so we would
25 have that information. But it doesn't, for what

16

1 our, whether staff made a mistake or not, I don't
2 think any of that other stuff has anything to do

3 with what we're trying to do here --

4 MR. DAVIES:

5 Correct.

6 MR. GOWAN:

7 In my opinion.

8 MR. WUNDER:

9 Well, that's why I asked that question, if it did

10 have any ramifications.

11 MR. GOWAN:

12 Yes, sir.

13 MR. WUNDER:

14 That's all.

15 MR. GOWAN:

16 So we have a motion. The motion died because there

17 was no second. And the motion was to move forward.

18 So is there another motion?

19 MR. DAVIES:

20 I would reiterate my motion from before.

21 MS. GETER:

22 I'll second.

23 MR. GOWAN:

24 Okay.

25 MR. DAVIES: ♣

1 There you go.

2 MR. GOWAN:

3 I have a motion and a second. All in favor of
4 moving forward signify by raising your right hand.
5 All opposed the same. Okay. All right. So we'll
6 move forward.

7 MR. JEDZINIAK:

8 Good evening. As I've already stated, my name is
9 Ethan Jedziniak. I am substitute counsel for Josh
10 Hawkins. If it pleases the board I am going to, in
11 the interest of time, turn it over to Mr. Robert
12 Merting, who has dealt with the appeal process. And
13 I'm going to hand each of you a packet of evidence
14 which Mr. Merting will discuss in turn, and they're
15 all the same.

16 [EXHIBIT PACKET ATTACHED]

17 MR. GOWAN:

18 All right. Thank you, sir.

19 MR. MERTING:

20 Ladies and gentlemen of the board, good evening.
21 I'll move through this as fast and expedient as I
22 can. The facts are largely undisputed.

23 MR. WUNDER:

24 Mr. Chairman?

25 MR. GOWAN:▲

18

1 Yes, sir.

2 MR. WUNDER:

3 Typically, by process we hear the staff's report and
4 then we ask for -- so should we ask for staff's
5 report?

6 MR. GOWAN:

7 I believe in this case since this is an appeal and
8 not a variance request --

9 MR. WUNDER:

10 Okay, thank you.

11 MR. GOWAN:

12 Yes, sir.

13 MR. MERTING:

14 Gentleman, I am going to be testifying the facts.

15 I'd ask to be sworn in.

16 MR. GOWAN:

17 Yes, sir. Please state your name.

18 MR. MERTING:

19 Robert Merting.

20 MR. GOWAN:

21 Robert Merting. And is the information you're

22 providing to this group tonight the truth and
23 nothing but the truth?

24 MR. MERTING:

25 Yes, sir, it is.▲

19

1 MR. GOWAN:

2 Thank you, sir.

3 MR. MERTING:

4 So, ladies and gentlemen, in 2019 the Adam
5 Washington Ballenger Camp approached me about
6 putting a flagpole on a piece of property adjacent
7 to 85. They wanted me to help with the feasibility
8 of that project. I started in the first place, and
9 that was the laws of Spartanburg County, to see if a
10 permit was required for a flagpole. Having looked
11 and found that none were required I then went next
12 to the departments that would issue us permits to
13 check. What I found on the website for the building
14 department is that they, quote, promote steady
15 maintenance of existing structures and enforce
16 regulation development practices in accordance with
17 South Carolina building code and local land use
18 regulations. In other words, they enforce building

19 and zoning. So I went to the building department,
20 called them via phone. Spoke with a clerk there who
21 referenced us to a supervisor to answer the
22 question. The person in the building department at
23 the scope and course of their employment concerning
24 the scope and course of their employment told me
25 that no permit was required in Spartanburg County▲

20

1 for placing a flagpole on property.
2 However, they told me to check with planning. That
3 did not make sense knowing that the building codes
4 enforces any land use regulations, but I indeed did
5 in 2019 call planning. I had the exact same routine
6 at planning. The clerk was able to not really help.
7 They referenced me to a supervisor. That supervisor
8 was speaking in the scope and course of their
9 employment concerning the scope and course of their
10 employment. That supervisor told me that a permit
11 was not needed for a flagpole; I should call
12 building. At that point in time, having exhausted
13 both building and planning, both having referenced
14 each other, and no need for a permit, we proceeded
15 on this project.

16 This was a three-year long project to make happen.
17 During that time I also reached back out to
18 building, and I was able to get a statement from the
19 building department manager or department head,
20 Gregg Hembree, that no permit was required for a
21 flagpole.
22 We approached the time where we were ready to actually
23 place that flagpole on the property. We had already
24 secured permission from the Federal Aviation
25 Administration, the FAA, and we had permission from

21

1 South Carolina DHEC. We had permits and notices at
2 state and federal level.
3 We wanted to put lights on that flagpole, want to
4 have it properly lit as you would like any other
5 flagpole. That required us to go back to the
6 building department to get a permit for electrical.
7 We again went back, this time in person (inaudible)
8 our electrical contractor who described the project.
9 For the fourth time was told that no building permit
10 is required. He asked for an electrical permit.
11 Was not able to get that. So he asked me to go back
12 and sort it. I took Mr. Jim Crocker, another one of

13 our witnesses here tonight, who is 40 years with
14 DHEC in Spartanburg County. He's very familiar with
15 their procedures. We went down to the building and
16 planning department.
17 When you go in the building and planning department
18 they are co-located. There is one section with
19 service windows. It's about four windows, teller-
20 like windows, that open up into the area, and then
21 doors to the back for the staff. We went to one of
22 the teller windows which invites you to ask for
23 permits and it gets your project permitted. We
24 described what we were doing, a flagpole, lights on
25 that flagpole. We need electricity for those

22

1 lights. We were again told that a permit was not
2 needed for a flagpole. That's our fifth
3 representation from the county.
4 We asked for a permit for electrical. The person
5 helping us was not able to figure out how that would
6 work without a building on the property. They knew
7 there was no building on the property. So we asked
8 for a supervisor. Again, Mr. Gregg Hembree came
9 out. He spoke to Mr. Jim Crocker and I. He again

10 said no permit was necessary for a flagpole. We
11 described to him the need for lighting. He
12 expressed to us concern about trailers on the
13 property, which we assured him were not, but we
14 needed lighting on the property.
15 Finally, in going through our project what we wanted
16 to do it mentioned that we were displaying the flag.
17 The lights were for display, not security, but to
18 light up the pole. And he said, yes, we can do a
19 permit for electrical decorative lighting for this
20 pole. That permit was issued to Mr. Jimmy Garrett
21 (ph), who is also here tonight. That permit was
22 then acted upon. We did the work performed. And on
23 July 20, 2022, Spartanburg County came out to the
24 property and actually inspected that.
25 The property is small. You'll probably a drawing of a

23

1 it. It is .8 acres. To go to the site on there
2 where the power pole was, you have to walk down one
3 entire side of the property and drive down the
4 other. At all times on July 20, the building
5 inspector could see that there was nothing else on
6 that property.

7 So, definitively, in July of last year, Spartanburg
8 County knew what we were putting on the property.
9 They knew what our intents were. They knew what was
10 on the property; they knew was not on the property.
11 They told us no permits were required six times, and
12 issued the only permit that they could identify that
13 we had to practically go down there three times to
14 get, electrical. And they passed off on that
15 inspection.
16 Only after having all of those representations made
17 to us did we rely on them and place the flagpole on
18 the property.
19 We raised the South Carolina flag on August 6. We
20 had no problems for two months after that while we
21 flew the South Carolina flag. During that time we
22 publicized that we were going to raise a Confederate
23 flag on October 22, 2022. Our intents being having
24 rotational flags related to the history of
25 Spartanburg County, that being the first. That was

24

1 publicized. We had our picnic in August. Our
2 speaker was Senator Martin. He told us he had heard
3 through a letter to him that David Britt and Mandy

4 (inaudible) both had been notified of this project
5 So the county had notification of this in August.
6 Still, we heard nothing in September. We heard
7 nothing in October.
8 We had an official flag raising October 22, 2022.
9 It was peaceful, a Saturday afternoon. Everything
10 was smooth, and we left. We had our first bit of
11 discrimination coming actually from the county
12 council board the following Monday or Tuesday when
13 Council Member Abusoft made comment about the
14 flagpole and flag, not understanding saying of us,
15 "Nobody moves their corporate headquarters to
16 Hicksville." I've been called worse. It's okay.
17 So we moved on and paid and paid that no attention.
18 But shortly thereafter, on October 26, 2022, three
19 months after this pole has been up, three months
20 after Spartanburg has known about it, after six
21 visits to building and planning, asking for permits
22 and being told none were required, we got a notice
23 that we were violating Section 1.07 of the Uniform
24 Land Management Ordinance. We were basically
25 accused of not getting a permit where a permit was

1 required, the permit that we'd been down to seek six
2 different times from offices that were supposed to
3 be enforcing those, and were not identified to
4 receive.

5 The ordinances explicitly say you don't get a permit
6 for a flagpole. The ordinances do not say you have
7 to have a principal use. They tell you if you have
8 an accessory use it is governed by the principal
9 use. It does not say you have to have a principal
10 use. And we told the County what our principal use
11 was, the flagpole. Nary a problem was had until the
12 Confederate flag went up. This is a pretextual
13 objection to our pole. It is an attack upon the
14 free speech and the free discretion of the camp.

15 In addition to burdening the camp's constitutional
16 rights of free speech you've already been told about
17 issues of due process and failure to give proper
18 notice to the camp. I understand that there's an
19 ordinance out here passed by Spartanburg County
20 about how this board will run. That ordinance is
21 authorized under South Carolina State law at 62-9-
22 800 Section D of that law requires that notice be
23 provided to the appellate 15 days in advance. That
24 notice was not provided. In fact, the letters to
25 Spartanburg County mail only made it to my office.

1 today, the day of the hearing.

2 So because we have not been able to present our

3 arguments in a meaningful way, there are adverse

4 witnesses to us who would like to call, have them

5 testify them in front, but we can't call them

6 because Article 4, Section 2 of that Land Management

7 Board of Appeals and Rules requires that we subpoena

8 them ten days in advance. So when this board gives

9 us notice less than seven days in advance, there's

10 no way we can get opposing witnesses here. That

11 inhibits our ability to defend this.

12 So we ask that you find that the Adam Washington

13 Ballenger Camp is not in violation of Spartanburg

14 County ordinance. We sought all permits that we

15 could find, both through building and planning. We

16 got every permit that was identified. We've

17 complied with those permits we describe in this

18 project.

19 We ask that if you find in the alternative, that

20 this ordinance is being discriminatorily applied.

21 There was nary a word said at an empty flagpole.

22 There was nary a word said when we displayed the

23 South Carolina flag. It was only when we put up an
24 unpopular banner that suddenly we had a problem.
25 And that is an undue burden on our free speech. ♣

27

1 I've given y'all a very brief version of this
2 because I know that there is a time constraint. I'm
3 happy to answer questions. I think we do have a
4 couple of other witnesses.

5 MR. GOWAN:

6 Thank you, sir. Does anyone have any questions?

7 MS. GETER:

8 I do. You indicated in your statement that there
9 was going to be a rotating section of flags --

10 MR. MERTING:

11 Yes, ma'am.

12 MS. GETER:

13 -- but you haven't rotated any flags.

14 MR. MERTING:

15 We have not, and so I have a good reason for that,
16 because I'm very concerned. I want to rotate flags.
17 First off, they're expensive. Now, the whole
18 project is probably about \$100,000. The flags are
19 going to be 1,500 a piece on the cheapest we can

20 find. So we've got to be able to invest that money.
21 I just have a hard time telling the camp to invest
22 that money knowing that this board is considering
23 whether or not we have a violation of statute.
24 The second part of that is the new Performance
25 Zoning Ordinance has a revision in there about not

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1 changing the emblem on a flag. So assuming we get
2 this sorted out, we will be right back in front of
3 you asking for permission to rotate all those flags.
4 What we're anticipating is a variety of both
5 Colonial through the end of the War Between the
6 States flags.
7 For an example, December 14 was the anniversary when
8 the British left South Carolina. Flying the
9 Moultrie flag would be very appropriate during that
10 time. December 20 is the anniversary of secession
11 or the ordinance of secession. We want to fly the
12 South Carolina secession flag. It's a bit of an
13 esoteric flag. There are state sovereignty flags.
14 South Carolina has two or three different flags we
15 would like to fly. There's, of course, national
16 flags. We'd like to fly the Old Glory, if you will,

17 on Fourth of July and for Veterans Day, and Memorial
18 Day.

19 So we have a variety of things that we have intended
20 and planned, and we need to be back in front of this
21 board asking permission to make sure we can do that
22 without any problems.

23 MS. GETER:

24 So you have a rotating -- your intention was a
25 rotating flag display of flags that you have not yet

29

1 purchased?

2 MR. MERTING:

3 All of those flags are custom, yes, ma'am. And the
4 size that we're talking about is a 20 by 30 foot
5 flag. Not even the South Carolina flag we got off
6 the shelf. So everyone of those has to be ordered
7 ahead of time, and we have to raise the funds still.
8 And these flags do not last very long. You're
9 talking about a two-to-three month life span on a
10 flag. So it's not an insignificant expense to get
11 those and get them in. The most recent quote I had
12 for the best price was a six-month (inaudible) time.

13 MS. GETER:

14 Was this price known at the time that you decided on
15 rotating flags?

16 MR. MERTING:

17 Yes, ma'am, it was known. We have the means to do
18 it. We have the willingness to do it. We just
19 don't want to have a (inaudible) selection of flags
20 and no pole to put them on.

21 MS. GETER:

22 Okay.

23 MR. DAVIES:

24 It doesn't matter which beautiful banner you choose
25 to fly, sir. What matters is, is that flagpole in

30

1 compliance with our ordinances.

2 MR. MERTING:

3 Yes, sir, we understand that.

4 MS. GETER:

5 Additionally, one of the stipulations that you had
6 asked for was that the flagpole be grandfathered in.

7 MR. MERTING:

8 Yes, ma'am.

9 MS. GETER:

10 Based on which part of the...?

11 MR. MERTING:

12 There's a restriction in the Performance Zoning
13 Ordinance about poles existing as of September 27,
14 2022. This pole was in place in July of 2022. So
15 it would come before that date and be grandfathered
16 in. That is a provision we also asked for a
17 variance from so we could display the different
18 flags. And I certainly understand that which flag
19 we display doesn't make a difference. But which
20 flag we displayed did make a difference when we
21 received this notice of violation.

22 MR. GOWAN:

23 Did you have a question?

24 MR. PADGETT:

25 I just, yeah, I have a question. What about under

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1 the -- this is not being held under the Performance
2 Zoning Ordinance? It's held under the ULMO, right?

3 MR. GOWAN:

4 Well, I think because this is considered a major
5 corridor I believe that the PZO rules; is that not
6 true?

7 UNKNOWN COUNCIL MEMBER:

8 No.

9 MR. GOWAN:

10 No?

11 MS. GETER:

12 John, can you help us with this? Because the
13 information that we got said the ULMO.

14 MR. HARRIS:

15 Sure. So the notice of violation was issued under
16 the Unified Land Management Ordinance, the ULMO,
17 because there was a use established without
18 obtaining a development permit. The zoning
19 ordinance that is in effect in the area where the
20 subject property is located is the ULMO. However,
21 the county also, as this board knows, has adopted
22 the Performance Zoning Ordinance. The Performance
23 Zoning Ordinance has regulations that deal with
24 flagpoles, which is why the Performance Zoning
25 Ordinance may effect what occurs on this property as

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1 it relates to the flagpoles. But the ULMO controls
2 what occurs on the property from a development
3 permit perspective.
4 So you potentially have both ordinances in play, but

5 the notice of violations that has been appealed that
6 is before this board this evening was a notice of
7 violation that was issued under the ULMO for failure
8 to obtain a development or zoning permit.

9 MS. GETER:

10 So for the purpose of this decision the only thing
11 we can look at is the ULMO, not the PZO?

12 MR. HARRIS:

13 That's the only issue that's before you all this
14 evening.

15 MR. JEDZINIAK:

16 And if I could raise one more issue that the county
17 has made, also, is they're saying that under Section
18 3.2, the accessory buildings, that a principal
19 building is required. If you actually read the text
20 and apply its plain meaning, that's not the case.
21 It says, All accessories and structures shall
22 observe the required setback requirement in Table 3.
23 That's fine. And it also says there is no limit in
24 Subsection 2A. And then in Subsection 2B it says,
25 Accessories shall observe the setback requirements▲

33

1 for the principal use. But it doesn't command that

2 there be a principal use. It simply says that if
3 there is a principal use than the accessory use
4 shall, meaning it must -- it must comply with the
5 setback requirements. But nowhere in Section 3.2 or
6 in the ULMO, period, does it require a principal use
7 on the property.

8 MS. GETER:

9 John, can you shed some light on the accessory use
10 without a permit?

11 MR. HARRIS:

12 So we're in Article 6 of the ULMO on page 102.
13 There's the definition of use principal. But let's
14 back up to the first definition, use. Use is the
15 purpose or activity for which land or any building
16 thereon is designed, arranged, or intended, or for
17 which it is occupied and maintained. And then under
18 the definition of use is use principal, the primary
19 purpose for which land is used.

20 For this case they've had no development. They have
21 made no application for a development permit or a
22 zoning permit. So there is no approved use from a
23 land use perspective by the county on the subject
24 property.

25 MR. JEDZINIAK:↗

1 And if I may, we take exception to that. You can
2 look at Exhibit A in the packet that I gave y'all.
3 We did inquire about a permit and they said no
4 permit is required. Under Section 1.7 you only need
5 a permit if a permit is required. The inverse of
6 that would be if no permit is required then you
7 don't need a permit. And they inquired about a
8 permit, and Gregg Hembree, who is now the Director
9 of Building Codes, who's over permitting, said no
10 permit is required. Detrimentially relied on that
11 statement.

12 And further, if I may, under Section 3.2, it does
13 say -- it talks about building accessory. If you
14 look at the definitions of building accessory,
15 flagpole is not contemplated in there. We're
16 looking at structures such as storage sheds,
17 workshops, domestic animal structures. It's just
18 smoke and mirrors. No permit was required. They
19 didn't get a permit. This is all pretext.

20 MR. GOWAN:

21 Does anyone else have any questions?

22 MR. WUNDER:

23 I have a question for John. John, in a previous

24 case that we had there was a requirement for 30-foot
25 height restriction on signs. Does that -- will that

35

1 ordinance apply for this (inaudible)?

2 MR. DAVIES:

3 I have the same question. It's on the interstate?

4 MR. HARRIS:

5 Correct. The specific -- they're in the PZO at some
6 point if that issue gets before this body, the PZO
7 limits flagpole heights to 30 feet. By analogy, Mr.
8 Wunder, if signs are at 30 feet the county has also
9 set a height for flagpoles at 30 feet.

10 MR. WUNDER:

11 Sure.

12 MR. HARRIS:

13 And there was also a question with respect to the
14 email from Mr. Emory. As this board knows, Mr.
15 Hembree (ph) is the building official in charge and
16 responsible for administering the international
17 building code, not the county's Performance Zoning
18 Ordinance or the Unified Land Management Ordinance.
19 So the applicant does have an email that speaks as
20 to what Mr. Hembree's (ph) building code

21 requirements are. What the applicant doesn't have
22 is an email that speaks to what the county's zoning
23 ordinance requirements are.
24 MR. JEDZINIAK:
25 And if I may respond to that --

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1 MR. GOWAN:
2 Just one second, please.
3 MR. JEDZINIAK:
4 Yes, sir.
5 MR. GOWAN:
6 Do you have the date that that flag requirement was
7 introduced into the PZO?
8 MR. HARRIS:
9 I'm sorry, the date that...?
10 MR. GOWAN:
11 Yes, sir. The date that it became (inaudible) that
12 has a flag. The book that we were provided, the
13 book (inaudible) printed, the PZO --
14 MR. HARRIS:
15 Sure.
16 MR. GOWAN:
17 -- that we were provided last middle of the year,

18 last fall, there's nothing on this chart that says
19 flags under this 7.2.10 quick reference chart.

20 MR. HARRIS:

21 Okay.

22 MR. GOWAN:

23 I'm curious of when the date was that this was put
24 on there --

25 MR. HARRIS:▲

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1 It's the same -- same date as the September 27 date.

2 MR. GOWAN:

3 Okay. So that and the -- so page 108 and page 116
4 and 124, all those happened September 27?

5 MR. HARRIS:

6 Correct.

7 MR. GOWAN:

8 Okay. Thank you, sir. Yes, sir?

9 MR. JEDZINIAK:

10 And if I just may address again, Mr. Hembree. When
11 you look at the Spartanburg County website, he's
12 listed as Director of Building Codes. If you go to
13 the Director of Building Codes web page, it
14 specifically says that he is the head of the

15 department which promotes the steady maintenance of
16 existing structures and enforces regulation
17 development practices in accordance with SC building
18 codes and local land use regulations.

19 We are arguing under the ULM, which is a local land
20 use ordinance, that no permit is required, and that
21 is exactly what the person authorized to speak in
22 that capacity has said.

23 MR. MERTING:

24 I would emphasize I did call the planning department
25 and spoke with a supervisor in planning. That

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1 sidesteps the entire issue whether it's building or
2 planning.

3 UNKNOWN COUNCIL MEMBER:

4 Whom did you speak to?

5 MR. MERTING:

6 I do not recall. It was 2019, and that did not seem
7 important at the time, unfortunately.

8 MR. PADGETT:

9 John, I'll just go back again. Are we -- we're
10 using the ULMO, right? Not the Performance Zoning
11 Ordinance?

12 MR. HARRIS:

13 That is correct as to the issue before the board
14 this evening is the ULMO.

15 MR. PADGETT:

16 Now, if the flagpole gets approved out there then
17 the Performance Zoning Ordinance passes, then does
18 that not become non-conforming use and can't be
19 touched?

20 MR. HARRIS:

21 So you could only become a non-conforming use if you
22 legally existed at some prior date. The flagpole to
23 date does not legally exist. And the county
24 ordinance requires the flagpole to be at 30 feet.
25 And so in order to legally exist they would have had

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1 to obtained a permit prior to placing the flagpole
2 on the property.

3 MR. PADGETT:

4 Where does it say it has to be 30 feet?

5 MR. HARRIS:

6 That's in the PZO, which isn't the issue before you
7 all this evening.

8 MR. PADGETT:

9 And that was my question. If it's not in the PZO,
10 it's still under the Unified Land Management
11 Ordinance, there's no height requirement on
12 flagpoles --

13 MR. GOWAN:

14 Exactly. That's what I see. That's what I read.

15 MR. HARRIS:

16 So what we're looking at is under the ULMO there is
17 a requirement. So when they acquired the property
18 it was a vacant tract of land. There were no --
19 there were trees on it, but no other use on the
20 property. They have, under the ULMO, changed the
21 use from a vacant tract of land to, as indicated on
22 their appeal, potentially apart. I don't know what
23 it is because they haven't submitted an application
24 to the planning department. But they have changed
25 their use from a vacant tract of land to something. 📌

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1 We don't know what they're going to call it till
2 they make application.
3 But in order to change it from a vacant tract of
4 land to something else, they have to make
5 application. And that's what they have not done,

6 which is why we're under the ULMO. If after making
7 an application they want to place a flagpole on
8 their property, at that point in time that's when
9 the requirements of the PZO would come into play as
10 to how the flagpole could or couldn't be placed on
11 the property.

12 MR. PADGETT:

13 Well, and I'd go back to the definition. I mean,
14 it's like (inaudible) stated. Nowhere in there do I
15 see flagpoles as an accessory use. Nowhere. It
16 does not specify. If that's the case, is a fountain
17 accessory use? A water fountain accessory use?
18 Have you got to permit that?

19 MS. HOLLIDAY:

20 It could be.

21 MR. HARRIS:

22 It could be, but we don't know what anything is on
23 the property until such point in time as they make
24 application.

25 MR. PADGETT:▲

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1 But we know the flagpole is there.

2 MR. HARRIS:

3 We don't have an application for the flagpole.

4 MR. GOWAN:

5 In the ULMO I don't find where an application for a
6 flagpole is needed. I don't see anything at all
7 about flags in there.

8 MR. DAVIES:

9 For use, for use, for use of the property.

10 MR. HARRIS:

11 The board is talking about whether an application is
12 required for flagpole. Flagpole is very, very
13 specific. We've got to take a step back and look at
14 the broader picture of there is an application
15 required to use the property other than as a vacant
16 tract of land. Their appeal application that you
17 all have before you tonight lists it as a park. I
18 don't know if that's their intent. Again, they
19 haven't made an application. But a development
20 application is required to use the property for
21 something, whatever that is.

22 Once we know what it is they want to use the
23 property for as their principal use then that will
24 govern if there can be multiple principal uses on
25 the property. That would govern what accessory uses▲

1 can be on the property. But you first have to start
2 at step 1, and step 1 would be submitting a
3 development application.

4 MS. BRADY:

5 But they were told they didn't have to do permits,
6 they didn't have to do anything, correct?

7 MR. HARRIS:

8 I don't have any --

9 UNKNOWN COUNCIL MEMBER:

10 The building code department.

11 MR. HARRIS:

12 -- I don't have any information that they have been
13 told that by the planning department. They have an
14 email that they've presented to you all as it
15 relates to the building code department. But --

16 MS. BRADY:

17 But if they have not submitted an application for
18 whatever you say wanted to use it for, then at this
19 point it's just vacant land, correct?

20 MR. DAVIES:

21 Right.

22 MR. HARRIS:

23 Staff has determined, planning staff has determined,
24 that it's not vacant land --

25 MS. BRADY:▲

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1 Why?

2 MR. HARRIS:

3 -- by virtue of the fact that there are improvements
4 that have been made on the property.

5 MS. GETER:

6 i.e. a flagpole.

7 MR. HARRIS:

8 And whatever else has occurred out there. But,
9 again, we don't have an application.

10 MR. WUNDER:

11 Well, the question I have about the application, and
12 I know Mr. Merting that you had a request of people
13 and it was all verbal. I understand what the
14 process is, and I'm looking at the (inaudible)
15 diagram, what the process is. And the process says
16 you have to put a permit application. Was there a
17 permit application ever put in? Even though you had
18 a verbal, you know, the big question I have is did
19 you put a permit application in at the time you had
20 these discussions? Now, I understand that you took
21 under good faith that somebody gave you yes, go

22 ahead. But the process requires a permit
23 application, correct? A permit application was or
24 was not submitted at the time back in 2019?
25 MR. MERTING: ♣

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1 In 2019 nothing was submitted because we were told
2 nothing was required. So when we're told that we
3 don't need a permit, what are we asking for a permit
4 for? It's like --
5 MR. WUNDER:
6 But as an attorney, as you have explicitly stated,
7 you were very thorough in your investigation and the
8 process detailed by the planning department by the
9 ordinance of the county is that you have to put an
10 application in. So you took it under assumption
11 that you were okay, legitimately. I'm not
12 disagreeing with what you're saying. But the
13 reality of it is, there's a process. Did you follow
14 the process?
15 MR. MERTING:
16 I did not put an application in. Now --
17 MR. WUNDER:
18 Please let -- now my question is to staff. Is the

19 process requiring application, a written
20 application?

21 MS. HOLLIDAY:

22 Yes.

23 MR. WUNDER:

24 So somebody at the county, I'm not saying who, gave
25 you a verbal. But the reality is he wasn't

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1 following the process, but the process says you have
2 to have a written application. Yes or no?

3 MR. MERTING:

4 I don't --

5 MR. WUNDER:

6 Staff? To change the use --

7 MS. HOLLIDAY:

8 I wouldn't know that.

9 MR. WUNDER:

10 -- of the property (inaudible).

11 MR. JEDZINIAK:

12 I think we're getting sidetracked from what the
13 appeal is over. The appeal is whether or not the
14 property violated Section 1.07 which is requiring a
15 permit. No permit was required. So technically by

16 the plain language of Section 1.07, if no permit's
17 required, you are not in violation of 1.07.

18 MR. DAVIES:

19 That's one way of looking at it.

20 MR. GOWAN:

21 Well, if a permit's not required, how do you apply
22 for one?

23 MR. DAVIES:

24 If you are changing the use of the land, which was a
25 bare ground, you have to have a permit to change the

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1 use.

2 MS. BRADY:

3 Have you changed the use yet? is my question. Has
4 the use been changed?

5 MR. DAVIES:

6 When they put the flagpole up --

7 MS. GETER:

8 Yes, because they put the flagpole.

9 MR. DAVIES:

10 -- it changed the use.

11 MR. MERTING:

12 The flagpole is free speech.

13 UNKNOWN MALE:

14 No, no.

15 MR. MERTING:

16 It's the same as changing use like putting up a
17 political sign or putting up a for sale sign.

18 Taking a piece of vacant land and putting a sign on
19 it doesn't change the use --

20 MS. GETER:

21 But a sign is not a -- it wasn't like you put some
22 sticks in the ground, correct, and put the flagpole
23 in there? You actually put a structure, a hole?

24 MR. MERTING:

25 It is a giant stick, but it is a stick in the

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1 ground.

2 MR. JEDZINIAK:

3 If I can interject here. The definition of
4 structure is just any manmade object. So
5 technically, by putting a political sign, which is
6 made of wire and plastic, under the rule, it's a
7 structure.

8 MR. MERTING:

9 There is unfortunately a court case that anticipates

10 if pink flamingoes might meet the definition of a
11 structure in one of our South Carolina courts.

12 MS. GETER:

13 Well, that's not before us, so.

14 MR. MERTING:

15 (Inaudible) in the definition of or from the 1984
16 case, pink flamingoes might be a structure. So
17 there is suffering de minimis use that is not a
18 change in the use of land. And we had the land
19 closed. It's not open to anybody. We had stopped
20 doing anything to make a park. We would like to
21 make a park. We'd be happy to apply for a permit to
22 make a park. But I would also say that the ULMO
23 doesn't require a permit for a private park. Under
24 any other use it requires permit for a public park.
25 But public park and private parks are defined

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1 differently, and there's no permit required for a
2 private park.

3 MS. BRADY:

4 But if I'm understanding you correctly one more time

5 --

6 UNKNOWN COUNCIL MEMBER:

7 (Inaudible) private park.
8 MS. BRADY:
9 -- one more time --
10 MR. MERTING:
11 Yes, ma'am.
12 MS. BRADY:
13 -- the use has not changed except for the fact that
14 you put a hole on it?
15 MR. MERTING:
16 You have not come in, you have not applied for a
17 permit because, at this point, it's moot because you
18 don't have a park building. When you decide to put
19 a park in, that's when you will issue --
20 MR. MERTING:
21 Yes, ma'am.
22 MS. BRADY:
23 -- come in and request a permit, correct?
24 MR. MERTING:
25 Yes, ma'am. ♣

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1 MS. GETER:
2 But it's -- am I also understanding that the flag
3 itself is considered to be an alteration of the use

4 --

5 MS. BRADY:

6 Of a blank piece of property, just a flagpole?

7 MR. DAVIES:

8 Yeah, okay. So 30 years ago out by my barn I put up
9 a 20-foot flagpole. Perfectly okay. I've got four
10 acres across the street from my house, and I can go
11 out there and put up a 100-foot flagpole on that?

12 MR. MERTING:

13 I believe that the new regulations on the zoning
14 ordinance might raise an issue with that, but I
15 think that the date on those regulations show that
16 they were passed because of what we did. I think
17 that shows, again, part of the response of the
18 county.

19 MS. FLEMING:

20 At what point is use defined? When is the use of
21 the land defined? I mean, if I go buy a piece of
22 land do I have to tell you what I'm going to use it
23 for?

24 MR. DAVIES:

25 If you use it for something, you do.▲

1 MS. FLEMING:

2 Who am I going to tell what I'm going to use it for?

3 MS. GETER:

4 I think it's under planning or building.

5 MS. FLEMING:

6 I just went and bought a piece of land.

7 MR. HARRIS:

8 So, Ms. Fleming, the ownership of a piece of land
9 that you do nothing to, from the point of
10 acquisition, you don't have to take any steps. It's
11 when you want to change the use.
12 So by the time the property owner acquired the
13 property they didn't need to make application. From
14 the time the property owner wanted to change the use
15 and put a flagpole and whatever else it is that they
16 want to put on the property, that is the point in
17 time at which they needed to make application. The
18 ULMO defines use as the purpose or activity for
19 which land or any building thereon is designed,
20 arranged, or intended, or for which it is occupied
21 or maintained.

22 MR. JEDZINIAK:

23 And Board Member Fleming, if I may add to that, I
24 think what's important -- and if y'all are on paper
25 it's page 102. It's the definition section of the

1 ULM. Again, they're charged with violating Section
2 1.07 by having an accessory use without a principal
3 use. We kind of glossed over that fact, and I think
4 Mr. Harris kind of glossed over what's right below,
5 the definition of use that he just read which is use
6 accessory, which, again, as I already stated directs
7 you to look at building accessory, which does not
8 contemplate flagpoles. It contemplates subordinate
9 structures that include storage sheds, workshops,
10 domestic animal shelters, pool houses. Flagpoles
11 are not contemplated in the definition section, and
12 flagpoles are not contemplated in the ULM.

13 MR. GOWAN:

14 Any other questions? Yes, sir?

15 MR. LANGFORD:

16 I just, before I came here I looked up, I did a -- I
17 pulled up the PDF on my computer and I couldn't find
18 the word flagpole anywhere in this document.

19 MS. FLEMING:

20 I did the same thing.

21 MR. GOWAN:

22 I think we all agree with that.

23 MS. FLEMING:

24 Yes.

25 MR. LANGFORD:▲

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1 I just -- I don't understand what our role is with
2 this.

3 MR. GOWAN:

4 The -- our role with this, the way I understand it,
5 and Mr. Harris may correct me, but our role with
6 this is determine whether the notice of violation
7 that the county issued against the appellate was
8 proper or improper. That's what we're here to
9 decide, if it was improperly issued. And the
10 argument they're making is that 107 is the article
11 that they're basing that point which, like you say,
12 I couldn't find anything in there that had anything
13 to do with flagpoles.

14 MR. LANGFORD:

15 And it talks about the permit. We've talked about
16 the permit here. I mean is there a flagpole permit
17 application that we can go get right now?

18 MS. HOLLIDAY:

19 There is not a flagpole permit.

20 MR. LANGFORD:

21 A building permit?

22 MS. HOLLIDAY:

23 There is a (inaudible) --

24 MR. LANGFORD:

25 A building permit? A flagpole building permit?▲

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1 MS. HOLLIDAY:

2 -- permit, an accessory use permit.

3 MR. DAVIES:

4 This is about the use of the property. Is it
5 barren, nothing there? If you're going to do
6 something on that property, you have to get a permit
7 to alter the property. Simple.

8 MR. LANGFORD:

9 But what I'm saying is that --

10 MR. DAVIES:

11 That has nothing to do with flagpoles or what you're
12 going to put on that property. You have to get that
13 permit first. If you're going to dig a ditch in
14 there, you have to get a permit.

15 MR. LANGFORD:

16 I understand that. But I'm saying what are we using

17 as our guidelines? Are we using the ULMO? If so,
18 and we're discussing the flagpoles, then it has to
19 be in there somewhere. See what I'm saying? I mean
20 there's ditches in here. There's roads in here.
21 But I didn't see anything about a flagpole. So I
22 don't understand what we're doing.

23 MR. PADGETT:

24 Uh-huh, I would second that. In fact, I don't think
25 you see a definition of a structure in here, either.▲

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1 MR. JEDZINIAK:

2 No, the structure --

3 MR. GOWAN:

4 (Inaudible) building codes --

5 MR. WUNDER:

6 Building codes (inaudible) --

7 MR. DAVIES:

8 Well, if you read down a little further in this and
9 where it says, 107, it's right here --

10 UNKNOWN MALE:

11 107?

12 MR. GOWAN:

13 In the appeals, right?

14 MR. DAVIES:

15 -- page 25. What's in your packet on your desk
16 there. No building, structure, or land shall be
17 used nor shall any building, structure, or land be
18 converted wholly or in part for any other use until
19 all applicable appropriate licenses, certificates,
20 and permits have been issued certifying compliance
21 with the requirements of this ordinance.

22 MS. GETER:

23 It's page 6.

24 UNKNOWN MALE:

25 Page 6?▲

55

1 MS. GETER:

2 Page 6 on --

3 MR. DAVIES:

4 To place a flagpole on empty ground is changing the
5 use. That's all I'm saying.

6 MR. JEDZINIAK:

7 If I may present to the board --

8 MR. DAVIES:

9 This is simple.

10 MR. JEDZINIAK:

11 I'm sorry to interrupt you, Mr. Davies.

12 MR. DAVIES:

13 That's all right. Go ahead.

14 MR. JEDZINIAK:

15 If I may, I think we've been talking around the same
16 issue this whole time, and I think it stems back to
17 exactly the section you just read. It says no
18 building, structure, or land shall be used, nor
19 shall any building, structure, or land be converted
20 until all applicable and appropriate licenses,
21 certificates, and permits have been issued. We
22 established this early on. A flagpole does not
23 require a permit. If you read the plain text and if
24 you read the ordinance the way it was written using
25 its plain definitional meanings, no ordinance or no

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1 permit is required for a flagpole.

2 MS. BRADY:

3 And you were told that six to seven times?

4 MR. JEDZINIAK:

5 And it's confirmed in writing as Exhibit A in the
6 evidence packet.

7 MS. GETER:

8 Okay, but I guess where I'm kind of struggling, I
 9 mean it doesn't specifically say anything in here.
 10 It just says no building, structure, or land. So
 11 it's not specifically referencing any particular
 12 innate object at all. So I guess we're saying, you
 13 know, if you had put, you know, a toothpick
 14 structure right there, you're still changing it from
 15 just grass, is what I think I'm understanding here.
 16 Is that when you purchased the land, it had grass,
 17 dirt, something, vegetation or whatever on that lot.
 18 And if I'm understanding John and the discussion
 19 that we've had, the fact that you did anything other
 20 than mow the grass or cut down the branches of the
 21 trees is considered to be an alteration of the land.
 22 MR. DAVIES:
 23 Right. When you dig a hole to place the pole in the
 24 hole, you are altering, changing it from no use to
 25 some use. ▲

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1 MS. GETER:
 2 So the fact --
 3 MR. DAVIES:
 4 This is not about flagpoles. If you put a shed on

5 that building you got to get a permit to place the
6 shed there. That's all there is to it.

7 MS. GETER:

8 But I'm just trying to make sure I understand that
9 it's not -- I mean we're getting caught up because
10 it is an actual flagpole. But if it had been a
11 playground or anything other than that, anything, it
12 doesn't matter what it is, is what I'm trying to get
13 to the bottom of, anything that makes it other than
14 just grass or dirt or whatever, that you -- is
15 considered to be an alteration, which would then
16 facilitate the need for a permanent. Is that my
17 understanding?

18 MS. HOLLIDAY:

19 That's correct.

20 MR. JEDZINIAK:

21 Board member, however, those specific things you
22 listed are contemplated and have specific ordinances
23 and requirements at the object. So a playground,
24 for example, is contemplated. A private park is
25 contemplated. A public park is contemplated. ⬆

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1 Again, Section 107 -- 1.07 is about an

2 uncontemplated thing. It does not require a permit.
3 So therefore, because it does not require a permit
4 you cannot be in violation of 1.07.
5 And I know I keep stressing that and saying that,
6 but it does matter, the use, because if the use
7 requires a permit, then you have to get a permit.
8 If the use does not require a permit, then you do
9 not have to get a permit.
10 MR. GOWAN:
11 Mr. Harris, is a grading permit required?
12 MR. HARRIS:
13 Yes, if grading is to occur on property and it meets
14 the square footage.
15 MR. GOWAN:
16 And staff doesn't know whether any grading occurred
17 or not, correct?
18 MS. GETER:
19 Because they don't have permission (inaudible).
20 MR. DAVIES:
21 When the hole --
22 MS. FLEMING:
23 Do you know what the square footage is?
24 MR. GOWAN:
25 I beg your pardon?▲

1 MS. FLEMING:

2 I was asking John if he knew what the square footage
3 was for a grading permit.

4 MR. HARRIS:

5 I do not know off the top of my head.

6 MR. MERTING:

7 Board members, I think that's a very good example
8 that some uses don't require a permit. A grading
9 under some certain number, that Mr. Harris doesn't
10 have for us, I don't have for us, doesn't require a
11 permit. So that wouldn't be a violation of 1.07
12 because no permit's required for that activity.

13 MR. WUNDER:

14 Was there a conversation when you had this dialogue
15 with Mr. Hembree about the flagpole as being part of
16 a park?

17 MR. MERTING:

18 We told him that's eventually where we wanted to go,
19 that we were going to have a little park there. We
20 would still be willing to go there, but we're not
21 going to go there if a permit's necessary. Again --

22 MR. WUNDER:

23 That's a decision now because it goes back to what

24 we've already previously discussed. It's change of
25 use. It's a park. It's a change of use.▲

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1 MR. MERTING:

2 If -- if we go there, and we have not gone to that
3 point yet. It's very much closed. There is nothing
4 there but lights and a flagpole. And everybody
5 keeps saying it's about the use; it's not about the
6 flagpole. I understand that. But look at that, and
7 what is the violation? It doesn't say anything else
8 has to be removed. The lights don't need to be
9 removed. The only thing they want removed is the
10 flagpole. Those lights are much more of a use than
11 the flagpole. They're connected to electrical.

12 MR. HARRIS:

13 Mr. Chairman, I know the board has asked several
14 questions of the appellant. I don't believe the
15 board has heard from staff. When you all have
16 finished the questions to the appellant, you may
17 wish to allow staff an opportunity to present their
18 staff report.

19 MR. JEDZINIAK:

20 And I would just take an exception to that. I do

21 believe you directed Mr. Harris, and we can read
22 back the record if necessary, to present any
23 directed questions, and I believed in rebuttal that
24 I have the opportunity to answer. So I apologize if
25 I stepped on Mr. Harris's presentation.▲

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1 MS. GETER:

2 So when you say the legal non -- what's -- when you
3 say that the -- ask that the flagpole be
4 grandfathered in, that is based on what?

5 MR. GOWAN:

6 The PZO.

7 MS. GETER:

8 The PZO?

9 MR. GOWAN:

10 I think so.

11 MR. JEDZINIAK:

12 Yes, under I believe it's Article 8 or Chapter 8
13 there is a grandfather date of September 27. And
14 the flagpole was up on August 6 of the same year.

15 MS. GETER:

16 Okay. So now I'm a little bit confused, staff,
17 because if that is a PZO question, and we are

18 looking at LMO, how do we consider that issue, John?

19 MR. HARRIS:

20 So --

21 MR. DAVIES:

22 Saying it was there prior.

23 MS. GETER:

24 No, I know what they're saying, but if the appeal is

25 based on the PZO, but the notice is based on the

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1 LMO, how are we to even consider that to be a part

2 of the argument if it's not related to the LMO?

3 MR. GOWAN:

4 Well, I believe -- I'm sorry. Go ahead, Mr. Harris.

5 MR. HARRIS:

6 I think ultimately the board has to determine

7 whether staff was correct in issuing the notice of

8 violation and whether or not the applicant or the

9 appellant, in this case, is required to get a permit

10 to change the use as has been discussed tonight.

11 That's really the underlying issue. Once that issue

12 is determined, then if the conclusion is the

13 appellant has to go through the permit process, then

14 the flagpole and its status would be addressed at

15 that point in time, and that may be an issue that
16 comes back to this board at some point in the
17 future. But that's not the issue tonight. The
18 issue tonight is whether or not they need a permit
19 to change the use of the property, and whether or
20 not the use has, in fact, changed as staff
21 determined at the point in time staff issued the
22 notice of violation.

23 MS. GETER:

24 Okay. Maybe this is a good time to hear from staff.

25 MR JEDZINIAK:▲

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1 Thank you, board.

2 MR. GOWAN:

3 Ms. Holliday?

4 MS. HOLLIDAY:

5 You guys, I'm going to do something I don't usually
6 do. I'm going to read what's been prepared. It's
7 just a lot.

8 MR. HARRIS:

9 Mr. Chairman, it would be appropriate to swear in
10 Ms. Holliday.

11 MR. GOWAN:

12 Oh, we swore -- we swore her in a few minutes ago,
13 did we not? No?
14 MS. HOLLIDAY:
15 Not me.
16 MR. GOWAN:
17 Okay. Please state your name.
18 MS. HOLLIDAY:
19 Joan Holliday.
20 MR. GOWAN:
21 Joan Holliday. And is the information you're about
22 to provide tonight is the truth and nothing but the
23 truth? Thank you.
24 MS. HOLLIDAY:
25 Yes. Okay. We have an appeal of issuance of notice▲

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1 of violation. The applicant is Adam W. Ballenger
2 Memorial Park. The meeting date is today, January
3 21, 2023. The address is 2294 Teaberry Road,
4 Spartanburg, South Carolina. The ordinance is the
5 ULMO. A notice of violation was mailed on 10/21/22.
6 The appeal application was received on 11/07/2022.
7 The deadline for appeal, the first deadline for
8 appeal, was 11/22 of 2022, and the continuance

9 request was received 12/13/2022 and approved the
10 next day.

11 So the applicant is Robert K. Merting on behalf of
12 Adam W. Ballenger Camp #68, Sons of Confederate
13 Veterans, Incorporated. The applicant status is the
14 agent or attorney, at least at the time of the
15 application. Map number 7-01-00-062.01. The
16 acreage is .83 acres.

17 And so the stated reason for the appeal, and this is
18 from the appeal form from the Adam W. Ballenger
19 Memorial Park project refers to the ordinances being
20 appealed as Unified Land Management Ordinance,
21 Section 1.07, and all other ordinances cited for
22 support of, and this is the EESONEVIOL is the notice
23 of violation, 1022-0339. Under their reason for
24 appeal on the application the applicant also refers
25 to the attached document entitled Appeal of Notice

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1 of Violation which largely resembles the lawsuit
2 filed against Spartanburg County as case number
3 2022-CP-42-04582.

4 The appeal of notice of violation attached to the
5 appeal form requests the following:

6 Plaintiff seeks to declare the status of its
7 property in Spartanburg County including any
8 grandfathered status as a non-conforming property,
9 to estopp Spartanburg County from asserting that any
10 further permits are needed for the work completed
11 upon its property, to seek damages for a civil
12 conspiracy by John Doe and Spartanburg County to
13 prevent plaintiff from using its property, and to
14 find that the Spartanburg County Zoning ordinance
15 has applied to plaintiff's property is against the
16 South Carolina Constitution.

17 The requests that are pertinent to the Board of
18 Zoning Appeals case:

19 S.C. Code of Laws 6-29-800 gives the following
20 powers to the Board of Appeals. To hear and decide
21 appeals where it is alleged there is an error in an
22 order, requirement, decision, or determination made
23 by an administrative official in the enforcement of
24 the zoning ordinance.

25 The issues the Zoning Board of Appeals has

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1 jurisdiction over here are the appeal of the
2 planning staff's issuance of a notice of violation

3 for the establishment of an accessory use without a
4 principal use. The basic request is to overturn the
5 notice of violation for the flagpole erected on
6 their property in their appeal.
7 In the appeal the appellant asks that the flagpole
8 be grandfathered. The board may decide whether
9 appropriate development permits were obtained in
10 order for the use to be a legal non-conforming use.
11 So the background information. On December 13,
12 2019, the appellant submitted a plat in the name of
13 William C. Berry to the planning and development
14 dividing the property. The plat was stamped and
15 recorded. A quitclaim deed was recorded on December
16 16 to transfer the property to the Adam Washington
17 Ballenger Camp #68, Sons of the Confederate
18 Veteran's Incorporated.
19 They did have to come to the planning department to
20 get the plat stamped. When they brought the plat
21 there was no questions about what they were going to
22 do with the park.
23 On June 3, 2022, G&S Electrical Services, LLC, on
24 behalf of Adam Washington Ballenger Camp #68,
25 submitted an electrical permit application to the

1 building codes department for permanent power for
2 decorative lights on pole. No development
3 application was made nor did any conversations take
4 place between the property owner or its agents and
5 the planning and development department regarding
6 the placement of a flagpole or any other use
7 associated with the property.

8 It was brought to the planning and development
9 department's attention that a flagpole had been
10 erected along Interstate 85. In researching the
11 site, it was found that the flagpole was the only
12 structure on the parcel, and accessory use cannot be
13 placed without a primary use under the ULMO.

14 The zoning staff issued a notice of violation on
15 October 21, 2022. The NOV was sent by certified
16 mail and the return receipt shows that it was picked
17 up on October 26, 2022. The NOV and the certified
18 mail tracking information are attached. The NOV
19 states the following, and this is what we've read
20 several times already.

21 No building, structure, or sign requiring a permit
22 or any part thereof shall be erected, added to, or
23 structurally altered, nor shall any excavation or
24 grading be commenced until the required permits have

25 been issued.▲

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1 No building, structure, or land shall be used, nor
2 shall any building, structure, or land be converted
3 wholly or in part to any other use until all
4 applicable and appropriate licenses, certificates,
5 and permits have been issued certifying compliance
6 with the requirements of this ordinance.
7 An accessory use has been established without a
8 principal use remove flagpole or obtain permit for a
9 principal use and lower flagpole to 30 feet.
10 The planning and development department received the
11 form for appeal of the notice of violation on
12 November 7, 2022. The next board of appeals meeting
13 was on December 20, 2022. The county received a
14 request for continuance on December 13. The staff
15 granted the first continuance request and notified
16 the appellant that the new meeting date is January
17 31, 2023, today's date. You can consider that
18 notice. They knew that this was the intended date
19 to meet.
20 County zoning ordinance information that's
21 applicable: the subject property lies in the part

22 of the county where the ULMO is in effect. The ULMO
23 in Section 1.07 states the following, and if you
24 guys are okay with it, I'm not going to read those
25 two again. They were on the notice of violation.▲

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1 The ULMO addresses accessory uses in 3.20 accessory
2 buildings and uses/non-residential. The language
3 states: Accessory uses shall observe the setback
4 requirements for the principal use to which they are
5 accessory when located contiguous to a residential
6 use.
7 Principal use is a primary use for which land is
8 used. If the land is used for a sign or a plaque,
9 it's not a principal use. It's not the land use.
10 A structure is as defined by the standard building
11 codes. So a structure, as defined by the ULMO, is
12 that which is built or constructed.
13 The subject site is located within the area subject
14 to the ULMO as it relates to development
15 applications. To date, the staff has received no
16 application for a development permit for the
17 property.
18 And there were a few of the allegations that were

19 made that I think is important for the board to
20 basically hear the county's side of, even though it
21 may or may not be pertinent to your decision this
22 evening.

23 The allegations contained in the appellant's appeal
24 include the following legal and equitable claims
25 that were included in the complaint filed against

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1 Spartanburg County in Case Number 2022-CP-42-04582.
2 Count 1 -- well, this is just a list. Count 1 -
3 declaratory judgment. Minor improvement on vacant
4 land does not change the use of said land.
5 Count 2 - Declaratory judgment - Camp's flag project
6 is a grandfathered non-conforming use.
7 Count 3 - Equitable estoppel and detrimental
8 reliance. Spartanburg County issued a building
9 permit for the flag and is now estopped from
10 alleging prior or other permits were needed.
11 Count 4 - Civil conspiracy. John Doe alerted
12 Spartanburg County to the flag project prior to the
13 non-conforming date expiring and the county, in
14 conjunction with John Doe, delayed action to
15 purposefully prevent the camp from meeting the non-

16 conforming date.
 17 Count 5 - As applied South Carolina Constitution
 18 violation - the Spartanburg County Performance
 19 Zoning Ordinance as applied to camp violates camp's
 20 right to free speech under South Carolina
 21 Constitution, Article 1, Section 2.
 22 Count 6 - As applied South Carolina Constitution
 23 violation - the Spartanburg County Unified Land
 24 Management Ordinance as applied to camp violates
 25 camp's right to free speech under South Carolina

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1 Constitution, Article 1, Section 2.
 2 Staff's position -- staff's position. The pertinent
 3 information for the Board of Appeals to hear and
 4 decide is whether the staff erred in issuing the
 5 notice of violation for establishing an accessory
 6 use without a principal use on the subject property
 7 without appropriate approvals/permits. The
 8 appellant did not contact planning and development
 9 department about placing the flagpole nor building
 10 the memorial park referred in the appeal form under
 11 project name, and thus have no development permit to
 12 change the use of this site. The project name on

13 the application is Adam W. Ballenger Memorial Park.
14 No such application has been made to the planning
15 and development department to date, so the planning
16 staff does not know the intentions for this site.
17 In Count 1, the appellant contends that a minor
18 improvement on the vacant land does not change the
19 use of the said land. However, Sections 1.07 and
20 1.13 of the ULMO require permits to be obtained
21 prior to commencing a land use or erecting a
22 structure. In fact, the definition of vacant land
23 reference by the appellant is from statute statutes
24 for tax increment financing. This statute does not
25 apply to zoning issues.▲

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1 In Count 2, the appellant is requesting that the
2 flagpole be grandfathered. To be a legal non-
3 conforming use, the use must have been legally
4 established. There were no development approvals or
5 permits issued for any use on the subject parcel.
6 Thus no use has been legally established.
7 In Counts 3 through 6, the appellant asserts claims
8 for equitable estoppel, civil conspiracy and the
9 South Carolina Constitution. The Board of Appeals

10 does not decide such matters. The BZA is tasked
11 with determining whether the staff erred in its
12 issuance of the notice of violation.
13 The appellant's appeal demonstrates the propriety of
14 the notice of violation. The appellant claims that
15 Spartanburg County issued a building permit to camp
16 for the flagpole project. In actuality, the
17 building codes department issued electrical permits,
18 not a building permit, for permanent power to
19 decorative lights on pole. The appellant cites
20 South Carolina Local Government Comprehensive
21 Enabling Act 6-29-950 in its appeal. Statute states
22 that any permit obtained without the approval of the
23 zoning administrator is unlawful or invalid. This
24 demonstrates the necessity of the absent development
25 permit. The zoning administrator is an employee of

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1 the planning department.
2 The appellant states that a private park is not
3 subject to zoning since it is not called out in the
4 zoning ordinance. There is no exemption for private
5 parks within the ULMO. The ULMO has a category
6 called "All Other Uses" where any land use not

7 specifically identified is reviewed.
8 The staff recommends the denial of the appeal and
9 upholding the staff's decision to issue the notice
10 of violation. Since there has been no development
11 application in this case, the staff also asks that
12 the flagpole not be considered a legal non-
13 conforming use. It is further requested that an
14 application for the desired land use be submitted
15 through the appropriate process, along with a site
16 plan, so an appropriate assessment of the
17 requirements for this site may be made.
18 This is the site where the flag is located, and this
19 is -- of course these photos were before the flag
20 was placed. This is tighter end on the site.
21 This is the notice of violation which you guys have
22 a copy of. This is the tracking for the notice of
23 violation which indicates it was sent on October 21,
24 2022. Questions?
25 MR. GOWAN:♠

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1 Yes, ma'am. I have a question, if I may. What was
2 the date that John Doe brought the attention of the
3 flagpole to staff? Is that noted anywhere?

4 MS. HOLLIDAY:

5 Not that I know of and I do not -- I would -- and I
6 hate to assume, but whoever let us know the flag was
7 out there I'm assuming is being referred to as John
8 Doe. We get complaints and questions about property
9 many times per week. So we really don't track who
10 tells us or who the complainant is or who....

11 MR. GOWAN:

12 Yeah, my question was what the date was. So you
13 don't keep up with dates when people call in and
14 say, hey, I've got a problem with this? There's no
15 notation or no record of that call?

16 MS. HOLLIDAY:

17 (Shakes head).

18 MR. GOWAN:

19 Okay. Thank you. Anyone else have any --

20 MR. PADGETT:

21 Two. Joan, I notice in here the 30-foot limitation,
22 it doesn't apply here, right?

23 MS. HOLLIDAY:

24 The 30-foot limitation on the height of the pole
25 would eventually apply.⚡

1 MR. PADGETT:

2 Okay, but not now --

3 MS. HOLLIDAY:

4 Not in this decision.

5 MR. PADGETT:

6 -- we're not in that ordinance right now. And my
7 second one is the definition of a structure, built
8 or constructed. Did they hammer nails? What I
9 consider a structure is built with constructive
10 means. I'm actually hammering nails, boards, pour
11 foundations, and things like that. So I guess my
12 question is, and I go back to it, is a flagpole a
13 structure.

14 MS. HOLLIDAY:

15 We consider it a structure.

16 MR. PADGETT:

17 Yeah, but the definition does not support that,
18 right?

19 MS. HOLLIDAY:

20 Well, I think the definition does support that.

21 MR. WUNDER:

22 The other question I would offer is that in the ULMO
23 Section 1.07 it specifically says no building or
24 structure. We can argue what a structure is
25 forever. One of the other things it says is any▲

1 excavation or draining, caveat any excavation. To
2 put a pole up you've got to excavate.

3 MR. DAVIES:

4 Exactly.

5 MR. WUNDER:

6 To put a pole up you've got to excavate unless it's
7 going to stand up on the top of the surface.

8 MR. JEDZINIAK:

9 If I could respond to that, Board.

10 MR. GOWAN:

11 I think right now we're talking to staff.

12 MR. JEDZINIAK:

13 Okay, yep, yep, I apologize.

14 MS. HOLLIDAY:

15 So when we get an application, we turn around and
16 send that application to the engineering department
17 who reviews the storm water and grading issues. And
18 I don't know that there was grading. I don't know
19 how much grading because we didn't have an
20 application.

21 MR. DAVIES:

22 Because there was no permit to change the use.

23 MR. PADGETT:

24 I would think that excavation and running a pole are
25 two different things.▲

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1 MR. WUNDER:

2 Just as any excavation so we go back to that whole
3 definition. What's the definition of excavation.

4 MS. HOLLIDAY:

5 And we don't know if they removed trees or graded to
6 put that in. We don't know.

7 MR. GOWAN:

8 Could have been a hole there to start with; they
9 just dumped it in.

10 UNKNOWN COUNCIL MEMBER:

11 Yeah.

12 UNKNOWN COUNCIL MEMBER:

13 Could have been.

14 MS. GETER:

15 But that's not what we're ultimately need to
16 determine is whether there's a structure or not.
17 What we have to determine is the information that
18 staff used to issue the notice of violation. Did
19 they use the information or tools or whatever before

20 them in order to make their decision. Is that what
21 we're tasked with today?

22 MR. DAVIES:

23 Pretty much.

24 MR. GOWAN:

25 I think so.▲

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1 MS. GETER:

2 And that is all we're tasked with. We're not tasked
3 with determining if it's a structure, a hole, a
4 alien, or anything. We're just to determine did
5 staff make a decision based upon the information
6 that is listed within the ULMO. That is what we're
7 tasked with. John, is that what I'm understanding?

8 MR. DAVIES:

9 Yeah.

10 MS. HOLLIDAY:

11 So, I would say, Ms. Geter, that we treat other
12 applicants the same way. If we have anything that's
13 built, flagpole or whatever, a cell tower, whatever
14 that is, we consider that built thing a structure.
15 So, I don't think that's in question. And I think
16 you're right. The question would be did staff err

17 in issuing that notice of violation, and I would ask
18 Mr. Harris, if I'm correct, in whether the
19 determination, whether it's grandfathered, may be
20 something that may be an issue right now.

21 MR. HARRIS:

22 So ultimately the notice of violation requires the
23 property owner, under the corrective action, to
24 remove the flagpole or obtain a permit for the
25 principal use and lower the flagpole to 30 feet. ♣

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1 That is essentially what the board is deciding,
2 whether or not the appellant has to comply with the
3 corrective actions set forth in the notice of
4 violation.

5 MS. BRADY:

6 The one thing, if I may, the one thing that I go
7 back to is it says no building, structure, or sign
8 requiring a permit. Apparently no permit was
9 required.

10 MS. HOLLIDAY:

11 Well, we do require a permit.

12 MS. BRADY:

13 Well, you told them multiple times they didn't need

14 a permit.

15 MS. HOLLIDAY:

16 We did not tell them. The building codes department
17 told them. We are not the building codes
18 department. They say that the windows in our front
19 office are planning and building codes. They're
20 not. Planning does not have windows. They asked
21 building codes' employees. They asked the building
22 codes' department these questions. They didn't ask
23 the planning department, yet they came to the
24 planning department when they wanted to record their
25 plat and get it stamped.▲

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1 MS. BRADY:

2 But if they had come to you, you would have told
3 them that they needed a permit to put that flagpole
4 up? Is that what you're telling me?

5 MS. HOLLIDAY:

6 It's according to, you know, if they were making the
7 -- an application for that use, yes.

8 MS. BRADY:

9 For the use of erecting a flagpole? Is that what
10 you're saying?

11 MR. DAVIES:

12 To change the use of the land from bare ground to a
13 private park --

14 MS. BRADY:

15 But at this point they had not applied for that.

16 MR. DAVIES:

17 -- which is one of their arguments.

18 MS. BRADY:

19 At this point they had not applied for that.

20 MR. DAVIES:

21 That's right. They haven't done that.

22 MS. BRADY:

23 So it's just a pole. It's just a pole.

24 MS. GETER:

25 But the pole wasn't part of the property when they

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1 bought it, if I'm understanding. It wasn't there.
2 It's like the land was this piece of paper. The
3 flagpole becomes the pen. So in order for them to
4 put the pen on there it's my understanding that a
5 permit has to be done. It doesn't matter if we like
6 that it has to be done or we agree that it has to be
7 done. The point that's being made is that it has to

8 be done, and that's not what we're in charge of
 9 determining is whether or not the law or the
 10 definitions or any of that is correct.
 11 We are tasked with looking at the notice of
 12 violation that the staff issued, and based upon
 13 their knowledge, experience, materials, or whatever
 14 it is they use to make their decision with, if they
 15 made a decision in line with that. The rest of this
 16 I think, you know, is good information to have, but
 17 I don't think that's the question that we're here,
 18 this board, this body, for this particular session,
 19 is here to answer.

20 MR. PADGETT:

21 But Angela, Tom made a point. There is provisions
 22 in this ordinance to deal with cell towers. There's
 23 no provision in this order to deal with flagpoles.

24 MS. BRADY:

25 So you could get a different answer to whoever you

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1 went to?

2 MS. HOLLIDAY:

3 So you were the building codes director.

4 MR. PADGETT:

5 Right.

6 MS. HOLLIDAY:

7 Was every single use listed for you?

8 MR. PADGETT:

9 And, yes they are --

10 MS. HOLLIDAY:

11 They're not in our ordinances. It is something that

12 is -- Mr. Davies keeps pointing out -- is the change

13 of that property. It doesn't matter what it is.

14 MR. PADGETT:

15 My point is they're not using the property. The

16 flagpole is there. That's all that's there. No

17 other use on the property except that pole that is

18 sitting there.

19 UNKNOWN COUNCIL MEMBER:

20 That's right.

21 MS. GETER:

22 But doesn't the pole have the use of maintaining the

23 flag?

24 MR. PADGETT:

25 No use. There's no business. There's no

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1 residential structure. There's --

2 MS. GETER:

3 Then why is it there?

4 MR. PADGETT:

5 -- nothing there.

6 MS. GETER:

7 Then why do they need it there? If that's the
8 argument that we want to use, then it begs the
9 question. If this property is not being used for
10 anything then why do they need a flagpole on it?

11 MS. BRADY:

12 Because it's America, and if they want to put a
13 flagpole on it, they can put a flagpole on it.

14 MS. GETER:

15 Well, and based upon that argument, America also
16 says they need a permit. So that -- I don't argue
17 that they can put whatever they wanted to put there
18 as long as they got the appropriate permit. So I
19 don't think it's anybody's telling them they can't
20 put it there. They just got to have a permit. At
21 least that's my interpretation of what staff is
22 saying is they've got to have a permit. And then
23 based upon what they request, they'll either grant
24 it or not grant it based upon these regulations that
25 we have before us. But the regulations may or may

1 not be flawed, but that's not the question.

2 We're not here to govern the regulation. We're here
3 to answer the question of the staff decision to
4 issue the notice of violation, which the notice of
5 violation, if I'm understanding, is based upon
6 standards listed in this ULMO, which may or may not
7 be fair. Right? Whatever. But that's what's
8 listed.

9 MS. FLEMING:

10 But short of reading this book, they didn't know
11 they needed a permit.

12 MS. GETER:

13 But ignorance is not a defense of the law, and every
14 attorney knows that --

15 MS. FLEMING:

16 (Inaudible) book to read it.

17 MS. GETER:

18 The attorney can't argue ignorance as a defense of
19 the law, and I think you know that.

20 MR. JEDZINIAK:

21 Board Member, I --

22 MS. GETER:

23 It's Board Member Geter.

24 MR. JEDZINIAK:

25 -- I take a little exception to that. I don't take

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1 it personally, but I do take exception to that. We
2 are not pleading ignorance here. We are simply
3 saying that if you read Section 1.07, and I
4 understand y'all aren't tasked with interpreting the
5 law, but you are tasked with interpreting of whether
6 this violation was wrongly issued. That is the
7 issue on appeal. And when you look at Section 1.07
8 it specifically says that you don't need a permit if
9 no permit can be given.
10 And we keep throwing around use. What's the use of
11 a flagpole? Use of a flagpole is speech. If you
12 want to put a political sign in your yard, you don't
13 have to go down to the county office and say, I want
14 a Lindsey Graham sign in my yard. You get to put it
15 up because it's free speech. All this is doing is
16 stifling free speech. If you put a flagpole on land
17 it doesn't do anything except produce speech and
18 expression which are protected by the South Carolina
19 Constitution and the United States Constitution.
20 Regardless of that, that is not why we're here

21 today. We're here as to whether or not 1.07 was
22 violated. Greg Hembree, who is the Director of
23 Building Codes, who, according to the Spartanburg
24 County website, is over the department that issues
25 permits, said no permit was required. Under Section▲

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1 1.07, if no permit is required, you can't get a
2 permit. If you can't get a permit there's no
3 violation. Nowhere in these ordinances does it
4 reference a flagpole nor does it say that this is a
5 violation.

6 MS. HOLLIDAY:

7 (Inaudible) --

8 MR. DAVIES:

9 (Inaudible) 1.07, though, in the second paragraph,
10 which you can't change the use without a permit.

11 MS. HOLLIDAY:

12 And the department to go to is the planning
13 department where the zoning administrator resides,
14 not to the building codes director who does not deal
15 with zoning issues.

16 MR. JEDZINIAK:

17 And I think the evidence in the record show that

18 they went to the planning department and they were
19 up to a supervisor to address this. And I might add
20 that 1.07 specifically says, Any other use until all
21 applicable and appropriate licenses, certificates,
22 and permits have been issued. There's no applicable
23 permit to be issued in this case.

24 MS. HOLLIDAY:

25 As the planning director I would beg to differ with

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1 that.

2 MR. GOWAN:

3 Okay. Does anybody else have any questions of the
4 staff or Joan? Does anyone have any questions for
5 the attorney?

6 MR. JEDZINIAK:

7 Thank you, ladies and gentlemen.

8 MR. GOWAN:

9 Thank you. Then I guess we will talk among
10 ourselves. I know you're ready.

11 MR. DAVIES:

12 I'm here. We've been drawing this out, and drawing
13 this out. We've been talking about stuff that's not
14 pertinent to the issue at hand. And, you know, we

15 can read 1.07 again and again and again. It says
16 the same thing. You can't change the use of the
17 land without a permit. When you place something on
18 that property, it says any building, structure, or
19 land then you change the use. So, I see no error
20 with staff. So y'all talk among yourselves,
21 whatever. I don't see an error and I have this
22 (inaudible).

23 MR. GOWAN:

24 Well, I see the corrective action that's cited in
25 this, to me, it says an accessory use hasn't been

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1 established without a principal use, and I don't see
2 that in the ULMO. I also don't see anything in here
3 as far as the action is to remove the pole or obtain
4 a permit for principal use and lower the flagpole to
5 30 feet. So I think that, you know, I think it is a
6 little bit confusing when you go and you seek a
7 permit to do something and you don't get one and
8 you're told you're not -- you don't need one, and
9 you go out and you take the action you intended that
10 you solicit the permit for, and you do that action
11 and then later comes back and says, no, you can't do

12 this.

13 You're in the building business. What if you've got
14 a house and you're almost built with it and then the
15 permit's office comes back there or planning goes
16 after you and says, no, no, no, you have to do this
17 now to this house, because this is after the fact.
18 You got a permit to build something and then you
19 built it to that permit, but they come back and say
20 no, we've changed the rules?

21 MS. GETER:

22 But the rules didn't change. The rules already
23 existed.

24 MR. DAVIES:

25 Well, then it's grandfathered in --▲

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1 MR. GOWAN:

2 Exactly.

3 MR. DAVIES:

4 -- because the rule didn't change --

5 MR. GOWAN:

6 It's grandfathered in.

7 MR. DAVIES:

8 But --

9 MS. GETER:

10 The rule already existed. Whether the rule didn't
11 suddenly get passed. The rule already --

12 MR. DAVIES:

13 If you change the rule -- if you change the use of
14 the property you have to have a permit to do that.
15 Now, you cannot put a structure, which is anything
16 that's built, whether it's -- well, I mean you got
17 to dig a hole and plant the thing, so that's
18 changing the use. That's what I'm saying that staff
19 didn't do anything wrong here.

20 MS. GETER:

21 But is it not on the person that that's putting the
22 thing up to make sure that they've gone to all the
23 appropriate departments? I get it that the building
24 department may have said you don't need a permit,
25 but you knew to go to the planning office to get the

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1 plat. So, you're already there at the planning
2 office. It seem like to me would it have been a
3 stretch to think that you would ask planning if
4 there's anything else you would need.
5 So, I mean I don't -- I don't know, I don't see any

6 malicious intent on the part of staff. I see them
7 making a decision based upon the information and the
8 guidelines that they have set before them.

9 If you don't like the guidelines, that's what the
10 process, and tells you, you go to city council,
11 county council, whichever body oversees that, and
12 you ask them to review and change it. We can't do
13 that for the purpose of this meeting.

14 But if we need clarity on these standards then John
15 and Joan and the rest of the planning department can
16 advise us on what we can do to establish a clearer
17 definition or a more definitive definition. Or
18 somebody put flagpole in there so that it makes
19 everybody happy. But unfortunately I have to agree
20 with Tom. I -- I can't -- I don't understand where
21 the staff erred in their decision.

22 MR. PADGETT:

23 Mr. Chairman, I make a motion that the -- the
24 violation notice was issued in error based on the
25 fact that they got permission to put the permit --

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1 to put the flagpole up, not a permit, electrical
2 permit, and nowhere in the definition of the ULMO

3 does it talk about permits for flags.

4 MS. BRADY:

5 I second.

6 MR. GOWAN:

7 We have a motion and a second. Is there any further

8 discussion? Those who vote to vote in favor of the

9 motion --

10 MR. DAVIES:

11 Clarify that for me one more time.

12 MS. FLEMING:

13 Clarify what was in the motion.

14 MR. DAVIES:

15 What's in the motion?

16 MR. GOWAN:

17 The motion is that staff made an error.

18 MS. GETER:

19 The motion is that staff made an error in their --

20 MR. GOWAN:

21 In issuing the notice of violation.

22 MS. GETER:

23 -- notice of the violation?

24 MR. GOWAN:

25 Yes, sir -- yes, ma'am. Any questions about the

1 motion, anyone? Okay. Is there anymore discussion
2 about the motion? Hearing none, those in favor,
3 please signify by raising your right hand. Those
4 that oppose, the same, raise your right hand. So,
5 what, four to three? Okay. Is there any other
6 business that we need to take up?
7 MR. WUNDER:
8 We've got a second item on the list.
9 MR. DAVIES:
10 How can it be four to three?
11 MR. GOWAN:
12 Huh? Four, five, six, seven, eight. Oh, okay.
13 MS. BRADY:
14 It's five to three.
15 MR. GOWAN:
16 Five to three. Okay, sorry. I need to go back to
17 math class.
18 MR. WUNDER:
19 We have a second item.
20 MR. GOWAN:
21 I beg your pardon?
22 MR. WUNDER:
23 We have a second item to cover.
24 MS. GETER:

25 No, we don't.▲

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1 MR. GOWAN:

2 I don't have a second item on my sheet.

3 MS. GETER:

4 (Inaudible).

5 MR. WUNDER:

6 It says here in the issues of the board has
7 jurisdiction over, and it says, In the appeal the
8 appellant asks that the flagpole be grandfathered.

9 MR. GOWAN:

10 That's -- I think you're being (inaudible).

11 MR. WUNDER:

12 It says the Board of Zoning Appeals has jurisdiction
13 over one is the appeal of the planning staff, which
14 we just voted on, and the second is in the appeal
15 the appellant asks that the flagpole be
16 grandfathered. I guess we are not in the appeal?
17 We are in the appeal, right? The board may decide
18 whether appropriate development permits were
19 obtained in order for the use to be a legal non-
20 conforming use.

21 MR. GOWAN:

22 This is the appeal request (inaudible). It's
23 superfluous information that we have. It's not -- I
24 don't think that's part of the request, is it, Mr.
25 Harris?▲

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1 MR. HARRIS:

2 As to -- I'm sorry, Mr. Chairman, I was making some
3 notes. I -- I am not fully up to speed as to the
4 discussion. So I'm certainly happy to try and
5 answer a question but I would ask you to --

6 MR. GOWAN:

7 The question is about the -- ask your question
8 again, please.

9 MR. WUNDER:

10 So on page 2 of the (inaudible) it says the issues
11 the Board of Zoning Appeals has jurisdiction over
12 are and one is number one, the appeal of the
13 planning staff's issuance of the notice of violation
14 for the establishment accessory use without a
15 principal use. This basic request is to overturn
16 the notice of violation for the flagpole erected on
17 the property in their appeal. Number two in the
18 appeal the appellant asks that the flagpole be

19 grandfathered. The board may decide whether
20 appropriate development permits were obtained in
21 order for the use to be legal and non-conforming
22 use. Is our charge to decide on that this evening
23 or is that going to be later on?

24 MR. HARRIS:

25 I don't think -- that is staff's characteristic of

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1 the appeal, but I think the issue that you all were
2 deciding on this evening is the issue that was
3 contained in Mr. Padgett's motion.

4 MR. MERTING:

5 May I address the board for a moment?

6 MR. GOWAN:

7 Not at this time, sir, please.

8 MR. WUNDER:

9 Okay, well, we don't have to vote on that, then.

10 MR. GOWAN:

11 Okay. Yes, sir, please, if you'd like?

12 MR. MERTING:

13 Yes, I actually would like to address just what
14 Board Member Wunder was talking about. That appeal
15 that you held up I actually reference back to the

16 document sent to Mr. Davies, and that document has
17 in there the grandfathered revision. So that is put
18 in front of you along with a long set of other
19 clauses that I don't think this board has
20 jurisdiction over. So the board may not want to
21 take jurisdiction over the other clauses, but if Mr.
22 Wunder wants to call for a vote on the
23 grandfathering, that was put into the appeal.

24 MR. WUNDER:

25 I would like to call for a vote on that.▲

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1 MR. GOWAN:

2 You would?

3 MR. WUNDER:

4 Yes.

5 MR. GOWAN:

6 Okay.

7 MS. GETER:

8 John, is that appropriate?

9 MR. HARRIS:

10 The --

11 MR. GOWAN:

12 Because that's in the PZO.

13 MR. HARRIS:

14 Right. And the notice of violation was issued under
15 Section 107. And so the question as to the
16 grandfathering issue is within the PZO, and there
17 has been no notice of violation issued on that
18 point.

19 MR. WUNDER:

20 So we would -- if there was a notice of violation to
21 be issued by staff, then that would come back to us?

22 MR. DAVIES:

23 Here's what it is. If we denied this today they
24 want to be sure they can come back and say it's
25 grandfathered in because we put it up before the PZO.

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1 came in.

2 MR. WUNDER:

3 Right.

4 MR. DAVIES:

5 That's all. It's, you know, smoke and mirrors.

6 MR. WUNDER:

7 It is under our purvey to grant that at this point
8 because we know there's some outstanding issues
9 beyond what we just voted on today?

10 MR. DAVIES:

11 Well, the county is still being sued; is that

12 correct?

13 MR. HARRIS:

14 That's correct.

15 MS. BRADY:

16 But that's not what we're charged with today, is it?

17 MR. DAVIES:

18 I understand that.

19 MR. GOWAN:

20 But that's not on our agenda for today, though.

21 MR. DAVIES:

22 It's not on our agenda for today.

23 MS. GETER:

24 Can we address issues that are not on the agenda?

25 MR. GOWAN:▲

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1 Well, we have other business, so.

2 MR. DAVIES:

3 What do we --

4 MR. GOWAN:

5 Huh? No, I mean we have another -- we're in the

6 other business section right now, so. I don't know

7 whether we could address that or not, Mr. Harris.

8 MR. HARRIS:

9 I don't think staff's issued anything to the

10 property owner, and the property owner hasn't

11 appealed anything. So I don't believe there's an

12 issue before the board at this time.

13 MR. GOWAN:

14 All right. That's the answer (inaudible) very good.

15 Is there anything else? Anyone wants to make a

16 motion?

17 MR. DAVIES:

18 I'll motion to adjourn.

19 MS. BRADY:

20 I will second that.

21 MR. GOWAN:

22 All right. We have a motion and a second. All in

23 favor signify by a raised hand. 100 percent.

24 (Concluded at 6:17 p.m.)

25▲

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C E R T I F I C A T E

I, the undersigned, Katherine Crowe, CVR-M, Notary
Public in and for the State of South Carolina, do hereby

certify that the foregoing Zoning Board of Appeals
Meeting was taken on: January 31, 2021;

That the foregoing is an accurate transcription of
the meeting and the testimony taken under oath;

That all exhibits entered herein are attached hereto
(if requested by counsel) and made a part of this
deposition.

I further certify that I am neither counsel nor
solicitor to any of the parties in said suit, nor
interested in the event of the cause.

In witness whereof, I have hereunto set my hand and
seal this date below: February 4, 2023

KATHERINE CROWE, CVR-M

Notary Public for South Carolina

My Commission Expires: 9/29/25♣

EXHIBIT "B"



Spartanburg County

BOARD OF ZONING APPEALS

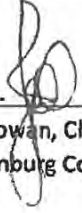
ORDER ON APPEAL

The Spartanburg County Board of Zoning Appeals (hereafter "Board") held a public hearing on January 31, 2023 to consider the request of Mr. Robert K. Merting on behalf of the Adam W. Ballenger Camp #68, Sons of Confederate Veterans, Inc. (hereafter "Appellant") for an appeal of a decision by Spartanburg County Zoning Administrator concerning the strict application of the Unified Land Management Ordinance (Ordinance) as set forth in the written application submitted by the Appellant(s).

After consideration of the testimony, evidence, and arguments presented orally and in the application, the Board makes the following findings of fact and conclusions of law:

1. The affected property is located at 2294 Teaberry Road, Spartanburg (Tax Map Number: 7-01-00-062.01) as described on said application.
2. On some date prior to October 21, 2022 Appellant developed its property to include the erection of a flagpole and other improvements on the subject site.
3. Appellant did not apply for, nor receive a Minor Land Development permit from Spartanburg County Planning Department.
4. On October 21, 2022, Spartanburg County issued a Notice of Violation to Appellant for developing the site without a required permit.
5. The Application for Appeal was received on November 7, 2022. The notice of this meeting was posted on the bulletin board at the Spartanburg County Administrative Building (and posted on the county website).
6. A quorum of the Board was present for the hearing, including Chairman Jack Gowan, Vice-Chair Angela Geter, Glenda Brady, Thomas Davies, Kaye Fleming, James Langford, Michael Padgett, and Stephen Wunder.
7. The Board concludes that the Notice of Violation was issued in error based on the fact that Appellant obtained an Electrical Permit and that the Unified Land Management Ordinance does not specifically address permits for flagpoles.

THE BOARD, THEREFORE, OVERTURNS the October 21, 2022 Notice of Violation. The motion to overturn was approved 5-3. Brady, Fleming, Gowan, Langford, and Padgett voted to overturn the Notice of Violation, and Davies, Geter, and Wunder voted to uphold the Notice of Violation.



Jack Gowan, Chairman
Spartanburg County Board of Zoning Appeals

February 28, 2023

EXHIBIT "C"

- ☐ Residential
☐ Mobile Home



SPARTANBURG COUNTY
ELECTRICAL PERMIT APPLICATION
 PHONE: (864) 596-2727 FAX: (864) 596-2194

DATE: 6-3-22

NAME OF POWER COMPANY :(REQUIRED):

LOCATION INFORMATION:

INSTALLATION ADDRESS: 2294 Terberry Rd

CITY: Spartanburg

STATE: SC

ZIP: 29303

OWNER'S INFORMATION:

OWNER'S NAME: Adam Washington Bollinger Corp #6 PHONE: 843-830-5227

MAILING ADDRESS: PO Box 26284

CITY: Greenville

STATE: SC

ZIP: 29616

WORK DESCRIPTION:

Permit Pmn for decorative lights on pole

TOTAL JOB COST: \$ 1,500.00

NAME OF POWER COMPANY :(REQUIRED)

CONTRACTORS INFORMATION:

CONTRACTORS NAME: G+S Electrical Services LLC

LICENSE NUMBER: M 105381

PHONE: 864.304.7979

E-MAIL: gandseletrical@yahoo.com

In the event of a refund or cancellation of a permit request, a \$32.00 administrative fee will be charged

DIRECTIONS LEAVING OUR OFFICE: go Left + go North on B-85 enter on I-85 take
next Exit Hwy 221, go Left to get Red light + Turn Left, go 1.5 miles
+ Turn Left on Terberry Rd go to Dead end on Right

ALL WORK TO COMPLY WITH PROVISIONS OF COUNTY ORDINANCE AND CODES

I CERTIFY THAT THE INFORMATION GIVEN ON THIS FORM IS CORRECT:

[Signature]
 SIGNATURE OF APPLICANT





Spartanburg County Building Codes
366 N Church St, Suite 500
Spartanburg, SC 29303
Electrical Permit (BCELECTRIC-0622-0243)

Permit Information

Permit Type: Electrical (Commercial)
Work Classification: Service Change
Description: power for decorative lights
Issued Date: 06/03/2022
Project:
Property Location: 2294 TEABERRY RD
SPARTANBURG, SC 29303
Parcel Number: 7-01-00-062.0:
Expiration Date: 11/30/2022
Permit Status: Issued

Contact Information

Electrical Contractor	Applicant	Property Owner
James M Garrett	James M Garrett	ADAM WASHINGTON
PO Box 1716	PO Box 1716	BALLENGER CAMP #68 SONS O
Greer, SC 29652	Greer, SC 29652	CONFEDERATE VETERANS INC
Home Phone:	Home Phone:	PO BOX 25284
Business Phone:	Business Phone:	GREENVILLE, SC 29615
Mobile Phone: 8648305227	Mobile Phone: 8648305227	Home Phone:
		Business Phone:
		Mobile Phone:

Electrical Information

Job Cost: \$1,500
Electrical Service:
Total Amps: 100
Service: New
Power Required: Yes
Electrical Company: Duke Energy
Solar Panel:
Roofing Type: (if other):
Framing Type: (if other):

Fee Information

Invoice Number	Fee Name	Fee Amount	Amount Paid
INV-00005639	Permit Fee (Electrical Commercial)	\$53.00	\$53.00
Totals:		\$53.00	\$53.00



Spartanburg County Building Codes
366 N Church St, Suite 500
Spartanburg, SC 29303
Inspection Worksheet (BCELECTRIC-0622-0243)

Case Number: BCELECTRIC-0622-0243

Case Module: Permit

Inspection Date: 07/21/2022

Inspection Status: Passed

Inspector: Charles Thomson

Inspection Type: Permanent Power Release (Commercial)

Job Address: 2204 Teaberry Rd
Spartanburg, SC 29303

Parent Number: 7-01-00-062.01

Contact Information

Contact Type	Company Name	Name
Applicant	G&S Electrical Services LLC	James Garrett
Electric Contractor	G&S Electrical Services LLC	James Garrett
Property Owner	ADAM WASHINGTON BALLENGER CAMP # 66 SONS OF CONFEDERATE VETERANS INC	

Checklist Information

Checklist Item	Results	Comments
General Comments - Checklist item used to track general comments, not specific to any other checklist item	Pass	

EXHIBIT "D"



Spartanburg County Planning and Development
366 N Church St, Suite 700
Spartanburg, SC 29303
Notice of Violation (EEZONEVIOL-1022-0339)

ADAM WASHINGTON BALLENGER CAMP # 68 SONS OF CONFEDERATE VETERANS INC
PO BOX 26284
GREENVILLE, SC 29616

Dear Property Owner,

An inspection has been made of your property location on parcel 7-01-00-062.01. We find that there exists on this property violations of County Regulations and/or Requirements. Those requirements are as follows:

Violation: ULMO Section 1.07 - Required Permits/Certificates - REQUIRED PERMITS/CERTIFICATES

Description: No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.
No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

Corrective Action: AN ACCESSORY USE HAS BEEN ESTABLISHED WITHOUT A PRINCIPAL USE. REMOVE FLAG POLE OR OBTAIN PERMIT FOR PRINCIPAL USE AND LOWER FLAG POLE TO 30 FEET.

Compliance Date: 11/10/2022

Sincerely,

Jay Ford
Zoning Inspector
864-596-3570

Site Location: 2294 TEABERRY RD, SPARTANBURG, SC 29303

ELECTRONICALLY FILED - 2023 Mar 30 4:26 PM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201155

EXHIBIT "E"



**Spartanburg County
Planning & Development Department**

366 N. Church St., Suite 700, Spartanburg SC 29303 Phone: (864) 596-3570 Fax: (864) 596-3018

Application for Appeal

Project Name: Adam W. Ballenger, Memorial Park Date Applied: Determination Delivered 10/26/22

Project Location & Directions: 2294 Teaberry Rd., Spartanburg, SC 29303

Tax Map #: 7-01-00-062.01 Subdivision: NA Lot #: NA

Information for Owner, Contact Person or Applicant (Person to be Notified of Meeting):

Name: Robert K. Merting, Attorney for Adam W. Ballenger Camp 68, SCV, Inc.

Address: P.O. Box 26284

Greenville, SC 29616

Phone: (864) 830-5227

Signature(s): _____

(Please note: We will only accept original signatures – no faxed copies. All property owners listed on the deed must sign this application)

☐ **Board of Zoning Appeals**

☐ **Planning Commission**

Ordinance Being Appealed: ULMO Section 1.07 and all Ordinances cited for support of EEZONEVIOL-1022-0339

Reason for appeal, with specific reference to action being appealed: See Attached

Section of the ordinance that is being appealed: ULMO 1.07 and all others cited

Is the tract or parcel of land restricted by any recorded covenant that is contrary to, conflicts with or prohibits the proposed activity? Yes X No

I hereby certify and agree that all the information provided in this application is true and correct. I understand that falsifying any information on this application will result in the automatic denial of this application and nullification of any action applied herein

Applicant's Signature

Date

For Staff Use Only:

Appeal Date: _____

Staff Decision Reversed?: ☐ YES ☐ NO

*Received
4/10/2022
JEA*

ELECTRONICALLY FILED - 2023 Mar 30 4:26 PM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201155

Spartanburg County Planning & Development Department

Acting Agent Authorization Form

If you are the acting agent for the property owner, we need written documentation granting you the authority to do so. Please have the Property Owner fill out the following form.

Date: November 3, 2022

I, Brian Motts, Commander, Ballenger # 68, am the owner of property in Spartanburg County,
located at address 2294 Teaberry Rd., Spartanburg, SC 29303
and having Tax Map # 7-01-00-062.01.

I hereby authorize:

<u>Robert K. Merting</u>	<u>Attorney for Owner</u>
	(Relationship)
<u></u>	<u></u>
	(Relationship)
<u></u>	<u></u>
	(Relationship)
<u></u>	<u></u>
	(Relationship)

to act as my agent for the subdivision, permitting, and/or development of the above mentioned property.

Brian Motts
(Property Owner Signature)

Brian Motts
(Printed Name and Telephone Number)

Tony McHale
Witness

Wesley Holland
Witness

EXHIBIT "F"



SPARTANBURG COUNTY

Planning & Development Department

Board of Zoning Appeals

APPEAL of ISSUANCE OF NOTICE of VIOLATION

Staff Report

Adam W. Ballenger Memorial Park			
Meeting Date: January 31, 2023			
Address	2294 Teaberry Road, Spartanburg, SC 29303	Ordinance	ULMO
	Notice of Violation Mailed	10/21/2022	
Factual Dates	Appeal Application Received	11/07/2022	
	Deadline for Appeal	11/22/2022	
	Continuance Request Received	12/13/2022	
Applicant	Robert K. Merting on behalf of Adam W. Ballenger Camp #68, Sons of Veterans, Inc.		
Applicant Status	Agent/Attorney		
Map Number	7-01-00-062.01		
Acreage	0.83 acres		
Staff	Joan Holliday		

Stated Reason for Appeal:

The appeal form from the Adam W. Ballenger Memorial Park project refers to the Ordinance being appealed as Unified Land Management Ordinance (ULMO) Sec. 1.07 and all other Ordinances cited for support of EESONEVIOL-1022-0339. Under Reason for Appeal, the Application also refers to an attached document entitled Appeal of Notice of Violation which largely resembles the lawsuit filed against Spartanburg County as Case No. 2022-CP-42-04582.

The Appeal of Notice of Violation attached to the appeal form requests the following:

Plaintiff seeks to declare the status of its Property in Spartanburg County including any grandfathered status as a non-conforming property, to estopp Spartanburg County from asserting that any further permits are needed for the work completed upon its Property, to seek damages for a civil conspiracy by John Doe and Spartanburg County to prevent Plaintiff from using its property, and to find that the Spartanburg County Zoning ordinance, as applied to Plaintiffs Property, is against the South Carolina Constitution.

Requests Pertinent to the Board of Zoning Appeals Case:

S.C. Code of Laws 6-29-800 gives the following powers to the Board of Zoning Appeals:

- (1) to hear and decide appeals where it is alleged there is an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.

The issues the Board of Zoning Appeals has jurisdiction over are:

1. The appeal of the Planning Staff's issuance of a Notice of Violation for the establishment of an Accessory Use without a Principal Use. The basic request is to overturn the Notice of Violation for the flagpole erected on their property in their appeal.
2. In the appeal, the Appellant asks that the flagpole be grandfathered. The Board may decide whether appropriate development permits were obtained in order for the use to be a legal nonconforming use.

Background Information:

On December 13, 2019, the Appellant submitted a plat in the name of William C. Berry to the Planning and Development Department dividing the property. The plat was stamped and recorded. A quitclaim deed was recorded on December 16, 2019 to transfer the property to the Adam Washington Ballenger Camp #68, Sons of the Confederate Veteran's Inc.

On June 3, 2022, G&S Electrical Services, LLC, on behalf of Adam Washington Ballenger Camp #68, submitted an electrical permit application to the Building Codes Department for "permanent power for decorative lights on pole." No development application was made nor did any conversations take place between the property owner or its agents and the Planning and Development Department regarding the placement of flagpole or any other land use associated with the property.

It was brought to the Planning and Development Department Staff's attention that a flagpole had been erected along Interstate 85. In researching the site, it was found that the flagpole was the only structure on the parcel. An Accessory Use cannot be placed without a Primary Use under the ULMO.

The Zoning Staff issued a Notice of Violation (NOV) on October 21, 2022. The NOV was sent by certified mail and the return receipt shows that it was picked up on October 26, 2022. The NOV and the certified mail tracking information are attached. The NOV states the following:

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the

required permits have been issued.

No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

AN ACCESSORY USE HAS BEEN ESTABLISHED WITHOUT A PRINCIPAL USE.
REMOVE FLAGPOLE OR OBTAIN PERMIT FOR A PRINCIPAL USE AND LOWER
FLAG POLE TO 30 FEET.

The Planning and Development Department received the form for appeal of the Notice of Violation on November 7, 2022.

The next Board of Zoning Appeals meeting was to be held on December 20, 2022. The County received a request for a Continuance on December 13, 2022. The staff granted the first continuance request and notified the Appellant that the new meeting date is January 31, 2023 (today).

County Zoning Ordinance Information:

The subject property lies in the part of the County where the ULMO is in effect.

The ULMO, in Sec. 1.07 states the following:

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.

No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

The ULMO addresses Accessory Uses in Section 3.20 Accessory Buildings and Uses/Non-Residential. The language states: "Accessory uses shall observe the setback requirements for the principal use to which they are accessory when located contiguous to a residential use."

Use, Principal – The primary purpose for which land is used.

Structure – (As defined by the Standard Building Code.)

The Standard Building Code defines "Structure" as "That which is built or constructed."

The subject site is located within the area subject to the ULMO as it relates to development applications. To date, the Staff has received no application for a Development Permit for this

property.

Appellant Allegations:

The allegations contained in Appellant's appeal include the following legal and equitable claims that were included in the complaint filed against Spartanburg County in Case No. 2022-CP-42-04582.

Count I - Declaratory Judgment: Minor Improvement on Vacant Land Does Not Change the Use of Said Land

Count II - Declaratory Judgment: Camp's Flag Project is a Grandfathered Non-conforming Use

Count III - Equitable Estoppel and Detrimental Reliance: Spartanburg County Issued a Building Permit for the Flag Project and is Now Estopped From Alleging Prior or Other Permits Were Needed

Count IV - Civil Conspiracy: John Doe alerted Spartanburg County to the Flag Project Prior to the Nonconforming Date Expiring and the County, in conjunction with John Doe, Delayed Action to Purposefully Prevent the Camp from Meeting the Nonconforming Date.

Count V - As Applied S.C. Constitution Violation: The Spartanburg County Performance Zoning Ordinance as applied to Camp violates Camp's Right to Free Speech under S.C. Constitution, Art. I, § 2.

Count VI - As Applied S.C. Constitution Violation: The Spartanburg County Unified Land Management Ordinance as applied to Camp violates Camp's Right to Free Speech under S.C. Constitution, Art. I, § 2.

Staff Position:

The pertinent information for the Board of Zoning Appeals to hear and decide is whether the Staff erred in issuing a Notice of Violation for establishing an Accessory Use without a Principal Use on the subject property without appropriate approvals/permits. The Appellant did not contact the Planning and Development Department about placing the flagpole nor building the memorial park (referred to in their appeal form under the project name) and, thus, has no development permit to change the use of this site. The project name on the application is Adam W. Ballenger Memorial Park. No such application has been made to the Planning and Development Department to date, so the Planning Staff does not know the intentions for the site.

In Count I, the Appellant contends that a minor improvement on vacant land does not change the use of said land. However, Sections 1.07 and 1.13 of the ULMO require permits to be obtained prior to commencing a land use or erecting a structure. In fact, the definition of vacant land referenced by the Appellant is from State statutes for Tax Increment Financing. This statute does not apply to zoning issues.

In Count II, the Appellant is requesting that the flagpole be grandfathered. To be a legal nonconforming use, a use must have been legally established. There were no development approvals or permits issued for any use on the subject parcel. Thus no use has been legally established.

In Counts III through VI, the Appellant asserts claims for equitable estoppel, civil conspiracy, and the South Carolina Constitution. The Board of Zoning Appeals does not decide such matters. The BZA is tasked with determining whether the staff erred in its issuance of the NOV.

The Appellant's appeal demonstrates the propriety of the NOV. The Appellant claims that Spartanburg County issued a building permit to Camp for the flagpole project. In actuality, the Building Codes Department issued an electrical permit for "permanent power for decorative lights on pole." The Appellant cites SC Local Government Comprehensive Planning Enabling Act (§ 6-29-950) in its appeal. The Statute states that any permit obtained without the approval of the Zoning Administrator is unlawful, or invalid. This demonstrates the necessity of the absent development permit.

The Appellant states that a private park is not subject to zoning since it is not called out in the Ordinance. There is no exemption for private parks within the ULMO. The ULMO has a category called "All Other Uses" where any land use not specifically identified is reviewed.

The Staff recommends the denial of the appeal and upholding the Staff's decision to issue the Notice of Violation. Since there has been no development application in this case, the Staff also asks that the flagpole not be considered a legal nonconforming use. It is further requested that an application for the desired land use be submitted through the appropriate process, along with a site plan, so an appropriate assessment of the requirements for this site may be made.

Attachments:

Figure 1: Adam Ballenger Memorial Park Application for Appeal with attachments:

- Acting Agent Authorization Form
- Notice of Violation from Spartanburg County
- Appellant's Appeal Document

Figure 2: Notice of Violation

Figure 3: Tracking Information for Certified Mail Containing NOV

STATE OF SOUTH CAROLINA	)	IN THE BOARD OF ZONING APPEALS
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2023-CP-42-01155
Spartanburg County and Cole Alverson	)	
in his Official Capacity as County	)	
Administrator,	)	
	)	RESPONSE TO PETITIONER'S
Petitioner/Appellant,	)	PETITION FOR APPEAL
	)	
v.	)	
	)	
The Spartanburg County Board of Zoning	)	
Appeals, and Adam Washington Ballenger	)	
Camp #68, Sons of Confederate Veterans,	)	
Inc.	)	
	)	
Respondents.	)	

COMES NOW, Respondent Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc., by and through its undersigned counsel, and here answers the Petitioner/Appellant's Petition for Appeal to the Circuit Court Decision of the Spartanburg County Board of Zoning Appeals, and respectfully would show unto this Honorable Court as follows:

For a First Defense
(General Denial)

1. Respondent Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc., denies each and every allegation not specifically admitted herein.
2. Upon information and belief, Respondent admits the allegations contained in Paragraph 1 as stated.
3. Upon information and belief, Respondent admits the allegations contained in Paragraph 2 as stated.
4. The allegations contained in Paragraph 3 are admitted so much as on June 3, 2022, Mr. James Garrett of G&S electrical services applied for an electrical permit at the property, providing a

work description as “permanent power for decorative light pole.” The application for the electrical permit was made after Respondent inquired multiple times about a permit for the flagpole (*see* Transcript pg. 19-22), was told that it did not need a permit for a flagpole (*see Id. and* Exhibit A), applied for an FAA permit (*see* Exhibit C), and applied for a DHEC permit (*see* Exhibit D). The remaining allegations of said paragraph are denied.

5. The allegations contained in Paragraph 4 are denied as stated. The flagpole was completed during the Summer of 2022, and on August 6, 2022, a South Carolina Flag was raised atop the flagpole in question. As previously stated, Respondent sought a permit for a flagpole several times and was told that “no permit is required for a flagpole.” *See* Exhibit A, *See, generally*, Transcript. Further, at the January 31, 2023 hearing, County officials admitted that there is not a flagpole permit. *See* Transcript page 52 (Board Member Langford: “[I]s there a flagpole permit application that we can go get right now?” Planning Department Head Ms. Holliday: “There is not a flagpole permit.”).
6. Upon information and belief, Respondent denies the allegations contained in Paragraph 5. “Exhibit D” is undated, and Respondent cannot ascertain a date in which this Notice was issued based upon the allegations contained therein. Respondent further states that the Notice was placed in the mail on October 21, 2022, but Notice of Violation was not actually received by Respondent until October 26, 2022. Public notice of the violation was not posted on or adjacent to the affected property.
7. Upon information and belief, Respondent admits the allegations contained in Paragraph 6 as stated.
8. Upon information and belief, Respondent admits the allegations contained in Paragraph 7 as stated.

9. Upon information and belief, Respondent admits the allegations contained in Paragraph 8 insomuch as the Board considered the property owner's appeal of the Notice of Violation on January 31, 2023 and ruled in favor of the property owners on January 31, 2023, concluding that the Notice of Violation had been issued in error. Respondent denies that "Exhibit F" is a complete record and respectfully requests that Appellant's counsel supplement the record with the complete staff report, including all attachments referenced therein.
10. Respondent admits the allegations of Paragraph 9 as stated.
11. Respondent admits the allegations contained in Paragraph 10 insomuch as S.C. Code Ann. § 6-29-820(A) speaks for itself. Any other allegations contained in Paragraph 13 are denied.
12. Respondent admits the allegations contained in Paragraph 11 as stated.
13. Respondent admits the allegations contained in Paragraph 12 as stated.
14. Respondent admits the allegations contained in Paragraph 13 as stated.
15. Paragraph 14 sets forth legal conclusions to which no response is required. Therefore, Respondent denies any allegations contained therein. Further, Respondent would show unto the Court that "[o]n appeal, the findings of fact by the [Zoning] Board shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); *See*, S.C. Code Ann. § 6-29-840(A) (Supp. 2020) ("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.") "The appellate court gives 'great deference to the decisions of those charged with interpreting and applying local zoning ordinances.'" *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 91, 791 S.E.2d 305, 308 (Ct. App.

2016) (quoting *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995)). “The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary.” *Pressley v. Lancaster County*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)). Further, if the minutes are found to be incomplete, then the transcript of the hearing can constitute the final findings of the Board. *See, Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 493–94, 536 S.E.2d 892, 899 (Ct.App.2000).

16. Respondent admits the allegations contained in Paragraph 15 inasmuch as Section 1.07 of the ULMO speaks for itself. Further responding to Paragraph 15, Respondent admits that, as shown in Petitioner’s “Exhibit D,” the only violation brought by Spartanburg County is ULMO Section 1.07. The remaining allegations of Paragraph 15 are denied.
17. Paragraphs 16 and 17 set forth legal conclusions to which no response is required. Therefore, Respondent denies any allegations contained therein. Respondent would further show unto this Court that “[a]ny ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Bennett v. Sullivan’s Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (1993). “In giving effect to legislative intent, the court is constrained to avoid an absurd result.” *South Carolina Tax Comm’n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 848 (1994).
18. Responding to Paragraph 18, Respondent denies any allegations and argument contained therein.

19. Responding to Paragraph 19, according to Joan Holliday and John Harris, both employees representing Spartanburg County at the January 31, 2023 hearing, the Spartanburg County Land Management Board of Appeals Rules of Procedure do not apply in this case. More specifically, Mr. Harris made a showing unto the Board that the “Land Management Board of Appeals rules is referring to variances.” *See*, Transcript page 9:18-20. Further responding to Paragraph 19, S.C. Code Ann. § 6-29-830 in pertinent part states that “the Board must file with the clerk of court a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.”
20. Responding to Paragraph 20, Respondent would show unto this Court that the Board of Zoning Appeals need not give extensive “findings of facts and conclusions;” A written statement, supported by the transcript of the trial, is finding enough. *See, Vulcan Materials v. Greenville Cty. Bd.*, 342 S.C. 480, 536 S.E.2d 892 (S.C. App. 2000). Respondent would further show unto the Court that, as opposed to being arbitrary or capricious, the record, attached hereto, revealed that the board was deliberative and considered all applicable evidence, including Respondent’s repeated attempts to obtain a building permit and Appellant’s employees and agents repeated statements that a permit was not required for a flagpole. *See Exhibit A; also see Transcript, generally.* Indeed, the findings of fact contained within the transcript reflect the Board’s majority opinion.
21. Responding to Paragraph 21, Respondent sought approval for a flagpole permit from several Spartanburg County employees, including Gregg Hembree, Director of Spartanburg County Building Codes. *See Exhibit A.* According to the Spartanburg County Website, the mission statement of the Building Codes Department is “to ensure sound construction of new buildings,

promote steady maintenance of existing structures, and enforce regulation development practices in accordance with the S.C. Building Code and Local Land Use Regulations.” The website goes on to say that “[t]his will be accomplished by expediting the permit and inspection process.” No evidence to the contrary was proffered at the hearing. Therefore, it naturally flows that Greg Hembree, as Director of Building Codes, the department tasked with “enforc[ing] regulation development practices in accordance with the S.C. Building Code and Local Land Use Regulations,” would have the authority to say that a permit is not required for a flagpole under the ULMO, a land use regulation.

22. Respondent denies the allegations set forth in Paragraph 22. Respondent would show unto this Court that the legislature’s intent was not as broad of reading as Petitioner/Appellant would suggest and that Spartanburg County has never enforced such a broad interpretation. Should the provision be read with such breadth, a permit would be required for birdbaths, basketball goals, swing sets, garden gnomes, and pink flamingoes. There is no doubt that, if this interpretation results, an absurd result would ensue. *See, South Carolina Tax Comm’n* at 168, 447 S.E.2d 843, 846 (“the court is constrained to avoid an absurd result”). Respondent would allege that, if this interpretation is to be taken as true, then the selective enforcement of such is meant to serve no other purpose than to attack Respondent’s freedom of speech and freedom of expression.

23. Responding to Paragraph 23, Petitioner/Appellant raises for the first time Section 1.13 of the ULMO. Respondent admits that, as shown in Petitioner’s “Exhibit D,” the only violation brought by Spartanburg County is ULMO Section 1.07. Petitioner/Appellant failed to raise section 1.13 of the ULMO in its Notice of Violation, and it is now improper to raise this issue on appeal. *See* S.C. Code § 6-29-840(A), “[t]he findings of fact by the board of appeals must

be treated in the same manner as a finding of fact by the jury, and the court *may not take additional evidence.*” (emphasis added). Respondent would further show unto the Court that, because Petitioner/Appellant Spartanburg County issued its violation exclusively under ULMO Section 1.07, it is estopped from bringing any other subsequent violations.

24. Respondent denies Petitioner/Appellant’s prayer for relief in the WHEREFORE clause.

For a Second Defense
(Failure to State a Claim)

25. The Appeal of the Petitioner/Appellant fails to set forth a claim upon which relief can be granted because Appellant alleges only that it disagrees with the Board’s conclusions, not that the Board acted in an arbitrary or erroneous matter.

For a Third Defense
(Decision Supported by Some Evidence)

26. The Court has the power to review the appeal and determine whether the Board made the correct decision as a matter of law. “On appeal, the findings of fact by the [Zoning] Board shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); *see* S.C. Code Ann. § 6-29-840(A) (Supp. 2020) (“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.”).

27. Further, if the minutes are found to be incomplete, then the transcript attached hereto can constitute the final findings of the Board. *See, Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 493–94, 536 S.E.2d 892, 899 (Ct.App.2000). Respondent herewith provides the full transcript including the exhibits presented to the board.

28. Therefore, in review of zoning appeals under § 6-29-840, the circuit court must defer to the factual findings of the board unless there is “no evidence” to support that lower body’s conclusion.

29. In the instant case, the Spartanburg County Board of Zoning Appeals heard ample evidence, attached hereto, and attached to Petitioner’s Notice of Appeal. After considering the evidence presented, the Board chose not to uphold the Notice of Violation but, in light of the evidence presented at the hearing, chose to reverse the Planning Department.

For a Fourth Defense
(No New Evidence Allowed)

30. Pursuant to S.C. Code § 6-29-840(A), “[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by the jury, and the court *may not take additional evidence.*” (emphasis added).

31. To the extent that Spartanburg County is trying to offer new evidence into the record, Respondent denies each and every piece of new evidence being proffered and requests that each and every piece of new evidence being proffered be stricken from the record.

For a Fifth Defense
(Strict Construction)

32. South Carolina courts have consistently held that zoning ordinances, being in derogation of common law, are strictly construed against the governing authority and in favor of the property owner to allow the freest and broadest use of one’s property. *See, e.g., Keane/Sherratt P’Ship. v. Hodge*, 292 S.C. 459, 357 S.E.2d 193 (Ct. App. 1987); *Purdy v. Moise*, 223 S.C. 298, 75 S.E.2d 605 (1953).

33. The statutory construction which the government, Spartanburg County, seeks to employ would be overly broad and encompass each and every act that a property owner seeks to take

on its private land. Indeed, as previously stated, Spartanburg’s construction argues that anything from a basketball goal to a 50-story state-of-the-art skyscraper to a flagpole falls within the purview of Unified Land Management Ordinance Section 1.07. Yet, even after arguing that all such items require permits, the County explicitly admits there is no permit required for a flagpole. *See* Transcript page 52 (Board Member Langford: “[I]s there a flagpole permit application that we can go get right now?” Planning Department Head Ms. Holliday: “There is not a flagpole permit.”).

34. When strictly construing the Spartanburg County Unified Land Management Ordinance against the governing authority in favor of the property owner, the Spartanburg County Board of Zoning Appeal’s decision must be upheld.

For a Sixth Defense
(Violation of Procedural Due Process)

35. If this Court finds that Spartanburg County Land Management Board of Appeals Rules of Procedure do apply, then pursuant to Article III, Section 6. Notice, Respondent did not receive proper notice.
36. After a search of the *Greenville News* and *Herald-Journal*, no notice of the hearing was published at least 15 days prior to the hearing.
37. After an inspection of the property at issue, no public notice of the hearing was posted on or adjacent to the property.
38. Further, if this Court finds that Spartanburg County Land Management Board of Appeals Rules of Procedure do apply, because proper notice was not given, and because notice was only given seven (7) days prior to the hearing, Respondent was denied its right to subpoena witnesses at least ten (10) days prior to the hearing pursuant to Article IV Section 2. Witnesses.

For a Seventh Defense
(Laches)

39. Respondent began flying the South Carolina State Flag atop the flagpole on its property on August 6, 2022.

40. By Petitioner/Appellant's own admissions through public statements regarding this ongoing litigation, an estimated 80,400 vehicles pass by this flag every day. Seventy-five days elapsed between when the South Carolina flag was first flown atop the flagpole and when the notice of violation was mailed to Respondent.

41. By Petitioner/Appellant's own admissions through public statements regarding this ongoing litigation, by their provided calculation, an estimated 6,030,000 vehicles (80,400 x 75), over ten times the population of Spartanburg County, passed the flagpole before a notice of violation was issued.

42. Therefore, the Petitioner/Appellant neglected for an unreasonable and unexplained length of time to provide notice of any alleged violations to Respondent, who has been prejudiced by the delay, and such unreasonable delay and resulting prejudice constitutes a complete defense to this Appeal.

WHEREFORE, having fully answered the Appeal of Appellant, Respondent prays that:

- a. the Appeal be dismissed, with prejudice;
- b. the Court affirm the subject decision of the Spartanburg County Board of Zoning Appeals;
- c. Respondent be reimbursed for the costs and fees associated with this action; and,
- d. for all other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ *Ethan L. Jedziniak*

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

Ethan L. Jedziniak, S.C. Bar #105785

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

(864) 752-0911 (facsimile)

josh@hjlsc.com

helena@hjlsc.com

ethan@hjlsc.com

Attorneys for Plaintiff

Greenville, SC
May 23, 2023

GH

From: Hembree, Gregg ghembree@spartanburgcounty.org
Subject: RE: Building Permit
Date: October 13, 2020 at 7:48 AM
To: R. K. Merting robert@rkmerting.com

Mr. Merting,
No permit is required for a flagpole.

Thank You,
Gregg Hembree

From: R. K. Merting <robert@rkmerting.com>
Sent: Monday, October 12, 2020 7:05 PM
To: Hembree, Gregg <ghembree@spartanburgcounty.org>
Subject: Building Permit

Mr. Hembree,

A client of mine has asked about installing a flag pole on their land in the unincorporated area of Spartanburg. I've looked and cannot find any permits for such. Is there any permit needed for said installation or the necessary groundbreaking therefore?

Sincerely,

Robert K. Merting
Attorney at Law
501 Furman Rd.
Suite W
Greenville, SC 29609
1-843-830-5227

w: rkmerting.com e: robert@rkmerting.com
[Newsletter signup](#)

Email secured by Check Point

Email secured by Check Point

EXHIBIT
A



Spartanburg County Building Codes
366 N Church St, Suite 500
Spartanburg, SC 29303
Inspection Worksheet (BCELECTRIC-0622-0243)

Case Number: BCELECTRIC-0622-0243

Case Module: Permit

Inspection Date: 07/21/2022

Inspection Status: Passed

Inspector: Charles Thornton

Inspection Type: Permanent Power Release (Commercial)

Job Address: 2294 Teaberry Rd
Spartanburg, SC 29303

Parcel Number: 7-01-00-062.01

Contact Information

Contact Type	Company Name	Name
Applicant	G&S Electrical Services LLC	James Garrett
Electrical Contractor	G&S Electrical Services LLC	James Garrett
Property Owner	ADAM WASHINGTON BALLENGER CAMP # 68 SONS OF CONFEDERATE VETERANS INC	

Checklist Information

Checklist Item	Results	Comments
General Comments - Checklist item used to track general comments, not specific to any other checklist item	Pass	



Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Aeronautical Study No.
2022-ASO-7362-OE

Issued Date: 04/22/2022

Robert K. Merting
Adam W. Ballenger Camp, SCV
P.O. Box 26284
Greenville, SC 29616

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ** (CORRECTION)**

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Flagpole Flag Pole
Location:	Spartanburg, SC
Latitude:	35-00-41.81N NAD 83
Longitude:	81-54-56.40W
Heights:	847 feet site elevation (SE) 120 feet above ground level (AGL) 967 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

See attachment for additional condition(s) or information.

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M.

This determination expires on 10/22/2023 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO

EXHIBIT

C

SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This determination cancels and supersedes prior determinations issued for this structure.

If we can be of further assistance, please contact our office at (816) 329-2525, or natalie.schmalbeck@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2022-ASO-7362-OE.

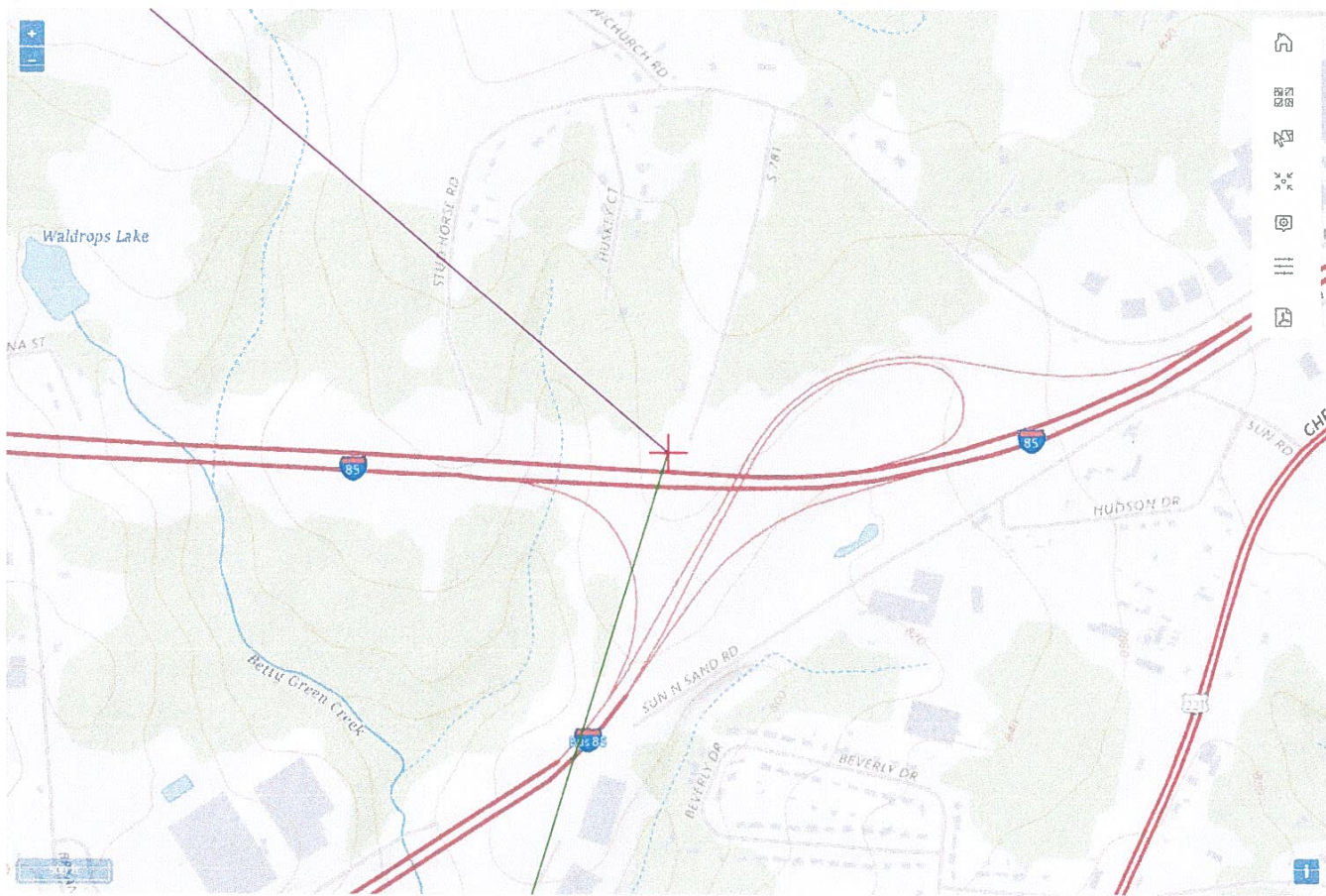
Signature Control No: 514039786-525424095

Natalie Schmalbeck
Technician

(DNE

Attachment(s)
Additional Information
Map(s)

Corrected Determination letter.



EXHIBIT

D

S

From: StormWaterLessThan1 Stormwaterlessthan1@dhec.sc.gov
Subject: Re: Adam W. Ballenger Veterans Memorial Park
Date: June 2, 2022 at 9:43 AM
To: R. K. Merting robert@rkmerting.com
Cc: Jim Crocker poilu151@hotmail.com, Danny Burns danburns1958@gmail.com, Brian Motts bmotts1@yahoo.com, Jimmy Garret jgarre10@bellsouth.net

****If you have already received this email for the project submitted, please disregard****

We are in receipt of your Non-Coastal Stormwater Less than One-Acre (LTOA) Notification.

Please allow this email to serve as confirmation of the Department's receipt of the notification form. Via submittal of this form, you have complied with your obligation for notification under the S.C. Stormwater Management Regulations and your notification has been placed on file with the Department (SCDHEC).

If you are certain your site meets all LTOA program requirements, you may proceed with construction activities identified in the notification submitted to the Department.

Please note that ONLY construction activities identified in your notification may be performed at your site. The operator of the activity is responsible for compliance with the plan and assuring no sediment is discharged off-site or to Waters of the State. The operator is also responsible for obtaining any additional approvals that may be necessary for the planned activity.

Please be aware, the Department may conduct periodic inspections of your project/site and failure to meet all applicable requirements, as defined by the Department or the respective MS4, or failure to comply resulting in discharge of sediment to Waters of the State and/or adjacent properties may subject you to applicable penalties under the S. C. Pollution Control Act.

If you are not certain your site meets all LTOA program requirements or if you have additional questions, do not proceed with construction activities. Please review the information on the following links and contact the Department or, if applicable, the respective MS4.

<http://www.scdhec.gov/Environment/WaterQuality/Stormwater/WherettoApply/>

<http://www.scdhec.gov/Environment/WaterQuality/Stormwater/less-than1-acre/>

ELECTRONICALLY FILED - 2023 May 23 3:46 PM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201155

<http://www.scdhec.gov/environment/waterQuality/stormwater/lessThan1acre/>

<http://www.scdhec.gov/Environment/docs/nonCoastal-LT1A.pdf>

If you have further questions, please call 803-898-4300 and ask for Stormwater Permitting.

Sincerely,

The Division of Dam Safety and Stormwater Permitting

From: R. K. Merting <robert@rkmerting.com>

Sent: Friday, May 27, 2022 1:25 PM

To: StormWaterLessThan1 <Stormwaterlessthan1@dhec.sc.gov>

Cc: Jim Crocker <poilu151@hotmail.com>; Danny Burns <danburns1958@gmail.com>;
Brian Motts <bmotts1@yahoo.com>; Jimmy Garret <jgarre10@bellsouth.net>

Subject: Adam W. Ballenger Veterans Memorial Park

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Ryan,

Please add this to your file.

Sincerely,

Robert K. Merting
Attorney at Law
P.O. Box 26284
Greenville, SC 29616
1-843-830-5227

w: rkmerting.com e: robert@rkmerting.com
[Newsletter signup](#)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2023-CP-42-01155
	)	
Spartanburg County and Cole Alverson)	)	
in his Official Capacity as County)	)	
Administrator,	)	RESPONDENT ADAM WASHINGTON
	)	BALLENGER CAMP #68, SONS OF
Petitioner/Appellant,	)	CONFEDERATE VETERANS, INC.’S
	)	BRIEF IN SUPPORT OF AFFIRMING
v.	)	SPARTANBURG COUNTY BOARD OF
	)	ZONING APPEALS DECISION
The Spartanburg County Board of Zoning)	)	
Appeals, and Adam Washington Ballenger)	)	
Camp #68, Sons of Confederate Veterans,)	)	
Inc.	)	
	)	
Respondents.	)	
	)	

Issue before the Court

The sole issue before this Court is whether the decision of the Spartanburg County Board of Zoning Appeals should be disturbed. The County has appealed the decision of the Board, arguing the Court should reverse the Board’s decision. For the reasons set forth below, the plaintiff respectfully submits that the Board did not err, and the County has not shown that the Board’s decision should be disturbed.

Factual Background

In 2019, Respondent Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc., (“Camp”) acquired property located at 2294 Teaberry Road, Spartanburg, South Carolina. *See*, Spartanburg County Planning and Development Department, Board of Zoning Appeals Meeting, 1:1-10 (Jan. 31, 2023) (Hereinafter “Transcript”). The property was acquired for the sole purpose of exercising the plaintiff’s First Amendment Right related to the plaintiff’s purpose, preservation of South Carolina and Southern heritage. After it acquired the property at

issue, the Camp approached Robert Merting to assist with the legal and procedural aspects of installing a flagpole on the property. *Id.*

Merting inquired on six separate occasions as to whether Spartanburg County requires a permit to erect a flagpole. *See generally*, Transcript. On each of these six inquiries, County representatives stated that a permit was not required for flagpole. *Id.* One of the exchanges was via email from County Building Codes Director Gregg Hembree, in which Mr. Hembree stated that “no permit is required for a flagpole.”¹ *See*, Minute Meetings of the January 31, 2023, Board of Zoning Appeals. *See also*, Exhibit A, Transcript; *See generally*, Transcript. Merting’s inquiries were made both to Spartanburg County Planning and Development and Spartanburg County Building Codes and were made to supervisors in each department. *See* Transcript, 19:10-25, 20:1-21.

During this three-year time period Merting repeatedly made efforts and inquiries with both the Spartanburg County Planning Department and Spartanburg County Building Codes, and Merting was repeatedly told no permit was required for a flagpole from those two entities.² Merting successfully secured several permits for the property and the proposed flagpole including a permit from the Federal Aviation Administration and a permit from South Carolina Department of Health and Environmental Control. Transcript, 20:22-25, 21:1-2. After realizing that the Camp wanted the flagpole surrounded by lighting, Merting, along with an electrical contractor, again, went to

¹ According to the Spartanburg County Website, the mission statement of the Building Codes Department is “to ensure sound construction of new buildings, promote steady maintenance of existing structures, and enforce regulation development practices in accordance with the S.C. Building Code and Local Land Use Regulations.” The website goes on to say that “[t]his will be accomplished by expediting the permit and inspection process.” Spartanburg County, *Building Codes*, SPARTANBURG CNTY. BLD. CODES, <https://www.spartanburgcounty.org/173/Building-Codes> (last visited Nov. 5, 2023).

² No other entity has challenged the Camp’s exercise of its First Amendment Right.

Spartanburg County to inquire about an electrical permit for the property to light the flagpole. Once again, the Camp was told that neither a building permit nor an electrical permit were required. Transcript, 21:3-16.

Finally, after explaining to several members of the Spartanburg County Building Codes Department that the lighting to surround the flagpole was not being installed for security purposes, but rather for purposes of displaying the flag and to illuminate the flagpole, Spartanburg County issued an Electrical Permit for the property. Transcript, 22:15-22; Transcript, Exhibit B. Once the electrical work was completed, Spartanburg County inspected the property, and approved of the electrical work done. Transcript, 22:22-24. The flag pole was placed on the Property in July of 2022.

On August 6, 2022, the Camp raised the South Carolina State Flag on the property, and, for two months while the South Carolina Flag was flying atop the flagpole, the Camp, the landowner, nor any member or representative of the camp received any pushback from Spartanburg County. *See generally*, Transcript 23:19-21. The Camp did not hide the fact that it was flying a South Carolina Flag nor did the Camp hide its intentions to display a Confederate Battle Flag atop the pole. Indeed, the Camp publicized several fundraising opportunities, including a picnic cancelled by the Spartanburg County Historical Society because of the events purpose, and the Camp even held a public flag raising ceremony. *See generally*, Transcript 23:23-25, 24:1-7, Exhibit E. It cannot be genuinely argued that Petitioners Spartanburg County and Cole Alverson in his Official Capacity as County Administrator, Spartanburg County Planning Department, and, for that matter, the estimated 80,400 vehicles per day that pass the flagpole each day, were unaware of the flagpole's existence or the South Carolina Flag's adornment atop the flagpole. However, once the Camp publicized that a Confederate Battle Flag would fly atop

the pole and the County learned of this intention, the County began to attempt to manufacture a pretextual reason to suppress the Camp's protected speech, in violation of the First Amendment.

Procedural History

On October 21, 2022, Spartanburg County Planning and Development Department issued a Notice of Violation of "ULMO Section 1.07 – Required Permits/Certificates." This was after the Camp flew the South Carolina state flag for nearly three months without so much as a word from the County. The Camp filed a civil case with this Court on November 29th, 2022³, and timely submitted its appeal of the Notice of Violation to the Board of Zoning Appeals. A hearing of the appeal was held on January 31, 2023.

At the hearing, the Board considered two issues. First, the Board considered whether the Planning Staff's issuance of a Notice of Violation for the establishment of an accessory use without a principal use was in error. Second, the Board considered whether, if any valid restriction did exist, the flagpole may be grandfathered in. Present at the hearing and offering testimony on behalf of the County were Joan Holliday, Director of Planning and Development for Spartanburg County, and John Harris, County Attorney for Spartanburg County. Present for the Camp was Robert Merting, a representative for the Camp and a sworn witness who testified to his personal knowledge of facts and observations, and Ethan Jedziniak, counsel for the Camp.

After nearly two hours of evidence, including testimony, and questioning of participants, the Board found that the Notice of Violation was issued in error, and overturned the October 21, 2022, Notice of Violation. On March 30, 2023, the County filed this Appeal.

³ Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). At a hearing to dismiss Respondent's civil case, the County represented to this Court that Respondent had won its case with the Board of Zoning Appeals. Appellant's Motion to Dismiss was granted therein.

Standard of Review

“In zoning matters, this Court is obligated to apply the extremely narrow standard of review outlined in *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct.App.2000). The local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities.” *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 412, 552 S.E.2d 42 (S.C. App. 2001).

“On appeal, the findings of fact by the [Zoning] Board shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); *See*, S.C. Code Ann. § 6-29-840(A) (Supp. 2020) (“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.”) “[T]he factual findings of the jury will not be disturbed unless a review of the record discloses that there is *no evidence* which reasonably supports the jury’s findings.” *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000) (internal citation omitted) (emphasis included in original). This “no evidence” standard may be phrased in the positive as: “The ‘findings... must be affirmed ... if there is any evidence to support them.’” *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 37, 606 S.E.2d 209, 213 (S.C. App. 2004) (discussing the appropriate standard of review).

“The appellate court gives ‘great deference to the decisions of those charged with interpreting and applying local zoning ordinances.’” *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 91, 791 S.E.2d 305, 308 (Ct. App. 2016) (quoting *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995)). Because the Court is constrained by the evidence

already admitted, it may only consider the minutes and, if the minutes are considered invalid, the Court may consider the transcript. *See, Vulcan*, 342 S.C. 480, 493–94, 536 S.E.2d 892, 899 (holding that a transcript of the hearing can constitute the final findings if the minutes are found invalid). “A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Restaurant Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

A decision of the Board of Zoning Appeals will be overturned only “if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Furr v. Horry Cnty. Zoning Bd. Of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014). “The party challenging a governmental body’s decision bears the burden of proving the decision is arbitrary.” *Pressley v. Lancaster County*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001). “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) (internal citations omitted).

Further, South Carolina courts have consistently held that zoning ordinances, being in derogation of common law, are strictly construed against the governing authority and in favor of the property owner to allow the freest and broadest use of one’s property. *See, e.g., Keane/Sherratt P’Ship. v. Hodge*, 292 S.C. 459, 357 S.E.2d 193 (Ct. App. 1987); *Purdy v. Moise*, 223 S.C. 298, 75 S.E.2d 605 (1953).

Analysis

- I. The Board’s finding that the Notice of Violation was issued in error due to the fact that the Unified Land Management Ordinance does not specifically address permits for flagpoles is supported by evidence, surpassing the low “any evidence” threshold.**

The issue before the Board of Zoning Appeals was whether the Spartanburg County Planning and Development Notice of Violation based upon a violation of ULMO Section 1.07 – Required Permits/Certificates was issued in error. ULMO Section 1.07 – Required Permits/Certificates reads as follows:

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.

No building, structure or land shall be used; nor shall any building structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

No permits inconsistent with the provisions of this Ordinance shall be issued unless accompanied by an approved variance.

Unless elsewhere regulated, the provisions of this Section shall not apply to the necessary construction, replacement, or maintenance by a public utility of its outside plant facilities, including such items as poles, cross arms, guys, wire, cable and drops.

Because of the plain language of the ordinance, the Board focused on whether the Camp complied with the requirements set forth in Section 1.07 during the hearing. Importantly, much of the testimony and evidence presented was related to Paragraph 2 of the Ordinance, specifically the clause stating, “[n]o building, structure or land shall be used; nor shall any building structure or land be converted, wholly or in part to any other use, *until all applicable and appropriate licenses, certificates and permits have been issued.*” (Emphasis added). Concisely stated, the Ordinance proclaims that, if a permit is required, then a permit must be obtained. The inverse of this Ordinance is equally as simple: if no permit is required, then no permit must be obtained. The Board’s decision, which must be given the same weight as facts determined by a jury, was that no permit was required, and this Court may end the analysis there if it chooses.

Indeed, the County reaffirmed this issue several time at the hearing. As stated by Spartanburg County Attorney John Harris: “ultimately the board has to determine whether staff

was correct in issuing the notice of violation and whether or not the applicant or the appellant, in this case, is required to get a permit.” Transcript 62:6-9. Throughout the hearing, the Board of Zoning Appeals heard ample evidence on this issue to reach their conclusion. Appellant presented ample evidence that the Camp, through its agents, inquired multiple times regarding a flagpole permit, and, each time, were told that no permit was needed for a flagpole. *See generally*, Transcript. Evidence was presented that the Spartanburg County Building Codes Director, Gregg Hembree, stated “[n]o permit is required for a flagpole.” Transcript, Exhibit A. When asked directly whether there was an application for a flagpole permit, the Director of the Planning Department, Joan Holliday, concisely stated that “[t]here is not a flagpole permit.” Transcript, 52:19. Ironically, although much to her chagrin, even when Board Member Padgett, former Director of Building Codes, was asked by Ms. Holliday “was every single use [which requires a permit] listed for you?” Board Member Padgett Responded, “And, yes they are.” Transcript, 82, 2-9. Therefore, the Board of Zoning Appeals heard ample evidence directly on the issue to reach their conclusion, made a factual finding based on that evidence, and is entitled to the same deference as a jury making a factual determination.

At the hearing, in support of the Camp’s positions, Spartanburg County Planning and Development argued that the Camp’s placing of a flagpole upon the property was a change-of-use of the property. Board of Zoning Appeals Meeting Minutes, January 31, 2023. The Camp offered evidence contradicting and disproving that argument. The Camp established that the land is vacant since the flagpole is not a structure, and is not capable of being occupied. Indeed, the flagpole is a form of speech expression, no different than a for-sale sign, a boundary sign, a political sign, or any myriad of signs that, when placed on vacant land, do not change the nature of the land. The

principal use of the land, that is the primary purpose for which the land is used, remains vacant land, suitable for future development. *See ULMO*, Article 6 – Definitions, Use, Principal.⁴

During the hearing, several of the members of the Board of Zoning appeals agreed with the Camp that the flagpole could not be occupied and acknowledged that the primary use had not changed. Transcript, 82, 15-18. The flagpole did not change the use of the property triggering a required permit. *Id.* “[I]n South Carolina, a zoning board determination regarding whether a particular activity or purpose constitutes a ‘use’ of property is a finding of fact.” *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 411, 552 S.E.2d 42 (S.C. App. 2001). Findings of fact “will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the [] findings.” *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 406, 552 S.E.2d 42, 45 (S.C. App. 2001) (quoting *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992) (emphasis added) (citing *Townes Assoc's, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976))). It was the Board’s decision whether or not a flagpole was a ‘use’ and whether that ‘use’ required a permit. Transcript, 62, 17-20 (“The issue tonight is whether or not they need a permit to change the use of the property, and whether or not the use has, in fact, changed.”).

Not only did the Board hear some evidence, the Board heard a lot of evidence – two hours’ worth of evidence – to conclude that the placement of a flagpole upon the property did not change

⁴ The definition of Use, Accessory directs the reader to the definition of Building, Accessory. A building is defined as “[a]ny structure built for support, shelter, or enclosure for any occupancy or storage.” *See ULMO*, Article 6 – Definitions, Use, Building. An accessory building is defined as, “[a] subordinate structure on the same lot as the principal or main building or use occupied or devoted to a use incidental to the principal use. Included in this definition are private garages, storage sheds, workshops, domestic animal shelters, pool houses, etc., when detached from the principal buildings.” *See ULMO*, Article 6 – Definitions, Use, Building, Accessory. Contrary to the County’s argument, a flagpole is neither contemplated in this definition of buildings nor accessory buildings as a flagpole is not “built for support, shelter, or enclosure for any occupancy or storage.”

the land's use and did not trigger the requirement for a permit. In fact, Spartanburg County Planning and Development admitted in the hearing that "[t]here is not a flagpole permit." Transcript, 52:15-19 (Board Member Langford: "[I]s there a flagpole permit application that we can go get right now?" Planning Department Head Ms. Holliday: "There is not a flagpole permit."). Further, the Board had and considered the Spartanburg County Performance Zoning Ordinance which regulates the placing of signs in "all the unincorporated portions of Spartanburg County." PZO § 7.1.00 (July 2022). The PZO defines flags as "a piece of durable fabric of distinctive design that is used as a symbol or decorative feature." Id § 7.2.00. Flags are further described as an "exempt" sign not requiring a permit. Id. § 7.2.10 and 7.4.00.

Even after considering unambiguous, black letter law that flags are exempt from permits and an admission from Spartanburg County Planning and Development that "[t]here is not a flagpole permit," the Board searched the Unified Land Management Ordinance for any regulations on flags or flagpoles.⁵ Transcript 52:19. The Board simply was persuaded by the weight of the evidence, of which there is plenty, and confirmed that the ULMO does not require permits for flagpoles. Since permits are not required for a flagpole, no permit was required, applicable, or appropriate. This is underscored by the fact that the County repeatedly told the Camp no permit was required for the flagpole.

Because ULMO §1.07 did not require the Camp to obtain a flagpole permit—a permit that does not exist—the only way the Camp could violate §1.07 is if the County changed its position and took the position that some permit was required. The only required permit identified by either

⁵ This evidences the discriminatory reason behind the County's efforts to prohibit the Camp's speech.

the County or the Camp was a permit for electrical work, which Spartanburg County Building Codes issued. SCBC inspected the completed work and signed off on it.

The Board correctly observed that all the required, applicable, and appropriate permits were obtained by the Camp, and, therefore, correctly concluded the Notice of Violation was issued in error. Because the decision was supported by ample evidence, the low “any evidence” threshold is satisfied. There is no evidence that the Board’s decision was arbitrary, capricious, or an abuse of discretion. With all the evidence offered by the Camp, much of it undisputed, it would have been hard for the Board to come to any other conclusion. The Board of Zoning Appeals decision must be upheld in order to comply with *Heilker, Sterling Dev. Co.* and the body of case law which requires the Board’s findings to be given the same weight as a jury verdict.

II. The only violation brought against the Camp was a violation of Unified Land Management Ordinance Section 1.07 – Required Permits/Certificates.

The County has raised, for the first time on appeal, a violation ULMO § 1.13.⁶ The only Notice of Violation issued to the property owners was violation of “ULMO Section 1.07 – Required Permits/Certificates.” Again, the sole issue before the Spartanburg County Board of Zoning Appeals was whether the Spartanburg County Planning and Development Notice of Violation based upon a violation of ULMO Section 1.07 – Required Permits/Certificates was issued in error. Therefore, the only issue before this Court is whether the Spartanburg County Board of Zoning Appeals erred in finding that the Spartanburg County Planning and Development Notice of Violation based upon a violation of ULMO Section 1.07 – Required Permits/Certificates

⁶ The only mention of ULMO Section 1.13 by Spartanburg County came on page 73 of the transcript in which Joan Holliday responded to an allegation that a minor improvement on land does not change the use of the land. Holliday did not allege that section the Planning Department also issued a Notice of Violation in violation of Section 1.13 of the ULMO and failed to raise the issue at the hearing.

was issued in error. The County's assertion that the Camp violated Section 1.13 of the ULMO, raised for the first time in Paragraph 23, the last paragraph, of the County's Appeal, cannot be considered by this Court because it was not preserved for appellate review.

It is a cardinal rule of appellate review that issues not raised below cannot be raised for the first time to the court reviewing a decision in an appellate context like this one. *See State v. Nichols*, 325 S.C. 111, 120-21, 481 S.E.2d 118, 123 (S.C. 1996) ("An issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review.") (citing *State v. Hudgins*, 319 S.C. 233, 460 S.E.2d 388 (1995), cert. denied, --- U.S. ----, 116 S.Ct. 821, 133 L.Ed.2d 764 (1996) (objection must be on specific ground)). Matters not raised are not preserved for review. *Id.* The County chose the grounds upon which it issued its Notice of Violation, and it chose to cite only ULMO Section 1.07. Having failed to cite Section 1.13 of the ULMO in the Notice of Violation, the Appellant cannot now raise it.⁷

Despite raising a new issue, even if, *arguendo*, ULMO Section 1.13 did apply, ULMO Section 1.13 does not prohibit flagpoles. Section 1.13 explicitly acknowledges that some uses are "specifically exempted by this Ordinance." *Id.* As discussed *supra*, the PZO amends and supersedes the ULMO as it applies to signs and flags, and the PZO specifically exempts the erection of flags. If two statutes or ordinances are incapable of being reconciled, "the last statute passed will prevail, so as to impliedly repeal the earlier statute to the extent of the repugnancy." *Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co.*, 295 S.C. 243, 247, 368 S.E.2d 64, 66 (1988). Therefore, the last legislative expression rule applies. "Under the 'last legislative expression' rule, where conflicting provisions exists, the last in point of time or order of arrangement, prevails."

⁷ Because the only corrective action is punitive in nature, removing the flagpole or lowering the flagpole to 30 feet, the Camp's right to be free from double jeopardy would also be violated if the Camp were punished by the County raising a new violation for the first time on appeal.

Ramsey v. Cnty. of McCormick, 206 S.C. 393, 397, 412 S.E.2d 408, 410 (1991). This rule “requires that in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment.” *Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993).

In this case, Spartanburg County has competing zoning ordinances. The ULMO, which was last amended in June of 2014, and the PZO, which was passed and put into effect in January of 2020. The ULMO is silent on the issue of whether a flagpole requires a permit. The PZO, on the other hand, is clear that a flagpole is exempt from requiring a permit. As discussed, the PZO defines flags as “a piece of durable fabric of distinctive design that is used as a symbol or decorative feature.” Id § 7.2.00. Flags are further described as an “exempt” sign not requiring a permit. Id. § 7.2.10 and 7.4.00. Therefore, even if § 1.13 of the ULM was applicable, given the last legislative expression rule, a flagpole still would not require a permit.

The Board’s finding is supported by the multiple statements made by the County and County employees and agents acting in the scope and course of County employment. Both before and during the hearing, the County repeatedly stated and confirmed there is no permit required for a flagpole. No permits are required for many other routine signs, such as political signs, incidental signs, real estate signs, and the like, and the County’s interpretation of ULMO § 1.13, similar to the discussion *infra*, leads to absurd results, namely, requiring of permits that do not exist for actions that are explicitly exempt from permits. This also places an undue burden on free speech by the creation of a prior restraint. Regardless, it is not contrary to any established readings, the Board was well within its discretion to determine that a flagpole is a use which is exempted from 1.13, and the Board’s decision regarding use is a finding of fact, entitled to the same deference as a jury verdict. *See, Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 411, 552 S.E.2d 42 (S.C. App.

2001). Findings of fact “will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the [] findings.” *Heilker*, 346 S.C. 401 at 411, 552 S.E.2d at 46.

III. The County’s Interpretation of ULMO Section 1.07 leads to absurd results, and an undue and unconstitutional burden on Free Speech.

The County argues that a “plain reading” of ULMO Section 1.07 shows that a permit is required before any structure can be erected on real property. The County’s construction leads to the patent absurdity that “a permit would technically be required for the erection of say, a basketball goal or a swing set or a birdbath or perhaps even those artificial pink flamingos which grace front yards everywhere.” *City of Aiken v. Cole*, 289 S.C. 239, 242, 345 S.E.2d 760, 762, (S.C. App. 1986) (refusing to reach such an absurdity and upholding a decision that no building permit was required for antennas despite it “appear[ing] that a building permit was technically required for their erection.”). A court is permitted to look beyond a statute’s plain language when applying the words literally would lead to a “result so patently absurd” that the drafter could not have intended it. *See, Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011)

In reality, ULMO §1.07 only prohibits the erection of a “structure or sign requiring a permit.” Any structure or sign not requiring a permit may be freely erected. As discussed supra, the PZO, a competing zoning ordinance in Spartanburg County, explicitly regulates the construction of signs, including flags, county wide, and said ordinance explicitly exempts flags from permitting requirements. PZO § 7.4.00. The ULMO is silent on flags and flagpoles and, therefore, likewise does not require a permit for their erection.

Nor does ULMO Section 1.07 require a permit for every use of land. Rather, the ordinance only forbids putting land to use or changing the use “until all applicable and appropriate licenses,

certificates and permits have been issued.” ULMO Section 1.07. As has been discussed *supra*, no permit was required for a flag or a flagpole, and such use is explicitly exempted in PZO § 7.4.00.

Accepting the County’s position that every structure, defined to mean anything which is built or constructed, requires a permit would lead to plain contradictions and create an undue and unconstitutional burden upon free speech.⁸ A flag is one of the purest forms of speech and both content and position of flags are routinely used to communicate information. *See Shurtleff v. City of Boston*, 596 U.S. ____ 142 S.Ct.1583, 1590 (2022) (discussing the speech of flags). Like political speech, it is at the core of the First Amendment. Like flags, political signs are explicitly exempted from permitting requirements in the PZO. PZO § 7.2.10. In fact, a thorough review of the reference chart reveals that five (5) types of signs are completely exempt from permitting requirements and that an additional eleven (11) are exempt from permitting when erected temporarily. PZO § 7.2.10. The County’s construction of the ULMO is in clear contradiction of the PZO and thus violates the canon of construction that the law should be read in a manner harmonious and not contradictory. *See, Food & Drug Admin. V. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (“A court must therefore interpret the statute ‘as a symmetrical and coherent regulatory scheme,’ and ‘fit, if possible, all parts into a harmonious whole.’” (citations omitted)).

Further, the County’s construction would place a prior restraint upon the speech of Spartanburg Citizens. Time sensitive speech, such as campaign signs, would be subject to the lengthy review process of Spartanburg County Planning and Development delaying speech that

⁸ The County’s desire to prohibit the speech at issue presents not only a desire to plainly violate the First Amendment, but presents other constitutional problems as well. Prohibition in this context would violate the Due Process Clause, the Equal Protection Clause, the Ex Post Facto Clause, the constitutional prohibition on Double Jeopardy, and potentially other constitutional guarantees and rights. While the Camp is hopeful the Court will uphold the Board’s decision under the applicable “any evidence” standard, and this issue will be resolved after a hearing, the Camp preserves for appeal all constitutional issues, should there be further appellate review.

must be prompt to be effective. Further, unpopular speech will be unconstitutionally stifled by ever changing regulations as experienced first-hand in this case.

IV. The County’s application of ULMO is discriminatory and constitutes an undue and unconstitutional burden on Free Speech.

It is axiomatic that the government may not restrict speech “to suppress a particular point of view.” *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 812 (1985). Indeed, “[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or the perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). Put differently, a government has engaged in viewpoint discrimination when it “denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.” *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993).

The County’s choice to selectively apply the ULMO against the Camp and the Confederate Battle Flag is a clear suggestion of a preference for certain viewpoints and speech over the Camp and is discriminatory in practice. It also seeks to treat the Camp and its expression differently than other groups and their expression in violation of the Equal Protection Clause of the Fourteenth amendment. See *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Plyler v. Doe*, 457 U.S. 202 (1982).

In the County’s interpretation of the ULMO and ULMO § 1.07, every structure requires a permit, and a structure is anything which is built or constructed. While the County argues the restriction is viewpoint neutral on its face, that cannot be true in practice. The County proclaiming that everything built or constructed requires a permit each and every time anything placed on property is not applied uniformly or to all things, which would be required by the County’s interpretation. Spartanburg County officials are not going door to door in Spartanburg County

issuing citations for basketball goals, planters, yard signs, holiday decorations, Santa Claus inflatables, garden hose holders, and pink flamingos. Not only would that interfere with landowner's use of their property and violate the Due Process Clause, it would be impossible.

In this case, the County has not uniformly applied provisions of the ULMO, and, a policy that is "viewpoint neutral on its face may still be unconstitutional if not uniformly applied." *Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790, 803 (9th Cir. 2011). The Camp placed the flagpole upon its property in July of 2022 after seeking permits from both Spartanburg County Planning and Development and Spartanburg County Building Codes. Six times, one of which was in writing, the Camp was informed that no permit was required. The County issued the Camp a permit for electrical lights to illuminate the flagpole and flag and inspected the work completed on and around the flagpole. The County had complete knowledge in July of 2022 that the Camp was placing a flagpole upon the property.

On August 6, 2022, the Camp began flying the South Carolina State Flag atop the flagpole on its property. The South Carolina State Flag flew nearly the entire time between August 6, 2022, and October 21, 2022: 77 days. The South Carolina Department of Transportation estimated that 80,400 vehicles per day pass by the flagpole. During the 77 days the South Carolina State Flag flew, approximately 6,190,800 vehicles would pass and view the flag. This is eighteen (18) times the population of Spartanburg County.

Despite this extreme visibility, the Camp did not receive the Notice of Violation until after the County was made aware of the well-publicized intentions to raise a Confederate Battle Flag and said flag was raised. There was never any indication or suggestion by the County that any issue existed whatsoever related to the flag pole during 77 days the South Carolina State Flag was displayed. The County explicitly did not require a permit, inspected the property, and raised no

objections until the content of the speech became, in the County's view, unpopular. The First Amendment is needed most where speech is unpopular, and the County's clear motivation by the content of the Camp's speech is an unconstitutional violation of the First Amendment.

Simply put, the County failed to "abstain from regulating speech when the specific motivating ideology or the opinion of the perspective of the speaker is the rationale for the restriction." *Rosenerger*, 515 U.S. 819, 829 (1995). Therefore, even if Spartanburg County's untenable proclamation that everything which is built or constructed requires a permit, the result of the County's enforcement of the ordinance and the specific and targeted efforts to prohibit political speech is unconstitutional and an unconstitutional burden on the Camp's right to free speech.

Conclusion

The Spartanburg County Board of Zoning Appeals decision was supported by the weight of the evidence, and is entitled to the same deference as a jury verdict. ULMO § 1.07 is clear, where a permit is not required, the owner is free to use his property, and the County does not require a permit for a flagpole. As much was admitted by the County in the hearing below. The County's efforts in this case are specifically aimed at prohibiting the Camp's speech. The Camp therefore respectfully requests that the Court affirm the Spartanburg County Board of Zoning Appeals decision.

Signature page to follow

Respectfully submitted,

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November 25, 2023

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2023-CP-42-01155
Spartanburg County and Cole Alverson in his Official Capacity as County Administrator,	)	
Petitioner/Appellant,	)	RESPONDENT'S MOTION TO ALTER
	)	OR AMEND THIS COURT'S
	)	FEBRUARY 20, 2024 FORMAL ORDER
v.	)	
The Spartanburg County Board of Zoning Appeals, and Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.	)	
Respondents.	)	

COMES NOW, Respondent Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc., by and through undersigned counsel, and respectfully gives notice and moves this Court under Rules 54, 59, including subpart (e), 60, and all other applicable Rules of the South Carolina Rules of Civil Procedure, to alter or amend the judgment entered February 20, 2024. This motion is properly made within 10 days after the entry of the Order.

Factual Background

In 2019, Respondent Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc., ("Camp") purchased property located at 2294 Teaberry Road, Spartanburg, South Carolina. *See* Spartanburg County Planning and Development Department, Board of Zoning Appeals Meeting, 1:1-10 (Jan. 31, 2023) (Hereinafter "Transcript"). After Respondent acquired the property at issue, the Camp approached attorney Robert Merting to assist with the legal and procedural aspects of installing a flagpole on the property. *Id.*

Mr. Merting inquired on six separate occasions as to whether Spartanburg County requires a permit to erect a flagpole. *See generally*, Transcript, 19-23. In response to each of these six

inquiries, County representatives stated that a permit was not required for flagpoles. *Id.* One of the exchanges occurred via email from County Building Codes Director Gregg Hembree, in which Mr. Hembree stated that “no permit is required for a flagpole.”¹ *See* Minute Meetings of the January 31, 2023, Board of Zoning Appeals; *see also* Transcript, Exhibit A; Transcript. Mr. Merting’s inquiries were made both to Spartanburg County Planning and Development and to Spartanburg County Building Codes and were made to supervisors in each department. *See* Transcript, 19:10-25, 20:1-21.

During this three-year time period, Mr. Merting repeatedly made inquiries with Spartanburg County Planning Department and Spartanburg County Building Codes, both of which repeatedly told Mr. Merting that no permit was required for a flagpole.² Mr. Merting successfully secured several permits for the property and the proposed flagpole from other entities, including a permit from the Federal Aviation Administration and a permit from South Carolina Department of Health and Environmental Control. *See* Transcript, 20:22-25, 21:1-2. After realizing that the Camp wanted lighting surrounding the flagpole, Mr. Merting, along with an electrical contractor, again went to Spartanburg County to inquire about an electrical permit for the property to install lighting for the flagpole. Once again, the Camp was told that neither a building permit nor an electrical permit was required. *See* Transcript, 21:3-16.

¹ According to the Spartanburg County Website, the mission statement of the Building Codes Department is “to ensure sound construction of new buildings, promote steady maintenance of existing structures, and enforce regulation development practices in accordance with the S.C. Building Code and Local Land Use Regulations.” The website goes on to say that “[t]his will be accomplished by expediting the permit and inspection process.” Spartanburg County, *Building Codes*, SPARTANBURG CNTY. BLD. CODES, <https://www.spartanburgcounty.org/173/Building-Codes> (last visited Nov. 5, 2023).

² No other entity has legally challenged the existence of the flagpole or the exercise of the Camp’s First Amendment Right.

Finally, after the Camp explained to several members of the Spartanburg County Building Codes Department that the lighting to surround the flagpole was not being installed for security purposes but rather to display flags and to illuminate the flagpole, Spartanburg County finally issued an Electrical Permit for the property. *See* Transcript, 22:15-22; Transcript, Exhibit B. Once the electrical work was completed, Spartanburg County inspected the property and approved the electrical work done. *See* Transcript, 22:22-24.

On August 6, 2022, the Camp raised the South Carolina State Flag on the property. For the two months while the South Carolina Flag was flying atop the flagpole, the Respondent, Mr. Merting, or any member or representative of the Camp did not receive any pushback from Spartanburg County. *See generally*, Transcript 23:19-21. The Camp did not hide the fact that it was flying a South Carolina Flag or its intentions to display a Confederate Battle Flag atop the pole. Indeed, the Camp publicized several fundraising opportunities, including a picnic that was ultimately cancelled by the Spartanburg County Historical Society because of the event's purpose. The Camp even held a public and publicized flag raising ceremony. *See generally*, Transcript 23:23-25, 24:1-7, Exhibit E. It cannot be genuinely argued that Petitioners Spartanburg County, Cole Alverson in his Official Capacity as County Administrator, Spartanburg County Planning Department, and, for that matter, the occupants of the estimated 80,400 vehicles that pass the flagpole each day, were unaware of the flagpole's existence or the South Carolina Flag that flew on it. However, once the Camp publicized that a Confederate Battle Flag would be raised, the County began to attempt to manufacture a pretextual reason to suppress the Camp's protected speech, in violation of the First Amendment.

Procedural History

On October 21, 2022, Spartanburg County Planning and Development Department issued a Notice of Violation of "ULMO Section 1.07 – Required Permits/Certificates." This was after the

Camp flew the South Carolina State Flag for nearly three months without any issues from the County. The Camp timely submitted its appeal, and a hearing was held on January 31, 2023.

At the hearing, the Spartanburg County Board of Zoning Appeals (hereinafter the “Board”) considered two issues. First, the Board considered whether the Planning Staff’s issuance of a Notice of Violation for the establishment of an accessory use without a principal use was in error. Second, the Board considered whether, if any valid restriction did exist, the flagpole may be grandfathered in. Present at the hearing and offering testimony on behalf of the County were Joan Holliday, Director of Planning and Development for Spartanburg County, and John Harris, County Attorney for Spartanburg County. Present for the Camp was Robert Merting, a representative for the Camp and a sworn witness who testified to his personal knowledge of facts and observations, and Ethan Jedziniak, counsel for the Camp.

After nearly two hours of evidence, including testimony, and questioning of participants, the Board found that the Notice of Violation was issued in error and overturned the October 21, 2022 Notice of Violation. At the February 28, 2023 Board of Zoning Appeals Meeting, the Board approved the January 31, 2023 Meeting Minutes (hereinafter “Minutes”). On March 30, 2023, the County filed this Appeal. Respondent filed an Answer, and on November 27, 2023 Respondent filed its Brief in Support of Affirming Spartanburg County Board of Zoning Appeals Decision in the Spartanburg County Court of Common Pleas.

On November 27, 2023, this Court heard Spartanburg County’s appeal. On January 23, 2024, this Court issued a Form 4 Order instructing Appellants’ counsel to draft a formal Order in accordance with the Form 4’s instructions. On February 20, 2024, this Court issued its formal Order.

STANDARD OF REVIEW

Rule 59(e), SCRPC, provides for a motion to alter or amend a judgment and preserve the record for appeal. *Pelican Build Centers v. Button*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘to alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. South Carolina Dept. of Transp.*, 61 S.C. 9, 21-22, 602 S.E.2d 772, 778-79. (2004). The South Carolina Rules of Civil Procedure:

contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Id at 21, 778. Indeed, “[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument . . . It is inherently unfair to disallow such an opportunity.” *Id*.

Similarly, Rule 60(b) allows a court to provide a party for relief from a prior order on a variety of bases including mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party, *see Tobias v. Rice*, 386 S.C. 306, n.4m 688 S.E.2d 552 (2010), upon a moving party presenting “facts essential to entitle [it] to relief.” *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

1. The Court’s Order misconstrues the issue in front of the Zoning Board and disregards the greater weight of the evidence that no permit was required.

The issue before the Board of Zoning Appeals was whether the Spartanburg County Planning and Development Notice of Violation based upon a violation of ULMO Section 1.07 –

Required Permits/Certificates was issued in error. ULMO Section 1.07 – Required Permits/Certificates reads as follows:

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.

No building, structure or land shall be used; nor shall any building structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

No permits inconsistent with the provisions of this Ordinance shall be issued unless accompanied by an approved variance.

Unless elsewhere regulated, the provisions of this Section shall not apply to the necessary construction, replacement, or maintenance by a public utility of its outside plant facilities, including such items as poles, cross arms, guys, wire, cable and drops.

During the hearing, because of the plain language of the ordinance, the Board focused on whether Respondent complied with the requirements set forth in Section 1.07. Importantly, much of the testimony and evidence presented was related to Paragraph 2 of the Ordinance, specifically the clause stating, “[n]o building, structure or land shall be used; nor shall any building structure or land be converted, wholly or in part to any other use, *until all applicable and appropriate licenses, certificates and permits have been issued.*” (Emphasis added). Concisely stated, the Ordinance proclaims that, if a permit is required, then a permit must be obtained. The inverse of this Ordinance is equally as simple: if no permit is required, then no permit must be obtained or can a permit be obtained. The Board’s decision, which requires the same deference as that of a jury, was that no permit was required, and this Court should end its analysis there upon finding in the record any fact supporting this position.

Spartanburg County affirmed that this was the issue before the Court several times at the hearing. As stated by Spartanburg County Attorney Mr. John Harris: “ultimately the board has to determine whether staff was correct in issuing the notice of violation and whether or not the applicant or the appellant, in this case, is required to get a permit.” Transcript 62:6-9. This statement alone raises an issue preservation controversy, as the Court’s Order must be altered and amended to reflect the sole issue of whether Respondent was required to get a permit. *See Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013) (stating an issue must be raised to and ruled upon by the trial court in order to preserve an issue for appellate review); *Shelton v. Bessant*, 312 S.C. 183, 439 S.E.2d 833 (1993) (stating acts of an attorney are directly attributable to and binding upon the client). Any further discussion by Appellant on statutory construction, different sections of the ULMO, and whether an absurd result would follow must be disregarded as the Appellant did not properly preserve those issues for appeal.³

Throughout the hearing, the Board of Zoning Appeals heard ample evidence on this issue to reach its conclusion. Respondent presented considerable uncontroverted evidence that the Camp, through its agents, inquired multiple times regarding a flagpole permit and, each time, was told that no permit was needed for a flagpole. *See generally*, Transcript, 19-23. Evidence was presented that the Appellants’ agent and employee, Spartanburg County Building Codes Director Mr. Gregg Hembree, stated “[n]o permit is required for a flagpole.” Transcript, Exhibit A. When asked directly whether there was an application for a flagpole permit, the Director of the Planning Department, Joan Holliday, concisely stated that “[t]here is not a flagpole permit.” Transcript, 52:19. Finally, when Ms. Holliday asked Board Member Padgett, former Director of Building

³ This is the exact conclusion reached by the Court on Page 13 of its Order. While this reasoning applies to Appellant, as discussed *infra*, Respondent does not, and cannot, face an issue preservation challenge under *L’On* and the very spirit of the appeals process.

Codes, “was every single use [which requires a permit] listed for you?” Padgett responded, “yes they are.” Transcript, 82, 2-9. The Board of Zoning Appeals heard *ample* evidence directly on point to reach its conclusion, made a factual finding based on that evidence, and is entitled to the same deference as a jury making a factual determination.

The Court’s inquiry into the definition of a structure and what constitutes a structure therefore has no bearing on the Board’s decision.⁴ Indeed, as discussed *supra* in Footnote 3, because Appellants’ counsel at the hearing waived any arguments other than “whether staff was correct in issuing the notice of violation and whether or not the applicant or the appellant, in this case, is required to get a permit,” any such additional issues are unpreserved. Transcript 62:6-9. Specifically, the Court’s conclusions on page 9 and 10 of the Order go directly against the greater weight of the evidence that the Board relied upon in reaching its determination.

Respondent respectfully requests that, because the issue of whether the flagpole is a structure was not before the Board, that all portions of the Court’s order related to statutory construction regarding what constitutes a structure be removed, the Order be redrafted in light of the appropriate standard of review and issues at hand, and that the Court reconsider, alter, and amend its Order to affirm the Board of Zoning Appeals’ decision and to find in favor of Respondent.

2. The Court’s disruption of the Board’s finding of fact despite there being evidence to support the Board’s decision is improper.

“On appeal, ‘the findings of fact by the [Zoning] Board shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.’” *See Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original)

⁴ Respondent did not argue to the Board that the flagpole was not a structure but rather argued and established that the flagpole was not a structure which required a permit.

(quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); *see also* S.C. Code Ann. § 6-29-840(A) (Supp. 2020) (“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.”). A decision of the Board of Zoning Appeals will be overturned only “if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Furr v. Horry Cnty. Zoning Bd. Of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014). “The factual findings of the jury will not be disturbed unless a review of the record discloses that there is *no evidence* which reasonably supports the jury’s findings.” *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000) (internal citation omitted) (emphasis included in original). This “no evidence” standard may be phrased in the positive as: “The findings... must be affirmed ... if there is any evidence to support them.” *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 37, 606 S.E.2d 209, 213 (S.C. App. 2004).

While it is generally true that the Court may only consider the evidence already admitted and the minutes created by the Board, if the minutes are considered invalid, the Court may consider the transcript. *See Vulcan*, 342 S.C. 480, 493–94, 536 S.E.2d 892, 899 (holding that a transcript of the hearing can constitute the final findings if the minutes are found invalid). In its appeal, Spartanburg County attached, as Exhibit B, the Board of Zoning Appeals “Order on Appeal.” This document, which the Court relies upon for disrupting the Board’s decision, is *not* the minutes recorded and approved by the Board of Zoning Appeals. The minutes, on the other hand, give a more in-depth analysis of the arguments by both sides and the evidence presented to the Board. Nevertheless, because the Appellant failed to produce the Minutes created and approved by the

Board, Respondent assumes Appellant intends to solely rely upon the transcript of the hearing as allowed by *Vulcan Materials*.

Relying upon the transcript and the exhibits and attachments thereto, this Order clearly goes against the weight of the evidence received and considered by the Board, as there is *ample* evidence to support the Board's findings – much more than the “any” evidence standard. *See Austin v. Board of Zoning Appeals*, 362 S.C. 29, 37, 606 S.E.2d 209, 213 (S.C. App. 2004) (“The findings... must be affirmed ... if there is any evidence to support them.”). The Board heard countless evidence that no permit was required, including an email from and a conversation with Spartanburg County Building Codes Director, Gregg Hembree, stating “[n]o permit is required for a flagpole.” Transcript, Exhibit A. Respondent testified that a supervisor in the Planning Department directly told Respondent there was no permit required for a flagpole. Transcript, 20:4-12. When asked directly whether there was an application for a flagpole permit, the Director of the Planning Department, Joan Holliday, concisely stated that “[t]here is not a flagpole permit.” Transcript, 52:19. Simply put, the Board had ample evidence to support its decision that, because Respondent sought a permit, was told that no permit was needed, and obtained other necessary permits, including an electrical permit and FAA permit were obtained, no permit was in fact needed and the Notice of Violation was issued in error. Respondent therefore respectfully requests that the Court reconsider, alter, and amend its Order and find in favor of Respondent, affirming the Board of Zoning Appeals ruling.

- 3. The Court's Order is based upon the consideration of new evidence/arguments that were not preserved for appeal by Petitioner/Appellant.**

Spartanburg County has raised, for the first time on appeal, a violation of ULMO § 1.13.⁵ The only Notice of Violation issued to the property owners was violation of “ULMO Section 1.07 – Required Permits/Certificates.” Again, the sole issue before the Spartanburg County Board of Zoning Appeals was whether the Spartanburg County Planning and Development Notice of Violation based upon a violation of ULMO Section 1.07 – Required Permits/Certificates was issued in error. Therefore, the only issue before this Court is whether the Board erred in finding that the Spartanburg County Planning and Development Notice of Violation based upon a violation of ULMO Section 1.07 – Required Permits/Certificates was issued in error. The County’s assertion that the Camp violated Section 1.13 of the ULMO, raised for the first time in Paragraph 23, the last paragraph, of the County’s Appeal, cannot be considered by this Court because it was not preserved for appellate review. The County chose the grounds upon which it issued its Notice of Violation, the County chose the grounds upon which it based its arguments at the Board’s hearing, and the County chose to cite only a violation of ULMO Section 1.07. Having failed to cite Section 1.13 of the ULMO in the Notice of Violation, the Appellant cannot now raise it.

However, even if, *arguendo*, ULMO Section 1.13 did apply, ULMO Section 1.13 does not prohibit flagpoles. Section 1.13 explicitly acknowledges that some uses are “specifically exempted by this Ordinance.” *Id.* As discussed at length in the Board of Zoning Appeals hearing and the hearing before this Court, the PZO, Spartanburg County’s new land use ordinance, amends and supersedes the ULMO as it applies to signs and flags, and the PZO specifically exempts the erection of flags. If two statutes or ordinances are incapable of being reconciled, “the last statute

⁵ The only mention of ULMO Section 1.13 by Spartanburg County came on page 73 of the transcript, in which Joan Holliday responded to an allegation that a minor improvement on land does not change the use of the land. Holliday did not allege that the Planning Department also issued a Notice of Violation in violation of Section 1.13 of the ULMO and failed to raise the issue at the hearing.

passed will prevail, so as to impliedly repeal the earlier statute to the extent of the repugnancy.” *Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co.*, 295 S.C. 243, 247, 368 S.E.2d 64, 66 (1988). “Under the ‘last legislative expression’ rule, where conflicting provisions exists, the last in point of time or order of arrangement, prevails.” *Ramsey v. Cnty. of McCormick*, 206 S.C. 393, 397, 412 S.E.2d 408, 410 (1991). This rule “requires that in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment.” *Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993).

In this case, Spartanburg County has competing zoning ordinances: the ULMO, which was last amended in June of 2014, and the PZO, which was passed and put into effect in January of 2020. The ULMO is silent on the issue of whether a flagpole requires a permit. The PZO, on the other hand, is clear that a flagpole is exempt from requiring a permit. As discussed, the PZO defines flags as “a piece of durable fabric of distinctive design that is used as a symbol or decorative feature.” Id. § 7.2.00. Flags are further described as an “exempt” sign not requiring a permit. Id. § 7.2.10 and 7.4.00. Therefore, even if § 1.13 of the ULM was applicable, given the last legislative expression rule, a flagpole still would not require a permit. This gives a clear insight into legislative intent on the issue.⁶

The Board’s findings are supported by the multiple statements made by the County and County employees and agents acting in the scope and course of County employment. Both before and during the hearing, the County repeatedly stated and confirmed there is no permit required for a flagpole. No permits are required for many other routine signs, such as political signs, incidental signs, real estate signs, and the like. The County’s interpretation of ULMO § 1.13 and the language

⁶ This is also further evidence considered by the Board supporting its ruling that a permit was not required for the placing of the flagpole.

of this Court's Order would lead to absurd results, namely, requiring of permits that do not exist for actions that are explicitly exempt from permits. Regardless, the Board was well within its discretion to determine that a flagpole is a use which is exempted from 1.13, and the Board's decision regarding use is a finding of fact, which is entitled to the same deference as a jury verdict. *See, Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 411, 552 S.E.2d 42 (S.C. App. 2001) (holding that findings of fact "will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the [] findings" and that "a zoning board determination regarding whether a particular activity or purpose constitutes a 'use' of property is a finding of fact").

4. The Court's failure to consider Spartanburg County's discriminatory application of the unified Land Management Ordinance and Spartanburg County's undue and unconstitutional burden on a private landowner's free speech is incorrect, and Respondent does not have to preserve any issues for appeal.

Respondent reminds the Court that it was the prevailing party – the winner in the lower tribunal. "The 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *L'On v. Town of Mount Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). Therefore, Respondent does not have to preserve issues for appeal. This is not a cross appeal. Indeed, "[i]t would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review." *See id.* at 420-421, 723. Respondent, in responding to Spartanburg County's appeal, is allowed to advance any and all arguments made to the lower court. This Court, as the

Court with appellate jurisdiction, certainly can hear arguments advanced by Respondent to the lower tribunal and may even consider additional arguments under *L'On*.⁷

Despite this established law, Page 13 of the Court's Order states that the Free Speech and Constitutional issues were not at play because Respondent waived and/or failed to properly preserve the issues. This assertion is directly at odds with established caselaw, the hearing's transcript, and the pleadings filed in this action. A review of pleadings, filings, and the transcript reveals that the Court's ruling contradicts the record and the arguments advanced by Respondent at the hearing. Indeed, the Court's Order fails to acknowledge the Constitutional issues raised in Respondent's Appeal of Notice of Violation, including Count V and Count VI; the Board of Zoning Appeals Transcript, which extensively discusses constitutional issues; and Respondent's Response to Petitioner's Petition for Appeal, including the incorporation of the transcript into the Response, its attachment as Exhibit A; and Respondent's Sixth Defense.⁸ Respondent attempted to raise Constitutional arguments previously advanced at the Appeal hearing. Nonetheless, the Court refused to allow the arguments to proceed because of the filing of a brief hours before the hearing.⁹

Even if, *arguendo*, Constitutional issues were somehow not preserved, as our Supreme Court has consistently stated, issue preservation "is not a 'gotcha' game aimed at embarrassing

⁷ Specifically, for Respondent to abandon the issue on appeal, he must have "fail[ed] to raise it in the appellate brief." *L'On*, 338 S.C. at 420, 526 S.E.2d 723. Respondent attempted to submit a brief on the issues. However, the Court refused to consider it despite its timely filing prior to the hearing.

⁸ An issue of whether the Board of Zoning Appeals even the authority has to consider a constitutional issue weigh in favor of this Court hearing and considering Respondent's argument. Specifically, pursuant to § 6-29-800, the Board of Zoning Appeals is a quasi-judicial body of limited jurisdiction. S.C. Code § 6-29-800. *See also Video Gaming Consultants v. S.C. Dept. of Rev.*, 342 S.C. 34, 535 S.E.2d 642 (2000) (holding that constitutional issues may be raised but not ruled upon by an administrative law judge).

⁹ Respondent would respectfully show unto the Court that Spartanburg County does not have timing requirements for when documents must be filed prior to hearings. Therefore, Respondent's brief was timely and should have been considered.

attorneys or harming litigants.” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 323, 730 S.E.2d 282, 285 (2012). The Supreme Court has explained: “[w]hile it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it clearly is unpreserved.” *Id.* at 324, 730 S.E.2d at 285. More recently, the Supreme Court again reaffirmed the notion that “issue preservation rules should not be applied in a technical manner as if this is some sort of game of ‘gotcha’ elevating form over substance to trap trial lawyers as to prevent the appeal of a legitimate issue.” *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Likewise, because the issue was fully argued at the hearing, and because both sides had an ability to argue at the hearing below, an appellate court is empowered to “affirm a judgment on any ground appearing in the record.” *City of Aiken v. Cole*, 289 S.C. 239, 242-43, 345 S.E.2d 760, 762 (Ct. App. 1986).

Respondent, therefore, requests that this Court reconsider its position to exclude any reference to Constitutional issues; reconsider, alter, and amend its Order with these Constitutional issues in mind; revise its Order to be consistent with established caselaw; and find in favor of Respondent.

5. The Court’s Order fails to incorporate the entirety of its Form 4 Order and fails to specifically define *de minimis* relief.

In the Court’s Form 4 Order directing Spartanburg County to write the Appeal’s final Order, the Court makes reference to the fact that the corrective action plan “should have no more than a ‘de minimis’ effect to the landowner’s present use.” Form 4 Order, January 22, 2024. The final order contains no reference to this position.

In *City of Aiken v. Cole*, the Court of Appeals did not require the defendant landowner to remove TV antennas even though it “appear[ed] that a building permit was technically required

for their erection.” 289 S.C. 239, 345 S.E.2d 760 (Ct. App. 1986). Specifically, the Court noted that, “when the equities between the parties here are considered, an injunction requiring the removal of the antennas would not be a proper remedy merely for the failure to obtain a building permit.” *Id.* In this case, the evidence shows that Respondent sought permits on multiple occasions and acquired all permits it was informed were required, including an electrical permit, a permit from the FAA, and filing with SC DHEC. Because Respondent was repeatedly advised by Spartanburg County officials that no permit was needed for a flagpole, requiring removal or alteration of the flagpole is not equitable.

Here, as in *City of Aiken v. Cole*, the inequities between the parties are immense. Appellant is a governmental entity that has enforced the ULMO daily for multiple decades failed to identify permits for a flagpole. Respondent owns less than one acre of land, has never developed a property or built a structure, and relied upon Appellant’s employees to identify the necessary permits. Further, the flagpole height, location, and all other characteristics complied with the PZO when placed on the property. It was only after the flagpole was placed upon the property that the PZO was amended by the Appellant to include height and location limits regarding flagpoles. Appellant would now have Respondent remove entirely or truncate its flagpole by 75%, eliminating Respondent’s ability to speak to motorists on I-85 and thereby reducing the flagpole’s utility for speech by 99%. Allowing Appellant to change both the rules and the interpretations of the rules to the complete detriment of Respondent who worked in good faith to comply is inequitable.

Therefore, Respondent requests that this language be included in the Order and asks for a clarification on the definition of *de minimis* in this specific context.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court reconsider its February 20, 2024, Order and alter and amend its judgment to find in favor of the Respondent.

Respectfully submitted,

Hawkins & Jedziniak, LLC

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Attorneys for Plaintiff

Greenville, South Carolina
March 1, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2023-CP-42-01155
	)	
Spartanburg County and Cole Alverson	)	
in his Official Capacity as County	)	
Administrator,	)	
	)	
Petitioners/Appellants,	)	
	)	
v.	)	MEMORANDUM IN OPPOSITION TO
	)	RESPONDENTS' MOTION TO ALTER
	)	OR AMEND
The Spartanburg County Board of	)	
Zoning Appeals, and Adam Washington	)	
Ballenger Camp #68, Sons of	)	
Confederate Veterans, Inc.,	)	
	)	
Respondents/Appellees.	)	
	)	

TO: THE HONORABLE J. MARK HAYES, II AND JOSHUA T. HAWKINS, ESQ:

Petitioners Spartanburg County and Cole Alverson in his Official Capacity as County Administrator ("Petitioners") submit this Memorandum in Opposition to Respondents Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.'s ("Respondents") Motion to Alter or Amend this Court's February 20, 2024 Formal Order ("Motion"). Respondents have not, and cannot, show that the Court erred in its Findings of Fact and Conclusions of Law when it issued its decision on the merits. Instead, Respondents merely express dissatisfaction with the Court's ruling, which is an insufficient ground for relief under Rule 59(e), SCRCP.

LEGAL STANDARD

Rule 59(e), SCRCP, allows a court to alter or amend a judgment upon a party's timely motion. Under South Carolina law, a motion to reconsider is appropriate in two basic

situations. First, “[a] party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, “[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* A party’s dissatisfaction with the outcome of the underlying litigation is not grounds for relief under Rule 59. *Id.*

Respondents’ Motion does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon in issuing its ruling on the merits. Rather, Respondents’ Motion illustrates that this is nothing more than a situation where the Respondents are unhappy with the Court’s ruling. Respondents’ dissatisfaction with the ruling in this matter is not grounds for relief under Rule 59, and their Motion must therefore be denied.

ARGUMENT

Respondents’ first contention in their Motion is that since no permit was required for the erection of a flagpole on their property, the Spartanburg County Planning Department’s Notice of Violation (Exhibit D to Petitioners’ Petition for Appeal filed on March 30, 2023) was issued in error, and that the “Court’s inquiry into the definition of a structure and what constitutes a structure therefore has no bearing on the Board’s decision.” Respondents go so far as to assert that at the BZA hearing on January 31, 2023, the Spartanburg County Attorney failed to preserve this argument for appeal. See page 6-8 of Respondents’ Motion. In making this argument, Respondents refer to page 62, lines 6-9 of the Transcript

of the BZA hearing. The Respondents even underline that portion of the Transcript in their Motion, asserting that according to Mr. John Harris, “ultimately the board has to determine whether staff was correct in issuing the notice of violation and whether or not the applicant or the appellant, in this case, is required to get a permit.” See Motion, page 7. However, the Respondents misrepresent Mr. Harris’ statement and fail to provide the entirety of what he said to the Board Members during the referenced exchange. In response to the Board Members’ discussion and questions as to whether the issue of the flagpole being somehow grandfathered in, Mr. Harris stated:

I think ultimately the board has to determine whether staff was correct in issuing the notice of violation and whether or not the applicant or the appellant, in this case, is required to get a permit to change the use as has been discussed tonight. That’s really the underlying issue. Once that issue is determined, then if the decision is the appellant has to go through the permit process, then the flagpole and its status would be addressed at that point in time, and that may be an issue that comes back to this board at some point in the future. But that’s not the issue tonight. The issue tonight is whether or not they needed a permit to change the use of the property, and whether or not that use has, in fact, changed as staff determined at the point in time staff issued the notice of violation. See Transcript, page 62 lines 6-22.

Furthermore, this argument by the Respondents fails to acknowledge that the Spartanburg County Planning and Development Staff, specifically its Director, Joan Holliday, not Mr. Harris, was responsible for making the presentation to the BZA in opposition to the appeal of the Notice of Violation, or the express terms of the Notice of Violation which specifically cites portions of the ULMO Section 1.07 as follows: “No building, structure or sign requiring a permit or any part thereof shall be erected, added to, or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued. No building, structure or land shall be used; nor shall any

building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.” To argue that what constitutes a structure and whether or not the flagpole at issue is a structure was not before the Board and is therefore not preserved for appeal is, quite frankly, laughable. In her testimony to the Board Members, Ms. Holliday pointed out that no development application had been made nor had any conversations taken place between the property owner or its agents and the planning and development department regarding the placement of a flagpole or any other use associated with the property. Furthermore, after the flagpole was brought to the attention of her department and investigated, it was found that the flagpole was the only structure on the property and that an accessory use cannot be placed without a primary use under the ULMO. See Transcript, page 67, lines 2-13. She then informs the Board Members that a structure as defined by the standard building codes and the ULMO, is that which is built or constructed. See Transcript, page 69, lines 10-12. Ms. Holliday also points out to the Board that “Sections 1.07 and 1.13 of the ULMO require permits to be obtained prior to commencing a land use or erecting a structure.” See Transcript, page 71, lines 19-22. Later, when Board Member Padgett asks if a flagpole is a structure, Ms Holliday states “[w]e consider it a structure.” See Transcript, page 75, line 15.

As Board Member Davies points out several times in the record: “[t]his is about the use of the property. Is it barren, nothing there? If you’re going to do something on that property, you have to get a permit to alter the property. Simple.” See Transcript, page 53, lines 4-7. “That has nothing to do with flagpoles or what you’re going to put on that

property. You have to get that permit first.” See Transcript, page 53, lines 11-13. “To place a flagpole on empty ground is changing the use, that’s all I’m saying.” See Transcript, page 55, lines 4-5. “When you dig a hole to place the pole in the hole, you are altering it from no use to some use.” See Transcript, page 56, lines 23-25.

Clearly the structure issue was preserved for this Court’s review. There is no evidence in the record proving anything other than that the flagpole is a structure. In fact, Respondents concede as much. See Motion, page 8, footnote 4. Although, to be fair, even Respondents’ counsel would not argue that a 120 foot flagpole that cost approximately \$100,000.00 to erect is not a structure. Thus, that is precisely why the Board’s decision that the Notice of Violation was issued in error because the ULMO “does not specifically address permits for flagpoles” was arbitrary, capricious, and an abuse of discretion. Some of the Board’s members got sidetracked by the absence of the word “flagpole” in the Ordinance. Instead, the Board should have focused on the flagpole’s status as a “structure” because of its size and installation cost. The Respondents even referred to the flagpole as a structure in their submission to the FAA.

Respondents never asked the Spartanburg County Planning and Development Department if a permit was required to erect a flagpole on the property, instead making those inquiries to the building codes department, which does not deal with zoning issues. If they had asked the Planning and Development Department if a permit was required to install a 120 foot tall flagpole on the property, according to the sworn testimony of Ms. Holliday at the BZA appeal hearing, they would have been told unequivocally that a permit was required.

Respondents also take issue with the inclusion of any reference to Section 1.13 of the ULMO in the Court's Order, claiming that it is being raised for the first time on appeal. However, as set forth above, Ms. Holliday referenced Section 1.13 in her discussions with the BZA (See Transcript, page 71, line 20), stating that Sections 1.07 and 1.13 require permits to be obtained prior to erecting a structure. Also, attached as Exhibit F to the Petitioners' *Petition for Appeal* filed on March 30, 2023, was a copy of the *Staff Report* of the Spartanburg County Planning and Development Department for use by the Board Members at the January 31, 2023 meeting. As set forth at the top of page 5 of this document, it clearly states that "Sections 1.07 and 1.13 of the ULMO require permits to be obtained prior to commencing a land use or erecting a structure." Therefore, it is clear that Section 1.13 of the ULMO was before the Board for its consideration on January 31, 2023, both in writing and through testimony. Furthermore, regardless of whether or not the Respondents were issued a notice of violation of Section 1.13 of the ULMO, it does not change the fact that Section 1.13 requires the issuance of a Development permit by the Planning Department staff. Respondents did not obtain such a permit, despite the fact that the land was clearly converted from some use other than vacant land. Indeed, in the Respondents' Application for Appeal from the Notice of Violation, the "Project Name" is listed as "Adam W. Ballenger, Memorial Park" indicating the property is being utilized as a park.

CONCLUSION

For the reasons set forth above, as well as the reasons set forth in this Court's February 20, 2024 Order, the Respondents' Motion to Alter or Amend that Order should be denied in its entirety.

Respectfully submitted,

HOLCOMBE, BOMAR, P.A.

s/ William B. "Kip" Darwin, Jr.

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Attorneys for Spartanburg County

March 25, 2024
Spartanburg, South Carolina

SPARTANBURG COUNTY
PLANNING AND DEVELOPMENT DEPARTMENT

BOARD OF ZONING APPEALS MEETING

DATE TAKEN: January 31, 2023

LOCATION: Spartanburg County Administration Building
County Council Chambers
366 North Church Street
Spartanburg, South Carolina 29303

TIME BEGAN: 4:30 p.m.

TIME ENDED: 6:17 p.m.

APPEARANCES:

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.....On behalf of the Appellate

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.....On behalf of Spartanburg County

Spartanburg County Board of Zoning Appeals

Page 3 1 MR. GOWAN: 2 It's 4:30. I'd like to call to order the January 31 3 meeting of the Board of Zoning Appeals. If everyone, I 4 would remind you, to turn your microphones on. If 5 there's anyone here that's going to speak today, if you 6 would please sign in. First order of business is 7 approval of the December 20 meeting minutes. Has 8 everyone had a chance to review those? Okay. Any 9 questions? Comments? 10 MR. PADGETT: 11 Mr. Chairman, I make a motion we approve the minutes 12 as they were submitted. 13 MR. GOWAN: 14 Okay. We have a motion. Is there a second? 15 MR. DAVIES: 16 Second -- 17 MS. FLEMING: 18 I'll second. 19 MR. GOWAN: 20 Okay, plenty of seconds. Those all in favor signify 21 by raising your right hand. All opposed, the same. 22 Okay. Is there any unfinished business that we need to 23 speak about? Hearing none we'll move to the new 24 business. New business is an appeal request for the Adam 25 W. Ballenger Memorial Park at 2294 Teaberry Road,	Page 5 1 please. 2 MR. GOWAN: 3 Okay. 4 MS. HOLLIDAY: 5 As far as the continuance request goes, the first 6 request for a continuance was made on December 13, 7 and staff granted that on the 14th and let them know 8 that their case would be heard today. So they've 9 known about the case since December 14, and they 10 haven't done anything during the time, even since 11 the notice of violation was issued, to come into 12 compliance or to make (inaudible). So we would like 13 to see the case go on and be heard this evening. 14 MR. GOWAN: 15 Okay. 16 MR. JEDZINIAK: 17 If I may respond to that, Mr. Chairman. 18 MR. GOWAN: 19 Thank you, Ms. Holliday. Yes, sir. 20 MR. JEDZINIAK: 21 We actually have made numerous attempts to continue 22 the hearing. It's our position that improper notice 23 was given in the first place. I know County 24 Attorney Harris and I disagree on which part of the 25 rules apply. However, as we read the Board of
Page 4 1 Spartanburg, South Carolina. Tax map 7-01-00-062.01. 2 The appeal of and issuance of the notice of violation of 3 the ULMO Section 1.07. So, when you get finished we'll 4 allow the appellant to make (inaudible) statements. 5 MR. JEDZINIAK: 6 Before we proceed, my name is Ethan Jedziniak. I'm 7 substitute counsel for Josh Hawkins who has been retained 8 as counsel on this case. Mr. Hawkins had a planned 9 vacation. He got protection with Spartanburg County for 10 that vacation. We have good cause, and we ask that 11 because we have good cause that we continue this hearing 12 until retained counsel is present and able to fully 13 present the merits of this appeal. 14 MR. GOWAN: 15 Okay, thank you. The appellate's counsel is a 16 replacement counsel and they have requested the 17 continuance of this matter. 18 MR. DAVIES: 19 So we're changing horses in the middle of the 20 stream? 21 MR. GOWAN: 22 No, sir, we have a replacement horse and we're 23 trying to get the original horse, to use your analogy. 24 MS. HOLLIDAY: 25 The staff would like to address the board members,	Page 6 1 Zoning Appeals Appellate Rules, 15 days notice is 2 required in the newspaper of general circulation, 3 and seven days posted on property. Neither of those 4 happened. 5 Like I said, we're substitute counsel. Mr. Merting 6 retained Josh Hawkins. They sent a letter, they did 7 send a letter seven days before. As soon as we 8 received that letter, we put in written and verbal 9 requests for a continuance. 10 Now, Mr. Harris at one point seemed that if we 11 brought it up that he may or may not, you know, that 12 if we brought it up before the board that would be 13 the only way that we could do it. However, we did 14 request in writing, and we sent a letter to the 15 chairman through Mr. Harris and through Ms. Joan 16 Holliday requesting the continuance. I'm not sure 17 if y'all ever received that, but that was put in the 18 mail and sent via email. 19 MR. GOWAN: 20 That was the letter dated the 26th? 21 MR. JEDZINIAK: 22 There was a letter sent the 26th. There was also a 23 letter sent Friday. 24 MR. GOWAN: 25 Yes.

Spartanburg County Board of Zoning Appeals

Page 7 1 MR. JEDZINIAK: 2 Yes. 3 MR. GOWAN: 4 Yes, I have copies of both of those letters. 5 MR. JEDZINIAK: 6 And so I believe that's a mischaracterization that 7 we took no attempts as substitute counsel to attempt 8 to continue this hearing so retained counsel could 9 meaningfully present the merits of this appeal and 10 have his rights to procedural due process. 11 MR. GOWAN: 12 Noted. 13 MR. JEDZINIAK: 14 Yeah, and again, one more thing. Like I said, we 15 put this forward through the circuit court. He does 16 have protection in the circuit court and the court 17 of Spartanburg County. It's not like he's out of 18 town at the beach just avoiding this hearing. He's 19 out of state,(inaudible) to Australia for months 20 even before he was retained and as soon as he was 21 retained, Mr. Hawkins made efforts to try to 22 continue the hearing, and those efforts, up to this 23 point, we haven't had any cooperation from opposing 24 counsel. So we are asking the board for the 25 continuance.	Page 9 1 I believe we have shown good cause and I believe it 2 is in the best interest for the actual merits of 3 this appeal to be heard to grant this continuance 4 instead of allowing substitute counsel to proceed. 5 And in that letter we do lay out where, although 6 notice may or may not have properly been given, it's 7 our contention notice was not properly given. 8 MS. HOLLIDAY: 9 May I address the board? 10 MR. GOWAN: 11 Understood. Yes, Ms. Holliday. 12 MS. HOLLIDAY: 13 So -- 14 MR. DAVIES: 15 Your microphone, please. I'm semi-deaf here. There 16 you go. Thank you. 17 MS. HOLLIDAY: 18 So where it refers to giving notice and the Board of 19 Appeals, the Land Management Board of Appeals rules 20 is referring to variances. And the law, the 21 ordinance, actually does not require the notice -- 22 and I have this application procedural chart -- 23 MR. GOWAN: 24 I started to say is this the chart you're referring 25 to?
Page 8 1 MR. DAVIES: 2 So are you referring to the like 100 points that are 3 on this that Mr. Merting sent me? 4 MR. JEDZINIAK: 5 No, no, sir. It's a different letter. 6 MR. DAVIES: 7 It's not a letter. It's just copies of the letter - 8 - 9 MR. GOWAN: 10 (Inaudible) please excuse my highlighting. 11 MR. DAVIES: 12 That's perfectly fine. 13 MS. GETER: 14 Why (inaudible). 15 MR. DAVIES: 16 Because this has been advertised for months. 17 MR. JEDZINIAK: 18 Right, we understand. Now, the advertising is a 19 different story. And again, I don't want to get 20 into the merits of our appeal here. This is simply 21 asking for a continuance so the retaining counsel 22 can get into the merits of the appeal. I think this 23 is one, we do have good cause, which is required by 24 the Board of Zoning Appeals rules. It says the 25 board may grant continuances if good cause is shown.	Page 10 1 MS. HOLLIDAY: 2 Yes. And all steps of the appeals process land 3 development. This is an application for a relief 4 for change. So we are under all steps of the 5 appeals' process. 6 MR. GOWAN: 7 Page 3. 8 MS. HOLLIDAY: 9 It's minor land development, so it does not have -- 10 the appeal does not have a public hearing or a 11 public notice. Does anybody need a copy of that? 12 So -- 13 MR. GOWAN: 14 This is in the minor column that you're speaking of, 15 correct? 16 MS. HOLLIDAY: 17 Yes. 18 MR. GOWAN: 19 Okay. 20 MS. HOLLIDAY: 21 So, I guess it's a matter for the board is to 22 decide. 23 MR. GOWAN: 24 Okay. All right, thank you. 25 MR. JEDZINIAK:

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Page 11 1 Again, board, we just respectfully request that this 2 continue. The board may postpone an appeal or 3 variance for good cause shown. I believe we have 4 shown good cause. I believe preserving the status 5 quo for another month will serve no (inaudible). 6 And I believe we have shown good cause, and I 7 believe the board is within its right to continue 8 this hearing and allow retained counsel to present. 9 MR. GOWAN: 10 Thank you, sir. Mr. Harris, I have a question. 11 MR. HARRIS: 12 Yes, sir, Mr. Chairman? 13 MR. GOWAN: 14 It appears in all this documentation there's several 15 actual things going on or lawsuits or whatever going 16 on at this time. Where exactly does this body fit 17 in all of that? 18 MR. HARRIS: 19 So, you're correct. There are a couple of different 20 actions proceeding. One, there is the appeal by the 21 property owner, the notice of violation that county 22 staff issued. That is one item that is proceeding 23 forward, and there is an appeal process if a 24 property owner or the county disagrees with this 25 board's decision. There is a second and separate	Page 13 1 applications of a continuance for this board? 2 MR. HARRIS: 3 Mr. Wunder, I apologize. I didn't hear your -- 4 MR. WUNDER: 5 I'm sorry. 6 MR. HARRIS: 7 -- your question. Just procedurally, Mr. Davies 8 motion since there was not a second, would fail for 9 a lack of seconds. So you might be back at this 10 point with no motion on the table. But I believe, 11 Mr. Wunder, you were trying to ask a question that I 12 didn't hear. 13 MR. WUNDER: 14 Yes, I -- just what is the legal ramifications of us 15 declining a continuance or accepting a continuance, 16 for this board? 17 MR. HARRIS: 18 For this board it's just a question of when this 19 case would be heard by this board, and then how the 20 appeal would move forward through the rest of the 21 process. The applicant or appellate in this case 22 has made their argument as to why they believe the 23 case should be continued. Staff has made their 24 argument of why they believe the case should go 25 forward tonight. And so the first decision the
Page 12 1 lawsuit filed in the Court of Common Pleas here in 2 Spartanburg County that was filed by the property 3 owner that is separate and apart from the appeal 4 process that is before you this evening. 5 MR. GOWAN: 6 Thank you. Okay. We have the staff's position and 7 we have the appellate's position. Is there any 8 discussion about whether to grant an extension or 9 hear this or move on this tonight? 10 MR. DAVIES: 11 I think we should move forward with it. 12 MR. GOWAN: 13 Okay. Is that a motion? 14 MR. DAVIES: 15 Yeah, I -- I move to go forward with this tonight. 16 MR. GOWAN: 17 Okay. Is there a second? Okay. Hearing none then 18 I guess we need to -- I guess the opposite of that 19 is we grant a continuance. 20 MR. WUNDER: 21 May I ask a question before we vote? 22 MR. GOWAN: 23 Yes, sir. 24 MR. WUNDER: 25 Can we ask our counsel what is the legal	Page 14 1 board has is whether or not to move forward with the 2 case this evening. 3 MR. WUNDER: 4 Well, the question about continuance, the ruling of 5 this board on the appeal, what kind of legal effects 6 would it have on the other external cases? 7 MR. HARRIS: 8 I don't think this board needs to worry about the 9 common pleas case. That case will take care of 10 itself and have its own process where it would 11 proceed forward. And this one should solely focus 12 on this case that's before -- 13 MR. WUNDER: 14 So none of the results of whether we had this 15 continuance or not, if we have a vote on appeal 16 today, would have bearing on those other cases? 17 MR. HARRIS: 18 I'm not going to say whether it does or doesn't have 19 bearing. But I think for the board's decision 20 tonight, they need to solely look at the issue 21 before them. 22 MR. JEDZINIAK: 23 Mr. Wunder, if I may, in the common pleas case a 24 temporary restraining order and a stay was moved. 25 It just has not been heard by Spartanburg County

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Page 15 1 Court. 2 MR. DAVIES: 3 Don't have anything to do with the Spartanburg 4 County Court. We have one item to figure out, if 5 they're in compliance or not. 6 UNKNOWN COUNCIL MEMBER: 7 Right. 8 MR. GOWAN: 9 Well, I think on the agenda is whether staff made an 10 error -- 11 MS. GETER: 12 Yeah. 13 MR. DAVIES: 14 Exactly. 15 MR. GOWAN: 16 So -- 17 MR. DAVIES: 18 See, that's why I said did everybody get a copy of 19 this, and you might have, I know counsel has, and 20 this is their case, but it's a court case. It's not 21 a zoning case. 22 MR. GOWAN: 23 I think a good portion of what was supplied was to 24 indicate what course the court case was so we would 25 have that information. But it doesn't, for what	Page 17 1 There you go. 2 MR. GOWAN: 3 I have a motion and a second. All in favor of 4 moving forward signify by raising your right hand. 5 All opposed the same. Okay. All right. So we'll 6 move forward. 7 MR. JEDZINIAK: 8 Good evening. As I've already stated, my name is 9 Ethan Jedziniak. I am substitute counsel for Josh 10 Hawkins. If it pleases the board I am going to, in 11 the interest of time, turn it over to Mr. Robert 12 Merting, who has dealt with the appeal process. And 13 I'm going to hand each of you a packet of evidence 14 which Mr. Merting will discuss in turn, and they're 15 all the same. 16 [EXHIBIT PACKET ATTACHED] 17 MR. GOWAN: 18 All right. Thank you, sir. 19 MR. MERTING: 20 Ladies and gentlemen of the board, good evening. 21 I'll move through this as fast and expedient as I 22 can. The facts are largely undisputed. 23 MR. WUNDER: 24 Mr. Chairman? 25 MR. GOWAN:
Page 16 1 our, whether staff made a mistake or not, I don't 2 think any of that other stuff has anything to do 3 with what we're trying to do here -- 4 MR. DAVIES: 5 Correct. 6 MR. GOWAN: 7 In my opinion. 8 MR. WUNDER: 9 Well, that's why I asked that question, if it did 10 have any ramifications. 11 MR. GOWAN: 12 Yes, sir. 13 MR. WUNDER: 14 That's all. 15 MR. GOWAN: 16 So we have a motion. The motion died because there 17 was no second. And the motion was to move forward. 18 So is there another motion? 19 MR. DAVIES: 20 I would reiterate my motion from before. 21 MS. GETER: 22 I'll second. 23 MR. GOWAN: 24 Okay. 25 MR. DAVIES:	Page 18 1 Yes, sir. 2 MR. WUNDER: 3 Typically, by process we hear the staff's report and 4 then we ask for -- so should we ask for staff's 5 report? 6 MR. GOWAN: 7 I believe in this case since this is an appeal and 8 not a variance request -- 9 MR. WUNDER: 10 Okay, thank you. 11 MR. GOWAN: 12 Yes, sir. 13 MR. MERTING: 14 Gentleman, I am going to be testifying the facts. 15 I'd ask to be sworn in. 16 MR. GOWAN: 17 Yes, sir. Please state your name. 18 MR. MERTING: 19 Robert Merting. 20 MR. GOWAN: 21 Robert Merting. And is the information you're 22 providing to this group tonight the truth and 23 nothing but the truth? 24 MR. MERTING: 25 Yes, sir, it is.

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Page 19 1 MR. GOWAN: 2 Thank you, sir. 3 MR. MERTING: 4 So, ladies and gentlemen, in 2019 the Adam 5 Washington Ballenger Camp approached me about 6 putting a flagpole on a piece of property adjacent 7 to 85. They wanted me to help with the feasibility 8 of that project. I started in the first place, and 9 that was the laws of Spartanburg County, to see if a 10 permit was required for a flagpole. Having looked 11 and found that none were required I then went next 12 to the departments that would issue us permits to 13 check. What I found on the website for the building 14 department is that they, quote, promote steady 15 maintenance of existing structures and enforce 16 regulation development practices in accordance with 17 South Carolina building code and local land use 18 regulations. In other words, they enforce building 19 and zoning. So I went to the building department, 20 called them via phone. Spoke with a clerk there who 21 referenced us to a supervisor to answer the 22 question. The person in the building department at 23 the scope and course of their employment concerning 24 the scope and course of their employment told me 25 that no permit was required in Spartanburg County	Page 21 1 South Carolina DHEC. We had permits and notices at 2 state and federal level. 3 We wanted to put lights on that flagpole, want to 4 have it properly lit as you would like any other 5 flagpole. That required us to go back to the 6 building department to get a permit for electrical. 7 We again went back, this time in person (inaudible) 8 our electrical contractor who described the project. 9 For the fourth time was told that no building permit 10 is required. He asked for an electrical permit. 11 Was not able to get that. So he asked me to go back 12 and sort it. I took Mr. Jim Crocker, another one of 13 our witnesses here tonight, who is 40 years with 14 DHEC in Spartanburg County. He's very familiar with 15 their procedures. We went down to the building and 16 planning department. 17 When you go in the building and planning department 18 they are co-located. There is one section with 19 service windows. It's about four windows, teller- 20 like windows, that open up into the area, and then 21 doors to the back for the staff. We went to one of 22 the teller windows which invites you to ask for 23 permits and it gets your project permitted. We 24 described what we were doing, a flagpole, lights on 25 that flagpole. We need electricity for those
Page 20 1 for placing a flagpole on property. 2 However, they told me to check with planning. That 3 did not make sense knowing that the building codes 4 enforces any land use regulations, but I indeed did 5 in 2019 call planning. I had the exact same routine 6 at planning. The clerk was able to not really help. 7 They referenced me to a supervisor. That supervisor 8 was speaking in the scope and course of their 9 employment concerning the scope and course of their 10 employment. That supervisor told me that a permit 11 was not needed for a flagpole; I should call 12 building. At that point in time, having exhausted 13 both building and planning, both having referenced 14 each other, and no need for a permit, we proceeded 15 on this project. 16 This was a three-year long project to make happen. 17 During that time I also reached back out to 18 building, and I was able to get a statement from the 19 building department manager or department head, 20 Gregg Hembree, that no permit was required for a 21 flagpole. 22 We approached the time where were ready to actually 23 place that flagpole on the property. We had already 24 secured permission from the Federal Aviation 25 Administration, the FAA, and we had permission from	Page 22 1 lights. We were again told that a permit was not 2 needed for a flagpole. That's our fifth 3 representation from the county. 4 We asked for a permit for electrical. The person 5 helping us was not able to figure out how that would 6 work without a building on the property. They knew 7 there was no building on the property. So we asked 8 for a supervisor. Again, Mr. Gregg Hembree came 9 out. He spoke to Mr. Jim Crocker and I. He again 10 said no permit was necessary for a flagpole. We 11 described to him the need for lighting. He 12 expressed to us concern about trailers on the 13 property, which we assured him were not, but we 14 needed lighting on the property. 15 Finally, in going through our project what we wanted 16 to do it mentioned that we were displaying the flag. 17 The lights were for display, not security, but to 18 light up the pole. And he said, yes, we can do a 19 permit for electrical decorative lighting for this 20 pole. That permit was issued to Mr. Jimmy Garrett 21 (ph), who is also here tonight. That permit was 22 then acted upon. We did the work performed. And on 23 July 20, 2022, Spartanburg County came out to the 24 property and actually inspected that. 25 The property is small. You'll probably a drawing of

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Page 23 1 it. It is .8 acres. To go to the site on there 2 where the power pole was, you have to walk down one 3 entire side of the property and drive down the 4 other. At all times on July 20, the building 5 inspector could see that there was nothing else on 6 that property. 7 So, definitively, in July of last year, Spartanburg 8 County knew what we were putting on the property. 9 They knew what our intents were. They knew what was 10 on the property; they knew was not on the property. 11 They told us no permits were required six times, and 12 issued the only permit that they could identify that 13 we had to practically go down there three times to 14 get, electrical. And they passed off on that 15 inspection. 16 Only after having all of those representations made 17 to us did we rely on them and place the flagpole on 18 the property. 19 We raised the South Carolina flag on August 6. We 20 had no problems for two months after that while we 21 flew the South Carolina flag. During that time we 22 publicized that we were going to raise a Confederate 23 flag on October 22, 2022. Our intents being having 24 rotational flags related to the history of 25 Spartanburg County, that being the first. That was	Page 25 1 required, the permit that we'd been down to seek six 2 different times from offices that were supposed to 3 be enforcing those, and were not identified to 4 receive. 5 The ordinances explicitly say you don't get a permit 6 for a flagpole. The ordinances do not say you have 7 to have a principal use. They tell you if you have 8 an accessory use it is governed by the principal 9 use. It does not say you have to have a principal 10 use. And we told the County what our principal use 11 was, the flagpole. Nary a problem was had until the 12 Confederate flag went up. This is a pretextual 13 objection to our pole. It is an attack upon the 14 free speech and the free discretion of the camp. 15 In addition to burdening the camp's constitutional 16 rights of free speech you've already been told about 17 issues of due process and failure to give proper 18 notice to the camp. I understand that there's an 19 ordinance out here passed by Spartanburg County 20 about how this board will run. That ordinance is 21 authorized under South Carolina State law at 62-9- 22 800 Section D of that law requires that notice be 23 provided to the appellate 15 days in advance. That 24 notice was not provided. In fact, the letters to 25 Spartanburg County mail only made it to my office
Page 24 1 publicized. We had our picnic in August. Our 2 speaker was Senator Martin. He told us he had heard 3 through a letter to him that David Britt and Mandy 4 (inaudible) both had been notified of this project 5 So the county had notification of this in August. 6 Still, we heard nothing in September. We heard 7 nothing in October. 8 We had an official flag raising October 22, 2022. 9 It was peaceful, a Saturday afternoon. Everything 10 was smooth, and we left. We had our first bit of 11 discrimination coming actually from the county 12 council board the following Monday or Tuesday when 13 Council Member Abusaft made comment about the 14 flagpole and flag, not understanding saying of us, 15 "Nobody moves their corporate headquarters to 16 Hicksville." I've been called worse. It's okay. 17 So we moved on and paid and paid that no attention. 18 But shortly thereafter, on October 26, 2022, three 19 months after this pole has been up, three months 20 after Spartanburg has known about it, after six 21 visits to building and planning, asking for permits 22 and being told none were required, we got a notice 23 that we were violating Section 1.07 of the Uniform 24 Land Management Ordinance. We were basically 25 accused of not getting a permit where a permit was	Page 26 1 today, the day of the hearing. 2 So because we have not been able to present our 3 arguments in a meaningful way, there are adverse 4 witnesses to us who would like to call, have them 5 testify them in front, but we can't call them 6 because Article 4, Section 2 of that Land Management 7 Board of Appeals and Rules requires that we subpoena 8 them ten days in advance. So when this board gives 9 us notice less than seven days in advance, there's 10 no way we can get opposing witnesses here. That 11 inhibits our ability to defend this. 12 So we ask that you find that the Adam Washington 13 Ballenger Camp is not in violation of Spartanburg 14 County ordinance. We sought all permits that we 15 could find, both through building and planning. We 16 got every permit that was identified. We've 17 complied with those permits we describe in this 18 project. 19 We ask that if you find in the alternative, that 20 this ordinance is being discriminatorily applied. 21 There was nary a word said at an empty flagpole. 22 There was nary a word said when we displayed the 23 South Carolina flag. It was only when we put up an 24 unpopular banner that suddenly we had a problem. 25 And that is an undue burden on our free speech.

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Page 27 1 I've given y'all a very brief version of this 2 because I know that there is a time constraint. I'm 3 happy to answer questions. I think we do have a 4 couple of other witnesses. 5 MR. GOWAN: 6 Thank you, sir. Does anyone have any questions? 7 MS. GETER: 8 I do. You indicated in your statement that there 9 was going to be a rotating section of flags -- 10 MR. MERTING: 11 Yes, ma'am. 12 MS. GETER: 13 -- but you haven't rotated any flags. 14 MR. MERTING: 15 We have not, and so I have a good reason for that, 16 because I'm very concerned. I want to rotate flags. 17 First off, they're expensive. Now, the whole 18 project is probably about \$100,000. The flags are 19 going to be 1,500 a piece on the cheapest we can 20 find. So we've got to be able to invest that money. 21 I just have a hard time telling the camp to invest 22 that money knowing that this board is considering 23 whether or not we have a violation of statute. 24 The second part of that is the new Performance 25 Zoning Ordinance has a revision in there about not	Page 29 1 purchased? 2 MR. MERTING: 3 All of those flags are custom, yes, ma'am. And the 4 size that we're talking about is a 20 by 30 foot 5 flag. Not even the South Carolina flag we got off 6 the shelf. So everyone of those has to be ordered 7 ahead of time, and we have to raise the funds still. 8 And these flags do not last very long. You're 9 talking about a two-to-three month life span on a 10 flag. So it's not an insignificant expense to get 11 those and get them in. The most recent quote I had 12 for the best price was a six-month (inaudible) time. 13 MS. GETER: 14 Was this price known at the time that you decided on 15 rotating flags? 16 MR. MERTING: 17 Yes, ma'am, it was known. We have the means to do 18 it. We have the willingness to do it. We just 19 don't want to have a (inaudible) selection of flags 20 and no pole to put them on. 21 MS. GETER: 22 Okay. 23 MR. DAVIES: 24 It doesn't matter which beautiful banner you choose 25 to fly, sir. What matters is, is that flagpole in
Page 28 1 changing the emblem on a flag. So assuming we get 2 this sorted out, we will be right back in front of 3 you asking for permission to rotate all those flags. 4 What we're anticipating is a variety of both 5 Colonial through the end of the War Between the 6 States flags. 7 For an example, December 14 was the anniversary when 8 the British left South Carolina. Flying the 9 Moultrie flag would be very appropriate during that 10 time. December 20 is the anniversary of secession 11 or the ordinance of secession. We want to fly the 12 South Carolina secession flag. It's a bit of an 13 esoteric flag. There are state sovereignty flags. 14 South Carolina has two or three different flags we 15 would like to fly. There's, of course, national 16 flags. We'd like to fly the Old Glory, if you will, 17 on Fourth of July and for Veterans Day, and Memorial 18 Day. 19 So we have a variety of things that we have intended 20 and planned, and we need to be back in front of this 21 board asking permission to make sure we can do that 22 without any problems. 23 MS. GETER: 24 So you have a rotating -- your intention was a 25 rotating flag display of flags that you have not yet	Page 30 1 compliance with our ordinances. 2 MR. MERTING: 3 Yes, sir, we understand that. 4 MS. GETER: 5 Additionally, one of the stipulations that you had 6 asked for was that the flagpole be grandfathered in. 7 MR. MERTING: 8 Yes, ma'am. 9 MS. GETER: 10 Based on which part of the...? 11 MR. MERTING: 12 There's a restriction in the Performance Zoning 13 Ordinance about poles existing as of September 27, 14 2022. This pole was in place in July of 2022. So 15 it would come before that date and be grandfathered 16 in. That is a provision we also asked for a 17 variance from so we could display the different 18 flags. And I certainly understand that which flag 19 we display doesn't make a difference. But which 20 flag we displayed did make a difference when we 21 received this notice of violation. 22 MR. GOWAN: 23 Did you have a question? 24 MR. PADGETT: 25 I just, yeah, I have a question. What about under

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Page 31 1 the -- this is not being held under the Performance 2 Zoning Ordinance? It's held under the ULMO, right? 3 MR. GOWAN: 4 Well, I think because this is considered a major 5 corridor I believe that the PZO rules; is that not 6 true? 7 UNKNOWN COUNCIL MEMBER: 8 No. 9 MR. GOWAN: 10 No? 11 MS. GETER: 12 John, can you help us with this? Because the 13 information that we got said the ULMO. 14 MR. HARRIS: 15 Sure. So the notice of violation was issued under 16 the Unified Land Management Ordinance, the ULMO, 17 because there was a use established without 18 obtaining a development permit. The zoning 19 ordinance that is in effect in the area where the 20 subject property is located is the ULMO. However, 21 the county also, as this board knows, has adopted 22 the Performance Zoning Ordinance. The Performance 23 Zoning Ordinance has regulations that deal with 24 flagpoles, which is why the Performance Zoning 25 Ordinance may effect what occurs on this property as	Page 33 1 for the principal use. But it doesn't command that 2 there be a principal use. It simply says that if 3 there is a principal use than the accessory use 4 shall, meaning it must -- it must comply with the 5 setback requirements. But nowhere in Section 3.2 or 6 in the ULMO, period, does it require a principal use 7 on the property. 8 MS. GETER: 9 John, can you shed some light on the accessory use 10 without a permit? 11 MR. HARRIS: 12 So we're in Article 6 of the ULMO on page 102. 13 There's the definition of use principal. But let's 14 back up to the first definition, use. Use is the 15 purpose or activity for which land or any building 16 thereon is designed, arranged, or intended, or for 17 which it is occupied and maintained. And then under 18 the definition of use is use principal, the primary 19 purpose for which land is used. 20 For this case they've had no development. They have 21 made no application for a development permit or a 22 zoning permit. So there is no approved use from a 23 land use perspective by the county on the subject 24 property. 25 MR. JEDZINIAK:
Page 32 1 it relates to the flagpoles. But the ULMO controls 2 what occurs on the property from a development 3 permit perspective. 4 So you potentially have both ordinances in play, but 5 the notice of violations that has been appealed that 6 is before this board this evening was a notice of 7 violation that was issued under the ULMO for failure 8 to obtain a development or zoning permit. 9 MS. GETER: 10 So for the purpose of this decision the only thing 11 we can look at is the ULMO, not the PZO? 12 MR. HARRIS: 13 That's the only issue that's before you all this 14 evening. 15 MR. JEDZINIAK: 16 And if I could raise one more issue that the county 17 has made, also, is they're saying that under Section 18 3.2, the accessory buildings, that a principal 19 building is required. If you actually read the text 20 and apply its plain meaning, that's not the case. 21 It says, All accessories and structures shall 22 observe the required setback requirement in Table 3. 23 That's fine. And it also says there is no limit in 24 Subsection 2A. And then in Subsection 2B it says, 25 Accessories shall observe the setback requirements	Page 34 1 And if I may, we take exception to that. You can 2 look at Exhibit A in the packet that I gave y'all. 3 We did inquire about a permit and they said no 4 permit is required. Under Section 1.7 you only need 5 a permit if a permit is required. The inverse of 6 that would be if no permit is required then you 7 don't need a permit. And they inquired about a 8 permit, and Gregg Hembree, who is now the Director 9 of Building Codes, who's over permitting, said no 10 permit is required. Detrimentially relied on that 11 statement. 12 And further, if I may, under Section 3.2, it does 13 say -- it talks about building accessory. If you 14 look at the definitions of building accessory, 15 flagpole is not contemplated in there. We're 16 looking at structures such as storage sheds, 17 workshops, domestic animal structures. It's just 18 smoke and mirrors. No permit was required. They 19 didn't get a permit. This is all pretext. 20 MR. GOWAN: 21 Does anyone else have any questions? 22 MR. WUNDER: 23 I have a question for John. John, in a previous 24 case that we had there was a requirement for 30-foot 25 height restriction on signs. Does that -- will that

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Page 35 1 ordinance apply for this (inaudible)? 2 MR. DAVIES: 3 I have the same question. It's on the interstate? 4 MR. HARRIS: 5 Correct. The specific -- they're in the PZO at some 6 point if that issue gets before this body, the PZO 7 limits flagpole heights to 30 feet. By analogy, Mr. 8 Wunder, if signs are at 30 feet the county has also 9 set a height for flagpoles at 30 feet. 10 MR. WUNDER: 11 Sure. 12 MR. HARRIS: 13 And there was also a question with respect to the 14 email from Mr. Emory. As this board knows, Mr. 15 Hembree (ph) is the building official in charge and 16 responsible for administering the international 17 building code, not the county's Performance Zoning 18 Ordinance or the Unified Land Management Ordinance. 19 So the applicant does have an email that speaks as 20 to what Mr. Hembree's (ph) building code 21 requirements are. What the applicant doesn't have 22 is an email that speaks to what the county's zoning 23 ordinance requirements are. 24 MR. JEDZINIAK: 25 And if I may respond to that --	Page 37 1 It's the same -- same date as the September 27 date. 2 MR. GOWAN: 3 Okay. So that and the -- so page 108 and page 116 4 and 124, all those happened September 27? 5 MR. HARRIS: 6 Correct. 7 MR. GOWAN: 8 Okay. Thank you, sir. Yes, sir? 9 MR. JEDZINIAK: 10 And if I just may address again, Mr. Hembree. When 11 you look at the Spartanburg County website, he's 12 listed as Director of Building Codes. If you go to 13 the Director of Building Codes web page, it 14 specifically says that he is the head of the 15 department which promotes the steady maintenance of 16 existing structures and enforces regulation 17 development practices in accordance with SC building 18 codes and local land use regulations. 19 We are arguing under the ULM, which is a local land 20 use ordinance, that no permit is required, and that 21 is exactly what the person authorized to speak in 22 that capacity has said. 23 MR. MERTING: 24 I would emphasize I did call the planning department 25 and spoke with a supervisor in planning. That
Page 36 1 MR. GOWAN: 2 Just one second, please. 3 MR. JEDZINIAK: 4 Yes, sir. 5 MR. GOWAN: 6 Do you have the date that that flag requirement was 7 introduced into the PZO? 8 MR. HARRIS: 9 I'm sorry, the date that...? 10 MR. GOWAN: 11 Yes, sir. The date that it became (inaudible) that 12 has a flag. The book that we were provided, the 13 book (inaudible) printed, the PZO -- 14 MR. HARRIS: 15 Sure. 16 MR. GOWAN: 17 -- that we were provided last middle of the year, 18 last fall, there's nothing on this chart that says 19 flags under this 7.2.10 quick reference chart. 20 MR. HARRIS: 21 Okay. 22 MR. GOWAN: 23 I'm curious of when the date was that this was put 24 on there -- 25 MR. HARRIS:	Page 38 1 sidesteps the entire issue whether it's building or 2 planning. 3 UNKNOWN COUNCIL MEMBER: 4 Whom did you speak to? 5 MR. MERTING: 6 I do not recall. It was 2019, and that did not seem 7 important at the time, unfortunately. 8 MR. PADGETT: 9 John, I'll just go back again. Are we -- we're 10 using the ULMO, right? Not the Performance Zoning 11 Ordinance? 12 MR. HARRIS: 13 That is correct as to the issue before the board 14 this evening is the ULMO. 15 MR. PADGETT: 16 Now, if the flagpole gets approved out there then 17 the Performance Zoning Ordinance passes, then does 18 that not become non-conforming use and can't be 19 touched? 20 MR. HARRIS: 21 So you could only become a non-conforming use if you 22 legally existed at some prior date. The flagpole to 23 date does not legally exist. And the county 24 ordinance requires the flagpole to be at 30 feet. 25 And so in order to legally exist they would have had

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Page 39 1 to obtained a permit prior to placing the flagpole 2 on the property. 3 MR. PADGETT: 4 Where does it say it has to be 30 feet? 5 MR. HARRIS: 6 That's in the PZO, which isn't the issue before you 7 all this evening. 8 MR. PADGETT: 9 And that was my question. If it's not in the PZO, 10 it's still under the Unified Land Management 11 Ordinance, there's no height requirement on 12 flagpoles -- 13 MR. GOWAN: 14 Exactly. That's what I see. That's what I read. 15 MR. HARRIS: 16 So what we're looking at is under the ULMO there is 17 a requirement. So when they acquired the property 18 it was a vacant tract of land. There were no -- 19 there were trees on it, but no other use on the 20 property. They have, under the ULMO, changed the 21 use from a vacant tract of land to, as indicated on 22 their appeal, potentially apart. I don't know what 23 it is because they haven't submitted an application 24 to the planning department. But they have changed 25 their use from a vacant tract of land to something.	Page 41 1 But we know the flagpole is there. 2 MR. HARRIS: 3 We don't have an application for the flagpole. 4 MR. GOWAN: 5 In the ULMO I don't find where an application for a 6 flagpole is needed. I don't see anything at all 7 about flags in there. 8 MR. DAVIES: 9 For use, for use, for use of the property. 10 MR. HARRIS: 11 The board is talking about whether an application is 12 required for flagpole. Flagpole is very, very 13 specific. We've got to take a step back and look at 14 the broader picture of there is an application 15 required to use the property other than as a vacant 16 tract of land. Their appeal application that you 17 all have before you tonight lists it as a park. I 18 don't know if that's their intent. Again, they 19 haven't made an application. But a development 20 application is required to use the property for 21 something, whatever that is. 22 Once we know what it is they want to use the 23 property for as their principal use then that will 24 govern if there can be multiple principal uses on 25 the property. That would govern what accessory uses
Page 40 1 We don't know what they're going to call it till 2 they make application. 3 But in order to change it from a vacant tract of 4 land to something else, they have to make 5 application. And that's what they have not done, 6 which is why we're under the ULMO. If after making 7 an application they want to place a flagpole on 8 their property, at that point in time that's when 9 the requirements of the PZO would come into play as 10 to how the flagpole could or couldn't be placed on 11 the property. 12 MR. PADGETT: 13 Well, and I'd go back to the definition. I mean, 14 it's like (inaudible) stated. Nowhere in there do I 15 see flagpoles as an accessory use. Nowhere. It 16 does not specify. If that's the case, is a fountain 17 accessory use? A water fountain accessory use? 18 Have you got to permit that? 19 MS. HOLLIDAY: 20 It could be. 21 MR. HARRIS: 22 It could be, but we don't know what anything is on 23 the property until such point in time as they make 24 application. 25 MR. PADGETT:	Page 42 1 can be on the property. But you first have to start 2 at step 1, and step 1 would be submitting a 3 development application. 4 MS. BRADY: 5 But they were told they didn't have to do permits, 6 they didn't have to do anything, correct? 7 MR. HARRIS: 8 I don't have any -- 9 UNKNOWN COUNCIL MEMBER: 10 The building code department. 11 MR. HARRIS: 12 -- I don't have any information that they have been 13 told that by the planning department. They have an 14 email that they've presented to you all as it 15 relates to the building code department. But -- 16 MS. BRADY: 17 But if they have not submitted an application for 18 whatever you say wanted to use it for, then at this 19 point it's just vacant land, correct? 20 MR. DAVIES: 21 Right. 22 MR. HARRIS: 23 Staff has determined, planning staff has determined, 24 that it's not vacant land -- 25 MS. BRADY:

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Page 43 1 Why? 2 MR. HARRIS: 3 -- by virtue of the fact that there are improvements 4 that have been made on the property. 5 MS. GETER: 6 i.e. a flagpole. 7 MR. HARRIS: 8 And whatever else has occurred out there. But, 9 again, we don't have an application. 10 MR. WUNDER: 11 Well, the question I have about the application, and 12 I know Mr. Merting that you had a request of people 13 and it was all verbal. I understand what the 14 process is, and I'm looking at the (inaudible) 15 diagram, what the process is. And the process says 16 you have to put a permit application. Was there a 17 permit application ever put in? Even though you had 18 a verbal, you know, the big question I have is did 19 you put a permit application in at the time you had 20 these discussions? Now, I understand that you took 21 under good faith that somebody gave you yes, go 22 ahead. But the process requires a permit 23 application, correct? A permit application was or 24 was not submitted at the time back in 2019? 25 MR. MERTING:	Page 45 1 following the process, but the process says you have 2 to have a written application. Yes or no? 3 MR. MERTING: 4 I don't -- 5 MR. WUNDER: 6 Staff? To change the use -- 7 MS. HOLLIDAY: 8 I wouldn't know that. 9 MR. WUNDER: 10 -- of the property (inaudible). 11 MR. JEDZINIAK: 12 I think we're getting sidetracked from what the 13 appeal is over. The appeal if whether or not the 14 property violated Section 1.07 which is requiring a 15 permit. No permit was required. So technically by 16 the plain language of Section 1.07, if no permit's 17 required, you are not in violation of 1.07. 18 MR. DAVIES: 19 That's one way of looking at it. 20 MR. GOWAN: 21 Well, if a permit's not required, how do you apply 22 for one? 23 MR. DAVIES: 24 If you are changing the use of the land, which was a 25 bare ground, you have to have a permit to change the
Page 44 1 In 2019 nothing was submitted because we were told 2 nothing was required. So when we're told that we 3 don't need a permit, what are we asking for a permit 4 for? It's like -- 5 MR. WUNDER: 6 But as an attorney, as you have explicitly stated, 7 you were very thorough in your investigation and the 8 process detailed by the planning department by the 9 ordinance of the county is that you have to put an 10 application in. So you took it under assumption 11 that you were okay, legitimately. I'm not 12 disagreeing with what you're saying. But the 13 reality of it is, there's a process. Did you follow 14 the process? 15 MR. MERTING: 16 I did not put an application in. Now -- 17 MR. WUNDER: 18 Please let -- now my question is to staff. Is the 19 process requiring application, a written 20 application? 21 MS. HOLLIDAY: 22 Yes. 23 MR. WUNDER: 24 So somebody at the county, I'm not saying who, gave 25 you a verbal. But the reality is he wasn't	Page 46 1 use. 2 MS. BRADY: 3 Have you changed the use yet? is my question. Has 4 the use been changed? 5 MR. DAVIES: 6 When they put the flagpole up -- 7 MS. GETER: 8 Yes, because they put the flagpole. 9 MR. DAVIES: 10 -- it changed the use. 11 MR. MERTING: 12 The flagpole is free speech. 13 UNKNOWN MALE: 14 No, no. 15 MR. MERTING: 16 It's the same as changing use like putting up a 17 political sign or putting up a for sale sign. 18 Taking a piece of vacant land and putting a sign on 19 it doesn't change the use -- 20 MS. GETER: 21 But a sign is not a -- it wasn't like you put some 22 sticks in the ground, correct, and put the flagpole 23 in there? You actually put a structure, a hole? 24 MR. MERTING: 25 It is a giant stick, but it is a stick in the

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Page 47 1 ground. 2 MR. JEDZINIAK: 3 If I can interject here. The definition of 4 structure is just any manmade object. So 5 technically, by putting a political sign, which is 6 made of wire and plastic, under the rule, it's a 7 structure. 8 MR. MERTING: 9 There is unfortunately a court case that anticipates 10 if pink flamingoes might meet the definition of a 11 structure in one of our South Carolina courts. 12 MS. GETER: 13 Well, that's not before us, so. 14 MR. MERTING: 15 (Inaudible) in the definition of or from the 1984 16 case, pink flamingoes might be a structure. So 17 there is suffering de minimis use that is not a 18 change in the use of land. And we had the land 19 closed. It's not open to anybody. We had stopped 20 doing anything to make a park. We would like to 21 make a park. We'd be happy to apply for a permit to 22 make a park. But I would also say that the ULMO 23 doesn't require a permit for a private park. Under 24 any other use it requires permit for a public park. 25 But public park and private parks are defined	Page 49 1 MS. GETER: 2 But it's -- am I also understanding that the flag 3 itself is considered to be an alteration of the use 4 -- 5 MS. BRADY: 6 Of a blank piece of property, just a flagpole? 7 MR. DAVIES: 8 Yeah, okay. So 30 years ago out by my barn I put up 9 a 20-foot flagpole. Perfectly okay. I've got four 10 acres across the street from my house, and I can go 11 out there and put up a 100-foot flagpole on that? 12 MR. MERTING: 13 I believe that the new regulations on the zoning 14 ordinance might raise an issue with that, but I 15 think that the date on those regulations show that 16 they were passed because of what we did. I think 17 that shows, again, part of the response of the 18 county. 19 MS. FLEMING: 20 At what point is use defined? When is the use of 21 the land defined? I mean, if I go buy a piece of 22 land do I have to tell you what I'm going to use it 23 for? 24 MR. DAVIES: 25 If you use it for something, you do.
Page 48 1 differently, and there's no permit required for a 2 private park. 3 MS. BRADY: 4 But if I'm understanding you correctly one more time 5 -- 6 UNKNOWN COUNCIL MEMBER: 7 (Inaudible) private park. 8 MS. BRADY: 9 -- one more time -- 10 MR. MERTING: 11 Yes, ma'am. 12 MS. BRADY: 13 -- the use has not changed except for the fact that 14 you put a hole on it? 15 MR. MERTING: 16 You have not come in, you have not applied for a 17 permit because, at this point, it's moot because you 18 don't have a park building. When you decide to put 19 a park in, that's when you will issue -- 20 MR. MERTING: 21 Yes, ma'am. 22 MS. BRADY: 23 -- come in and request a permit, correct? 24 MR. MERTING: 25 Yes, ma'am.	Page 50 1 MS. FLEMING: 2 Who am I going to tell what I'm going to use it for? 3 MS. GETER: 4 I think it's under planning or building. 5 MS. FLEMING: 6 I just went and bought a piece of land. 7 MR. HARRIS: 8 So, Ms. Fleming, the ownership of a piece of land 9 that you do nothing to, from the point of 10 acquisition, you don't have to take any steps. It's 11 when you want to change the use. 12 So by the time the property owner acquired the 13 property they didn't need to make application. From 14 the time the property owner wanted to change the use 15 and put a flagpole and whatever else it is that they 16 want to put on the property, that is the point in 17 time at which they needed to make application. The 18 ULMO defines use as the purpose or activity for 19 which land or any building thereon is designed, 20 arranged, or intended, or for which it is occupied 21 or maintained. 22 MR. JEDZINIAK: 23 And Board Member Fleming, if I may add to that, I 24 think what's important -- and if y'all are on paper 25 it's page 102. It's the definition section of the

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Page 51 1 ULM. Again, they're charged with violating Section 2 1.07 by having an accessory use without a principal 3 use. We kind of glossed over that fact, and I think 4 Mr. Harris kind of glossed over what's right below, 5 the definition of use that he just read which is use 6 accessory, which, again, as I already stated directs 7 you to look at building accessory, which does not 8 contemplate flagpoles. It contemplates subordinate 9 structures that include storage sheds, workshops, 10 domestic animal shelters, pool houses. Flagpoles 11 are not contemplated in the definition section, and 12 flagpoles are not contemplated in the ULM. 13 MR. GOWAN: 14 Any other questions? Yes, sir? 15 MR. LANGFORD: 16 I just, before I came here I looked up, I did a -- I 17 pulled up the PDF on my computer and I couldn't find 18 the word flagpole anywhere in this document. 19 MS. FLEMING: 20 I did the same thing. 21 MR. GOWAN: 22 I think we all agree with that. 23 MS. FLEMING: 24 Yes. 25 MR. LANGFORD:	Page 53 1 MS. HOLLIDAY: 2 -- permit, an accessory use permit. 3 MR. DAVIES: 4 This is about the use of the property. Is it 5 barren, nothing there? If you're going to do 6 something on that property, you have to get a permit 7 to alter the property. Simple. 8 MR. LANGFORD: 9 But what I'm saying is that -- 10 MR. DAVIES: 11 That has nothing to do with flagpoles or what you're 12 going to put on that property. You have to get that 13 permit first. If you're going to dig a ditch in 14 there, you have to get a permit. 15 MR. LANGFORD: 16 I understand that. But I'm saying what are we using 17 as our guidelines? Are we using the ULMO? If so, 18 and we're discussing the flagpoles, then it has to 19 be in there somewhere. See what I'm saying? I mean 20 there's ditches in here. There's roads in here. 21 But I didn't see anything about a flagpole. So I 22 don't understand what we're doing. 23 MR. PADGETT: 24 Uh-huh, I would second that. In fact, I don't think 25 you see a definition of a structure in here, either.
Page 52 1 I just -- I don't understand what our role is with 2 this. 3 MR. GOWAN: 4 The -- our role with this, the way I understand it, 5 and Mr. Harris may correct me, but our role with 6 this is determine whether the notice of violation 7 that the county issued against the appellate was 8 proper or improper. That's what we're here to 9 decide, if it was improperly issued. And the 10 argument they're making is that 107 is the article 11 that they're basing that point which, like you say, 12 I couldn't find anything in there that had anything 13 to do with flagpoles. 14 MR. LANGFORD: 15 And it talks about the permit. We've talked about 16 the permit here. I mean is there a flagpole permit 17 application that we can go get right now? 18 MS. HOLLIDAY: 19 There is not a flagpole permit. 20 MR. LANGFORD: 21 A building permit? 22 MS. HOLLIDAY: 23 There is a (inaudible) -- 24 MR. LANGFORD: 25 A building permit? A flagpole building permit?	Page 54 1 MR. JEDZINIAK: 2 No, the structure -- 3 MR. GOWAN: 4 (Inaudible) building codes -- 5 MR. WUNDER: 6 Building codes (inaudible) -- 7 MR. DAVIES: 8 Well, if you read down a little further in this and 9 where it says, 107, it's right here -- 10 UNKNOWN MALE: 11 107? 12 MR. GOWAN: 13 In the appeals, right? 14 MR. DAVIES: 15 -- page 25. What's in your packet on your desk 16 there. No building, structure, or land shall be 17 used nor shall any building, structure, or land be 18 converted wholly or in part for any other use until 19 all applicable appropriate licenses, certificates, 20 and permits have been issued certifying compliance 21 with the requirements of this ordinance. 22 MS. GETER: 23 It's page 6. 24 UNKNOWN MALE: 25 Page 6?

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Page 55 1 MS. GETER: 2 Page 6 on -- 3 MR. DAVIES: 4 To place a flagpole on empty ground is changing the 5 use. That's all I'm saying. 6 MR. JEDZINIAK: 7 If I may present to the board -- 8 MR. DAVIES: 9 This is simple. 10 MR. JEDZINIAK: 11 I'm sorry to interrupt you, Mr. Davies. 12 MR. DAVIES: 13 That's all right. Go ahead. 14 MR. JEDZINIAK: 15 If I may, I think we've been talking around the same 16 issue this whole time, and I think it stems back to 17 exactly the section you just read. It says no 18 building, structure, or land shall be used, nor 19 shall any building, structure, or land be converted 20 until all applicable and appropriate licenses, 21 certificates, and permits have been issued. We 22 established this early on. A flagpole does not 23 require a permit. If you read the plain text and if 24 you read the ordinance the way it was written using 25 its plain definitional meanings, no ordinance or no	Page 57 1 MS. GETER: 2 So the fact -- 3 MR. DAVIES: 4 This is not about flagpoles. If you put a shed on 5 that building you got to get a permit to place the 6 shed there. That's all there is to it. 7 MS. GETER: 8 But I'm just trying to make sure I understand that 9 it's not -- I mean we're getting caught up because 10 it is an actual flagpole. But if it had been a 11 playground or anything other than that, anything, it 12 doesn't matter what it is, is what I'm trying to get 13 to the bottom of, anything that makes it other than 14 just grass or dirt or whatever, that you -- is 15 considered to be an alteration, which would then 16 facilitate the need for a permanent. Is that my 17 understanding? 18 MS. HOLLIDAY: 19 That's correct. 20 MR. JEDZINIAK: 21 Board member, however, those specific things you 22 listed are contemplated and have specific ordinances 23 and requirements at the object. So a playground, 24 for example, is contemplated. A private park is 25 contemplated. A public park is contemplated.
Page 56 1 permit is required for a flagpole. 2 MS. BRADY: 3 And you were told that six to seven times? 4 MR. JEDZINIAK: 5 And it's confirmed in writing as Exhibit A in the 6 evidence packet. 7 MS. GETER: 8 Okay, but I guess where I'm kind of struggling, I 9 mean it doesn't specifically say anything in here. 10 It just says no building, structure, or land. So 11 it's not specifically referencing any particular 12 innate object at all. So I guess we're saying, you 13 know, if you had put, you know, a toothpick 14 structure right there, you're still changing it from 15 just grass, is what I think I'm understanding here. 16 Is that when you purchased the land, it had grass, 17 dirt, something, vegetation or whatever on that lot. 18 And if I'm understanding John and the discussion 19 that we've had, the fact that you did anything other 20 than mow the grass or cut down the branches of the 21 trees is considered to be an alteration of the land. 22 MR. DAVIES: 23 Right. When you dig a hole to place the pole in the 24 hole, you are altering, changing it from no use to 25 some use.	Page 58 1 Again, Section 107 -- 1.07 is about an 2 un contemplated thing. It does not require a permit. 3 So therefore, because it does not require a permit 4 you cannot be in violation of 1.07. 5 And I know I keep stressing that and saying that, 6 but it does matter, the use, because if the use 7 requires a permit, then you have to get a permit. 8 If the use does not require a permit, then you do 9 not have to get a permit. 10 MR. GOWAN: 11 Mr. Harris, is a grading permit required? 12 MR. HARRIS: 13 Yes, if grading is to occur on property and it meets 14 the square footage. 15 MR. GOWAN: 16 And staff doesn't know whether any grading occurred 17 or not, correct? 18 MS. GETER: 19 Because they don't have permission (inaudible). 20 MR. DAVIES: 21 When the hole -- 22 MS. FLEMING: 23 Do you know what the square footage is? 24 MR. GOWAN: 25 I beg your pardon?

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Page 59 1 MS. FLEMING: 2 I was asking John if he knew what the square footage 3 was for a grading permit. 4 MR. HARRIS: 5 I do not know off the top of my head. 6 MR. MERTING: 7 Board members, I think that's a very good example 8 that some uses don't require a permit. A grading 9 under some certain number, that Mr. Harris doesn't 10 have for us, I don't have for us, doesn't require a 11 permit. So that wouldn't be a violation of 1.07 12 because no permit's required for that activity. 13 MR. WUNDER: 14 Was there a conversation when you had this dialogue 15 with Mr. Hembree about the flagpole as being part of 16 a park? 17 MR. MERTING: 18 We told him that's eventually where we wanted to go, 19 that we were going to have a little park there. We 20 would still be willing to go there, but we're not 21 going to go there if a permit's necessary. Again -- 22 MR. WUNDER: 23 That's a decision now because it goes back to what 24 we've already previously discussed. It's change of 25 use. It's a park. It's a change of use.	Page 61 1 MS. GETER: 2 So when you say the legal non -- what's -- when you 3 say that the -- ask that the flagpole be 4 grandfathered in, that is based on what? 5 MR. GOWAN: 6 The PZO. 7 MS. GETER: 8 The PZO? 9 MR. GOWAN: 10 I think so. 11 MR. JEDZINIAK: 12 Yes, under I believe it's Article 8 or Chapter 8 13 there is a grandfather date of September 27. And 14 the flagpole was up on August 6 of the same year. 15 MS. GETER: 16 Okay. So now I'm a little bit confused, staff, 17 because if that is a PZO question, and we are 18 looking at LMO, how do we consider that issue, John? 19 MR. HARRIS: 20 So -- 21 MR. DAVIES: 22 Saying it was there prior. 23 MS. GETER: 24 No, I know what they're saying, but if the appeal is 25 based on the PZO, but the notice is based on the
Page 60 1 MR. MERTING: 2 If -- if we go there, and we have not gone to that 3 point yet. It's very much closed. There is nothing 4 there but lights and a flagpole. And everybody 5 keeps saying it's about the use; it's not about the 6 flagpole. I understand that. But look at that, and 7 what is the violation? It doesn't say anything else 8 has to be removed. The lights don't need to be 9 removed. The only thing they want removed is the 10 flagpole. Those lights are much more of a use than 11 the flagpole. They're connected to electrical. 12 MR. HARRIS: 13 Mr. Chairman, I know the board has asked several 14 questions of the appellant. I don't believe the 15 board has heard from staff. When you all have 16 finished the questions to the appellant, you may 17 wish to allow staff an opportunity to present their 18 staff report. 19 MR. JEDZINIAK: 20 And I would just take an exception to that. I do 21 believe you directed Mr. Harris, and we can read 22 back the record if necessary, to present any 23 directed questions, and I believed in rebuttal that 24 I have the opportunity to answer. So I apologize if 25 I stepped on Mr. Harris's presentation.	Page 62 1 LMO, how are we to even consider that to be a part 2 of the argument if it's not related to the LMO? 3 MR. GOWAN: 4 Well, I believe -- I'm sorry. Go ahead, Mr. Harris. 5 MR. HARRIS: 6 I think ultimately the board has to determine 7 whether staff was correct in issuing the notice of 8 violation and whether or not the applicant or the 9 appellant, in this case, is required to get a permit 10 to change the use as has been discussed tonight. 11 That's really the underlying issue. Once that issue 12 is determined, then if the conclusion is the 13 appellant has to go through the permit process, then 14 the flagpole and its status would be addressed at 15 that point in time, and that may be an issue that 16 comes back to this board at some point in the 17 future. But that's not the issue tonight. The 18 issue tonight is whether or not they need a permit 19 to change the use of the property, and whether or 20 not the use has, in fact, changed as staff 21 determined at the point in time staff issued the 22 notice of violation. 23 MS. GETER: 24 Okay. Maybe this is a good time to hear from staff. 25 MR. JEDZINIAK:

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1 Thank you, board. 2 MR. GOWAN: 3 Ms. Holliday? 4 MS. HOLLIDAY: 5 You guys, I'm going to do something I don't usually 6 do. I'm going to read what's been prepared. It's 7 just a lot. 8 MR. HARRIS: 9 Mr. Chairman, it would be appropriate to swear in 10 Ms. Holliday. 11 MR. GOWAN: 12 Oh, we swore -- we swore her in a few minutes ago, 13 did we not? No? 14 MS. HOLLIDAY: 15 Not me. 16 MR. GOWAN: 17 Okay. Please state your name. 18 MS. HOLLIDAY: 19 Joan Holliday. 20 MR. GOWAN: 21 Joan Holliday. And is the information you're about 22 to provide tonight is the truth and nothing but the 23 truth? Thank you. 24 MS. HOLLIDAY: 25 Yes. Okay. We have an appeal of issuance of notice	Page 63 1 of Violation which largely resembles the lawsuit 2 filed against Spartanburg County as case number 3 2022-CP-42-04582. 4 The appeal of notice of violation attached to the 5 appeal form requests the following: 6 Plaintiff seeks to declare the status of its 7 property in Spartanburg County including any 8 grandfathered status as a non-conforming property, 9 to estopp Spartanburg County from asserting that any 10 further permits are needed for the work completed 11 upon its property, to seek damages for a civil 12 conspiracy by John Doe and Spartanburg County to 13 prevent plaintiff from using its property, and to 14 find that the Spartanburg County Zoning ordinance 15 has applied to plaintiff's property is against the 16 South Carolina Constitution. 17 The requests that are pertinent to the Board of 18 Zoning Appeals case: 19 S.C. Code of Laws 6-29-800 gives the following 20 powers to the Board of Appeals. To hear and decide 21 appeals where it is alleged there is an error in an 22 order, requirement, decision, or determination made 23 by an administrative official in the enforcement of 24 the zoning ordinance. 25 The issues the Zoning Board of Appeals has
Page 64 1 of violation. The applicant is Adam W. Ballenger 2 Memorial Park. The meeting date is today, January 3 21, 2023. The address is 2294 Teaberry Road, 4 Spartanburg, South Carolina. The ordinance is the 5 ULMO. A notice of violation was mailed on 10/21/22. 6 The appeal application was received on 11/07/2022. 7 The deadline for appeal, the first deadline for 8 appeal, was 11/22 of 2022, and the continuance 9 request was received 12/13/2022 and approved the 10 next day. 11 So the applicant is Robert K. Merting on behalf of 12 Adam W. Ballenger Camp #68, Sons of Confederate 13 Veterans, Incorporated. The applicant status is the 14 agent or attorney, at least at the time of the 15 application. Map number 7-01-00-062.01. The 16 acreage is .83 acres. 17 And so the stated reason for the appeal, and this is 18 from the appeal form from the Adam W. Ballenger 19 Memorial Park project refers to the ordinances being 20 appealed as Unified Land Management Ordinance, 21 Section 1.07, and all other ordinances cited for 22 support of, and this is the EESONEVIOL is the notice 23 of violation, 1022-0339. Under their reason for 24 appeal on the application the applicant also refers 25 to the attached document entitled Appeal of Notice	Page 66 1 jurisdiction over here are the appeal of the 2 planning staff's issuance of a notice of violation 3 for the establishment of an accessory use without a 4 principal use. The basic request is to overturn the 5 notice of violation for the flagpole erected on 6 their property in their appeal. 7 In the appeal the appellant asks that the flagpole 8 be grandfathered. The board may decide whether 9 appropriate development permits were obtained in 10 order for the use to be a legal non-conforming use. 11 So the background information. On December 13, 12 2019, the appellant submitted a plat in the name of 13 William C. Berry to the planning and development 14 dividing the property. The plat was stamped and 15 recorded. A quitclaim deed was recorded on December 16 16 to transfer the property to the Adam Washington 17 Ballenger Camp #68, Sons of the Confederate 18 Veteran's Incorporated. 19 They did have to come to the planning department to 20 get the plat stamped. When they brought the plat 21 there was no questions about what they were going to 22 do with the park. 23 On June 3, 2022, G&S Electrical Services, LLC, on 24 behalf of Adam Washington Ballenger Camp #68, 25 submitted an electrical permit application to the

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Page 67 1 building codes department for permanent power for 2 decorative lights on pole. No development 3 application was made nor did any conversations take 4 place between the property owner or its agents and 5 the planning and development department regarding 6 the placement of a flagpole or any other use 7 associated with the property. 8 It was brought to the planning and development 9 department's attention that a flagpole had been 10 erected along Interstate 85. In researching the 11 site, it was found that the flagpole was the only 12 structure on the parcel, and accessory use cannot be 13 placed without a primary use under the ULMO. 14 The zoning staff issued a notice of violation on 15 October 21, 2022. The NOV was sent by certified 16 mail and the return receipt shows that it was picked 17 up on October 26, 2022. The NOV and the certified 18 mail tracking information are attached. The NOV 19 states the following, and this is what we've read 20 several times already. 21 No building, structure, or sign requiring a permit 22 or any part thereof shall be erected, added to, or 23 structurally altered, nor shall any excavation or 24 grading be commenced until the required permits have 25 been issued.	Page 69 1 The ULMO addresses accessory uses in 3.20 accessory 2 buildings and uses/non-residential. The language 3 states: Accessory uses shall observe the setback 4 requirements for the principal use to which they are 5 accessory when located contiguous to a residential 6 use. 7 Principal use is a primary use for which land is 8 used. If the land is used for a sign or a plaque, 9 it's not a principal use. It's not the land use. 10 A structure is as defined by the standard building 11 codes. So a structure, as defined by the ULMO, is 12 that which is built or constructed. 13 The subject site is located within the area subject 14 to the ULMO as it relates to development 15 applications. To date, the staff has received no 16 application for a development permit for the 17 property. 18 And there were a few of the allegations that were 19 made that I think is important for the board to 20 basically hear the county's side of, even though it 21 may or may not be pertinent to your decision this 22 evening. 23 The allegations contained in the appellant's appeal 24 include the following legal and equitable claims 25 that were included in the complaint filed against
Page 68 1 No building, structure, or land shall be used, nor 2 shall any building, structure, or land be converted 3 wholly or in part to any other use until all 4 applicable and appropriate licenses, certificates, 5 and permits have been issued certifying compliance 6 with the requirements of this ordinance. 7 An accessory use has been established without a 8 principal use remove flagpole or obtain permit for a 9 principal use and lower flagpole to 30 feet. 10 The planning and development department received the 11 form for appeal of the notice of violation on 12 November 7, 2022. The next board of appeals meeting 13 was on December 20, 2022. The county received a 14 request for continuance on December 13. The staff 15 granted the first continuance request and notified 16 the appellant that the new meeting date is January 17 31, 2023, today's date. You can consider that 18 notice. They knew that this was the intended date 19 to meet. 20 County zoning ordinance information that's 21 applicable: the subject property lies in the part 22 of the county where the ULMO is in effect. The ULMO 23 in Section 1.07 states the following, and if you 24 guys are okay with it, I'm not going to read those 25 two again. They were on the notice of violation.	Page 70 1 Spartanburg County in Case Number 2022-CP-42-04582. 2 Count 1 -- well, this is just a list. Count 1 - 3 declaratory judgment. Minor improvement on vacant 4 land does not change the use of said land. 5 Count 2 - Declaratory judgment - Camp's flag project 6 is a grandfathered non-conforming use. 7 Count 3 - Equitable estoppel and detrimental 8 reliance. Spartanburg County issued a building 9 permit for the flag and is now estopped from 10 alleging prior or other permits were needed. 11 Count 4 - Civil conspiracy. John Doe alerted 12 Spartanburg County to the flag project prior to the 13 non-conforming date expiring and the county, in 14 conjunction with John Doe, delayed action to 15 purposefully prevent the camp from meeting the non- 16 conforming date. 17 Count 5 - As applied South Carolina Constitution 18 violation - the Spartanburg County Performance 19 Zoning Ordinance as applied to camp violates camp's 20 right to free speech under South Carolina 21 Constitution, Article 1, Section 2. 22 Count 6 - As applied South Carolina Constitution 23 violation - the Spartanburg County Unified Land 24 Management Ordinance as applied to camp violates 25 camp's right to free speech under South Carolina

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Page 71 1 Constitution, Article 1, Section 2. 2 Staff's position -- staff's position. The pertinent 3 information for the Board of Appeals to hear and 4 decide is whether the staff erred in issuing the 5 notice of violation for establishing an accessory 6 use without a principal use on the subject property 7 without appropriate approvals/permits. The 8 appellant did not contact planning and development 9 department about placing the flagpole nor building 10 the memorial park referred in the appeal form under 11 project name, and thus have no development permit to 12 change the use of this site. The project name on 13 the application is Adam W. Ballenger Memorial Park. 14 No such application has been made to the planning 15 and development department to date, so the planning 16 staff does not know the intentions for this site. 17 In Count 1, the appellant contends that a minor 18 improvement on the vacant land does not change the 19 use of the said land. However, Sections 1.07 and 20 1.13 of the ULMO require permits to be obtained 21 prior to commencing a land use or erecting a 22 structure. In fact, the definition of vacant land 23 reference by the appellant is from statue statutes 24 for tax increment financing. This statute does not 25 apply to zoning issues.	Page 73 1 the planning department. 2 The appellant states that a private park is not 3 subject to zoning since it is not called out in the 4 zoning ordinance. There is no exemption for private 5 parks within the ULMO. The ULMO has a category 6 called "All Other Uses" where any land use not 7 specifically identified is reviewed. 8 The staff recommends the denial of the appeal and 9 upholding the staff's decision to issue the notice 10 of violation. Since there has been no development 11 application in this case, the staff also asks that 12 the flagpole not be considered a legal non- 13 conforming use. It is further requested that an 14 application for the desired land use be submitted 15 through the appropriate process, along with a site 16 plan, so an appropriate assessment of the 17 requirements for this site may be made. 18 This is the site where the flag is located, and this 19 is -- of course these photos were before the flag 20 was placed. This is tighter end on the site. 21 This is the notice of violation which you guys have 22 a copy of. This is the tracking for the notice of 23 violation which indicates it was sent on October 21, 24 2022. Questions? 25 MR. GOWAN:
Page 72 1 In Count 2, the appellant is requesting that the 2 flagpole be grandfathered. To be a legal non- 3 conforming use, the use must have been legally 4 established. There were no development approvals or 5 permits issued for any use on the subject parcel. 6 Thus no use has been legally established. 7 In Counts 3 through 6, the appellant asserts claims 8 for equitable estoppel, civil conspiracy and the 9 South Carolina Constitution. The Board of Appeals 10 does not decide such matters. The BZA is tasked 11 with determining whether the staff erred in its 12 issuance of the notice of violation. 13 The appellant's appeal demonstrates the propriety of 14 the notice of violation. The appellant claims that 15 Spartanburg County issued a building permit to camp 16 for the flagpole project. In actuality, the 17 building codes department issued electrical permits, 18 not a building permit, for permanent power to 19 decorative lights on pole. The appellant cites 20 South Carolina Local Government Comprehensive 21 Enabling Act 6-29-950 in its appeal. Statute states 22 that any permit obtained without the approval of the 23 zoning administrator is unlawful or invalid. This 24 demonstrates the necessity of the absent development 25 permit. The zoning administrator is an employee of	Page 74 1 Yes, ma'am. I have a question, if I may. What was 2 the date that John Doe brought the attention of the 3 flagpole to staff? Is that noted anywhere? 4 MS. HOLLIDAY: 5 Not that I know of and I do not -- I would -- and I 6 hate to assume, but whoever let us know the flag was 7 out there I'm assuming is being referred to as John 8 Doe. We get complaints and questions about property 9 many times per week. So we really don't track who 10 tells us or who the complainant is or who.... 11 MR. GOWAN: 12 Yeah, my question was what the date was. So you 13 don't keep up with dates when people call in and 14 say, hey, I've got a problem with this? There's no 15 notation or no record of that call? 16 MS. HOLLIDAY: 17 (Shakes head). 18 MR. GOWAN: 19 Okay. Thank you. Anyone else have any -- 20 MR. PADGETT: 21 Two. Joan, I notice in here the 30-foot limitation, 22 it doesn't apply here, right? 23 MS. HOLLIDAY: 24 The 30-foot limitation on the height of the pole 25 would eventually apply.

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Page 75 1 MR. PADGETT: 2 Okay, but not now -- 3 MS. HOLLIDAY: 4 Not in this decision. 5 MR. PADGETT: 6 -- we're not in that ordinance right now. And my 7 second one is the definition of a structure, built 8 or constructed. Did they hammer nails? What I 9 consider a structure is built with constructive 10 means. I'm actually hammering nails, boards, pour 11 foundations, and things like that. So I guess my 12 question is, and I go back to it, is a flagpole a 13 structure. 14 MS. HOLLIDAY: 15 We consider it a structure. 16 MR. PADGETT: 17 Yeah, but the definition does not support that, 18 right? 19 MS. HOLLIDAY: 20 Well, I think the definition does support that. 21 MR. WUNDER: 22 The other question I would offer is that in the ULMO 23 Section 1.07 it specifically says no building or 24 structure. We can argue what a structure is 25 forever. One of the other things it says is any	Page 77 1 MR. WUNDER: 2 Just as any excavation so we go back to that whole 3 definition. What's the definition of excavation. 4 MS. HOLLIDAY: 5 And we don't know if they removed trees or graded to 6 put that in. We don't know. 7 MR. GOWAN: 8 Could have been a hole there to start with; they 9 just dumped it in. 10 UNKNOWN COUNCIL MEMBER: 11 Yeah. 12 UNKNOWN COUNCIL MEMBER: 13 Could have been. 14 MS. GETER: 15 But that's not what we're ultimately need to 16 determine is whether there's a structure or not. 17 What we have to determine is the information that 18 staff used to issue the notice of violation. Did 19 they use the information or tools or whatever before 20 them in order to make their decision. Is that what 21 we're tasked with today? 22 MR. DAVIES: 23 Pretty much. 24 MR. GOWAN: 25 I think so.
Page 76 1 excavation or draining, caveat any excavation. To 2 put a pole up you've got to excavate. 3 MR. DAVIES: 4 Exactly. 5 MR. WUNDER: 6 To put a pole up you've got to excavate unless it's 7 going to stand up on the top of the surface. 8 MR. JEDZINIAK: 9 If I could respond to that, Board. 10 MR. GOWAN: 11 I think right now we're talking to staff. 12 MR. JEDZINIAK: 13 Okay, yep, yep, I apologize. 14 MS. HOLLIDAY: 15 So when we get an application, we turn around and 16 send that application to the engineering department 17 who reviews the storm water and grading issues. And 18 I don't know that there was grading. I don't know 19 how much grading because we didn't have an 20 application. 21 MR. DAVIES: 22 Because there was no permit to change the use. 23 MR. PADGETT: 24 I would think that excavation and running a pole are 25 two different things.	Page 78 1 MS. GETER: 2 And that is all we're tasked with. We're not tasked 3 with determining if it's a structure, a hole, a 4 alien, or anything. We're just to determine did 5 staff make a decision based upon the information 6 that is listed within the ULMO. That is what we're 7 tasked with. John, is that what I'm understanding? 8 MR. DAVIES: 9 Yeah. 10 MS. HOLLIDAY: 11 So, I would say, Ms. Geter, that we treat other 12 applicants the same way. If we have anything that's 13 built, flagpole or whatever, a cell tower, whatever 14 that is, we consider that built thing a structure. 15 So, I don't think that's in question. And I think 16 you're right. The question would be did staff err 17 in issuing that notice of violation, and I would ask 18 Mr. Harris, if I'm correct, in whether the 19 determination, whether it's grandfathered, may be 20 something that may be an issue right now. 21 MR. HARRIS: 22 So ultimately the notice of violation requires the 23 property owner, under the corrective action, to 24 remove the flagpole or obtain a permit for the 25 principal use and lower the flagpole to 30 feet.

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Page 79 1 That is essentially what the board is deciding, 2 whether or not the appellant has to comply with the 3 corrective actions set forth in the notice of 4 violation. 5 MS. BRADY: 6 The one thing, if I may, the one thing that I go 7 back to is it says no building, structure, or sign 8 requiring a permit. Apparently no permit was 9 required. 10 MS. HOLLIDAY: 11 Well, we do require a permit. 12 MS. BRADY: 13 Well, you told them multiple times they didn't need 14 a permit. 15 MS. HOLLIDAY: 16 We did not tell them. The building codes department 17 told them. We are not the building codes 18 department. They say that the windows in our front 19 office are planning and building codes. They're 20 not. Planning does not have windows. They asked 21 building codes' employees. They asked the building 22 codes' department these questions. They didn't ask 23 the planning department, yet they came to the 24 planning department when they wanted to record their 25 plat and get it stamped.	Page 81 1 bought it, if I'm understanding. It wasn't there. 2 It's like the land was this piece of paper. The 3 flagpole becomes the pen. So in order for them to 4 put the pen on there it's my understanding that a 5 permit has to be done. It doesn't matter if we like 6 that it has to be done or we agree that it has to be 7 done. The point that's being made is that it has to 8 be done, and that's not what we're in charge of 9 determining is whether or not the law or the 10 definitions or any of that is correct. 11 We are tasked with looking at the notice of 12 violation that the staff issued, and based upon 13 their knowledge, experience, materials, or whatever 14 it is they use to make their decision with, if they 15 made a decision in line with that. The rest of this 16 I think, you know, is good information to have, but 17 I don't think that's the question that we're here, 18 this board, this body, for this particular session, 19 is here to answer. 20 MR. PADGETT: 21 But Angela, Tom made a point. There is provisions 22 in this ordinance to deal with cell towers. There's 23 no provision in this order to deal with flagpoles. 24 MS. BRADY: 25 So you could get a different answer to whoever you
Page 80 1 MS. BRADY: 2 But if they had come to you, you would have told 3 them that they needed a permit to put that flagpole 4 up? Is that what you're telling me? 5 MS. HOLLIDAY: 6 It's according to, you know, if they were making the 7 -- an application for that use, yes. 8 MS. BRADY: 9 For the use of erecting a flagpole? Is that what 10 you're saying? 11 MR. DAVIES: 12 To change the use of the land from bare ground to a 13 private park -- 14 MS. BRADY: 15 But at this point they had not applied for that. 16 MR. DAVIES: 17 -- which is one of their arguments. 18 MS. BRADY: 19 At this point they had not applied for that. 20 MR. DAVIES: 21 That's right. They haven't done that. 22 MS. BRADY: 23 So it's just a pole. It's just a pole. 24 MS. GETER: 25 But the pole wasn't part of the property when they	Page 82 1 went to? 2 MS. HOLLIDAY: 3 So you were the building codes director. 4 MR. PADGETT: 5 Right. 6 MS. HOLLIDAY: 7 Was every single use listed for you? 8 MR. PADGETT: 9 And, yes they are -- 10 MS. HOLLIDAY: 11 They're not in our ordinances. It is something that 12 is -- Mr. Davies keeps pointing out -- is the change 13 of that property. It doesn't matter what it is. 14 MR. PADGETT: 15 My point is they're not using the property. The 16 flagpole is there. That's all that's there. No 17 other use on the property except that pole that is 18 sitting there. 19 UNKNOWN COUNCIL MEMBER: 20 That's right. 21 MS. GETER: 22 But doesn't the pole have the use of maintaining the 23 flag? 24 MR. PADGETT: 25 No use. There's no business. There's no

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Page 83 1 residential structure. There's -- 2 MS. GETER: 3 Then why is it there? 4 MR. PADGETT: 5 -- nothing there. 6 MS. GETER: 7 Then why do they need it there? If that's the 8 argument that we want to use, then it begs the 9 question. If this property is not being used for 10 anything then why do they need a flagpole on it? 11 MS. BRADY: 12 Because it's America, and if they want to put a 13 flagpole on it, they can put a flagpole on it. 14 MS. GETER: 15 Well, and based upon that argument, America also 16 says they need a permit. So that -- I don't argue 17 that they can put whatever they wanted to put there 18 as long as they got the appropriate permit. So I 19 don't think it's anybody's telling them they can't 20 put it there. They just got to have a permit. At 21 least that's my interpretation of what staff is 22 saying is they've got to have a permit. And then 23 based upon what they request, they'll either grant 24 it or not grant it based upon these regulations that 25 we have before us. But the regulations may or may	Page 85 1 it personally, but I do take exception to that. We 2 are not pleading ignorance here. We are simply 3 saying that if you read Section 1.07, and I 4 understand y'all aren't tasked with interpreting the 5 law, but you are tasked with interpreting of whether 6 this violation was wrongly issued. That is the 7 issue on appeal. And when you look at Section 1.07 8 it specifically says that you don't need a permit if 9 no permit can be given. 10 And we keep throwing around use. What's the use of 11 a flagpole? Use of a flagpole is speech. If you 12 want to put a political sign in your yard, you don't 13 have to go down to the county office and say, I want 14 a Lindsey Graham sign in my yard. You get to put it 15 up because it's free speech. All this is doing is 16 stifling free speech. If you put a flagpole on land 17 it doesn't do anything except produce speech and 18 expression which are protected by the South Carolina 19 Constitution and the United States Constitution. 20 Regardless of that, that is not why we're here 21 today. We're here as to whether or not 1.07 was 22 violated. Greg Hembree, who is the Director of 23 Building Codes, who, according to the Spartanburg 24 County website, is over the department that issues 25 permits, said no permit was required. Under Section
Page 84 1 not be flawed, but that's not the question. 2 We're not here to govern the regulation. We're here 3 to answer the question of the staff decision to 4 issue the notice of violation, which the notice of 5 violation, if I'm understanding, is based upon 6 standards listed in this ULMO, which may or may not 7 be fair. Right? Whatever. But that's what's 8 listed. 9 MS. FLEMING: 10 But short of reading this book, they didn't know 11 they needed a permit. 12 MS. GETER: 13 But ignorance is not a defense of the law, and every 14 attorney knows that -- 15 MS. FLEMING: 16 (Inaudible) book to read it. 17 MS. GETER: 18 The attorney can't argue ignorance as a defense of 19 the law, and I think you know that. 20 MR. JEDZINIAK: 21 Board Member, I -- 22 MS. GETER: 23 It's Board Member Geter. 24 MR. JEDZINIAK: 25 -- I take a little exception to that. I don't take	Page 86 1 1.07, if no permit is required, you can't get a 2 permit. If you can't get a permit there's no 3 violation. Nowhere in these ordinances does it 4 reference a flagpole nor does it say that this is a 5 violation. 6 MS. HOLLIDAY: 7 (Inaudible) -- 8 MR. DAVIES: 9 (Inaudible) 1.07, though, in the second paragraph, 10 which you can't change the use without a permit. 11 MS. HOLLIDAY: 12 And the department to go to is the planning 13 department where the zoning administrator resides, 14 not to the building codes director who does not deal 15 with zoning issues. 16 MR. JEDZINIAK: 17 And I think the evidence in the record show that 18 they went to the planning department and they were 19 up to a supervisor to address this. And I might add 20 that 1.07 specifically says, Any other use until all 21 applicable and appropriate licenses, certificates, 22 and permits have been issued. There's no applicable 23 permit to be issued in this case. 24 MS. HOLLIDAY: 25 As the planning director I would beg to differ with

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Page 87 1 that. 2 MR. GOWAN: 3 Okay. Does anybody else have any questions of the 4 staff or Joan? Does anyone have any questions for 5 the attorney? 6 MR. JEDZINIAK: 7 Thank you, ladies and gentlemen. 8 MR. GOWAN: 9 Thank you. Then I guess we will talk among 10 ourselves. I know you're ready. 11 MR. DAVIES: 12 I'm here. We've been drawing this out, and drawing 13 this out. We've been talking about stuff that's not 14 pertinent to the issue at hand. And, you know, we 15 can read 1.07 again and again and again. It says 16 the same thing. You can't change the use of the 17 land without a permit. When you place something on 18 that property, it says any building, structure, or 19 land then you change the use. So, I see no error 20 with staff. So y'all talk among yourselves, 21 whatever. I don't see an error and I have this 22 (inaudible). 23 MR. GOWAN: 24 Well, I see the corrective action that's cited in 25 this, to me, it says an accessory use hasn't been	Page 89 1 MR. GOWAN: 2 Exactly. 3 MR. DAVIES: 4 -- because the rule didn't change -- 5 MR. GOWAN: 6 It's grandfathered in. 7 MR. DAVIES: 8 But -- 9 MS. GETER: 10 The rule already existed. Whether the rule didn't 11 suddenly get passed. The rule already -- 12 MR. DAVIES: 13 If you change the rule -- if you change the use of 14 the property you have to have a permit to do that. 15 Now, you cannot put a structure, which is anything 16 that's built, whether it's -- well, I mean you got 17 to dig a hole and plant the thing, so that's 18 changing the use. That's what I'm saying that staff 19 didn't do anything wrong here. 20 MS. GETER: 21 But is it not on the person that that's putting the 22 thing up to make sure that they've gone to all the 23 appropriate departments? I get it that the building 24 department may have said you don't need a permit, 25 but you knew to go to the planning office to get the
Page 88 1 established without a principal use, and I don't see 2 that in the ULMO. I also don't see anything in here 3 as far as the action is to remove the pole or obtain 4 a permit for principal use and lower the flagpole to 5 30 feet. So I think that, you know, I think it is a 6 little bit confusing when you go and you seek a 7 permit to do something and you don't get one and 8 you're told you're not -- you don't need one, and 9 you go out and you take the action you intended that 10 you solicit the permit for, and you do that action 11 and then later comes back and says, no, you can't do 12 this. 13 You're in the building business. What if you've got 14 a house and you're almost built with it and then the 15 permit's office comes back there or planning goes 16 after you and says, no, no, no, you have to do this 17 now to this house, because this is after the fact. 18 You got a permit to build something and then you 19 built it to that permit, but they come back and say 20 no, we've changed the rules? 21 MS. GETER: 22 But the rules didn't change. The rules already 23 existed. 24 MR. DAVIES: 25 Well, then it's grandfathered in --	Page 90 1 plat. So, you're already there at the planning 2 office. It seem like to me would it have been a 3 stretch to think that you would ask planning if 4 there's anything else you would need. 5 So, I mean I don't -- I don't know, I don't see any 6 malicious intent on the part of staff. I see them 7 making a decision based upon the information and the 8 guidelines that they have set before them. 9 If you don't like the guidelines, that's what the 10 process, and tells you, you go to city council, 11 county council, whichever body oversees that, and 12 you ask them to review and change it. We can't do 13 that for the purpose of this meeting. 14 But if we need clarity on these standards then John 15 and Joan and the rest of the planning department can 16 advise us on what we can do to establish a clearer 17 definition or a more definitive definition. Or 18 somebody put flagpole in there so that it makes 19 everybody happy. But unfortunately I have to agree 20 with Tom. I -- I can't -- I don't understand where 21 the staff erred in their decision. 22 MR. PADGETT: 23 Mr. Chairman, I make a motion that the -- the 24 violation notice was issued in error based on the 25 fact that they got permission to put the permit --

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Page 91 1 to put the flagpole up, not a permit, electrical 2 permit, and nowhere in the definition of the ULMO 3 does it talk about permits for flags. 4 MS. BRADY: 5 I second. 6 MR. GOWAN: 7 We have a motion and a second. Is there any further 8 discussion? Those who vote to vote in favor of the 9 motion -- 10 MR. DAVIES: 11 Clarify that for me one more time. 12 MS. FLEMING: 13 Clarify what was in the motion. 14 MR. DAVIES: 15 What's in the motion? 16 MR. GOWAN: 17 The motion is that staff made an error. 18 MS. GETER: 19 The motion is that staff made an error in their -- 20 MR. GOWAN: 21 In issuing the notice of violation. 22 MS. GETER: 23 -- notice of the violation? 24 MR. GOWAN: 25 Yes, sir -- yes, ma'am. Any questions about the	Page 93 1 MR. GOWAN: 2 I don't have a second item on my sheet. 3 MS. GETER: 4 (Inaudible). 5 MR. WUNDER: 6 It says here in the issues of the board has 7 jurisdiction over, and it says, In the appeal the 8 appellant asks that the flagpole be grandfathered. 9 MR. GOWAN: 10 That's -- I think you're being (inaudible). 11 MR. WUNDER: 12 It says the Board of Zoning Appeals has jurisdiction 13 over one is the appeal of the planning staff, which 14 we just voted on, and the second is in the appeal 15 the appellant asks that the flagpole be 16 grandfathered. I guess we are not in the appeal? 17 We are in the appeal, right? The board may decide 18 whether appropriate development permits were 19 obtained in order for the use to be a legal non- 20 conforming use. 21 MR. GOWAN: 22 This is the appeal request (inaudible). It's 23 superfluous information that we have. It's not -- I 24 don't think that's part of the request, is it, Mr. 25 Harris?
Page 92 1 motion, anyone? Okay. Is there anymore discussion 2 about the motion? Hearing none, those in favor, 3 please signify by raising your right hand. Those 4 that oppose, the same, raise your right hand. So, 5 what, four to three? Okay. Is there any other 6 business that we need to take up? 7 MR. WUNDER: 8 We've got a second item on the list. 9 MR. DAVIES: 10 How can it be four to three? 11 MR. GOWAN: 12 Huh? Four, five, six, seven, eight. Oh, okay. 13 MS. BRADY: 14 It's five to three. 15 MR. GOWAN: 16 Five to three. Okay, sorry. I need to go back to 17 math class. 18 MR. WUNDER: 19 We have a second item. 20 MR. GOWAN: 21 I beg your pardon? 22 MR. WUNDER: 23 We have a second item to cover. 24 MS. GETER: 25 No, we don't.	Page 94 1 MR. HARRIS: 2 As to -- I'm sorry, Mr. Chairman, I was making some 3 notes. I -- I am not fully up to speed as to the 4 discussion. So I'm certainly happy to try and 5 answer a question but I would ask you to -- 6 MR. GOWAN: 7 The question is about the -- ask your question 8 again, please. 9 MR. WUNDER: 10 So on page 2 of the (inaudible) it says the issues 11 the Board of Zoning Appeals has jurisdiction over 12 are and one is number one, the appeal of the 13 planning staff's issuance of the notice of violation 14 for the establishment accessory use without a 15 principal use. This basic request is to overturn 16 the notice of violation for the flagpole erected on 17 the property in their appeal. Number two in the 18 appeal the appellant asks that the flagpole be 19 grandfathered. The board may decide whether 20 appropriate development permits were obtained in 21 order for the use to be legal and non-conforming 22 use. Is our charge to decide on that this evening 23 or is that going to be later on? 24 MR. HARRIS: 25 I don't think -- that is staff's characteristic of

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Page 95 1 the appeal, but I think the issue that you all were 2 deciding on this evening is the issue that was 3 contained in Mr. Padgett's motion. 4 MR. MERTING: 5 May I address the board for a moment? 6 MR. GOWAN: 7 Not at this time, sir, please. 8 MR. WUNDER: 9 Okay, well, we don't have to vote on that, then. 10 MR. GOWAN: 11 Okay. Yes, sir, please, if you'd like? 12 MR. MERTING: 13 Yes, I actually would like to address just what 14 Board Member Wunder was talking about. That appeal 15 that you held up I actually reference back to the 16 document sent to Mr. Davies, and that document has 17 in there the grandfathered revision. So that is put 18 in front of you along with a long set of other 19 clauses that I don't think this board has 20 jurisdiction over. So the board may not want to 21 take jurisdiction over the other clauses, but if Mr. 22 Wunder wants to call for a vote on the 23 grandfathering, that was put into the appeal. 24 MR. WUNDER: 25 I would like to call for a vote on that.	Page 97 1 came in. 2 MR. WUNDER: 3 Right. 4 MR. DAVIES: 5 That's all. It's, you know, smoke and mirrors. 6 MR. WUNDER: 7 It is under our purvey to grant that at this point 8 because we know there's some outstanding issues 9 beyond what we just voted on today? 10 MR. DAVIES: 11 Well, the county is still being sued; is that 12 correct? 13 MR. HARRIS: 14 That's correct. 15 MS. BRADY: 16 But that's not what we're charged with today, is it? 17 MR. DAVIES: 18 I understand that. 19 MR. GOWAN: 20 But that's not on our agenda for today, though. 21 MR. DAVIES: 22 It's not on our agenda for today. 23 MS. GETER: 24 Can we address issues that are not on the agenda? 25 MR. GOWAN:
Page 96 1 MR. GOWAN: 2 You would? 3 MR. WUNDER: 4 Yes. 5 MR. GOWAN: 6 Okay. 7 MS. GETER: 8 John, is that appropriate? 9 MR. HARRIS: 10 The -- 11 MR. GOWAN: 12 Because that's in the PZO. 13 MR. HARRIS: 14 Right. And the notice of violation was issued under 15 Section 107. And so the question as to the 16 grandfathering issue is within the PZO, and there 17 has been no notice of violation issued on that 18 point. 19 MR. WUNDER: 20 So we would -- if there was a notice of violation to 21 be issued by staff, then that would come back to us? 22 MR. DAVIES: 23 Here's what it is. If we denied this today they 24 want to be sure they can come back and say it's 25 grandfathered in because we put it up before the PZO	Page 98 1 Well, we have other business, so. 2 MR. DAVIES: 3 What do we -- 4 MR. GOWAN: 5 Huh? No, I mean we have another -- we're in the 6 other business section right now, so. I don't know 7 whether we could address that or not, Mr. Harris. 8 MR. HARRIS: 9 I don't think staff's issued anything to the 10 property owner, and the property owner hasn't 11 appealed anything. So I don't believe there's an 12 issue before the board at this time. 13 MR. GOWAN: 14 All right. That's the answer (inaudible) very good. 15 Is there anything else? Anyone wants to make a 16 motion? 17 MR. DAVIES: 18 I'll motion to adjourn. 19 MS. BRADY: 20 I will second that. 21 MR. GOWAN: 22 All right. We have a motion and a second. All in 23 favor signify by a raised hand. 100 percent. 24 (Concluded at 6:17 p.m.) 25

C E R T I F I C A T E

I, the undersigned, Katherine Crowe, CVR-M, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing Zoning Board of Appeals Meeting was taken on: January 31, 2021;

That the foregoing is an accurate transcription of the meeting and the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this date below: February 4, 2023

KATHERINE CROWE, CVR-M

Notary Public for South Carolina

My Commission Expires: 9/29/25

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2023-CP-42-01155
COUNTY OF SPARTANBURG	)	
	)	
	)	
SPARTANBURG COUNTY AND	)	
COLE ALVERSON IN HIS	)	
OFFICIAL CAPACITY AS COUNTY	)	
ADMINISTRATOR,	)	
	)	
PETITIONERS/APPELLANTS,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE SPARTANBURG COUNTY	)	
BOARD OF ZONING APPEALS,	)	
AND ADAM WASHINGTON	)	
BALLENGER CAMP #68, SONS	)	
OF CONFEDERATE VETERANS,	)	
INC.,	)	
	)	
RESPONDENTS/APPELLEES.	)	
	)	

November 27, 2023
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE J. MARK HAYES, II, JUDGE

A P P E A R A N C E S:

WILLIAM B. DARWIN, JR., ESQ.
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CHERYL A. SMITH
Circuit Court Reporter

INDEX

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

PAGE

There were no witnesses called.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 2:30 PM.)

THE COURT: We're here on the Spartanburg County and Cole Alverson vs. Spartanburg County Board of Zoning and Adam Washington Ballenger. I've got this as 2023-CP-42-01155.

I believe we're here on the appeal that has been filed by the county, so I'll be more than happy to hear from you.

MR. DARWIN: Thank you, Your Honor. Good afternoon.

So what we're appealing is this order on appeal dated February 28, 2023. And you've got -- I know you reviewed the materials carefully to prepare for today, but that order at the end, paragraph 7, indicates the board concludes that the notice of violation was issued in error based on the fact that appellant obtained an electrical permit and that the Unified Land Management Ordinance does not specifically address permits for flagpoles.

The zoning board, Board of Zoning got off track here and committed error and didn't pay attention to what the overwhelming evidence was. The overwhelming evidence is this is a structure. You can't get caught up in what you call something. They want to call it a flagpole, but it's 120 feet high. It required an aeronautical study. It cost according -- if you look at page 27 of the

1 transcript, it cost \$100,000 to put up. That's what
2 Mr. Merting was testifying as a witness in the case. So
3 this very clearly is a structure.

4 Now, they want to call it a flagpole because they put
5 a flag on it. I can think of a lot of different analogies
6 for this, but it's really a common-sense analysis. This
7 ordinance cannot define everything that requires a permit
8 and that doesn't. It talks clearly in terms of a
9 structure. They should have applied for a permit. They
10 should have told Planning and Development what they were
11 planning to do. You can't just say there's a permit
12 required for a flagpole. That's disingenuous. That's not
13 telling them what they really planned to do. What they
14 really did was put this really big pole or whatever you
15 want to call it up in the ground that has survived, I
16 guess, tornadoes, other storms and is not going anywhere.
17 It was put in at a high cost.

18 The electrical permit part of it doesn't apply
19 because what the notice was for was for the violation of
20 this Ordinance 1.07. And if you look at the preamble to
21 the Unified Land Management Ordinance, it talks about the
22 purpose of it, and one is order and appearance. And then
23 if you go to 1.07, it talks about no building. We're not
24 dealing with a building here. We're dealing with a
25 structure here requiring a permit, shall be erected, added

1 to or structurally altered. You can read the language
2 there. But that's already -- this doesn't have anything
3 to do with free speech, First Amendment, anything like
4 that. It's just the fact that very clearly, given the
5 amount invested, it is a structure.

6 If I want to build a 2,000 square-foot building on my
7 property and I do it for my two dogs and call it a dog
8 house, that doesn't mean it's a dog house. That doesn't
9 mean it doesn't require a permit. If I want to erect --
10 they use examples of pink flamingos, things like that. A
11 pink flamingo that's like two feet tall is one thing. A
12 pink flamingo that is 120 feet tall is another thing.
13 Common sense just needs to prevail here, Judge. It's
14 clearly a structure. That's our argument. I don't think
15 it needs to be overly complicated. That's what this is
16 about.

17 MR. HAWKINS: Judge, Joshua Hawkins on behalf of
18 Camp.

19 Your Honor, we submitted a lot of case law, and in
20 the standard review section of the brief we submitted, we
21 tried to file it Saturday but there were errors so we
22 ended up filing it today and sent a copy. But all those
23 cases say when you have a factual determination by the
24 board, it's the same as a jury verdict. If there's any
25 evidence to support it, it should be upheld and shouldn't

1 be disturbed. And so that's the backdrop that we're
2 dealing with all this other stuff against.

3 I think that the Court's analysis can end there,
4 because whether this was a structure was talked about ad
5 nauseam below. There was a factual determination related
6 to whether or not it was a structure. It was two hours of
7 evidence. Not just some evidence, but two hours of
8 evidence, documentary evidence, testimonial evidence.
9 There's a mountain of evidence. And this was fully
10 considered. The two sides argued back and forth does this
11 require a permit? Does the plain language of the
12 ordinance require a permit? All that stuff was delved
13 into, the facts were explored, factual determinations were
14 made. And the decision shouldn't be disturbed. That's
15 what case after case have said.

16 And the pink flamingos example is not our example.
17 That's the Supreme Court's example. I think that's that
18 case out of Aiken where it said basically -- and I'm glad
19 he brought that case up because what that case said is
20 that although something technically required a permit in
21 that case, it would be -- it would lead to an absurd
22 result because you'd have to have a permit for anything in
23 your yard.

24 So the fact that this thing cost, you know, thousands
25 of dollars to erect is not the governing factor, you know.

1 The board had a chance to explore all that and make
2 factual determinations related to all that.

3 You can buy a sculpture. You know, you can buy an
4 artifact or a sculpture that can be moved around and
5 placed in a yard and pay, you know, \$250,000 for it, but
6 you don't have to have a permit to put it in your yard.
7 The fact that it's 120 foot tall does not govern. In the
8 ULMO there's no size limit or anything of that nature. In
9 fact, the same body drafted the PZO which says flags are
10 exempted specifically. To have a flag, you obviously have
11 to have a flagpole.

12 Now, the First Amendment issue is important to talk
13 about because I know that they're saying this is a
14 licensure issue and not a First Amendment issue. But what
15 happened in this case is the Camp repeatedly went and
16 sought permits. They tried to ---

17 THE COURT: Wouldn't that be better -- my
18 understanding is, based upon what you've filed, there's a
19 separate lawsuit somewhere that's challenging that. Is
20 that not better resolved through that type of litigation
21 than an appeal?

22 MR. HAWKINS: Well, we think ---

23 THE COURT: Because until I received your brief, your
24 memo about 11:15, there was no mention of a First
25 Amendment issue in anything that your side had filed in

1 this case. And we had prepared for this hearing to take
2 place weeks ago, ready to go. You're the ones who asked
3 for the continuance. There was no mention at that time
4 that there would be a First Amendment issue. So why not
5 reserve that First Amendment issue for the litigation
6 that's taking place?

7 MR. HAWKINS: Happy to do that, Your Honor.

8 THE COURT: Okay.

9 MR. HAWKINS: As long as I don't waive anything or
10 waive any arguments. And the content of the ---

11 THE COURT: Well, I only say that because this court
12 has gone out of its way to accommodate the parties to have
13 this hearing. We got prepared to do the hearing several
14 weeks ago based upon issues that were raised then and
15 based upon an accommodation for y'all because y'all said
16 you had other things to do. I did not expect to be hit an
17 hour and a half or two hours before this hearing with a
18 complete set of different issues. That's just not fair to
19 the Court.

20 MR. HAWKINS: Yes, sir.

21 THE COURT: That's disrespectful to the Court and
22 from what we had to do to get this thing scheduled and put
23 on the calendar.

24 MR. HAWKINS: Yes, Your Honor. And I apologize for
25 that. That's on me and my apologies to the Court.

1 But I do want to say that the decision they appealed
2 was a decision where the First Amendment very much was at
3 issue and is part of the record below that they appealed.

4 THE COURT: But it was not raised in the document
5 that you filed earlier.

6 MR. HAWKINS: Right, Your Honor. And I'm not making
7 any excuses. I just want to make sure on the record that
8 I'm pointing out that the First Amendment issue is part of
9 the decision that they're appealing because it was
10 discussed ---

11 THE COURT: There's no First Amendment issue for me
12 to address because it is not raised before me.

13 MR. HAWKINS: Well, I think if ---

14 THE COURT: And I will acknowledge you're asking,
15 well, I just want to make sure not waiving an issue.

16 MR. HAWKINS: Yes, Your Honor.

17 THE COURT: But with an issue not being in front of
18 me, I don't have to address that issue.

19 MR. HAWKINS: And that is ---

20 THE COURT: And I think it would be far better for
21 your position would be you're correct, I didn't raise it
22 as opposed to have me rule on an issue that was not
23 properly before me.

24 MR. HAWKINS: Well, my concern -- and I'm happy to
25 move on, Your Honor. I don't want to come across as

1 arguing. My concern is that ---

2 THE COURT: I don't want you to -- and I don't want
3 to be offensive ---

4 MR. HAWKINS: Yes, Your Honor.

5 THE COURT: --- to you, but I was offended when I
6 get, what, a, 15, 18, 20 page document an hour and a half
7 to two hours before I'm supposed to have a hearing that
8 I've already prepared for to take place weeks ago and was
9 never aware of those issues.

10 MR. HAWKINS: Yes, Your Honor.

11 THE COURT: Blatantly unfair to the Court and
12 disrespectful.

13 MR. HAWKINS: Yes, Your Honor. And again, profuse
14 apologies to the Court.

15 THE COURT: All right. Now let me ask you this. You
16 say and you argue in your materials that this is a
17 standard review issue.

18 MR. HAWKINS: Yes, Your Honor.

19 THE COURT: What particular fact do you contend was
20 decided by the board that I need to recognize? What is it
21 that you contend is at play or not at play?

22 MR. HAWKINS: Well, during the board -- during the
23 proceeding with the board, whether or not this is a
24 structure was discussed. That's a factual determination.

25 THE COURT: Okay. So you're contending the issue of

1 structure is settled, it's over ---

2 MR. HAWKINS: It's settled. There's some ---

3 THE COURT: --- based upon the standard review, based
4 upon what they did below.

5 MR. HAWKINS: Right. And according to Heilker and
6 Vulcan and these ten other cases, that is a factual
7 determination that has been decided by the board and is
8 entitled to the same deference as a jury verdict.

9 THE COURT: Okay.

10 MR. HAWKINS: And to go a step beyond that, there's
11 not any -- if you look at 1.07, there's not any ambiguity
12 in it. And the board looked at that. They made factual
13 determinations about whether or not that language applied
14 to the flagpole and all this stuff. Even if there was an
15 ambiguity, the ambiguities is zoning board matters are to
16 be strictly enforced against the government and in favor
17 of the landowner because we want to promote freedom of
18 land use.

19 There's also -- and I don't want to offend the Court
20 by talking about the Fourth Amendment, but there's also a
21 Fourteenth Amendment issue or equal protection issue if
22 you're talking about, you know, telling people what they
23 can do with their land or limiting the use of their land.
24 So that issue is present there along with the other
25 issues.

1 THE COURT: But they're not raised in what y'all
2 filed originally?

3 MR. HAWKINS: Just part of the case that's been
4 appealed, Your Honor.

5 THE COURT: Right.

6 MR. HAWKINS: You're correct, Your Honor.

7 THE COURT: It's not part of what's before me because
8 you did not raise it before.

9 MR. HAWKINS: Yes, Your Honor. I just don't want to
10 be on the record saying I'm waiving anything. Because
11 this is going to leave this court, and if the Court relies
12 on Vulcan and all these cases that say that board zoning
13 has to be upheld, then I think that they're probably going
14 to appeal it. And what I run into often in the Court of
15 Appeals is saying you didn't waive -- you didn't preserve
16 something. I just don't want to be accused of that.

17 THE COURT: Well, then you may inform the Court of
18 Appeals that I considered that these issues were not
19 presented in front of me because you did not raise them
20 timely.

21 MR. HAWKINS: Yes, Your Honor.

22 So for all those reasons and for all the reasons set
23 out in all these cases, I mean, that case that ---

24 THE COURT: I'm trying to figure out what your
25 argument is. I'm trying to figure out both arguments

1 based upon what's been properly presented to me, okay?

2 MR. HAWKINS: Well, our argument, Your Honor, I don't
3 think you have to go any further than the Vulcan case.

4 THE COURT: Which is?

5 MR. HAWKINS: Which is the factual determinations
6 about structure, about whether or not a license is
7 permitted. That evidence -- this evidence about how many
8 times the Camp went to the county to try to comply,
9 because it's not clear from 1.07, to try to get all the
10 permits they needed, that was all part of the decision
11 below. That was a factual determination. Are you
12 required of have a permit is a factual determination. And
13 they made it. Is this a structure? No, it's not.

14 THE COURT: Let me ask you to slow down, okay?

15 MR. HAWKINS: Okay.

16 THE COURT: I'm making notes with your arguments.

17 MR. HAWKINS: Yes, Your Honor.

18 THE COURT: I don't want you to rush through things
19 because my questions are sincere in understanding what
20 your argument is.

21 I understand from reviewing your brief and from
22 taking a look at the record that you're relying upon the
23 standard of review issue which weighs heavily in your
24 favor.

25 MR. HAWKINS: Right.

1 THE COURT: The standard of review as you contend it
2 is is the same as which that applies to a review of a
3 decision made by a jury.

4 MR. HAWKINS: Yes, Your Honor.

5 THE COURT: Which is I have to then take a look is,
6 is there any support in the record which supports the
7 factual determinations that are made by a jury. If I find
8 that there is factual support, then my decision is in
9 favor of the jury's decision here, in favor of the board's
10 decision, correct?

11 MR. HAWKINS: Correct, Your Honor.

12 THE COURT: Now, I'm trying to get you to identify
13 what it is you contend factually should not be contested
14 because it has been presented to the board and has been
15 decided by the board.

16 MR. HAWKINS: Well, they -- so another piece of
17 evidence that goes to the factual determinations is the
18 fact that county ---

19 THE COURT: Okay.

20 MR. HAWKINS: --- county representatives said you
21 don't have to have a permit for a flagpole.

22 THE COURT: Okay. So one of the factual
23 determinations is that there is no requirement for a
24 permit.

25 MR. HAWKINS: Right.

1 THE COURT: Okay. Got you. All right.

2 MR. HAWKINS: And so ---

3 THE COURT: What else? And then I believe you also
4 said the factual determination that there is no structure?
5 Or that ---

6 MR. HAWKINS: Right. The flag -- the flagpole
7 doesn't -- is not synonymous with a structure. It's not a
8 structure. It's not defined as a structure.

9 THE COURT: Flagpole is not a structure.

10 MR. HAWKINS: Right. And part of that factual
11 determination, Your Honor, was the fact that -- or what
12 was discussed below. If you look at the ULMO, in the
13 definitions it will point you to the building code, and
14 it's clear from that that a flagpole cannot constitute a
15 structure. That's why there's a specific exemption in the
16 PZO, you know, for flags. You don't have to have any
17 permit whatsoever for a flag. The same body drafted both
18 documents.

19 Another thing I want to put before the Court is that,
20 you know, in their petition they've referenced legislative
21 intent. And that goes back to the point I just made about
22 is the same -- and this was discussed below. This was
23 part of their appeal. The same body drafted the PZO and
24 the ULMO. So if you want to look at the legislative
25 intent about whether or not there's a permit required for

1 a flag, just look at the specific exception and exemption
2 for flags in the PZO. And, you know, that's just if the
3 Court wants to get into, you know, what did the
4 legislature intend. I think the analysis stops, like I
5 said earlier, because the factual determination should be
6 disturbed, and that makes the case. That decides the
7 case. But if the Court does want to look at the
8 legislative intent, they can look at what the same
9 drafting body did in the PZO.

10 THE COURT: And again, the legislative intent that
11 you're saying that they're arguing is whether or not a
12 flagpole requires a permit?

13 MR. HAWKINS: Right.

14 And they're relying -- I think they're relying on the
15 ULMO 1.07, but there's no -- and the Court has this cited
16 in both filings. And part of both filings is the second
17 paragraph of that cited language.

18 Basically, what it says is if there's a permit
19 required for an item, you've got to obtain the permit.
20 And so what we say in our filing is the inverse of that's
21 true. If there is no permit requirement, you don't have
22 to have a permit. And so if that's ambiguous in any way,
23 it's construed against the board in our favor. But beyond
24 that, the board looked at the facts related to that. They
25 looked at the facts surrounding the interpretation of that

1 by the issuance of the notice and everything else that was
2 discussed between the parties, representations that
3 there's -- you know, oral representations that there's no
4 permit needed. And they use that and interpreted what
5 that meant. And they decided that it meant there's no
6 need for a permit for a flagpole. And, you know, we think
7 that it's pretty cut and dry, Your Honor.

8 I'll answer any questions the Court might have about
9 our argument.

10 THE COURT: Thank you. I think I've got it. I might
11 have some more. Let me hear from them.

12 MR. HAWKINS: Yes, Your Honor.

13 MR. DARWIN: So, Your Honor, I would refocus the
14 Court on this order on the appeal dated February 28, 2023.
15 And that's how I started my argument. This is where the
16 Board of Zoning ---

17 THE COURT: You say the order. It's the actual
18 transcript is what they said at the end is what you
19 consider to be an order?

20 MR. DARWIN: Actually, there's an Exhibit B to what
21 we filed.

22 THE COURT: Exhibit B.

23 MR. DARWIN: There's an order on appeal.

24 THE COURT: Okay. I've got it. My Exhibit B, let me
25 tell you what I've got. I have a document that up top has

1 got the seal of the county. Down at the bottom it's dated
2 February 28th signed by Jack Gowan.

3 MR. DARWIN: Yeah.

4 THE COURT: That's the decision.

5 MR. DARWIN: That's the decision.

6 And if you look at that decision, it talks about --
7 I'll read it again. The board -- Number 7 is what I think
8 is the relevant part of that order. The board concludes
9 that the notice of violation was issued in error based on
10 the fact that appellant obtained an electrical permit,
11 which I don't think is relevant to our discussions, and
12 that the Unified Land Management Ordinance does not
13 specifically address permits for flagpoles. That's where
14 the error occurs, because no ordinance is going to list
15 everything that is required to be permitted. It's not
16 possible. Plus, it terms for what people call things.

17 Again, this ruling does not say that this pole is not
18 a structure. That is not a finding made in this order.

19 And I tell you, if you read the transcript carefully,
20 which I know you have, there's facts that they will not
21 dispute, I don't think. It's 120 feet high. Fundraising
22 was required to raise enough money for this \$100,000 pole.
23 An aeronautical study had to be done, it's so high up in
24 the air. That is not your typical flagpole. It doesn't
25 have -- and so I don't believe this order addresses that

1 issue. If it doesn't address that issue by firmly saying
2 this 120 foot tall pole is not a structure, I don't think
3 that's been a determination by them. They just said --
4 and, again, they got off track here because they went with
5 their definition of what they're calling it. They put a
6 flag on top of it, but it is not common to have a 120 foot
7 flagpole and they didn't tell anybody that's what they
8 were planning to do. They should have applied for a
9 permit and come clean with what they were doing, then
10 there would have been a proper analysis.

11 THE COURT: You said they should have done what?

12 MR. DARWIN: They should have applied for a permit.
13 They should have asked for a permit to install this and
14 then let Planning and Development, whatever it's called
15 when you -- they got the notice of violation from Planning
16 and Development, Spartanburg County Planning and
17 Development. They got -- the reason the notice of
18 violation was issued, which is Exhibit D, is they cited
19 this section that we're talking about today. And that's
20 why we're focusing this argument just on this section,
21 Section 1.07 of the ULMO. And they said this is not in
22 compliance. You put this up in violation of this
23 ordinance. That's what the Planning and Development --
24 and that was what the appeal was from.

25 And so then the Board of Zoning focuses on, well,

1 there's nothing in the ordinance that talks about
2 flagpoles. So what? It doesn't mean it's not a
3 structure. It goes back to the argument I went to before.
4 You can call it whatever you want to call it, but size and
5 scope matter here.

6 It's a dangerous precedent to allow to happen because
7 other people can do the same thing. And I don't think
8 anybody in the county wants 120 foot poles put up without
9 a permit. This one may have been put up so it won't come
10 down, but they might not all be put up so they don't come
11 down. It's 120 feet high. And I'm assuming it's steel,
12 and I'm assuming it's real heavy. And if that's not a
13 structure, I don't know what is. And to compare it to a
14 pink flamingo or a play set or a basketball goal is an
15 absurd argument.

16 THE COURT: Well, is it your contention that the
17 zoning -- Board of Zoning was incorrect when they said the
18 Unified Land Management Ordinance does not specifically
19 address permits for flagpoles?

20 MR. DARWIN: It does -- it's not going to say
21 anything about that in there. It's not going to say that,
22 but it talks about structures. And the definition of
23 structure is if you look at -- there's a reference. If
24 you look all the way towards the back ---

25 THE COURT: Back of ---

1 MR. DARWIN: Yeah. I'm sorry. Do you have the
2 Unified Land Management Ordinance?

3 THE COURT: Did y'all give it to me? Because I've
4 got everything that ---

5 MR. DARWIN: I don't know. May I approach? I don't
6 think there'll be a dispute if I hand this up to him.
7 Josh, you don't mind?

8 MR. HAWKINS: No dispute.

9 MR. DARWIN: I'll flag where the definition of
10 structure is there. And I don't think we're going to have
11 a dispute about what it's defined as. Let me find it in
12 my notes. The definition of structure would be that which
13 is built or constructed. I mean, it doesn't say -- I
14 think we can stipulate to that. I don't think there's an
15 argument about that. I think that was actually addressed
16 by the Board of Zoning.

17 THE COURT: So this thing you gave me, what's it
18 called?

19 MR. DARWIN: That's called the Unified Land
20 Management Ordinance. That's the whole ordinance.
21 Everything's in there. A lot of stuff that doesn't apply
22 to this, but I'll flag some stuff that I think does.

23 But, you know, you see 1.07 talks about structure,
24 and then you look towards the back there, page 101 where
25 you look for definition of structure, and it refers to

1 another resource.

2 THE COURT: Standard Building Code?

3 MR. DARWIN: Right. But the definition of the
4 Standard Building Code is that which is built or
5 constructed. I don't think we disagree on that.

6 THE COURT: I agree that that's what it says.

7 MR. DARWIN: Well, agree that that's what the
8 Standard Building Code -- I mean, is there any
9 disagreement about that, about what ---

10 MR. HAWKINS: We don't disagree with what it says.
11 We don't think it applies to a flagpole.

12 MR. DARWIN: Yeah. I get that. I get that. I mean,
13 we agree on a lot factually in this, and I'm not going to
14 sit here and say that flagpoles are covered under that.
15 I'm just saying what they've done is create a structure
16 based on the size, the cost, just the impact. It's not
17 just appearance. Just safety issue, too, candidly, if you
18 allow that. I mean, I'm assuming theirs have been up a
19 lot. I'm assuming you pay a hundred thousand dollars, I
20 guess you did it right. But I don't know that everybody
21 would do it that way. And if you go slapping them up
22 around the county without a permit, that's a problem.

23 And I don't care what they're flying up there, you
24 know. That's not what this is about today.

25 THE COURT: So let me ask you hypothetically, if

1 somebody went and wanted to install a structure or a
2 flagpole that's this high like this in the county, what
3 should they have done? Gone to the planning -- said
4 planning commission? Land use management?

5 MR. DARWIN: Yeah. If you actually -- sorry to
6 interrupt. That what I handed up talks you through the
7 process.

8 So if you start at the beginning, you actually apply
9 for the permit and you tell them what you plan to do. And
10 then they get an opportunity to say, hey, you know, it's
11 either allowed or not allowed under the ordinance, and
12 this is the issue we have with it. That's what they
13 should have done here. Because, you know, the more I make
14 this argument, the more it highlights the safety. The
15 reason for this in part is safety.

16 And again, the Sons of Confederate Veterans
17 apparently did a really good job of putting this in the
18 ground, but not everybody's going to do that.

19 I mean, there is no way to argue it's not a
20 structure.

21 THE COURT: Let me ask you this. How do you respond?
22 In their filings they argue that this -- I'm going to put
23 words in your mouth so if you'll correct me if I'm wrong.
24 They say that they exhaustedly went to the county
25 repeatedly a number of times and said we want a permit, we

1 want to do this and that they were told you don't have to
2 have one, you don't have to have one, you don't have to
3 have one.

4 MR. DARWIN: If you look at the correspondence,
5 there's an email correspondence I think between
6 Mr. Merting and a guy name Greg Hembree, is a permit
7 required for a flagpole without further elaboration. They
8 can correct me if I'm wrong, but I don't think there was
9 any document presented to anyone at the county in charge
10 of these -- in force of these ordinances say we plan to
11 erect a 120 foot tall pole. They should have applied --
12 like I said before, they should have applied for a permit,
13 and that way the county could have assessed exactly what
14 they planned to do here and then said, oh, I believe it
15 meets the ordinance or it doesn't. But I guarantee you if
16 they'd have looked at that, they would have said this has
17 to be a structure. This isn't a six foot pole you put in
18 your driveway. It's not a 30 foot pole you put in front
19 of a business. It's far taller and more substantial than
20 probably any flagpole. I don't think there's any other
21 poles of this size in the county that haven't been
22 permitted. They can correct me if I'm wrong, but I don't
23 think there are. Got to be a permit for something like
24 this.

25 THE COURT: Yes, sir. I'm trying -- I'm hearing that

1 y'all really do agree on a lot, but you disagree on the
2 outcome of what it means.

3 MR. HAWKINS: Well, Your Honor, where we disagree
4 fundamentally is that this argument that they're making
5 has been made, has been made, you know, in the governing
6 body, and evidence was offered on it. And a factual
7 determination was made because they said, you know, on
8 page 9 of the filing they submitted ---

9 THE COURT: Okay. Hang on. You're looking at page 9
10 of what?

11 MR. HAWKINS: Of the filing we submitted earlier.

12 THE COURT: Is that in your memo or is it in the ---

13 MR. HAWKINS: It's in the memo, supplemental memo.

14 THE COURT: Supplemental memo?

15 MR. HAWKINS: Yeah.

16 THE COURT: The one I got about an hour ago?

17 MR. HAWKINS: Right, Your Honor. And it references
18 the transcript that's part of all this. Page 82, all this
19 stuff was talked about. Several members of the Board of
20 Zoning Appeals agreed with the Camp the flagpole cannot be
21 occupied and acknowledged that the primary use had not
22 been changed. So they're talking about are you changing
23 this in any way? Is it going to be a structure? Then
24 again ---

25 THE COURT: Let me ask you this. Thank you for

1 reading from your memo. But weren't you referencing a
2 transcript?

3 MR. HAWKINS: Yes, Your Honor. And that's page 82 of
4 the transcript.

5 THE COURT: Let me turn to page 82.

6 MR. HAWKINS: And my co-counsel pointed out
7 specifically on page 52 at line 14, line 14 through 20,
8 all this was talked about. And it says: And it talks
9 about the permit. We've talked about the permit here. I
10 mean, is there a flagpole permit application that we can
11 go get one right now?

12 And then Ms. Holliday says: There is not a flagpole
13 permit.

14 So they're talking about specifically whether it's a
15 structure, whether or not a permit's required, and she's
16 saying it doesn't require one. And that earlier -- that
17 was on page 52 I read from. Then in page 82 that I
18 referenced earlier, they're talking about whether it's a
19 structure or -- sorry.

20 THE COURT: I'm not as fast as you are talking, so
21 give me just a second.

22 I was on page 52. Now you want me to look at 82?

23 MR. HAWKINS: Yes, Your Honor. 82. I believe it's
24 lines 15 through 18.

25 And, you know, they're trying to figure out whether

1 or not this thing is a structure. They're trying to
2 figure out can it to be occupied. Obviously, it can't.
3 That was part of the factual determination.

4 THE COURT: 82. What lines?

5 MR. HAWKINS: That's page 82, lines 15 through 18.

6 THE COURT: Okay. I've got it. Thank you.

7 MR. HAWKINS: And then the other thing I would add,
8 Your Honor, is that there was sort of reference to one
9 email exchange. That's not all the evidence that the
10 board relied on for the proceeding below. There was
11 testimonial evidence about five other conversations. That
12 was a factual determination made. And Mr. Merting's
13 present. He was the one who had the conversations, and he
14 offered testimony about the fact that he had those
15 conversations.

16 THE COURT: Let me help you help me.

17 MR. HAWKINS: Yes, Your Honor.

18 THE COURT: You just said to me that's not the only
19 evidence. There were five other emails. Finish your
20 thought. Five other evidence of that there was no
21 structure? That there was a structure? That there
22 was ---

23 MR. HAWKINS: That whether or not a permit's
24 required.

25 THE COURT: Whether or not a permit's required.

1 MR. HAWKINS: There was an email and then there were
2 five additional conversations not reduced to email where
3 Mr. Merting specifically sought whether or not they needed
4 any additional permits to do anything related to this
5 flagpole. And he was repeatedly, on six different
6 occasions, the email and then five conversations he
7 offered testimony about -- it's part of the record -- no
8 permits required repeatedly because it's not a structure.

9 And they looked -- you know, the board looked at 1.07
10 of the ULMO during this entire proceeding to see if
11 there's any way to pigeonhole this flagpole into being a
12 structure, and they determined that it simply does not fit
13 in 1.07. It doesn't require a permit. It's not a
14 structure that requires a permit. That was factually
15 determined.

16 And I get what my colleague is saying about, you
17 know, he thinks it's tall and it's made out of steel and
18 all this. Well, they can draft another ordinance. But
19 the ordinance -- yeah. And in fact, they have, I believe.
20 But the ordinance that was in place and the ordinance that
21 was inquired about and the ordinance that was talked about
22 and facts in evidence offered in relation to simply does
23 not require a permit for any flagpole. It's plain as day.
24 And that's what the decision -- that's why the decision
25 was what it was.

1 And I don't think it's ambiguous where they say
2 here's our decision based on the fact that, one, they got
3 an electrical permit. I think that is relevant because
4 what they're saying is they got the permits they were
5 required to have, electrical permit. You know, they
6 sought and got the stuff that they were supposed to. But
7 1.07 doesn't require a permit for this. I think that both
8 of those axioms are true and patently obvious and I think
9 they reached the correct result.

10 So that's our argument, Your Honor.

11 MR. DARWIN: Your Honor, if I may.

12 THE COURT: Uh-huh.

13 MR. DARWIN: So where is the limit? This is 300 feet
14 high. Is that -- they call it a flagpole and somehow they
15 get a flag on top of it. Is that a flagpole? If that's
16 500 feet, is that a flagpole? Just because they're
17 calling it a flagpole doesn't mean it's really a flagpole.
18 They put a flag up there and they have converted the
19 property. They refer you to page 83 of the transcript.
20 By putting something that big on their property, they've
21 converted it to a monument, a shrine, a park, whatever you
22 want to call it, but that was the intent to draw attention
23 to it by putting it -- making it that high. Common sense
24 has to apply here.

25 This is not your ordinary flagpole. If I went to

1 somebody at the county right now and said do I need a
2 permit to put a swing set in my backyard and then I
3 erected a 200 foot high swing set, I know it sounds
4 ridiculous but this does too, then that's not common
5 sense. That's a structure. You can't let this turn on
6 what they call it. That's not reasonable. And that's
7 where the Board of Zoning got off track in error. And
8 it's evidentiary, it's an error of law, it's capricious,
9 it's arbitrary. It doesn't make sense. It defies common
10 sense. It's got to be a structure. I mean, every fact
11 that I've listed here about what was involved in putting
12 it up they haven't disputed because they can't. It's in
13 the record.

14 MR. JEDZINIAK: Your Honor, Ethan Jedziniak. I'm
15 co-counsel for the respondent.

16 If I may respond. We talked about this a decent
17 amount at the actual hearing. The staff's position was
18 that it was in violation of 1.07 and they determined that
19 no permit was needed because you couldn't get a permit for
20 a flagpole. And then their corrective action in the
21 notice which is what we are reviewing here, whether the
22 notice was issued in error, their corrective action stated
23 that an accessory had been established without a principal
24 use.

25 And we've been talking about definitions a lot, and I

1 know it's going to take some time for us to flip back.
2 But when you look at the definitions under "building" and
3 under "use," the definition of "use" specifically directs
4 you to -- and let me get there real quick. The definition
5 of "use," if you flip to page 102 in the ULMO,
6 specifically directs you to accessory which is what
7 they're saying, that we had an accessory without a
8 principal. But then it directs you specifically to
9 building accessory. And when you look at how "building"
10 is defined, a flagpole is not contemplated in the
11 definition of "building."

12 Specifically, building accessories are things like
13 private garages, storage sheds, workshops. The 2,000
14 square foot doghouse would be contemplated under
15 buildings, accessories under the definition of the ULMO.
16 And this court specifically in reviewing is constrained in
17 not leading to absurdity. But when you look at the
18 definition of a structure which is literally anything that
19 is built or constructed, an absurd result would occur in
20 that everything would require a permit which is why
21 specifically when asked multiple times by Mr. Merting and
22 multiple times by members of the Camp there was no permit
23 to issue because a flagpole doesn't require a building
24 permit. And then a few years later Spartanburg County,
25 the same planning department that says a permit is not

1 needed under the ULMO for a flagpole, then adopts the PZO,
2 the performance zoning for separate parts of the counties.
3 And if I may pass it up.

4 The flags are specifically exempt in the new
5 ordinance. So under the ULMO, flagpoles do not require a
6 permit, and that's what the board found. And then under
7 the PZO, it's codified in Section 7.2.10 on the quick
8 reference chart that flags are specifically exempt.

9 And so we've talked around the definitions, but what
10 it really boils down to is if you look at the definitions,
11 if you look at the plain language of the statute the way
12 it's meant to be applied, it doesn't fall under building
13 and it's not under what is required for a permit under the
14 ULMO or what now Spartanburg County is shifting to where
15 they acknowledge that a flag doesn't require a permit
16 because it's specifically exempt independent of the
17 board's finding that it's exempt under the ULMO.

18 THE COURT: Are you arguing to me that under the code
19 they have now it would not have to have a permit?

20 MR. JEDZINIAK: Under both codes. Yes, Your Honor.
21 Neither code, neither the ULMO or the PZO require a permit
22 for a flagpole. And that's what the board found, and
23 apparently that's what the drafters and the legislature
24 and County Council found when the PZO is adopted as well.

25 THE COURT: Tell me again what PZO stands for.

1 MR. HAWKINS: Your Honor, may I?

2 MR. DARWIN: Your Honor, I would just ask ---

3 THE COURT: Let me just ask you, tell me again what
4 PZO stands for.

5 MR. JEDZINIAK: Performance Zoning Ordinance.

6 MR. DARWIN: Your Honor, before Mr. Merting says
7 anything, I think he's a witness. He testified during the
8 Board of Zoning hearing so I'm not sure it would be
9 appropriate for him to address the Court.

10 THE COURT: Can you tell him what you're going to
11 say?

12 MR. MERTING: Your Honor, I was merely going to try
13 to talk about these ordinances at a very broad level if I
14 may have a minute.

15 THE COURT: It would be -- it would be -- I didn't
16 see your name on the pleading.

17 MR. MERTING: Yes.

18 THE COURT: I did not see your name on the pleadings
19 so it's probably best if you let them talk.

20 MR. MERTING: Then if you'll give me one moment.

21 THE COURT: Sure.

22 MR. DARWIN: While they're doing that, what if they
23 had not called it a flagpole? What if they had said, the
24 Sons of Confederate Veterans, they come forward and said
25 we want to erect a 120 foot tall pole. Don't call it a

1 flagpole. What do you think they would have said? You
2 need a permit for that. They didn't do that.

3 And these conversations, read the record carefully.
4 I don't think Mr. Merting ever testified that he told them
5 this was going to be 120 feet high and somebody said, oh,
6 that will be okay. That didn't happen. They said
7 "flagpole."

8 I'm telling you, and the notice of violation referred
9 to ULMO Section 1.07. And I would argue that they have
10 -- by putting this huge, massive pole on the property,
11 they've actually created a principal use now because
12 they've turned this into a park or a monument or a shrine,
13 and that was their intent so this could be seen from the
14 highway. That's what they did.

15 MR. JEDZINIAK: Your Honor, I don't want to jump too
16 quickly here, but if you're ready, I'd like to respond to
17 that.

18 THE COURT: Which part?

19 MR. JEDZINIAK: Specifically to it being converted to
20 a principal use.

21 Now, converting under the law to a principal use is a
22 finding of fact that the Board of Zoning Appeals
23 specifically declined to find that it had been converted.
24 That was a question raised before them, and they declined
25 to say that the principal use of the property had been

1 changed. That -- specifically in case law under Heilker
2 v. Zoning Board of Appeals specifically stated in South
3 Carolina, a zoning board determination regarding whether a
4 particular activity or purpose constitutes a use of the
5 property is a finding of fact, and that finding of fact,
6 as we've discussed, cannot be disturbed absent abuse of
7 discretion.

8 And it's like a jury finding, which if you think
9 about the Chevron factors at the federal level, I believe
10 this is actually higher than the Chevron factors. I mean,
11 we're talking about you're trying to essentially rip a
12 jury verdict out of their hands. And they didn't abuse
13 any discretion. They relied on evidence, and they relied
14 on the facts and the law given to them.

15 THE COURT: All right. Tell me where in the record
16 that you contend that they have made that decision. Is it
17 in that document Mr. Darwin referenced earlier?

18 MR. JEDZINIAK: Yes, Your Honor. It's in the
19 transcript on page 62, lines 17 through 20. Specifically,
20 Your Honor, Mr. Harris, the county attorney, was talking
21 and he said -- yeah. I'm sorry. Scratch what I was just
22 saying.

23 THE COURT: Not 62?

24 MR. JEDZINIAK: No, Your Honor. It is 62.

25 THE COURT: Okay.

1 MR. JEDZINIAK: Yes, Your Honor. The issue is
2 whether or not they need a permit to change the use of the
3 property. I'm sorry. The issue is whether or not they
4 need a permit to change the use of the property and
5 whether the use has, in fact, changed. And that's what
6 the board found.

7 And also, Your Honor, as I was flipping ---

8 THE COURT: What line? Tell me what line you're
9 reading.

10 MR. JEDZINIAK: 62, lines 17 through 20.

11 THE COURT: Got it. Thank you. I've got that one.
12 Yes, sir?

13 MR. DARWIN: Your Honor, I'm focusing on the order on
14 appeal. That's the order we're appealing from. And it
15 doesn't say anything about that. I'm looking at number --
16 paragraph 7 doesn't say a word about it.

17 MR. JEDZINIAK: And, Your Honor ---

18 MR. DARWIN: That's what we appealed from.

19 MR. JEDZINIAK: With all due respect, under Vulcan
20 and under several of the case law, specifically look at
21 the minutes which were not included in the appeal. And
22 then if the minutes are found to be insufficient, and I
23 believe the minutes are a nine-page document in this case,
24 and if that's found insufficient, then the transcript and
25 supplement and based upon the way that we thought the

1 appeal was framed was that the transcript was going to be
2 the governing document, and the transcript is replete with
3 the board's findings.

4 THE COURT: Okay. Anything else from anybody?

5 MR. DARWIN: No, sir. I can't think of anything
6 else.

7 MR. HAWKINS: The only thing I would add just
8 housekeeping, the transcript is part of what the Court
9 considers its own files and exhibit. And also, the ULMO,
10 the ULMO is what we talked about ad nauseam, what was
11 talked about below. But the PZO, if there's any inkling
12 by the Court that the PZO governs, you know, because it's
13 got specific language and specific -- it's got specific
14 language for flags and signage. So if you look at that,
15 that's unambiguous. There's a specific -- there's a very
16 specific exception. It's in -- Ethan handed up the PZO.
17 It's circled and checked off there, the specific exemption
18 for flags, Your Honor.

19 MR. DARWIN: Your Honor, I would point out that on
20 this order of appeal, it says: After consideration of the
21 testimony, evidence and arguments presented orally and in
22 the application, the board makes the following findings of
23 fact and conclusions of law, and then it sets forth those
24 seven numbered paragraphs.

25 THE COURT: Let me ask you this. This PZO that you

1 handed me, is it part of what's already been submitted?

2 MR. HAWKINS: Yeah. It was referenced -- below it
3 was referenced but we couldn't attach it as an exhibit.
4 So it's part of what was discussed below, but it was never
5 an exhibit below.

6 THE COURT: I think I understand that. Okay.

7 Okay. Best I can tell you is I will let y'all know
8 when I take a look at it. Thank you very much.

9 (WHEREUPON, proceedings concluded at 3:16 PM.)
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF SPARTANBURG)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Spartanburg County, South Carolina, on
14 the 27th day of November, 2023.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 July 8, 2024
19
20

21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG * TRANSCRIPT OF RECORD

-----X

SPARTANBURG COUNTY AND COLE *

ALVERSON COUNTY *

ADMINISTRATOR, *

Appellant, *

vs. * Case No. 2023-CP-42-01155

THE SPARTANBURG COUNTY BOARD *

OF ZONING APPEALS, et al., *

Respondent. *

-----X

March 27, 2024

B E F O R E:

The Honorable J. Mark Hayes, II, Presiding Judge

A P P E A R A N C E S:

William B. Darwin, Jr., Esq.

Attorney for Appellant

Ethan Jedziniak, Esq.

Attorney for Respondent Camp

Recorded by: Webex

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

THE COURT: Now, I have got Spartanburg County versus Spartanburg County Board of Zoning. Good morning.

MR. JEDZINIAK: Good morning, Your Honor.

MR. DARWIN: Good morning, Your Honor.

THE COURT: All right. I have down that this is the -- this is Adam Washington Ballenger Camp's motion to alter and/or amend.

All right. I have reviewed the information. Thank you, Mr. Darwin, for alerting me that -- giving me a copy of your response.

MR. DARWIN: Certainly, Your Honor.

THE COURT: Be more than happy to hear from you.

Let me ask for a little bit of clarification from the moving party. In your motion, you reference, if I'm correct, you referenced Rules 54, 59, including subpart E, 60, and all other applicable rules of South Carolina Rules of Civil Procedure. Which rule are we going under?

MR. JEDZINIAK: Your Honor, we're going under Rule 59(e) ---

THE COURT: Okay.

MR. JEDZINIAK: --- at the moment and then --

THE COURT: Okay. Why do you say "at the moment"? Are you going to change that? Because I need to know because that determines the standard of review that I

1 apply and the way that I view these arguments.

2 MR. JEDZINIAK: No, it's under 59(e), Your Honor.

3 THE COURT: Okay.

4 MR. JEDZINIAK: It's for a move to reconsider.

5 THE COURT: Okay. Thank you for the clarity.

6 All right. I have taken a look at the information.

7 Be more than happy to hear from you.

8 MR. JEDZINIAK: Thank you, Your Honor. Just by a
9 brief way of background, I'm Ethan Jedziniak. I represent
10 Adam Washington Ballenger, the respondent in this.

11 You heard the appeal a few months ago. This stems
12 from a zoning board decision where respondent won at the
13 lower court and it was ruled by the Board of Zoning
14 Appeals that the violation of 1.07, the local ordinance
15 was issued in error.

16 We're moving to reconsider primarily based on five
17 grounds, and I'm going to try to be quick because I know
18 y'all have heard a lot about this already.

19 First is you asked the appellant to draft a formal
20 order, and the Court's order, in our opinion, misconstrues
21 the issue that was actually before the Board of Zoning
22 Appeals.

23 THE COURT: All right. Let me ask you about that.

24 MR. JEDZINIAK: Yes, Your Honor.

25 THE COURT: You're raising an issue about me issuing

1 a Form 4 asking the opposing party to prepare a formal
2 order?

3 MR. JEDZINIAK: No, Your Honor. This is with the
4 formal order that was prepared.

5 THE COURT: Okay. But in your brief, you raise an
6 issue about the fact that I had asked the other side to do
7 a Form 4 to prepare an order.

8 MR. JEDZINIAK: Your Honor, we issued -- we did two
9 motions to alter. We did the one that said, when the
10 formal order was issued --

11 THE COURT: Yeah, I was going to ask you about that
12 because -- because, when I did the Form 4, I sent an email
13 prior to sending the Form 4 saying that this was not a
14 final order and I was going to edit and issue the order.
15 And then I also had that paper cut-and-pasted into the
16 Form 4 that said this is not a final order. And it's
17 just -- it was odd, if nothing else, that I got a motion
18 to reconsider on a Form 4 that I filed that the Form 4
19 said this is not a final order.

20 MR. JEDZINIAK: Yes, Your Honor. Just out of an
21 abundance of caution, that's why we did it, because it has
22 happened, and actually, it happened in Columbia before I
23 was a lawyer where it was before a judge, the judge
24 retired, and the formal order was never granted and then
25 that Form 4 was what eventually became the formal order.

1 And so it created an issue where the motion to reconsider
2 on that case -- and I know Richland County is a lot
3 different than Spartanburg.

4 THE COURT: Mm-hmm.

5 MR. JEDZINIAK: And this was, I believe, Judge
6 Manning, so this is before my time. But that Form 4 --

7 THE COURT: You're not -- you're that young? God.
8 Go ahead.

9 MR. JEDZINIAK: But that Form 4 became the final
10 order. And so, I guess, learning from the past, we have
11 decided it was the best option ---

12 THE COURT: Okay.

13 MR. JEDZINIAK: --- just to put that in place in
14 case anything weird happened with that.

15 THE COURT: Okay. Thank you. I didn't plan on
16 retiring, but I could have died, so yeah. Okay.

17 MR. JEDZINIAK: You never know. I didn't know if
18 Judge Manning was going to retire either and, you know,
19 here we are.

20 THE COURT: All right. I'm not as old as Judge
21 Manning. I hope I make it that far.

22 All right. Go ahead. I'm sorry.

23 MR. JEDZINIAK: No, you're fine, Your Honor.

24 So our first sort of issue with the order is that,
25 again, the Board of Zoning Appeals was faced with one

1 issue and whether that was the issuance of an order in
2 violation of 1.07 of the ULMO was in error. And the Court
3 found -- or, I'm sorry, the Board of Zoning Appeals found
4 that it was issued in error, and they had some evidence to
5 support that. And that's the standard on appeal. It's
6 the same as a jury verdict. As long as there's some
7 evidence to support the board's decision, it stands.

8 And, actually --

9 THE COURT: Let me ask you about that.

10 MR. JEDZINIAK: Yes, Your Honor.

11 THE COURT: But the zoning board issued an order,
12 and in the order, they outlined the reasons that they
13 gave. It's not that -- the standard of review, as I
14 understand it, is not that they just simply made the
15 decision in your favor. It is the fact that the zoning
16 board made a decision, discussed the reasons that they
17 made the decision.

18 And so, simply by your saying that they made a
19 decision in your client's favor and there's evidence to
20 support that decision misses a lot of, I think, links in
21 between the analysis of what must take place when a zoning
22 board issues an order that was -- I don't want to say it
23 was detailed, but they gave specific reasons why.

24 MR. JEDZINIAK: Yes, Your Honor. And to that point,
25 the appellants cite an order, but that's not what the law

1 says you look to. The law says you look to the minutes.
2 And they're saying the minutes are invalid. The minutes
3 are nine pages and they specifically address why in the
4 bottom of the minutes they found that way. Specific, it
5 says, Mike Patrick made a motion that the notice of
6 violation was issued in error based on the fact that
7 appellant obtained an electrical permit and that the ULMO,
8 the Unified Land Management Ordinance, does not
9 specifically address permits for a flagpole. That is the
10 exact root of the issue in 1.07.

11 And they found that. It's supported by evidence.
12 And that's another issue --

13 THE COURT: Well, which part?

14 MR. JEDZINIAK: That the appellant obtained an
15 electrical permit and that the ULMO does not specifically
16 address permits for flagpoles because that's --

17 THE COURT: And that's just the basis of the order
18 that I issued.

19 MR. JEDZINIAK: Yes. But, Your Honor, they talk
20 about other things in the minutes, and the order that the
21 Board of Zoning Appeals issued is overridden by the
22 minutes that were approved at the meeting. At the
23 February meeting, I was there. The board did not look at
24 the ordinance cited by the appellant.

25 THE COURT: They issued the order after they made

1 their decision.

2 MR. JEDZINIAK: Yes, Your Honor, but the minutes are
3 controlling. If you look at Vulcan Materials, which is
4 referenced a lot in our brief --

5 THE COURT: It's referenced a lot in your brief.
6 And I have read Vulcan Materials.

7 MR. JEDZINIAK: Right. And, Your Honor, so they --
8 their decision is supported by evidence and they list the
9 evidence. And the transcript --

10 THE COURT: But the decision they made is what they
11 issued in their order. And you look at the order for
12 their decision and you look into the minutes to see if
13 their decision that they made in their order is supported
14 by the minutes.

15 MR. JEDZINIAK: Yes, Your Honor.

16 THE COURT: You cannot just jump to the minutes and
17 say, okay, anything in the world is in the minutes;
18 therefore, the decision was correct, because you have to
19 take a look at the board's analysis that they did through
20 the order, which I believe my order that I issued did.

21 MR. JEDZINIAK: Right. And, Your Honor, again,
22 that's our contention with this is it's the some-evidence
23 standard, and they reference the evidence they had. And
24 if we're saying that we ignore the minutes and we then
25 look to the transcript, in the transcript, there's an

1 email from the director of the Building Codes who, on the
2 website, it specifically says issues permits. And there's
3 an email from him saying that no permit is required for a
4 flagpole.

5 And I can actually, if you'd like --

6 THE COURT: Okay. But you submitted in your brief
7 that that flagpoles were, in fact, now structures. Did I
8 get that right?

9 MR. JEDZINIAK: Your Honor, I --

10 THE COURT: In your brief that you just -- in your
11 brief -- but I will remind you, under Rule 59(f), you are
12 to have provided the Court with a copy of your
13 memorandum -- of the copy of your motion. We never
14 received it. You know, this Court likes to prepare ahead
15 of time prior to having these meetings. We did not become
16 aware that you had filed -- I was aware because Maribel
17 had told me that you had filed the appeal to the Form 4,
18 so it was just sitting out there. We were not aware until
19 this week that you had actually filed a motion under 59(e)
20 to challenge the order that I issued because we were never
21 served, as is required under 59, I believe, (f).

22 MR. JEDZINIAK: Yes, Your Honor. And if that was,
23 that was an inadvertent oversight, but we did --

24 THE COURT: Well, it's a requirement.

25 MR. JEDZINIAK: Yes, Your Honor.

1 THE COURT: And the reason it's a requirement is so
2 that we could be sure that we're prepared for when we get
3 here. The same issue cropped up last hearing.

4 MR. JEDZINIAK: Right, Your Honor. And apologies
5 for that. We did e-File this on March 1st.

6 THE COURT: You didn't serve me with it.

7 MR. JEDZINIAK: That is understood, Your Honor.

8 THE COURT: I mean, be aware that that's out there
9 so that if you go in front of me or some other judge again
10 and you file a 59(e) motion, serve the judge with the
11 motion. There's a lot of benefit that comes of that.

12 MR. JEDZINIAK: Yes, Your Honor.

13 THE COURT: Go ahead.

14 MR. JEDZINIAK: So, again, that's sort of our -- our
15 first contention is that the formal order misconstrues the
16 actual issue that was before the Court -- or before the
17 board, and when you look at the plain language of 107,
18 which is what the board looked at and which is what we
19 argued, if a permit is required, then you have to get a
20 permit. The board found that no permit was required so,
21 therefore, he did not need a permit. And that is the crux
22 of our argument and that is what the board found, that no
23 flagpole permit is available at issue. There is ample
24 testimony on that. Joan Holiday said that. Greg Henry
25 said that. The former director of Building Codes who is

1 on the board said that. You can't get a permit for a
2 flagpole. And specifically why, in the minutes, it says
3 that there's no permit for it is because Spartanburg then
4 amended their ordinances and amended to the PLZO, which
5 does specifically say no permit is required.

6 So they're using that the ULMO didn't talk about it
7 and the PZO did as an inference that you can draw that
8 there's no permit required for a flagpole.

9 Second, again, it sort of goes to the same point,
10 but the standard for this is the some-evidence standard,
11 and the board's decision was supported by some evidence.
12 Like I said, there's -- you have the transcript. There's
13 pages of discussion on this. They took in evidence. We
14 handed up an evidence packet, which has emails that say no
15 permit is required for a flagpole. It shows we went
16 through the Spartanburg County to get other permits for
17 the property, like an electrical permit. They came out
18 and inspected it and said it was fine. They could have
19 raised it then but they didn't raise it until months
20 later.

21 They went through the proper channels -- the
22 respondent did -- and showed that to the board, and that's
23 why the board found it was their decision --

24 THE COURT: I think they would disagree that you
25 went through the proper channels.

1 MR. JEDZINIAK: I think they would, and I think
2 that's why there's a lawsuit and not -- you know, it's the
3 adversarial proceeding at its core, is we couldn't come to
4 the common consensus. And I think that's part of the
5 issue with the way they drafted the order, too, is because
6 John Harris, who I know they're going to contend isn't
7 their attorney but was the county attorney, talked for
8 pages on the transcript and specifically said what the
9 issue was.

10 And that's another point we're bringing up is the
11 issue -- preservation issue. We're the respondent. Under
12 L'on -- or L apostrophe o-n; that fancy community in
13 Charleston -- I don't know how it's pronounced -- we can't
14 have an issue -- preservation issue. We're the
15 respondents. We won at the lower tribunal. We raised it
16 in our brief. We raised all these issues in our brief and
17 we don't have an issue -- preservation issue.

18 THE COURT: If you didn't argue it and present it to
19 the trier of fact, how in the world are you going to have
20 an issue on appeal?

21 MR. JEDZINIAK: Your Honor, we -- we're not on
22 appeal.

23 THE COURT: No, we are on appeal. I am sitting as
24 an appellate court.

25 MR. JEDZINIAK: I'm sorry, Your Honor. Let me

1 rephrase. I'm the respondent.

2 THE COURT: Right.

3 MR. JEDZINIAK: We can raise any argument on appeal
4 that supports our position and there is --

5 THE COURT: I think you have to raise it at some
6 point to the trial level in order to make a record of the
7 issue and have the trial -- the trier of fact -- and have
8 that issue presented with facts so that if, in fact -- if,
9 later on, in the appellate process, you are able to raise
10 it, there is some basis for an analysis to be made by an
11 appellate court. I don't think you can just walk in and
12 raise an issue on appeal that was not properly raised to
13 the trial level.

14 MR. JEDZINIAK: Your Honor, we actually attempted to
15 raise it, and Bullet Point -- not Bullet Point 8 --
16 Footnote 8 actually addresses this. We tried to raise it,
17 and there is -- under Video Game Consultants v. Department
18 of Revenue, there's actually an issue of whether an admin
19 court can even hear a constitutional issue.

20 It's in our actual notice of appeal to Spartanburg
21 County Board of Appeals.

22 THE COURT: In my order, though, I pointed out that,
23 during the hearing -- was it you that presented it to the
24 board?

25 MR. JEDZINIAK: No, Your Honor.

1 THE COURT: Okay. Whoever presented it to the
2 board --

3 MR. JEDZINIAK: Oh, yeah, I presented it to the
4 board.

5 THE COURT: Okay. Presented it to the board. You
6 specifically told them they are not there to address First
7 Amendment issues or free speech issues. You are there to
8 address the compliance with the code issues.

9 MR. JEDZINIAK: Your Honor -- and I get that, and
10 that was a point of -- I was trying to get them back on
11 what the actual notice of violation was issued. We were
12 arguing our constitutional arguments. They're in the
13 record. And this goes exactly to what the Supreme Court
14 has said, that it's not a gotcha game, it's not meant to
15 catch lawyers, and --

16 THE COURT: It's not a gotcha game. You are
17 responsible for when you went in front of that board of
18 presenting those issues on behalf of your client.

19 MR. JEDZINIAK: And, again, Your Honor, we --

20 THE COURT: Otherwise, it becomes a gotcha issue
21 because of the way you're approaching this is you're
22 just -- you're continually trying to argue issues that
23 were not presented to the board. And I have not yet heard
24 an argument that you understood what my order was
25 addressing when I did -- when I went beyond just the mere

1 evidence standard of review.

2 MR. JEDZINIAK: Your Honor, I -- we understand
3 that's just -- we're taking issue with the fact that --
4 and these are hard motions to argue, because I'm not
5 telling you you're wrong; I'm just saying we --

6 THE COURT: And I want you to try to get me to take
7 a look at it the way you want me to take a look at it, but
8 I have not yet heard that you have addressed the things
9 that I addressed.

10 MR. JEDZINIAK: Your Honor, when you look at the
11 actual notice of appeal and what actually happened at the
12 Board of Zoning Appeals meeting -- when you look through
13 the minutes, when you look through the transcript, when
14 you look through the arguments -- we made constitutional
15 arguments. It was the lead-in to Fox News that night was
16 me talking about the constitutional arguments.

17 THE COURT: I applaud you for making television.

18 MR. JEDZINIAK: I -- one of my finer moments. My
19 mom loved it.

20 THE COURT: Okay.

21 MR. JEDZINIAK: We talked about it. It was raised
22 ad nauseam at the hearing. They just -- I was just
23 directing them back to what the notice of the violation
24 was. And I understand that, that I did say that. But
25 it's not the gotcha game that the Court -- the Supreme

1 Court has said. That's -- it's me trying to direct them
2 back to what the notice of violation was issued and the
3 direct issue but we also talked about the implications of
4 this discriminatory application against one specific
5 person.

6 THE COURT: Your client, who testified, acknowledged
7 in the record that they understood that the reason they
8 were there had nothing to do with what flag flies on a
9 pole but was there to address compliance with the -- with
10 the county's code.

11 MR. JEDZINIAK: Yes, Your Honor. And --

12 THE COURT: So it's more than just your argument.

13 MR. JEDZINIAK: I'd also -- I'd also like to point,
14 again, if we're going to this issue and the issue --
15 preservation issue, that Spartanburg County's attorney
16 waived the argument -- if that's what the Court's
17 concluding -- waived the argument in the exact same way
18 that I would have weighed the argument. He said the board
19 has no -- hasn't determined whether staff was correct in
20 issuing the notice of violation and whether or not the
21 applicant or appellant in this case is required to get a
22 permit. And that is exactly what the board found, that no
23 permit was required, so they did not violate Section 1.07.

24 And I know Mr. Darwin -- he's great -- he's going to
25 argue the opposite, and that's why we disagree. But the

1 same reasoning that was put in the formal order has to
2 apply to the appellant. That issue was waived. We waived
3 it. It doesn't work one way. And that's exception No. 2.

4 I'm going to try to move on here. Our issue that we
5 take up, No. 3, is that, again, Section 1.13 of the ULMO
6 violation was not raised as a notice of violation. It was
7 only raised as a response. And because of that, they
8 can't now raise on appeal that we violated 1.13. And the
9 same issue of preservation argument applies.

10 But also, Your Honor, I'd point out that it's also a
11 double jeopardy violation, because the only thing that can
12 happen is punitive to my client. The only real remedy
13 would be taking down the flagpole, and that it's punitive
14 in nature. And so they have their one grab, and they
15 chose Section 1.07. The board found against it, and now
16 they can't come back and say Section 1.13 was also
17 violated. That's not what the notice of violation says.
18 That's not what the board [indiscernible].

19 Fourth --

20 THE COURT: Well, where did that double jeopardy
21 argument come from?

22 MR. JEDZINIAK: It was actually a footnote in our
23 brief, and that's part of the -- another part of this
24 response, Your Honor. We filed that brief I believe a few
25 days before, and we had to unfile it because it was posted

1 with the track changes, and then that was the brief that
2 was filed the morning of, was the correct brief.

3 THE COURT: Well, that's not what I was told at the
4 last hearing. I was told that the internet wasn't
5 working, and that's the reason that it couldn't file --

6 MR. JEDZINIAK: That's --

7 THE COURT: The same way I was told that the reason
8 we needed the continuance from the November hearing was
9 because I think you or your partner was busy in federal
10 court or had something to do and we didn't -- and I said,
11 "Well, fine. We're going to get it placed on the docket."

12 But then we receive a 17-, 18-, 19-page brief the
13 morning -- the same day we're having the hearings?

14 MR. JEDZINIAK: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. JEDZINIAK: And, again, I know it's impolite and
17 it's not --

18 THE COURT: Impolite?

19 MR. JEDZINIAK: Yes, Your Honor. I --

20 THE COURT: It's --

21 MR. JEDZINIAK: I'm fully aware of that. It's not
22 appropriate. I fully understand that. But, to the best
23 of my knowledge, Spartanburg County does not have a rule
24 that requires briefs to be filed a certain time period
25 before the hearing, and so we believe that it should be

1 considered -- it should have been considered, and that is
2 also, to my fifth point.

3 And then, finally, Your Honor --

4 THE COURT: The reason I went through the analysis,
5 is taking a look at the record, trying to find out where
6 these issues were in the record of the board minutes
7 because I made the decision and said, no, I'm not going to
8 accept this brief when we tried to have this hearing
9 scheduled. And the fact that the hearing got scheduled
10 was not to rebrief or to expand the issues that this Court
11 was going to be required to address because this Court was
12 ready to go back at the previously set hearing. And I
13 only allowed it to be rescheduled at the consent of both
14 parties after having the discussion that, "Well, we're
15 just too busy."

16 MR. JEDZINIAK: Yes, Your Honor. And we appreciate
17 it, and we did not mean to disrespect the Court in that
18 manner. That was not the intention. And apologies for
19 that, Your Honor.

20 THE COURT: Well, see, you come today -- and I
21 appreciate your apology; thank you very much for that.
22 It's completely unnecessary, but I want -- not only you --
23 a lot of parties to understand that we -- that, as a
24 Court, we get scheduled 20, 30, 40, 50 cases, and they're
25 put on a docket at a specific time with a specific amount

1 of time assigned to them. My office, including me, we go
2 through a process of trying to analyze these cases and get
3 ready for these hearings. We don't just come in here and
4 want to come in here blind. I don't think, as a judge, we
5 do service to the litigants if we do that. Okay?

6 MR. JEDZINIAK: Yes, Your Honor.

7 Just final thing here, your Form 4 order asked the
8 appellant to draft a formal order to discuss de minimus
9 and what a de minimus --

10 THE COURT: I thought you -- I thought you didn't
11 have any -- were not going to make any issue out of my
12 Form 4 order.

13 MR. JEDZINIAK: Well, Your Honor, we're not taking
14 issue with it.

15 THE COURT: Okay.

16 MR. JEDZINIAK: The formal order does not
17 incorporate anything with de minimus in the formal order.

18 THE COURT: Okay.

19 MR. JEDZINIAK: And so that's our only issue on that
20 front is --

21 THE COURT: You wanted them to put something in
22 there on that?

23 MR. JEDZINIAK: I'm sure Mr. Darwin will point it
24 out, now that I can't find it. So I apologize. But, yes,
25 Your Honor, that's our [indiscernible].

1 THE COURT: Well, wait a minute. I don't understand
2 that part. What did you want him to put in there that was
3 not in there?

4 MR. JEDZINIAK: Your Honor, you say something -- and
5 I'm struggling to find it right now. I'm sorry. You may
6 consider including this Court's disagreement with the --
7 and notwithstanding -- I'm sorry, it's middle of page 3,
8 "Notwithstanding the landowner's position that the
9 structure is de minimus, it should have no more than a
10 de minimus effect on the landowner's present use." And
11 that was not included in the form order. So we're just
12 asking --

13 THE COURT: You think that was a mistake for me not
14 to include it in the final order?

15 MR. JEDZINIAK: No, I just -- for the issues --

16 THE COURT: What?

17 MR. JEDZINIAK: Yes, Your Honor, we believe it was.
18 It should be included.

19 THE COURT: Okay. But, as again, in the email I
20 sent, prior to sending the Form 4, I believe my email
21 started out with the -- the second paragraph that's -- or
22 maybe the end of the first paragraph -- talked about this
23 is -- from a proposed order "and the final order of this
24 Court will not be until it is received, edited, and
25 filed."

1 And I also believe the email contains that in the
2 last paragraph of the email that was not contained in the
3 Form 4 order that was left out when we copied and paste
4 it.

5 My Form 4 is just meant as a way of asking the other
6 side, "Prepare an order, this is what I'm thinking, put
7 these things in there." I can change -- and I have done
8 it before -- completely change my mind after issuing a
9 Form 4 requesting order, and I find in the plaintiff's
10 favor, I can go and find in the defense favor. That Form
11 4 I do not view as binding me to anything. It is simply a
12 way of getting the case to move forward so that we're all
13 just not stuck in Nowhere Land waiting for me to write my
14 orders because a Court depends on the -- depends on
15 lawyers to assist me in issuing these orders because I
16 have a lot of them to do.

17 MR. JEDZINIAK: Yes, Your Honor.

18 THE COURT: And you think that was an error for me
19 not to require him to put something about de minimus in
20 there?

21 MR. JEDZINIAK: Your Honor, we just -- our position
22 is, if the Court's order holds, we're either going to have
23 to move for a stay as it goes up through the appellate
24 courts or they're going to have to take the flagpole down.
25 And the way the Form 4 order is read is that it should be

1 a de minimus thing, and we just don't know what de minimus
2 means, whether that means take the whole flagpole down,
3 whether it means lower it, whether it means you can't use
4 the property for anything. We just -- that's our
5 clarification.

6 THE COURT: That would -- well, thank you for
7 clarifying that to me as to what you want with it, but --
8 thank you for that. It might be that's a question that's
9 better asked if, in fact, the decision is made adverse to
10 your client, then have that discussion. And if y'all need
11 clarity, come back to me as to what maybe I meant because
12 that was just put in a Form 4. I have made -- that is not
13 a declaration by the Court that this is an order or this
14 is a finding of fact.

15 MR. JEDZINIAK: Yes, Your Honor.

16 THE COURT: I mean, if that became the case, then I
17 need to abandon my customary practice of trying to advise
18 lawyers of what my decisions are and asking their
19 assistance preparing orders in the way that I do them. I
20 do them probably -- and I appreciate you're sharing with
21 your thing that happened with Judge Manning, because I was
22 not aware of that -- I put them in a Form 4 and send them
23 to the clerk's office and ask for -- prepare an order in
24 the event I do drop dead, you know, so that somebody knows
25 that somebody was done to it. So I do appreciate that. I

1 wish I could retire, but I'm not of that age yet.

2 MR. JEDZINIAK: And, Your Honor, admittedly, I have
3 been a lawyer for less than two years at this point --

4 THE COURT: You're doing a great job.

5 MR. JEDZINIAK: I just kind of do what I'm told.

6 THE COURT: Oh, you're doing a great job. You do
7 not do what you're told; you tell the Court what to do.

8 MR. JEDZINIAK: And I think that sort of -- we hit
9 our five. So, thank you, Your Honor.

10 THE COURT: No, thank you very much.

11 Yes, sir, Mr. Darwin?

12 MR. DARWIN: Thank you, Your Honor. May it please
13 the Court?

14 THE COURT: Now, do you believe that when I asked
15 you about -- sent you the Form 4 that it had some
16 significance?

17 MR. DARWIN: Not at all, Your Honor. As a matter of
18 fact, your Form 4 says, "This order does not end the
19 case," and your email was, "This is preliminary." As a
20 matter of fact, I'm pretty sure that the proposed order I
21 sent to you was changed pretty significantly from the
22 final order that we're here about today, Your Honor.

23 THE COURT: I believe that it was too.

24 MR. DARWIN: Yes. And I guess I'll -- let me just
25 start off by quoting Mr. Faust (ph) from the last hearing:

1 "You're right, Judge."

2 THE COURT: Well, Mr. Faust learned that from
3 Mr. Langley.

4 MR. DARWIN: Right. And you were right in the order
5 that we're here about today, obviously. I'll start with
6 the de minimus in the Form 4, even though I don't know
7 that it matters. But in that, Mr. -- Ethan just argued,
8 it says, "While it may not be significant to this appeal,
9 you may consider including it." That's all it said. And,
10 again, it's nothing more than a reference to me to assist
11 me in drafting the proposed order to Your Honor,
12 submitting it, and then Your Honor making any changes that
13 you see fit.

14 Your Honor, I think to say that the issue of what a
15 structure is was not preserved for appeal, if you look at
16 the transcript -- the 96-page transcript of the actual BZA
17 appeal hearing, the word "structure" is found 39 times in
18 that transcript. It's clear that they simply got
19 sidetracked on a -- the actual word "flagpole" not being
20 in the ULMO. It reminds me -- I don't know if you
21 remember, Your Honor -- it was one of my favorite
22 movies -- "A Few Good Men," when they're talking about
23 what a Code Red is, they walk up to the witness and say,
24 "Hey, here's the Marine Corps manual. Show me where it
25 says Code Red." Well, it doesn't. That's just -- that's

1 just something we all know.

2 When they're walking back -- Tom Cruise is -- and he
3 says, "Well, show me where it says 'mess hall.'"

4 "It doesn't say mess hall."

5 "Have you ever been fed while you have been in the
6 Marine Corps?"

7 "Three squares a day."

8 Same thing, Your Honor. You can't put everything.
9 But to argue that a 120-foot flagpole that costs in excess
10 of \$100,000 to construct and put on that property is not a
11 structure is just outrageous. It simply is. And, Your
12 Honor, that was part of your ruling of saying that the
13 findings of the board can be [indiscernible] when they
14 acted arbitrarily, capricious, and no reasonable
15 relationship to a lawful purpose. That's exactly what
16 happened here.

17 As a matter of fact, the chairman of the board, at
18 one point when they were discussing this, Your Honor --
19 you may recall this -- he said, "Well, we don't know if
20 any excavation was done on that property. They could have
21 just put it in an existing hole."

22 And another board member said, "Yeah, that's right."

23 So there could have been an existing hole on this
24 property that would accommodate and hold a 120-foot
25 flagpole, which, if it were a building, Your Honor, would

1 be the fifth tallest structure in Spartanburg County.

2 There's nothing at all erroneous in any part of your
3 14-page order. There's nothing that we have heard today
4 or in the motion, in the brief of the respondents that
5 would be consistent with 59(e), overturning your opinion
6 whatsoever, Your Honor. It's the same thing we heard at
7 the argument before you, and there's absolutely nothing
8 new that you should consider, and your order should stand.

9 THE COURT: Let me ask you a question.

10 MR. DARWIN: Yes, sir.

11 THE COURT: Thank you for that argument. Let me ask
12 you question. When you -- when I got your memorandum, you
13 started the memorandum with an analysis of the two reasons
14 why a party files a 59(e). Do you recall that?

15 MR. DARWIN: Yes, Your Honor.

16 THE COURT: Okay. Tell me -- I guess the reason I
17 ask that question is that I saw neither -- I didn't see
18 the Adam Washington Ballenger Camp argue this. I didn't
19 see it in your brief either. Is my analysis -- was in the
20 order -- that went beyond just that it's an evidentiary
21 matter. My analysis -- and if it is, it's my fault in the
22 way that I prepared the order, because I thought my order
23 went beyond and even said the outcome made by the board,
24 which was to allow this 120-foot, \$100,000 structure, as I
25 believe that it is a structure that required -- that the

1 applicant for the appellant below wanted to feel the need
2 to go get a height clearance from the FAA. I felt like
3 that the board, as a matter of law, made an error because
4 the vast majority of the information that was presented to
5 the Board and the discussion that was done by the Board
6 then -- especially it's the idea of the electrical
7 permit -- went beyond what legally the board could do.

8 The board has vast authority. The board -- and this
9 Court has a lot of respect for -- and let me tell y'all, I
10 have never knew that I would have so many zoning board
11 decisions. I have now done two or three here in
12 Spartanburg. I went out of town to York. I did one in
13 York that dealt with their advanced zoning codes. I am,
14 like, becoming, I feel like, very versed in zoning law,
15 something I never knew that I would get in my career.
16 But -- so I have a lot of respect for what zoning boards
17 do.

18 But I felt like the zoning board -- when they rested
19 their decision based upon an electrical permit, that that
20 went beyond what they're entitled to do when they're being
21 asked by the zoning board to address a zoning issue.

22 And let me tell you what: In my research in getting
23 ready and writing the opinion, I ran across a couple of
24 cases -- and I wish I could remember the case, but I think
25 one of them came from Horry County -- and it dealt with --

1 oh, gosh -- or from York County and it dealt with a
2 parking lot or something like that, and somebody within
3 York County -- zoning and building structure had either
4 authorized or not authorized a parking lot.

5 And they ruled that -- and the argument was made in
6 that case that it was an equitable argument that, okay,
7 wait a minute, the county councilman or the county
8 administrator or whoever said, you know, we could do it
9 or -- and, therefore, they need to be estopped from
10 changing their mind, and the Court said, no, that official
11 went beyond what that official's duty was in doing it.

12 And what my point in raising that case is that, if
13 we start -- and what I meant and probably saying the
14 statement meant for the zoning board for when they take a
15 look at my decision or they want to scratch their head and
16 say, "What was Judge Hayes thinking?", is that my view was
17 that the zoning board went beyond their authority because
18 they were now allowing permits that would be issued for
19 buildings to circumplant the need or the authority of the
20 zoning people.

21 And so you then -- under what the zoning board did
22 in this case -- would vest building code permits and
23 compliance and construction compliance with the fact that,
24 okay, you get -- you want an inspector to come out and
25 give you a permit to build a building then, all of a

1 sudden, that inspector who is just not versed in zoning
2 regulations, all of a sudden, the zoning board is going to
3 say, "Well, if you get a building permit, then you get
4 compliance with zoning regardless of what takes place."

5 That was one of the points that I tried to make in
6 my order that I probably didn't articulate very well, is
7 that I felt like the zoning board decision in this case
8 was, as a matter of law, in error.

9 And then the other case that I had read was the case
10 about -- oh, yeah, it was about -- I think it was an Horry
11 County case -- maybe it was Greenville -- they had this
12 nightclub that had -- I guess, lack of a better way of
13 describing it, it had strippers. And a First Amendment
14 argument was made in that case, and they talked about the
15 need for the zoning board to act in a way that could not
16 be interpreted as being arbitrary and capricious for cases
17 that came later.

18 And so I felt like that, you know, if the board
19 allowed a building permit to serve as a permit for a
20 zoning compliance, then the board's going to put itself in
21 a situation that could mirror that case from Horry County
22 where the nightclub owner was challenging the zoning and
23 claiming it was his First Amendment right that, if, in
24 fact, we had -- if this zoning board had that problem,
25 then a builder or a property owner could get a building

1 permit to put up lights outside of their strip club and
2 say, "Well, we got a lighting permit to light up our sign
3 about strip clubs; therefore, we don't have to comply with
4 the zoning process in Spartanburg County."

5 And those were just two points that I -- in the
6 cases that I reviewed as to a reason why I made the
7 decisions that I made in this case. And neither one of
8 you mentioned them, so I guess they're no good.

9 MR. DARWIN: Well, Your Honor, they're in the order.
10 I was only trying to address --

11 THE COURT: What he did, okay.

12 MR. DARWIN: I mean, I didn't address all five of
13 the points.

14 THE COURT: Okay.

15 MR. DARWIN: I wanted to address mainly the two --
16 the structure argument and the preservation argument, were
17 the main two that I wanted to address in my memo in
18 response.

19 THE COURT: Okay.

20 MR. DARWIN: Or in opposition.

21 THE COURT: I don't want to put words in your mouth.

22 MR. DARWIN: That's all.

23 No, no, not at all, Your Honor.

24 THE COURT: I won't be offended.

25 MR. DARWIN: Those issues were clearly addressed in

1 your order, and they should not be touched or disturbed,
2 Your Honor.

3 THE COURT: All right.

4 MR. JEDZINIAK: Your Honor, if I may briefly respond
5 to that.

6 THE COURT: Sure.

7 MR. JEDZINIAK: You're referring to the Greenville
8 Bistro case, which [indiscernible]; it was the strip club
9 on 385. It's kind of a funny case because I read that too
10 in preparing for this.

11 But specifically the board is tasked under -- in
12 South Carolina law -- to hear decisions made under the
13 zoning ordinances, and specifically what was at issue was
14 whether a permit was needed. And so they -- that is
15 exactly, under 1.07 of the Spartanburg County ULMO, what
16 they were looking at was whether a permit was required.

17 We don't believe -- and I think we addressed this,
18 which was sort of to my first point of the issues on
19 appeal are getting conflated.

20 They're not -- they're not going beyond anything
21 other than deciding whether or not it was a violation of
22 1.07 because, if you take the inverse of 1.07, it's if no
23 permit is required, then no permit is needed, and you
24 can't violate the ordinance.

25 THE COURT: I remember y'all mentioned that.

1 MR. DARWIN: So that's why they're looking at what
2 the respondent did in the process of trying to get a
3 permit. And it's in our memo, but there's seven or eight
4 pages of the respondent's lawyer at the time discussing
5 what he did. He went down to the Planning Department and
6 was told he didn't need a permit. He did that three or
7 four times, he testified to under oath. He then goes to
8 the Building Codes to double-check, and he's told no.
9 Again, he's told by multiple departments.

10 And I think one thing that is extremely important
11 that everyone is overlooking is Greg Hembree is the
12 director of Building Codes. And this sort of goes to your
13 point too. If you look on Spartanburg County's website at
14 what his job is -- and I'm going to quote this because
15 it's in our thing -- it says -- it's to "ensure the sound
16 construction, promote steady maintenance of existing
17 structures, and enforce regulation and development
18 practices in accordance with S.C. building codes and local
19 land use regulations."

20 And it further says, "This will be accomplished by
21 expediting the permit and inspection process."

22 So he went to Planning, was told no permit. He then
23 went to Building Codes -- I mean, he went for multiple
24 reasons, but, for one, he's relying on what they're
25 putting out in the public, that says they're the ones that

1 issue permits.

2 And, again, he was told "no permit." That's written
3 in an email, and that's why they found that. It's the
4 greater weight of the evidence leans towards no permit
5 being required, so you can't get a permit. And if you
6 can't get a permit, you can't violate 1.07. And that's
7 the bulk of that argument, Your Honor.

8 THE COURT: Okay. Well, thank you for pointing that
9 out. And the -- one of the reasons I mention that case is
10 exactly -- and I feel like mirrors what you just pointed
11 out to me. The people that he went to were not the zoning
12 people.

13 MR. DARWIN: That was going to be my point, Your
14 Honor.

15 THE COURT: Yeah.

16 MR. DARWIN: Greg Hembree is Building Codes. He's
17 got nothing to do with zoning. Nothing whatsoever.

18 Joan Holiday testified in that hearing -- she was
19 sworn under oath -- said if they had come to Planning, we
20 would have told them that a permit was required for a
21 flagpole, especially if they had been transparent and said
22 this flagpole is not a little 10-foot flagpole that you
23 want to put in your yard; it's 120-feet tall and will cost
24 over \$100,000 to construct.

25 THE COURT: All right.

1 MR. DARWIN: That's definitely Zoning. That's not
2 Building. They went to the wrong department, Your Honor.

3 THE COURT: Okay.

4 MR. DARWIN: I don't know if they knew what they
5 were doing, but they went to the wrong department.

6 THE COURT: Okay. Thank you for that.

7 What I'll do -- let me take another look at it
8 because you have raised the -- in the evidence
9 standards -- I'm going to go back and take a look at the
10 record, but I still would encourage both sides -- my
11 analysis cannot ignore the order that was issued by the
12 board. Okay? It sort of tells me that -- okay, first of
13 all, I think that the First Amendment issues were not
14 presented -- properly presented to the board. You're
15 going to have a hard time convincing me of that; I'll take
16 another look at it. Because when you stand up and tell
17 them, "Well, that's not why we're here. It's First
18 Amendment. This is why we're here." I appreciate your
19 explaining what your intent was, but the board heard that,
20 as well as the individual who testified on behalf of your
21 client. He acknowledged that, when asked specifically by
22 a board member, "Do you understand we're not here to
23 address the flags or the nice banners that you put up;
24 we're here to address compliance?" I just feel like that,
25 at that juncture, the board is processing it. And if you

1 view the board as a jury, then that jury has now been told
2 what they're not to think about, and they're told by the
3 parties, the witness, and the lawyers.

4 Then I have got to take a look and decide through
5 that order is what the board said in the order supported
6 in the record. And even if it's supported by the record,
7 I think what they put in the order is, as a matter of law,
8 incorrect in the way that they addressed it. But I'm
9 going to take a look at it and let you know.

10 Thank y'all very much.

11 MR. DARWIN: Thank you, Your Honor.

12 MR. JEDZINIAK: Thank you, Your Honor.

13 THE COURT: If y'all get -- I don't know what's
14 going on outside of this, but y'all just share with me.
15 There might be other things. If y'all get under a time
16 crunch, let me know.

17 MR. JEDZINIAK: Yes, Your Honor.

18 THE COURT: Because I have got a lot of things to
19 do.

20 MR. DARWIN: I'm not aware of any, Your Honor.

21 THE COURT: Okay. Thank y'all very much. Because I
22 have got other things. See these lawyers in the back?
23 They're, like, looking at me like "hurry up." All right.
24 Thank y'all.

25 (The above hearing concluded.)

1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Spartanburg Co. vs.

3 Spartanburg BZA, et al.

4 2023-CP-42-01155

5 DATE OF HEARING: 3/27/24

6 COURT REPORTER/MONITOR: WEBEX

7 *****

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16
17 18 /s/ Bobbi Fisher_____

19 Bobbi Fisher, RPR and Certified Transcriber

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UNIFIED LAND MANAGEMENT ORDINANCE



SPARTANBURG COUNTY SOUTH CAROLINA

Ordinance No. O-99-015 adopted December 31, 1999

Amended:

05/15/2000	07/19/2004	08/28/2009	04/15/2013	09/16/2019
10/16/2000	05/15/2006	02/10/2011	09/16/2013	12/16/2019
12/18/2000	06/16/2007	12/13/2011	02/17/2014	06/28/2021
06/18/2001	05/21/2007	05/21/2012	06/16/2014	03/07/2022
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SPARTANBURG COUNTY, SC

UNIFIED LAND MANAGEMENT ORDINANCE

AN ORDINANCE OF SPARTANBURG COUNTY, SOUTH CAROLINA REGULATING THE USE OF CERTAIN BUILDINGS, STRUCTURES AND LAND, THE HEIGHT OF BUILDINGS AND STRUCTURES, THE SIZE OF YARDS, THE DEVELOPMENT OF FLOOD PLAIN AREAS, MULTI-FAMILY DWELLINGS, MANUFACTURED HOMES, AIRPORT ENVIRONS, LAND DEVELOPMENTS, AND STORM WATER RUNOFF; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR THE METHOD OF ADMINISTRATION AND AMENDMENT; AND PROVIDING FOR THE IMPOSITION OF PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE.

PREAMBLE

In accordance with authority conferred by the general statutes of South Carolina, 1976 Code of Laws, Title 6, Chapter 29 of the Comprehensive Planning Enabling Act of 1994, as amended, and for the purpose of promoting public health, safety, morals, convenience, order, appearance, prosperity, and general welfare; securing safety from fire; providing adequate light, air, and open space; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the creation of a convenient, attractive, and ecologically sensitive areas; facilitating the provision of public services, affordable housing, and disaster evacuation, in harmony with the adopted Comprehensive Plan for Spartanburg County, South Carolina, the Spartanburg County Council hereby ordains and enacts into law the following articles and sections, which shall comprise and be known as the Unified Land Management Ordinance of Spartanburg County, South Carolina, and shall be applicable throughout the designated portions of the unincorporated area of the County.

ARTICLE 1 – APPLICATIONS AND REQUIRED PERMITS

Section 1.01 Responsibility

All requests for permits and licenses required by this Ordinance, and legislative change or relief from the terms of this Ordinance shall be in the form of an application. The provisions of this Article shall govern the basic requirements for processing different types of applications from initiation to final action and issuance of a permit.

It shall be the responsibility of the Spartanburg County Administrator or his designee to administer the requirements for processing applications and issuing permits in accord with the provisions of this Ordinance.

It shall be the responsibility of an applicant to provide the required information to process a permit application, secure or renew a license, and present facts about circumstances which would justify a proposed change or modification to the terms and/or application of this Ordinance.

Section 1.02 Types of Applications

Types of applications for processing matters subject to the requirements of this Ordinance include:

1. Applications to Develop or Alter the Use of Land

This includes all land use and development activity covered by this Ordinance. Applications to develop or alter the use of land are classified for administrative purposes into two (2) categories.

Minor Land Development – is any land development or land altering activity requiring a permit from the County other than a subdivision or Major Land Development.

Major Land Development – includes but is not limited to commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.

2. Applications for Change or Relief

This includes applications for changes to and/or relief from any part or provision of this Ordinance, of which there are three types of applications:

Amendment – is a change to the text of the Ordinance.

Variance – is an adjustment or modification of any regulation alleged to impose an unnecessary hardship on the use or development of land.

Appeal – is a petition by an applicant to reverse or modify a decision of an administrative officer, board, commission or council.

Section 1.03 Eligible Applicants

Parties and individuals required and/or eligible to initiate an application to alter, develop, subdivide or utilize land for purposes and activities regulated by this Ordinance, or to seek relief from or change requirements of this Ordinance are identified on Table 1.

Parties not listed may petition the Planning Commission and/or Council to initiate a change, but the petitioned party is not bound to act on behalf of the petitioner.

Table 1 Applicant Requirements/Eligibility				
Eligible Applicants	Applicants to Develop or Alter Use of Land	Applicants for Change and/or Relief from Ordinance Requirements		
		Amendment	Variance	Appeal
Property Owners	YES	NO	YES	YES
Agent of Property Owner*	YES	NO	YES	YES
Option Holder	YES	NO	YES*	YES*
Aggrieved Person or Party	NO	NO	NO	YES
Officials Administering this Ordinance (Staff)	NO	YES	NO	YES
Planning Commission	NO	YES	YES**	NO
Governing Council	YES	YES	NO	NO

* Must have written authorization

** Major Land Developments only

Section 1.04 Application Procedures

The procedure for processing applications is outlined by the following Application Procedural Chart (APC).

The process is initiated by filing a complete application including all information and fees required by Section 1.06 and assignment of the application to the proper staff member, agency, board or commission for review and processing outlined in Section 1.05.

Public notice where required by the APC chart shall be announced in a newspaper of general circulation in Spartanburg County at least 15 days but not more than 30 days prior to the time the application is scheduled for a public hearing. The notice shall state the nature of the application and the time, date and place of the hearing.

In addition to public notice in a newspaper, notice of an application for a variance shall be posted by Spartanburg County Planning Department staff on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. Notification shall be made by Staff via Certified Mail to contiguous land owners, which shall include those separated by a paved road.

If public hearing is delayed; party responsible for delay is to pay for re-advertising, re-notification, additional fees, etc.

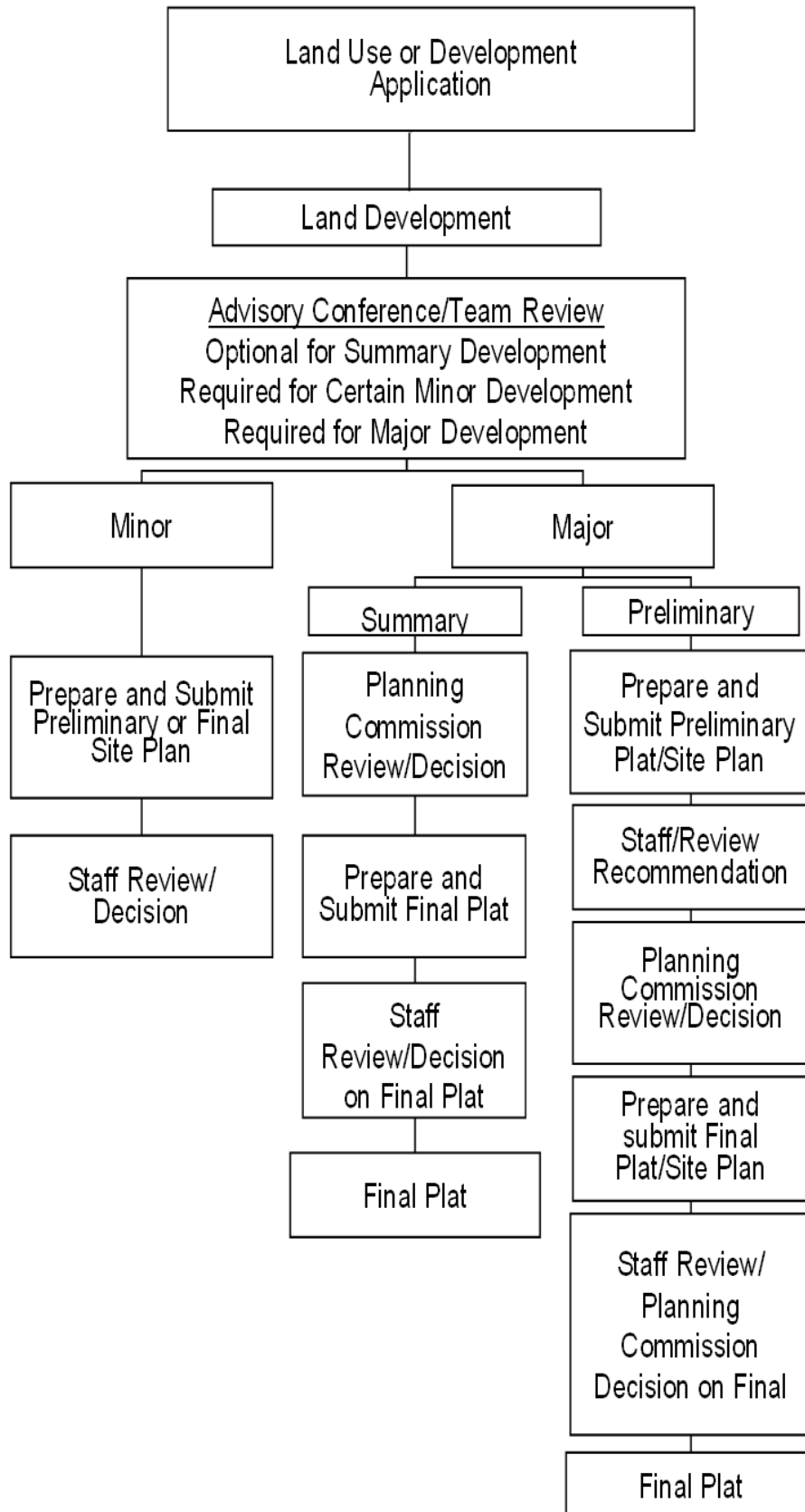
Appeals shall be taken within 10 days of the date of the action filing notice of appeal with the County.

A permit for an application subject to appeal to the Planning Commission or to the Board of Zoning Appeals may not be issued until the appeal period has expired.

Section 1.05 Assignment of Application for Review, Approval, Variances, and/or Appeals

Final authority on any land development application or application seeking relief from or change of any provision or regulation contained herein shall reside with the following County divisions, unless appealed, as provided for below. (See page 1-7)

Application Procedural Chart 1



Application Procedural Chart 2

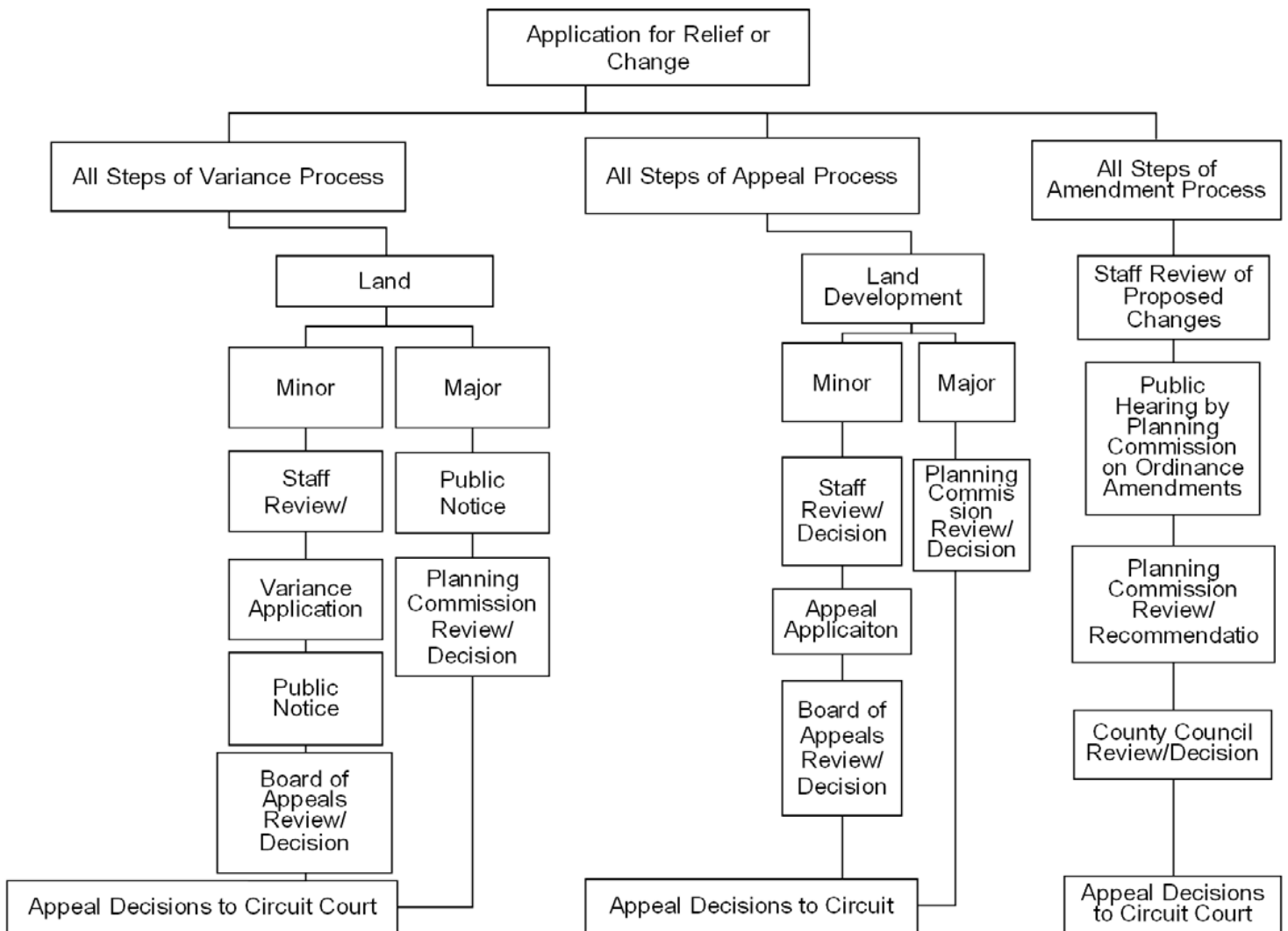


EXHIBIT A

EXHIBIT A	Review and Approval Authority			Variances		Appeals		Circuit Court Appeal
	Administrative		Board	Board		Administrative		
Land Developments	Building Department	Planning Department	Planning Commission	Board of Appeals	Planning Commission	Board of Appeals	Planning Commission	Circuit Court
Minor, to include								
Single-family dwelling	YES			YES		YES		YES
Manufactured home	YES			YES		YES		YES
Mining Operation		YES		YES		YES		YES
Outdoor Gun Range		YES		YES		YES		YES
Sexually Oriented Business		YES		YES		YES		YES
Open Storage		YES		YES		YES		YES
Communication Tower		YES		YES		YES		YES
Junk or Salvage Yard		YES		YES		YES		YES
Tattoo Parlors		YES		YES		YES		YES
Signs		YES		YES		YES		YES
Temporary Uses		YES		YES		YES		YES
All other Uses Not Classified as Major		YES		YES		YES		YES
Major, to include								
Attached Multi-Plex Dwelling Projects:								
(Apartment, Condominium & Townhouse)			YES		YES		YES	YES
Manufactured Home Park			YES		YES		YES	YES
Industrial Park & Commercial Subdivision			YES		YES		YES	YES
Shopping Center, Big-Box Retail			YES		YES		YES	YES
Office Park			YES		YES		YES	YES
Camps and RV Parks			YES		YES		YES	YES
Multiple Occupancy Building Project			YES		YES		YES	YES
Motor Speedway or Testing Track			YES		YES		YES	YES
Bulk Storage and Distribution Facility for Fuel Products and Liquid Asphalt Distribution Terminals			YES		YES		YES	YES
Waste Management Facility			YES		YES		YES	YES
Asphalt Batch Plant			YES		YES		YES	YES
Scrap Metal Processor			YES		YES		YES	YES
Certain Public Uses			YES		YES		YES	YES
Mixed-Use Project/Mixed-Use Project–Residential Only			YES		YES		YES	YES

Section 1.06 Requirements and Fees

Table 2
Information Required to Support Application

All applications shall be filed on forms provided by the County and contain or be accompanied by the information required by Table 2, and any applicable ULMO section, with the required fee to help cover the cost of processing. Major Land Development Projects shall be submitted not less than 10 working days prior to the Planning Commission meeting and shall show the date of submittal.

Type of Application:	Information Required (Requirements are Cumulative, except # 13):
LAND DEVELOPMENT	
Minor (Final Plat or Site Plan Approval)	1. Location of all proposed structures, including free standing signs, 2. Required building setback lines, 3. Required landscaping and bufferyards, 4. Required off-street parking, 5. All information specified by Article 3 for conditional uses, as applicable.
Major (Preliminary Plat or Site Plan Approval)	
Major (Final Plat or Site Plan Approval) (Letter of Credit Plat)	
REVISIONS	1. Plat revisions by Developer/Owner/Surveyor, or by County on third submittal.
AMENDMENT	1. Draft of new text to be added and existing text to be deleted, 2. State reasons for change.
VARIANCE	1. State nature of variance, 2. Provide evidence of unnecessary hardship, 3. State necessity of variance.
APPEAL	1. State reasons for appeal, with specific reference to action being appealed.
Land Use Compliance Letter	

(Please obtain a checklist for projects from the Planning Department.)

Fees: Set per Fee Schedule adopted by Resolution of County Council

Section 1.07 Required Permits/Certificates

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.

No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

No permits inconsistent with the provisions of this Ordinance shall be issued unless accompanied by an approved variance.

Unless elsewhere regulated, the provisions of this Section shall not apply to the necessary construction, replacement or maintenance by a public utility of its outside plant facilities, including such items as poles, cross arms, guys, wire, cable and drops.

Section 1.08 Types of Required Permits/Certificates

One or more of the following permits/certificates together with the fees set per the Fee Schedule adopted by Resolution of County Council, which fees are non-refundable, shall be required by this Ordinance.

Permits (See Fee Schedule)
Building Permit
Repair Permit
Grading Permit
Right-of-Way Encroachment Permit
Development Permit
Certificate of Occupancy (use)
Stormwater Permit

Section 1.09 Building Permit

A building permit shall be required of all proposed building and/or development activity unless expressly exempted by the County Building Code.

Section 1.10 Repair Permit

When a permit is requested to make repairs only, the County may waive the requirements of a plat or plan.

Section 1.11 Grading (Land Disturbing) Permit

A grading permit approved by the Spartanburg County Public Works Department, Engineering Division shall be required prior to ANY land disturbing activity covered by the Spartanburg County Stormwater Management and Sediment Reduction Regulations (County Ordinance #497). [This ordinance has been replaced by the Storm Water Management Ordinance of Spartanburg County (No. O-09-02). (See also County Code Chapter 30, Article IV.)] This requirement applies to all land disturbing activities covered by this Unified Land Management Ordinance. No grading permit shall be issued in the absence of an approved Storm Water Management Plan.

Section 1.12 Right-of-Way Encroachment Permit

A Right-of-Way encroachment permit approved by the County Roads and Bridges Department shall be required prior to any improvements in Spartanburg County Road Rights-of-Way. No encroachment will be allowed in the absence of an approved Encroachment Permit. Reference to Section 2.02-8.

Section 1.13 Development Permit

No building, other structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part, to any other use, until a Development permit, certifying compliance with this Ordinance has been issued by the Planning Department staff, other than for such uses specifically exempted by this Ordinance or meet the following conditions: Continued identical use(s) of any building or land in existence and occupied on the effective date of this ordinance.

Section 1.14 Certificate of Occupancy

It shall be unlawful to use or occupy or permit the use of occupancy of any building or premises, or both, or parts thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use of structure until a Certificate of Occupancy has been issued by the County stating that the proposed use of the building or land conforms to the requirements of this Ordinance. A Certificate of Occupancy shall not be issued unless and until all required improvements have been met and approved by the County, a Letter-of-Credit notwithstanding.

Section 1.15 Inspections for Compliance

The County enforcement officer may make or require inspections of any land disturbing activity, construction or maintenance requirement to ascertain compliance with the provisions of this Ordinance and to ascertain compliance with approved permit applications, plats, plans, and/or certificates.

Section 1.16 Expiration of Permit

If the work described by any permit has not begun within six months from the date of issuance thereof, said permit shall expire, unless extended by the County upon application by the owner/developer.

Section 1.17 Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, the appropriate County agent or enforcement officer shall record and investigate such complaint, and take such action as provided by this Ordinance. Complaints may be filed in writing or verbally, stating fully the cause and basis thereof.

Section 1.18 Penalties for Violations

Any person violating any provision of this Ordinance shall upon conviction be guilty of a misdemeanor and shall be fined as determined by the court for each offense.

Where any building, structure, use or sign is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure, sign, or land is or is proposed to be used in violation of this Ordinance or in violation of an approved plan or plat granted by the County or Planning Commission, the enforcement officer may, in accord with the provisions of Section 56-7-80 of the South Carolina Code of Laws 1976, as amended, issue an ordinance summons, or institute injunction, mandamus, issue stop work order, withhold permits or Certificates of Occupancy, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use; to correct or abate the violation or to prevent the occupancy of the building, structure, or land. Each day such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues shall be deemed a separate offense.

ARTICLE 2 – DESIGN AND DEVELOPMENT STANDARDS

Section 2.01 Types of Land Development

For purposes of this Article, land development activity is divided into five categories:

1. Land Development, Generally
2. Land Development in Flood Hazard Areas
3. Land Development in the Vicinity of Spartanburg Downtown Memorial Airport

Design and development standards for each type of development follow.

Section 2.02 Land Development, Generally

The following requirements apply to all development in Spartanburg County, where applicable.

Section 2.02-1 Dimensional Standards

1. Purpose

The purpose of this Section is to establish order to the development process and reduce, if not eliminate, potential off-site conflicts regarding the development of a lot or parcel.

2. Lot Dimensions, Building Setbacks, and Height Requirements

Minimum lot areas, lot width, building setbacks and maximum height requirements are established on Table 3.

EXHIBIT A Table 3a – Residential Setbacks and Other Requirements

In any case where this table does not match the text in the chapters, use the requirements in the text.

Uses	Section Reference	Minimum Lot (Project Area - square feet)	Minimum Lot Frontage (feet)	Minimum Setback (feet from)									Maximum Height (feet)
				Front Lot Line See Footnote (Z):			Rear Lot Line	Side Lot Line	Residential Units				
				Arterial Street	Collector Street	Minor Street			One	25 or More (I)	Other Uses (A)	Spacing Between Buildings on Same Lot	
RESIDENTIAL													
Single-Family With or Without Community Sewer	NONE	(J)(Q)	50(K)(S)(U)(EE)	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	20(Z)	5 or 10(N)(Z)	NA	NA	NA	Sec. 2.02-6	(Y)
Duplex	NONE	(J)(Q)	50(K)(U)(EE)	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	20(Z)	5 or 10(N)(Z)	NA	NA	NA	Sec. 2.02-6	(Y)
Patio & Zero Lot Line Housing	3.01	4000 R	40/house (K)(S)(U)(FF)	50 (L)/83(M)	30(L)/55(M)	15(L)/40(M)	20(Z)	(H)(N)(Z)	NA	NA	NA	NA	(Y)
CONDITIONAL													
Townhouses	3.02	See Sec. 3.02	18/house (K)(S)(FF)	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	20(Z)	(G)(N)(Z)	NA	NA	NA	NA	(Y)
Attached Multi-Plex Dwelling Projects	3.02	See Sec. 3.02	50(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	10(N)(Z)	NA	NA	NA	20 + 5 per story over first (DD)	(Y)
Manufactured Homes	3.03	(J)(Q)	50(K)(S)(U)(EE)	50(L)/83(M)	30(L) / 55(M)	20(L)/45(M)	20(Z)	7.5 or 10(N)(Z)	NA	NA	NA	Sec. 2.02-6	(Y)
Manufactured Home Park	3.04	(87,120)	3-99 lots 60 ft. 100 lots or more 100 ft. (K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	7.5 or 10(N)(Z)	NA	NA	NA	20	(Y)
Accessory Apartments	3.05	-	-	50(L)/83(M)	30(L)/55(M)	20(L) / 45(M)	20(Z)	5 or 10(N)(Z)	-	-	-	10(DD)	(Y)
Accessory Use		-	-	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	5(Z)	5 or 10(N)(Z)	NA	NA	NA	NONE	(Y)
Home Occupations	3.06	See Sec. 3.06	-	-	-	-	-	-	-	-	-	-	Section 3.06
Mixed-Use – Residential Only	3.29	See Sec. 3.29	See Sec. 3.29	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	20(Z)	NA	NA	NA	20 +5 per story over first (DD)	(Y)

(A) Other uses include public parks, schools, religious institutions, hospitals, day care facilities, and nursing homes.
(G) No side yard required between townhouse units; 7.5 feet required between building and property line.
(H) If a zero lot line development, one side of lot shall provide a five-foot (5') side yard setback. If not a zero lot line development, each side shall have a three & ½ foot (3.5') side yard setback.
(I) 25 or more units in a platted subdivision.
(J) 8,000 sq. ft. with community sewer.
(K) Commercial/Industrial Developments must take access off a paved public or privately maintained road built to at least the County standards other than those for limited private residential developments. Other Uses require frontage on all weather or paved public or privately maintained road built to at least the County Standards.
(L) Setbacks shall be measured from the right-of-way line where dedicated. Setbacks may be modified by Section 2.02-2 Bufferyards.
(M) Where there is no right-of-way, measure from the centerline of the road.
(N) 10-ft side yard setback for corner lots within Residential Subdivisions on Minor and Major Residential Streets shall be measured from right-of-way.
(Q) Without Community Sewer, as determined by SC DHEC
(R) For Patio Homes designated deeded Common Areas may be substituted to fulfill the minimum requirements for setback, bufferyard and open space. A 10-ft. setback required between the unit and the Common Areas. In such cases, lot size may be reduced by up to 10%.
(S) 25 feet for approvable flag lots, see Section 2.05-4.
(U) Cul-de-sac lots must meet minimum frontage at the setback line.
(Y) Each additional foot above 35' add 1' to each side and rear yard setback.
(Z) All setbacks on roads are front setbacks as required by the road classification except as in footnote (N).
(DD) Spacing between residential buildings may be reduced if requirements of the International Residential Code are met.
(EE) Lot Frontage is controlled by the Subdivision Regulations. Use the larger of the two Frontage requirements.
(FF) Patio Homes and Townhouses must take their frontage on an internal road constructed as part of the development. Project frontage must meet the Subdivision Regulations.

EXHIBIT A Table 3b – Commercial & All Other Uses – Setbacks and Other Requirements

In any case where this table does not match the text in the chapters, use the requirements in the text.

Uses	Section Reference	Minimum Lot (Project area-square feet)	Minimum Lot Frontage (feet)	Minimum Setback (feet from)								Spacing between buildings on same lot	Maximum Height (feet)
				Front Lot Line See Footnote (Z)			Rear Lot Line Side Lot Line		Residential and Other Uses				
				Arterial Street	Collector Street	Minor Street			One Res.	25 or more Res. Units (I)	Other Uses (A)		
Auction House/Barn	3.07	(87,120)	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	20(Z)	15(Z)	500(W)	500(W)	NA	20(DD)	(Y)
Commercial Kennels and Certain Agricultural Uses	3.08	(20,000)	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	25(Z)	500(W)	1000 (W)	1000 (W)	20(DD)	(Y)
Mining Operations	3.09	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	25	25	(B) (W)	(B) (W)	NA	20(DD)	(Y)
Motor Speedways and Testing Tracks	3.10	NONE	60(K)(EE)	100(L)/133(M)	100(L)/125(M)	X	100(Z)	100(Z)	1000 (W)	2000 (W)	2000 (W)	20(DD)	(Y)
Outdoor Gun or Skeet Range	3.11	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	25(Z)	1000 (W)	1000 (W)	1000 (W)	20(DD)	(Y)
Sexually Oriented Businesses	3.12	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	20(Z)	15(Z)	200(W)	1000 (W)	(F) (W)	20(DD)	(Y)
Campgrounds and RV Parks	3.13	(217,800)	100(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	50(Z)	NA	NA	NA	10	(Y)
Fuel Products Bulk Storage and Distribution Facility	3.14	NONE	60(K)(EE)	Sec.3.14	Sec. 3.14)	X	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14
Off-Site Hazardous Chemicals	3.15	(87,120)	60(K)(EE)	Sec. 3.15	Sec. 3.15	X	Sec. 3.15	Sec. 3.15	Sec. 3.15	Sec. 3.15	Sec. 3.15	20(DD)	(Y)
Coin-Operated Amusement, Cash Payouts	3.16	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	20(Z)	15(Z)	NA	500(W)	500(W)	20(DD)	(Y)
Waste Management Facilities	3.17	Sec. 3.17	60(K)(EE)	See Sec. 3.17	See Sec. 3.17)	X	Sec. 3.17	Sec. 3.17	Sec. 3.17	Sec. 3.17	Sec. 3.17	20(DD)	(Y)
Communication Towers	3.18	See Sec. 3.18	(V)	(D)(E)	(D)(E)	(D)(E)(V)	(D)(E)(Z)	(D)(E)(Z)	(D)	(E)	Sec. 3.18	20(DD)	Sec 3.18
Junk/Salvage Yards	3.19	(217,800)	100(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	50(Z)	Sec. 3.19	Sec. 3.19	Sec. 3.19	20(DD)	Sec. 3.19-4(3)
Accessory Buildings/Uses – Non-Residential	3.20	NA	NA	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	5(Z)	5(Z)	NA	NA	NA	NONE	(Y)
Temporary Uses	3.21	-	-	-	-	-	-	-	-	-	-	-	Sec 3.21
Nuclear and Hazardous Waste Disposal	3.22	NOT permitted	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Certain Public Service Uses	3.23	Sec. 3.23	-	-	-	-	-	-	-	-	-	-	Sec. 3.23
Tattoo Facility	3.25	Sec. 3.25	50(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	15(Z)	Sec 3.25	Sec 3.25	Sec 3.25	20(DD)	(Y)
Flea Markets, Swap Meets, etc.	3.26	2 acres	60(K)(EE)	50(L)/83(M)	50(L)/83(M)	X	30(Z)	30(Z)	200	200	NA	20(DD)	(Y)
Asphalt Plants	3.27	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	50(Z)	1000(W)	1000(W)	1000(W)	20(DD)	(Y)
Scrap Metal Processors	3.28	217,800	100(K)(EE)	Sec 3.28	Sec 3.28	X	Sec 3.28	Sec 3.28	Sec 3.28	Sec 3.28	Sec 3.28	20(DD)	Sec 3.28
All Other Commercial and Industrial Uses	3.24	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	15(Z)	NA	NA	NA	20(DD)	(Y)
Mixed-Use Project	3.29	Sec. 3.29	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	25(Z)	25(Z)	50(Z)	50(Z)	50(Z)	20(DD)	(Y)
ALL OTHER USES		NONE	60(K)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	15(Z)	NA	NA	NA	20(DD)	(Y)

(A) Other Uses include public parks, schools, religious institutions, hospitals, day care facilities, nursing homes.
(B) 1,000 feet for mining involving explosives. 300 feet for mining not involving explosives.
(D) Height of tower minus 20 feet.
(E) Setbacks from platted subdivisions with 25 lots or more or at least 50 dwelling units within 1,000 feet of a proposed tower shall be 2 times the height of the tower (if the tower is less than 200 ft.) or 3 times the height of the tower if tower is 200 ft. or taller.
(F) 1,000 feet from another sexually oriented use and other uses listed in (A).
(I) 25 or more units in a platted subdivision.
(K) Nonresidential Developments must take access off a paved public or privately maintained road built to at least the County standards other than Section 2.05-3-Private Road Developments. Other Uses require frontage on all weather or paved public or privately maintained road built to at least the County Standards.
(L) Setbacks shall be measured from the right-of-way line where dedicated. Setbacks may be modified by Section 2.02-2, Bufferyards.
(M) Where there is no right-of-way, measure from the centerline of the road
(V) Minimum of a 25-foot recorded access easement to a publicly maintained road.
(W) Setbacks shall be measured from the proposed structure to the nearest property line.
(Y) Each additional foot above 35' add 1' to each side and rear yard setback.
X= Denied Access to Minor Street.
XX= Not Permitted.
(Z) All setbacks on roads are front setbacks as required by the road classification.
(DD) Spacing between non-residential buildings may be reduced if the requirements of the International Building Code are met. Twenty-foot spacing requirement does not apply to communication equipment buildings.
(EE) Lot Frontage is controlled by the Subdivision Regulations. Use the larger of the two Frontage requirements.

Section 2.02-2 Bufferyards

1. Purpose

The purpose of a buffer area is to minimize any potential adverse impact between adjacent land uses and minor streets; and promote land use compatibility.

2. Definition

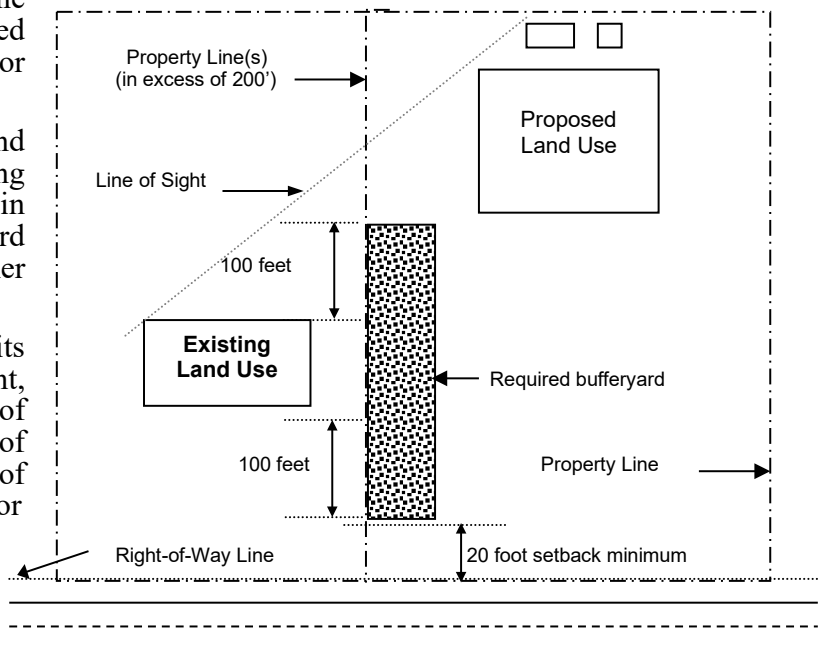
A bufferyard is a portion of a yard, which contains fences, walls, berms and plantings located along the perimeter of a parcel of land to lessen the impact of noise, land use intensity, and light on adjoining property. The area used in the bufferyard must be a portion of the property under development and may be a portion of the rear, side or front yard setback requirements of Section 2.02-1. Bufferyards are inclusive of required setbacks. The yard depths shown in the Bufferyard Illustrations are the minimum required.

3. Specifications and Options

To determine the required bufferyard for a given use, refer to Table 4, and match the abutting use with a proposed use or expansion of an existing use. Should a question arise as to the land use classification of a proposed or abutting use, Planning Department staff shall determine the classification. Next, refer to the Bufferyard Illustrations to determine the amount of bufferyard required. After review of the preliminary plan, the County staff shall determine the appropriate bufferyards. The requirements are given in 100-foot units as measured along the property line. Whenever a wall or fence and/or landscaping is required, the location of the structure shall be determined by Planning Department staff. After site review, fencing requirements may be changed by Planning Department staff. The required bufferyards must be installed before a Certificate of Occupancy or Certificate of Completion is given.

The length of a bufferyard shall extend the length of the property line separating two uses, except for property lines in excess of 200 feet, where the bufferyard need only extend 100 feet beyond either end of the existing use to be buffered.

However, if proposed use or its accessories are within the line of sight, the buffer may be extended. Line of sight shall be taken from corner of existing use structure to corner of adjacent proposed use structure and/or its accessory buildings, as shown. The above also applies to any second existing residential use structure on the same parcel.



4. Use of Existing Vegetation In Bufferyard Areas

Existing vegetation shall be retained to the degree practical and feasible with special attention given to existing trees 18 inches in diameter or larger at DBH. If the existing vegetation provides a screen equal to or greater than that which would be planted, no other plant material shall be required. In case of open woods, an additional planting of eye level shrubs such as hemlock or pines may be needed to improve screening.

Site plans submitted for approval shall show location and extent of existing vegetation within bufferyard areas. Approved site plans can only be altered or amended by the Planning Commission.

5. Materials

To achieve the desired results, only evergreen plants, suitable for local conditions, shall be used, to achieve an opaque screen as required. Deciduous trees may be planted along with the evergreens to

enhance the height of the screen. Lower story deciduous shrubs may be used in front of evergreen screens as part of the required number of plants. Refer to Table 5 for plant suggestions. When structures are used, the materials shall be durable and suitable for screening, as outlined in 2.02-2.9.

6. Plant Size and Caliper

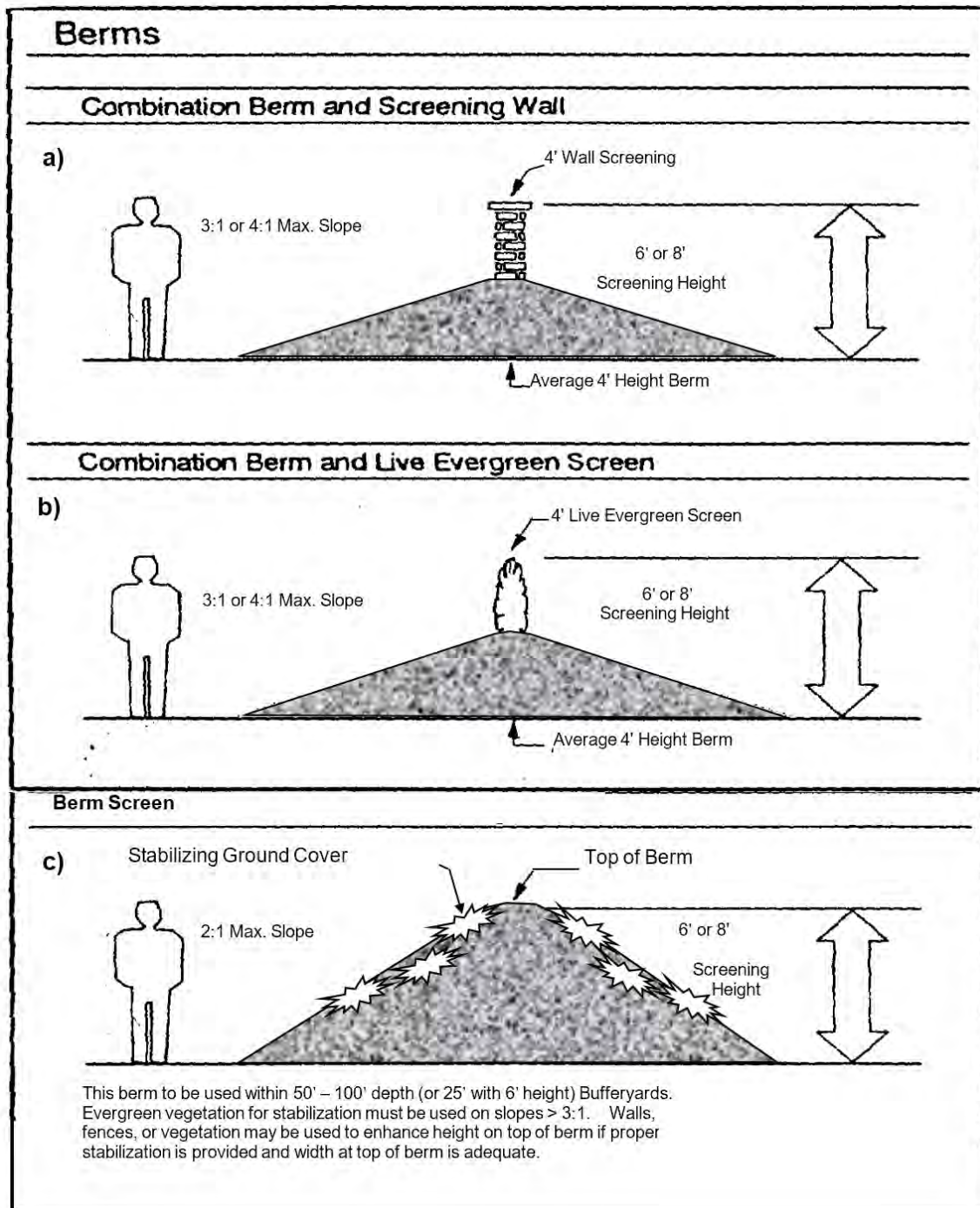
The minimum tree at planting shall be 6 to 7 feet in height and 2 or more inches in trunk diameter at a height of 18 inches above the ground. The minimum shrub shall be 2 to 3 feet in height but shall also be large enough to ensure an opaque screen within the specified time period of four (4) years, in accord with Bufferyard Illustration requirements. Both trees and shrubs shall be nursery stock with well-developed root systems unless comparable plants found in place can be used.

It is generally understood that the strict application of these provisions will apply. However, due to unique circumstances the Planning Department staff may approve an alternative method. When determined appropriate by staff one of the following alternatives may be used:

7. Berms

- a) Combination berms may be used to compensate for fences or walls. A six (6) or eight (8) foot high opaque structure can be a combination of berm and fence or wall to total six (6) or eight (8) feet.
- b) Combination berms may be used to compensate for live evergreen screens. A six (6) or eight (8) foot high opaque screen can be a combination of berm and evergreen plants to total six (6) or eight (8) feet.
- c) Stand-alone berms may be used to compensate for fences, walls or vegetative screens. A six (6) or eight (8) foot high opaque screen can be a berm planted with grass if the slope is 3:1 or less, or with evergreen vegetative ground cover to prevent erosion if the slope is greater than 3:1.

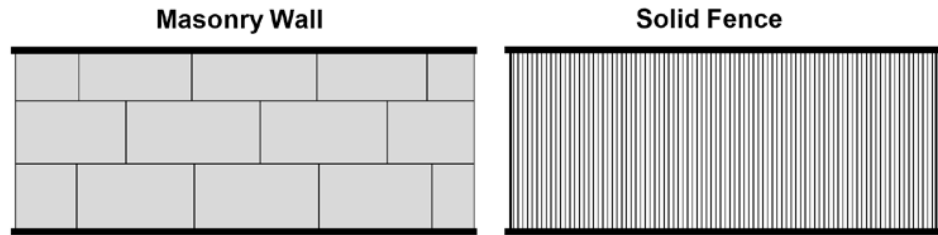
Bufferyard width and site conditions will determine the proper slope ratio to be used for berms. All berms are to have compacted and stabilized dirt material.



8. Fence and Wall Specifications

Walls must be made of masonry materials including poured concrete, concrete block covered with stucco, and brick. See Bufferyard Illustrations for placement options.

Chain link fences with evergreen hedge on the outbound side may be substituted for wooden fence of the same height, as approved by Planning Department staff. Refer to Table 5 for hedge plants which are among those acceptable. All plants must be sized and spaced to obscure the chain link fence within four (4) years of planting. Chain link fences with wood, plastic, or metal strips are expressly prohibited.



9. Front Yard Plant Strip Required

All commercial, industrial, office, and institutional developments must have at least a five (5) foot wide plant strip between the road right-of-way and any property development. The plant strip shall be grassed or mulched and may have plantings that do not interfere with sight distance for egress and ingress. On expansion projects, the requirement for a five (5) foot plant strip may be waived if it can be shown that existing or new dimensions of the lot or buildings make it impossible to comply.

10. Responsibility

It shall be the responsibility of the proposed new use to provide the bufferyard where required by this Ordinance, except that no new detached single-family dwelling or duplex shall be required to provide such bufferyard.

11. Required Maintenance

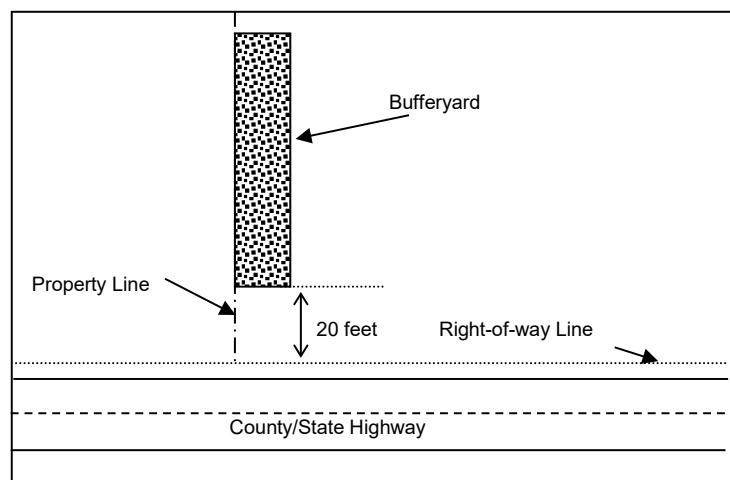
The maintenance of required bufferyards shall be the responsibility of the property owner. All such areas shall be properly maintained so as to ensure continued buffering. Dead trees shall be removed and promptly replaced with correct sized plants; debris and litter shall be cleaned; and berms, fences, and walls shall be maintained at all times. Failure to do so is a violation of this Ordinance, and may be remedied in the manner prescribed for other violations.

12. Use of Bufferyards

A bufferyard may be used for passive recreation and may be interrupted by access driveways not exceeding 16 feet in width (exceptions for uses requiring wide curb cuts may be approved by Planning Department staff). All other uses are prohibited, including off-street parking and accessory uses.

13. Sight Clearance

Bufferyards may not obscure a clear line of sight for vehicular traffic. Therefore, bufferyards should be placed no closer than 20 feet from street/road right-of-way lines.



14. Bufferyards for Industrial or Commercial Expansions

When an industrial or commercial land use expands in the direction of an existing adjacent land use, it is required to provide a bufferyard against that adjacent land use, as outlined in Table 4.

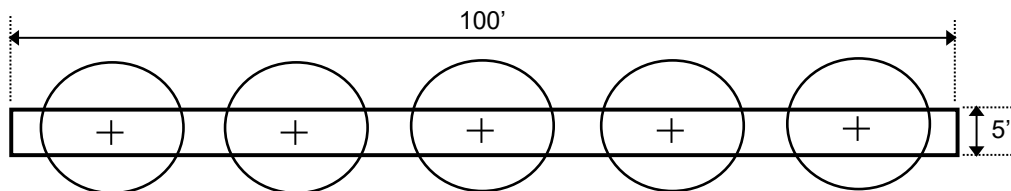
Table 4 Side and Rear Bufferyard Requirements (Note: Check Design Standards Section 2.08-9 for additional buffer yard requirements.)									
<i>Proposed Use (5)*</i>	<i>Existing Use (1)(2)</i>								
	Agricultural (with residence) (6)	Single-family Home (3)	All Other Residential (4)	Office/Institutional	Low Intensity Commercial	Medium Intensity Commercial	High Intensity Commercial	Light Industry	Heavy Industry
Office / Institutional	2	4	3	0	0	0	0	0	0
Manufactured Home Park	3	5	4	0	0	0	0	0	0
Multi-Family 1-3 units/acre	1	3	2	0	0	0	0	0	0
Multi-Family 4-8 units/acre	2	4	3	0	0	0	0	0	0
Multi-Family > 8 units/acre	3	5	4	0	0	0	0	0	0
Townhouses 1-3 units/acre	1	2	1	0	0	0	0	0	0
Townhouses 4-8 units/acre	2	3	2	0	0	0	0	0	0
Townhouses > 8 units/acre	3	4	3	0	0	0	0	0	0
Mixed-Use Projects	3	4	3	2	1	0	0	0	0
Mixed-Use Projects – Residential Only	2	3	2	0	0	0	0	0	0
Low Intensity Commercial	1	3	2	0	0	0	0	0	0
Medium Intensity Commercial	2	5	4	1	1	0	0	0	0
High Intensity Commercial	3	5	5	2	2	1	0	0	0
Light Industry	3	6A	5	2	2	1	1	0	0
Heavy Industry	4	6B	6	3	3	2	2	1	0
Footnotes apply only where indicated in the table. (1) Buffer along minor streets as if the property were an adjacent parcel. (2) In determining buffer yard classification, adjacent vacant parcel(s) that total less than 100 feet in width shall be disregarded, and the buffer applied shall be determined by the next adjacent property use. (3) Includes subdivision of 25 or more submitted for approval or recorded platted lots, or a single-family home or manufactured home on a minor street. (4) Requirements may be reduced by one side buffer yard class where existing residential use is located on an arterial street. (5) Planning Department Staff shall determine appropriate buffer yard within the classes listed above. (6) To be considered, existing residence must be within 100 feet of property line adjacent to new use. Accessory structures and uses are not to be considered. * If the proposed use is not stated on the site plan or plat, then the highest intensity buffer shall be required at perimeter of project boundary. If projects are phased, Buffer yard must be consistent with previous or other phases.									

Bufferyard Illustrations

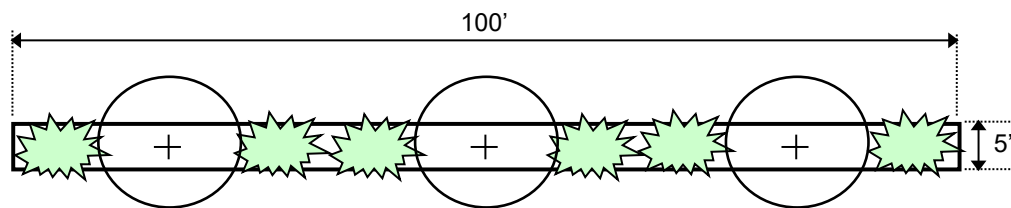
Following are examples of vegetation, fence, wall or berm layouts within each Bufferyard. "o.c." means 'on center', or from the center of one plant to the center of the next plant, indicating the possible spacing. The bottom border of each bufferyard represents the existing use side. The scale used in the illustrations is approximately 1"=20'-0". See Legend for symbol representations.

Bufferyard 1 Options

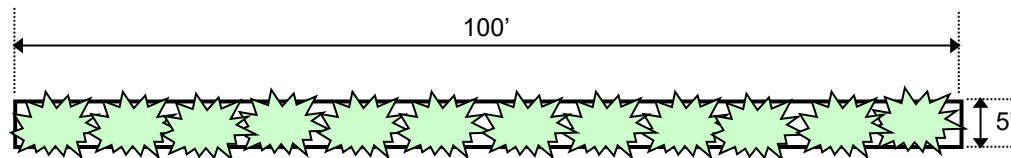
a) 5 trees (20' o.c.)



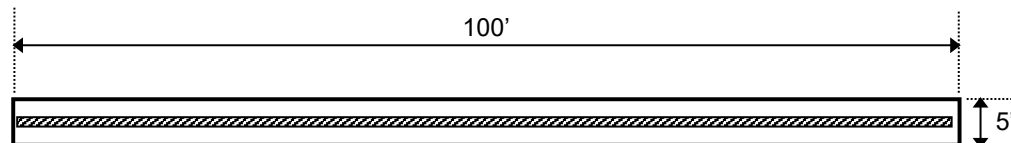
b) 3 trees (33' o.c.) & 6 shrubs



c) 12 shrubs (8' o.c.)

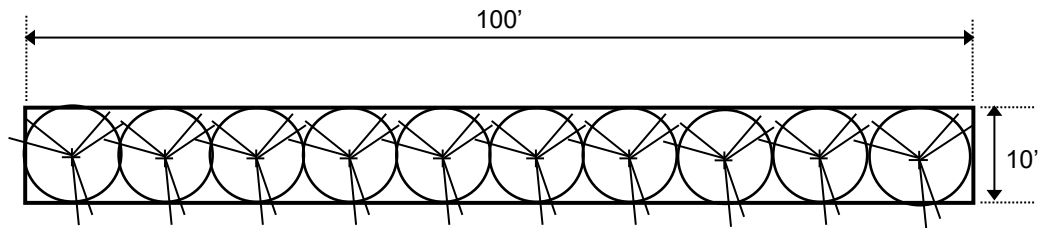


d) 6' fence

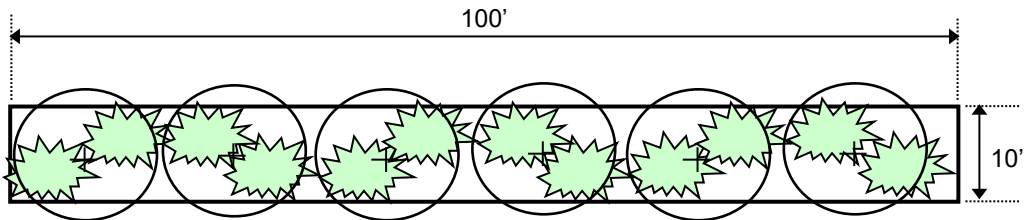


Bufferyard 2 Options

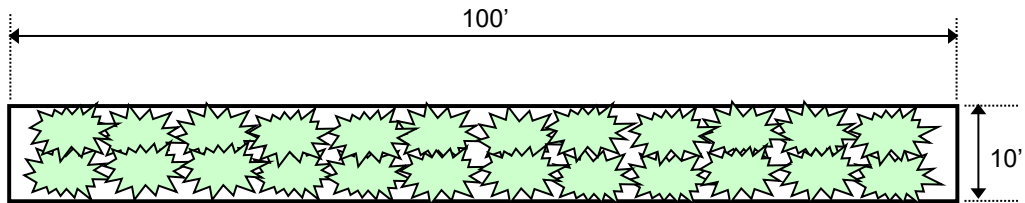
a) 10 trees (10' o.c. single row)



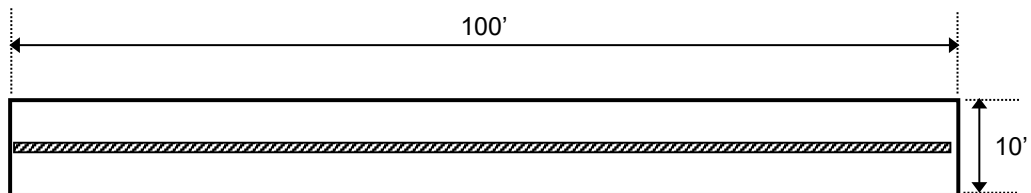
b) 6 trees (17' o.c. single row) & 12 shrubs (8' o.c. single row)



c) 24 shrubs (5'-8' o.c. two rows)

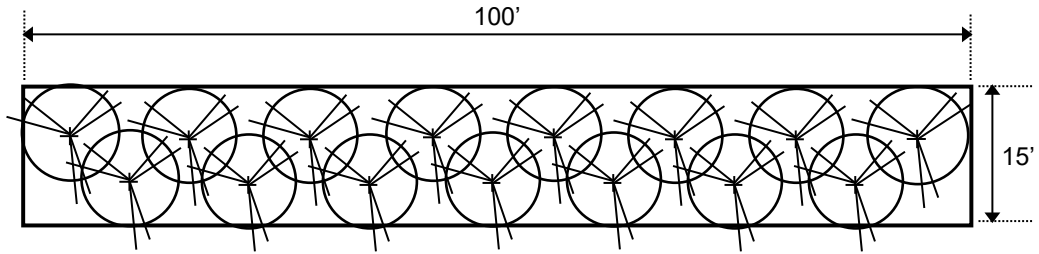


d) 6' fence

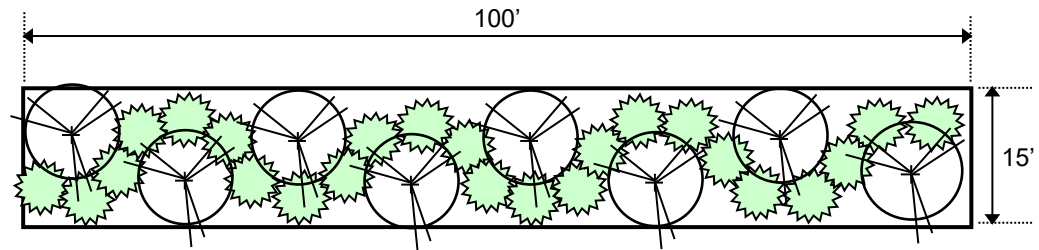


Bufferyard 3 Options

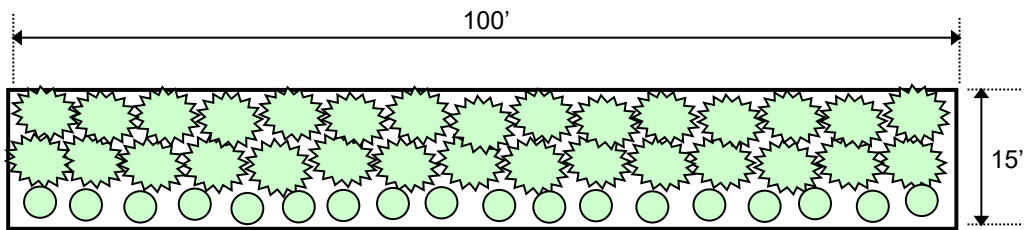
a) 15 trees (8' o.c. staggered rows)



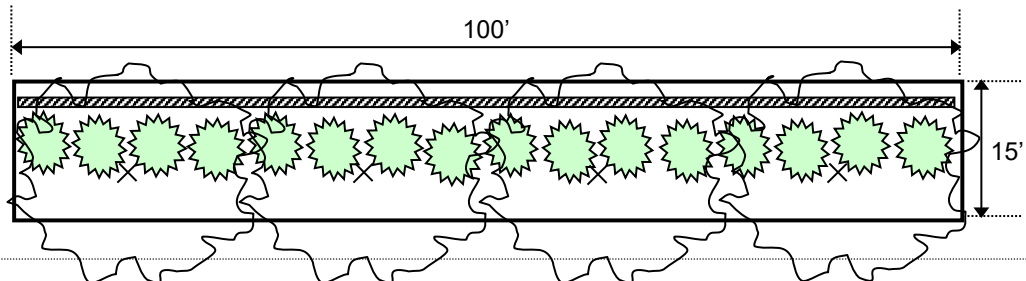
b) 8 trees (12' o.c.) & **24 shrubs** (4' o.c. single row; 8' o.c. two rows)



c) 48 shrubs (4' o.c. two rows; 6' o.c. three rows; or combine large and small)

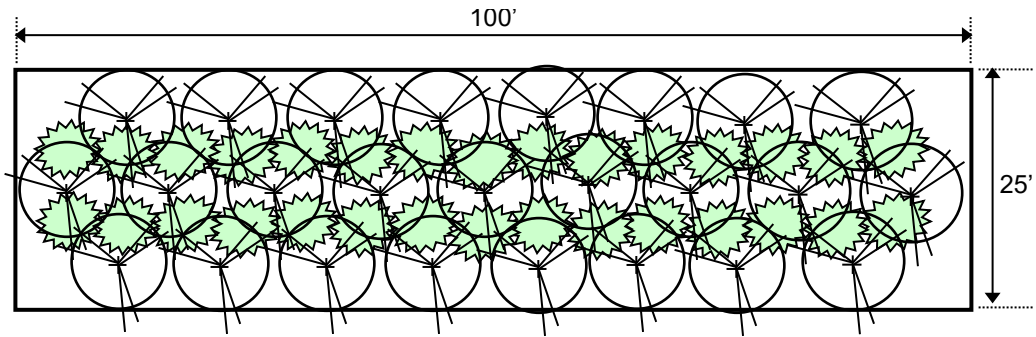


d) 6' fence & 20 shrubs or trees (5' o.c. single row; 8' o.c. single row, staggered; or a combination)

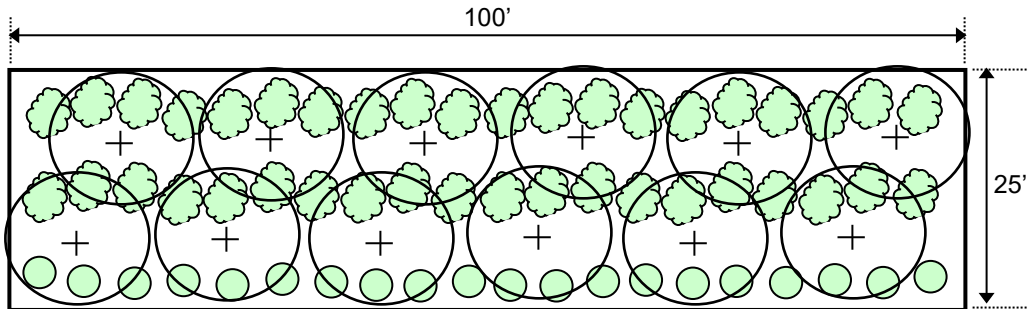


Bufferyard 4 Options
(Opaque Screen)

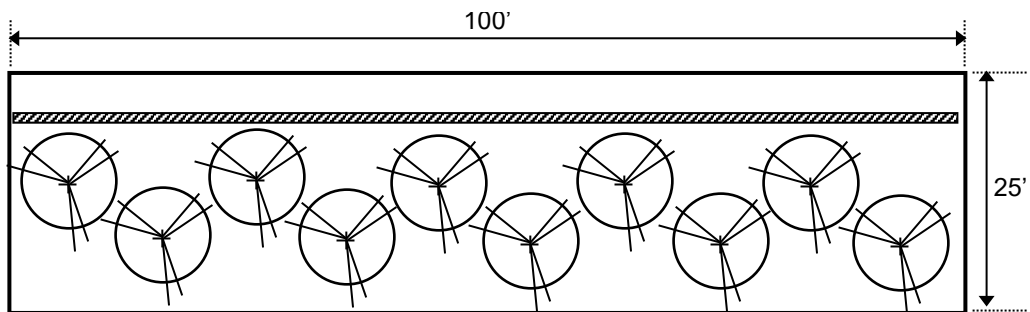
a) 25 trees (12' o.c. three rows) & **30 shrubs** (6' o.c. two rows)



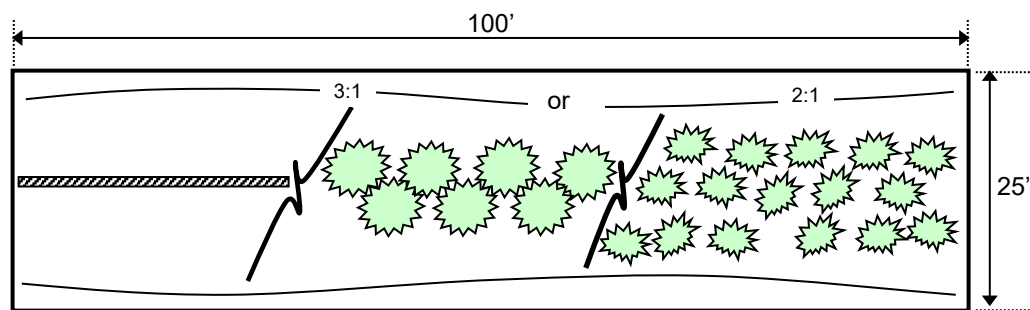
b) 12 trees (17' o.c. two rows) & **60 shrubs** (5' o.c. three rows)



c) 8' fence & 10 trees or shrubs (10' o.c. single row, staggered; 20' o.c. two rows)

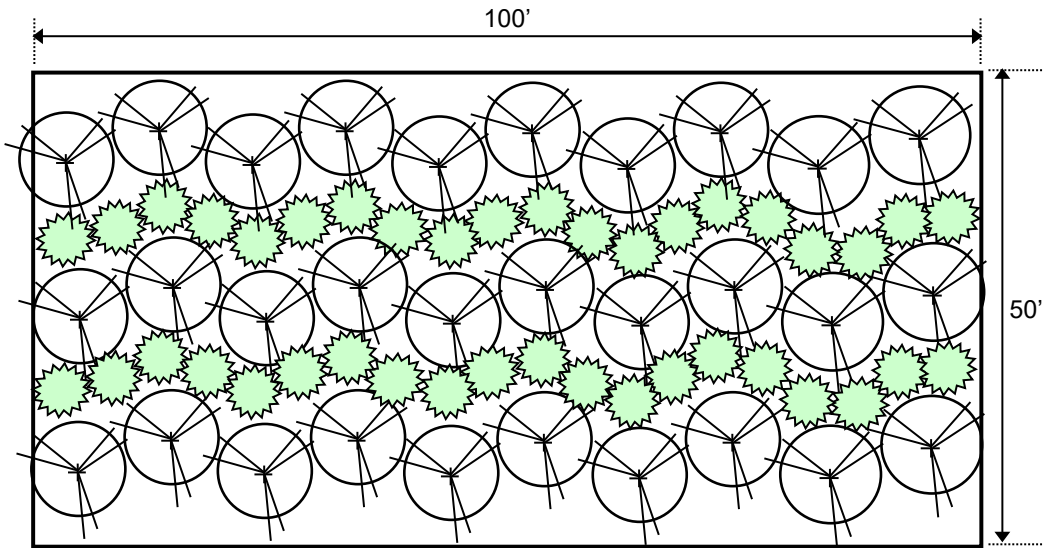


d) 3:1 Berm (4' Height) or 2:1 Berm (6' Height with stabilization vegetation)

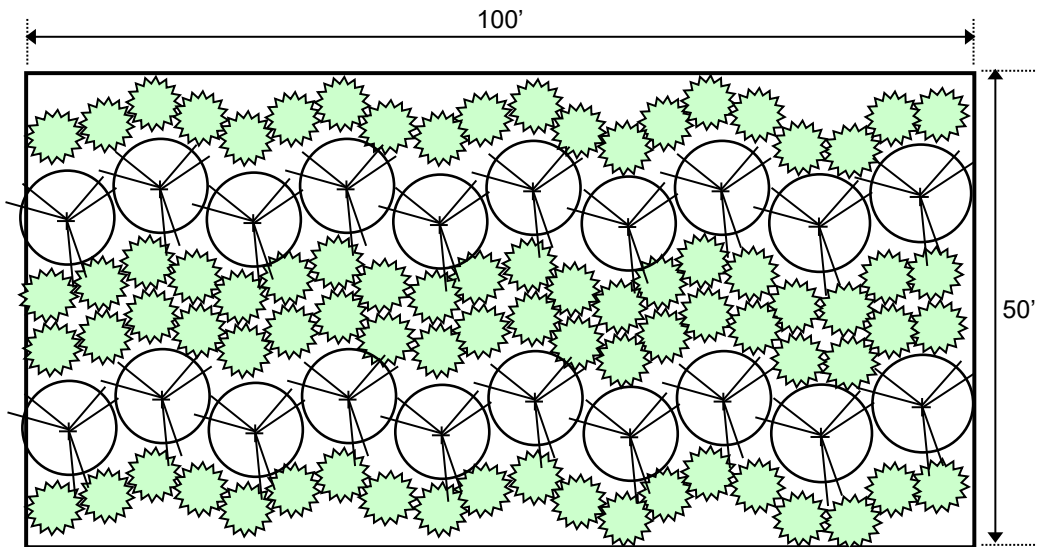


Bufferyard 5A Options
(Opaque Screen)

a) 30 trees (10' o.c. three rows) **& 40 shrubs** (5' o.c. two rows)

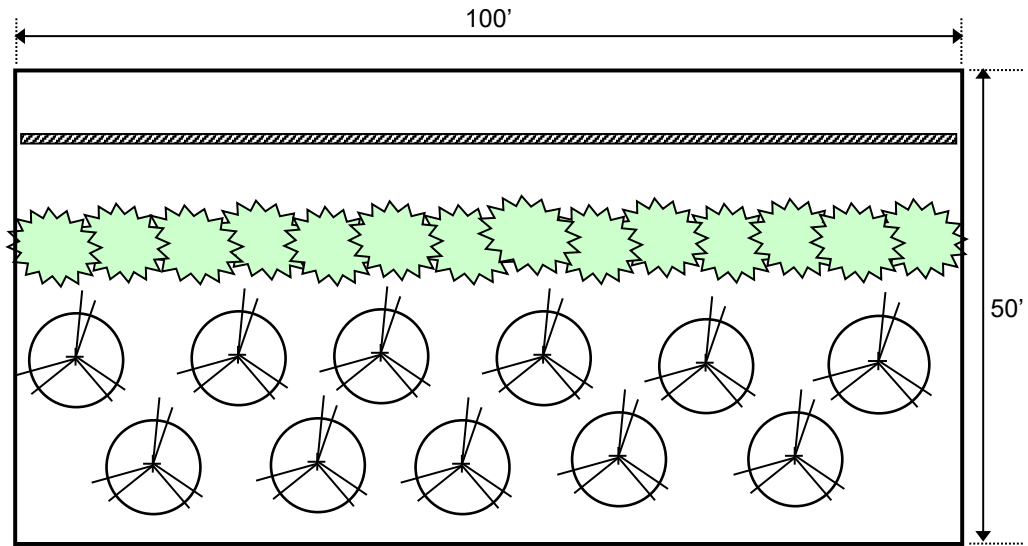


b) 20 trees (10' o.c. two rows) **& 80 shrubs** (5' o.c. four rows)

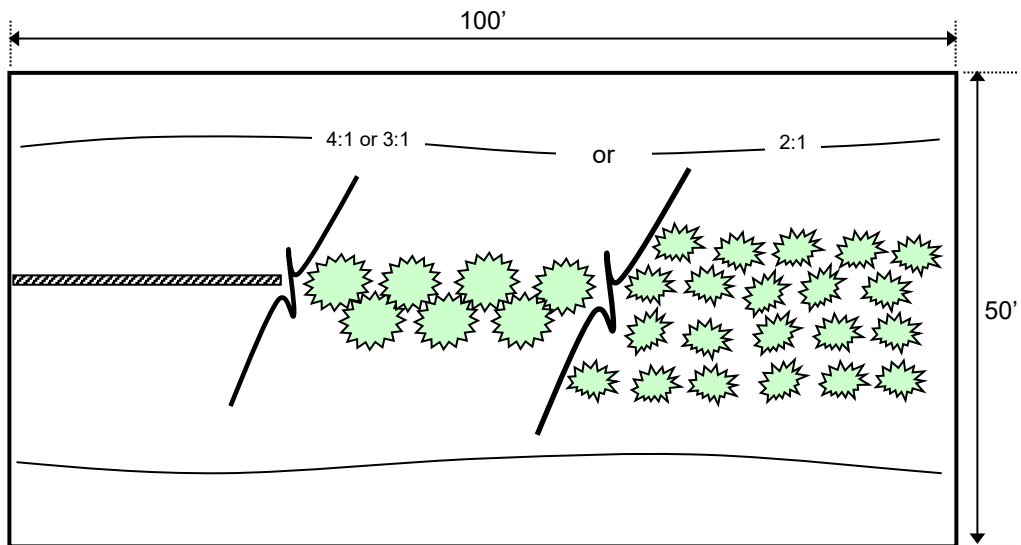


Bufferyard 5A Options (Opaque Screen)

c) 8' fence & 25 trees or shrubs (or a combination)

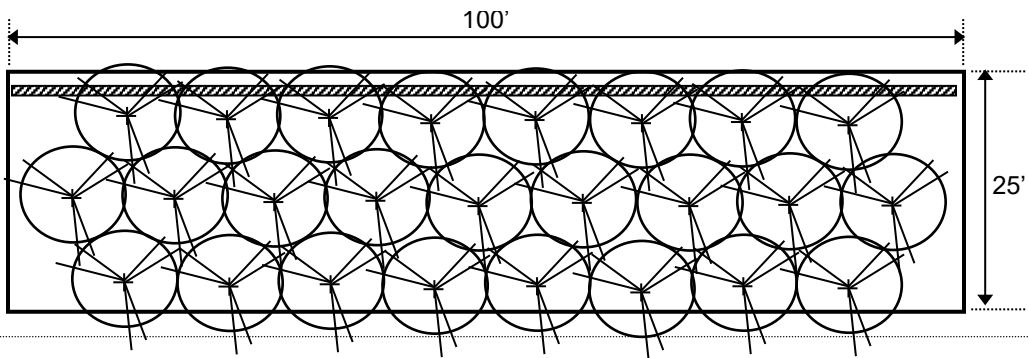


d) Any Berm option 4:1, 3:1, or 2:1 (With stabilization vegetation)

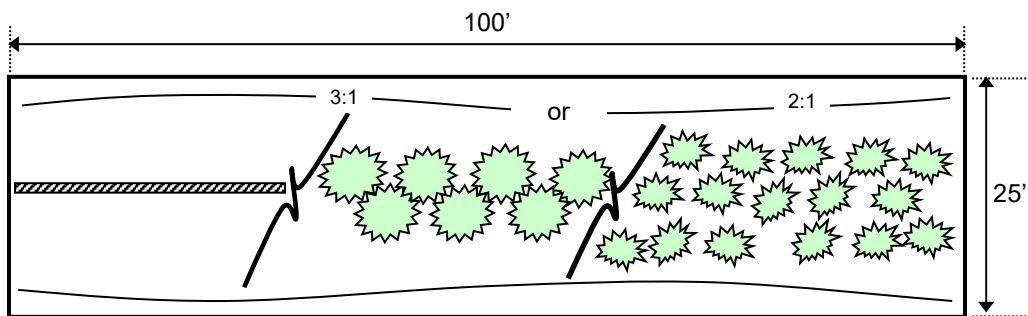


Bufferyard 5B Options
(Opaque Screen)

a) 6' wall & 25 trees or shrubs (10' o.c. three rows, staggered)

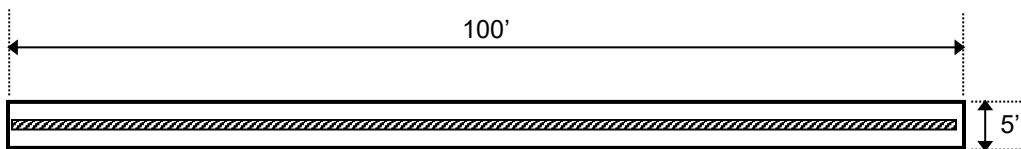


b) 3:1 Berm (4' Height) or 2:1 Berm (6' Height with stabilization vegetation)



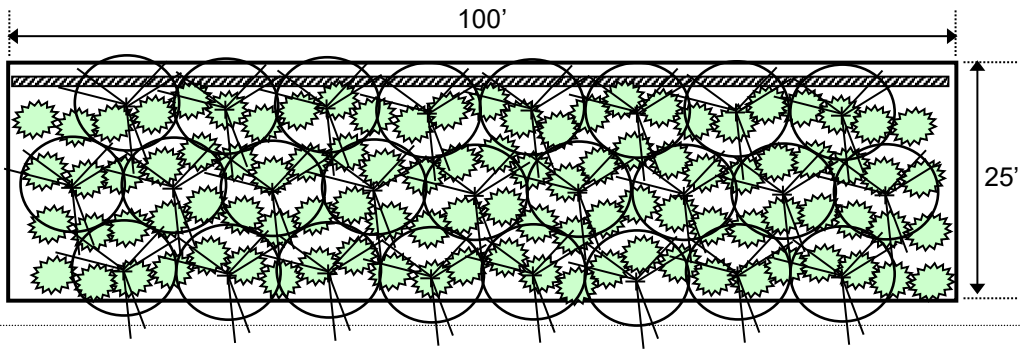
Bufferyard 5C Option
(Opaque Screen)

a) 8' wall

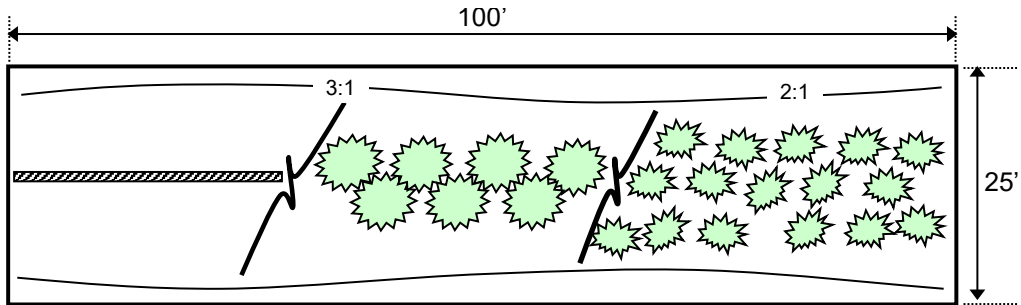


Bufferyard 6A Options
(Opaque Screen)

a) 6' wall & 25 trees (10' o.c. three rows, staggered) **& 100 shrubs** (4' o.c. four rows)

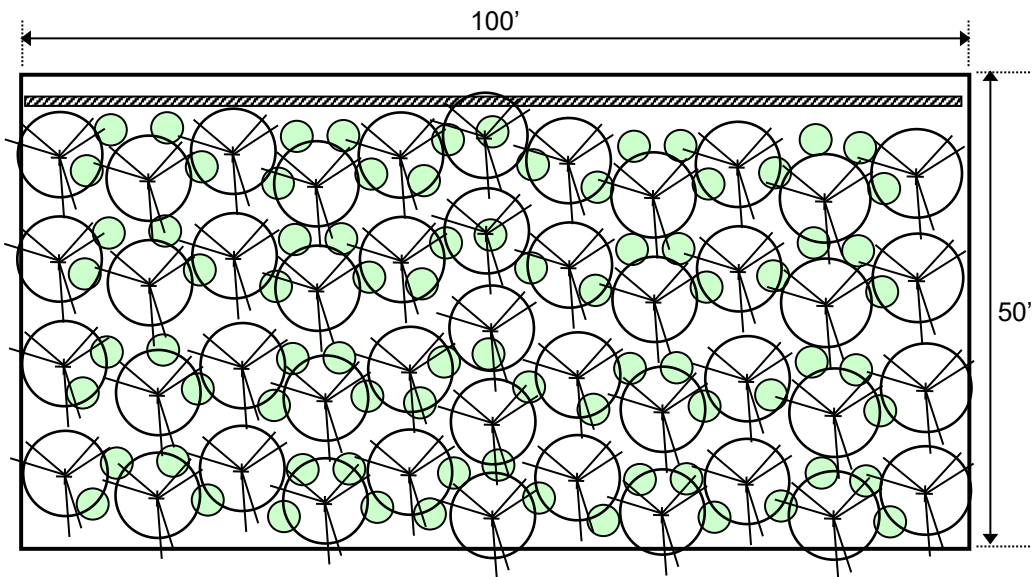


b) 3:1 Berm (4' Height) or 2:1 Berm (6' Height with stabilization vegetation)

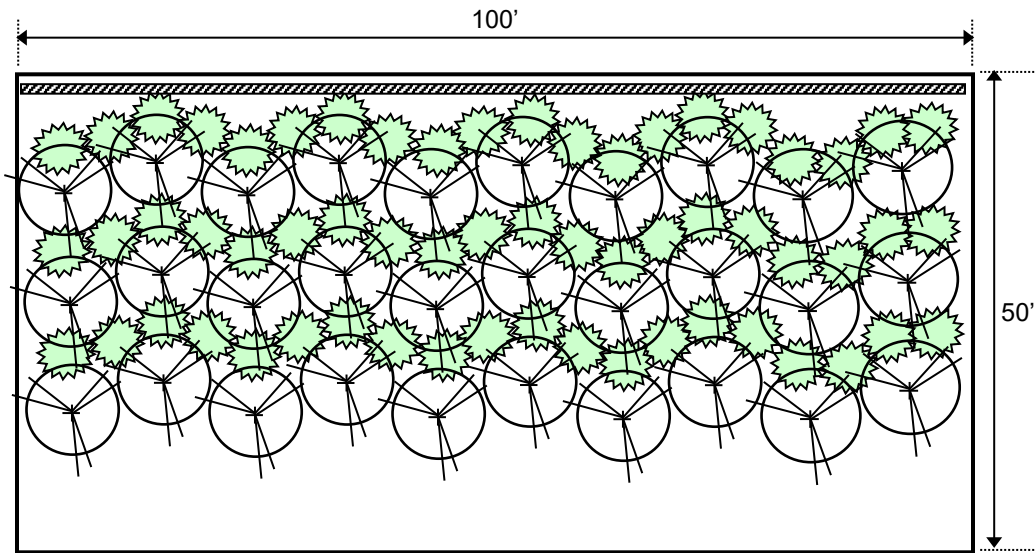


Bufferyard 6B Options
(Opaque Screen)

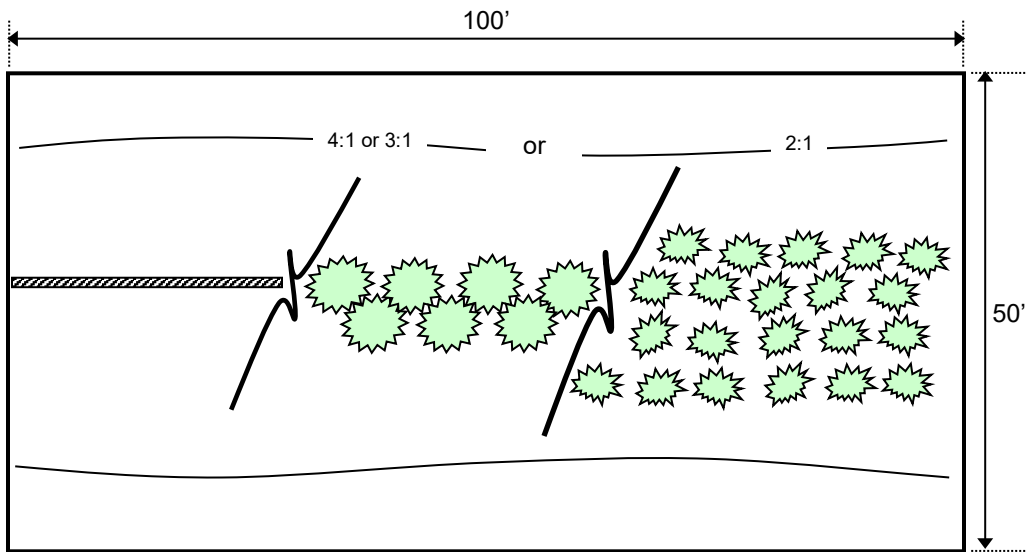
a) 8' fence & 45 trees (9' o.c. four rows) **& 80 shrubs** (5' o.c. four rows, staggered)

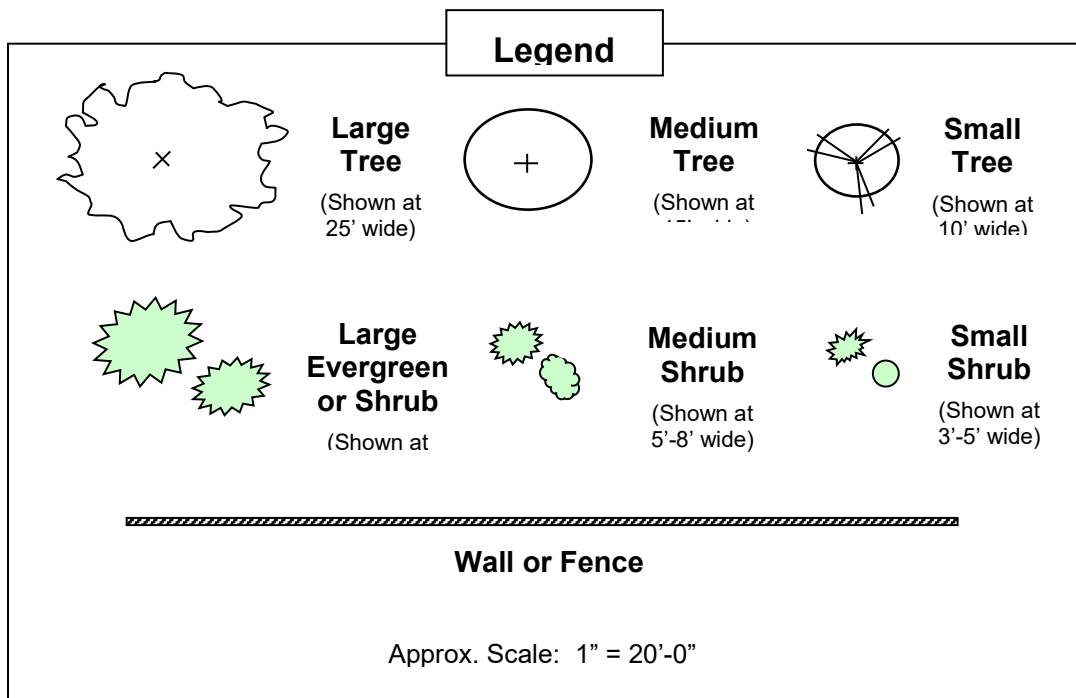


b) 30 trees (10' o.c. three rows) **& 120 shrubs** (5' o.c. six rows)



c) Any Berm option 4:1, 3:1, or 2:1 (With stabilization vegetation)





See Table 5 for Suggested Landscape Plants.

Table 5 Suggested Landscape Plants						
<i>Plant Name Or Variety Name</i>	<i>Approximate Mature Height</i>	<i>Width</i>	<i>Growth Rate</i>	<i>Screening Capacity</i>	<i>Maintenance Level</i>	<i>Evergreen or Deciduous</i>
Large Trees or Evergreens						
Leyland Cypress	70'	12'	Fast	Good	Low	Evergreen
Loblolly Pine	70'	25'	Fast	Good	Low	Evergreen
Maple, Red	40'-60'	35'-40'	Med-Fast	Good	Low	Deciduous
Maple, Sugar	70'	45'	Med-Fast	Good	Low	Deciduous
Oak, Pin	70'	50'	Fast	Good	Low	Deciduous
Oak, Red	65'	65'	Fast	Good	Low	Deciduous
Oak, Sawtooth	40'	30'	Fast	Good	Low	Deciduous
Oak, Water	70'	45'	Med-Fast	Good	Low	Deciduous
Oak, Willow	50'	35'	Medium	Good	Low	Deciduous
Red Cedar	50'	20'	Medium	Excellent	Low	Deciduous
River Birch	70'	40'	Fast	Good	Low	Deciduous
Southern Magnolia	70'	40'	Slow-Med	Excellent	Low	Evergreen
White Pine	70'	40'	Fast	Good	Low	Evergreen
Medium Trees or Evergreens						
Cherry Laurel	25'	20'	Fast	Good	Low	Deciduous
Flowering Dogwood	30'	30'	Slow-Med	Good	Medium	Deciduous
Holly, Nellie Stevens	25'	15'	Fast	Excellent	Low	Evergreen
Japanese Cherry 'Kwanzan'	35'	35'	Med-Fast	Good	Low	Deciduous
Small Trees or Evergreens						
Anise	20'	15'	Medium	Excellent	Low	Evergreen
Crape Myrtle	20'	30'	Fast	Good	Low	Deciduous
Fortune's Tea Olive	20'	15'	Slow	Excellent	Low	Evergreen
Holly, Chinese 'Burford'	20'	15'	Fast	Excellent	Low	Evergreen
Holly, Emily Bruner	20'	15'	Fast	Excellent	Low	Evergreen
Ligustrum Japonica	10'	8'	Fast	Excellent	Low	Evergreen
Torulosa Juniper 'Hollywood'	15'	10'	Fast	Good	Low	Evergreen

Section 2.02-3 Landscaping

1. Purpose

The purpose of landscaping is to improve the appearance of vehicular use areas and development abutting public rights-of-way; to protect, preserve, and promote the aesthetic appeal, scenic beauty, character and value of land in the County; to promote public health and safety through the reduction of noise pollution, storm water runoff, air pollution, visual pollution, and artificial light glare.

2. Definition

Landscaping is a type of open space permanently devoted and maintained for the growing of shrubbery, grass, other plants and trees.

3. Where Required

No proposed commercial, institutional, industrial or other non-residential use shall hereafter be established and subsequently used unless landscaping is provided in accord with the provisions of this Section. Expansions shall meet the minimum requirements of the expansion area only. Landscaping is not required for existing uses.

4. Landscaping Plan

A landscaping plan is required and the developer is responsible for meeting the landscaping requirements of this Ordinance.

5. Landscaping Requirements

Required landscaping shall be provided as follows:

- (1) Along the outer perimeter of a lot or parcel, where required by the bufferyard provisions of this Article to buffer and separate incompatible land uses. The amount specified shall be as prescribed by Section 2.02-2.
- (2) There is no landscaping requirement for sites needing fewer than 20 parking spaces. Landscaped areas shall be provided for any open vehicular use area containing 20 or more parking spaces, or fraction thereof. Landscaped areas shall be located in such a manner as to divide and break up the expanse of paving and at strategic points, but shall contain not less than one canopy tree per 20 parking spaces, or fraction thereof. This will allow for clustering of trees. In no case shall a parking space be located more than 100 feet from the trunk of a canopy tree. Elsewhere, landscaped areas shall be designated to soften and compliment the building site.

6. Landscaped Areas

- (1) All landscaped areas in or adjacent to parking areas shall be protected from vehicular damage by a raised concrete curb or an equivalent barrier of six (6) inches in height. The barrier need not be continuous.
- (2) Interior landscaped areas containing canopy trees must have a minimum area of eight (8) feet by eight (8) feet in size.
- (3) Landscaped areas adjacent to parking spaces shall be landscaped so that no plant material greater than 12 inches in height is located within two feet of the curb or other protective barrier. (Plant material greater than 12 inches in height would be damaged by the automobile bumper overhang or by doors swinging open over the landscaped areas.)

7. Required Maintenance

The maintenance of required landscaped areas shall be the responsibility of the property owner. All such areas shall be properly maintained so as to assure their survival and aesthetic value.

Section 2.02-4 Common Open Space

1. Purpose

The purpose of this section is to ensure adequate open space for high density residential development; to integrate recreation, landscaping, greenery and/or natural areas into such projects;

to promote the health and safety of residents of such projects; and to compensate for the loss of open space inherent in single-family residential projects.

2. Definition

Common open space is land and/or water bodies used for recreation, amenity or buffer; it shall be freely accessible to all residents and property owners of a development, where required by this Ordinance. Open space shall not be occupied by buildings, structures, roads, or parking, other than those in conjunction with the use of the open space. Nor shall it include the yards or lots of residential dwelling units required to meet minimum lot area or parking area requirements.

3. Common Open Space Plan

Proposed uses/projects required by this Ordinance to have common open space shall be accompanied by an open space or landscaping plan as part of the application. The plan shall:

- (a) Show natural areas of undisturbed vegetation or areas replanted with vegetation construction. Woodlands and wetlands are specific types of natural areas.
- (b) Designate the type of open space, which will be provided.
- (c) Specify the manner in which common open space shall be perpetuated, maintained and administered.

4. Types of Common Open Space and Required Maintenance

The types of common open space which may be provided to satisfy the requirements of this Ordinance together with the maintenance required for each are as follows:

- (a) Maintenance is limited to removal of litter, dead trees, plant materials, and brush. Natural watercourses are to be maintained as free flowing and devoid of debris. Stream channels shall be maintained so as not to alter floodplain levels.
- (b) Recreational areas are designed for specific active recreational uses such as tot lots, tennis courts, swimming pools, ballfields, and similar uses.
- (c) Greenways are linear green belts linking residential areas with other open space areas. These greenways may contain bicycle paths, footpaths, and bridle paths. Connecting greenways between residences and recreational areas are encouraged.
- (d) Landscaped areas, lawns and required buffer areas, including creative landscaped areas with gravel and tile, so long as the tile does not occupy more than two percent of the required open space. Lawns, with or without trees and shrubs, shall be watered regularly to ensure survival and mowed regularly to ensure neatness.

5. Preservation of Open Space

Land designated as open space may not be separately sold, subdivided or developed. Open space areas shall be maintained so that their use and enjoyment as open space are not diminished or destroyed. Open space areas may be owned, preserved and maintained as required by this section by any of the following mechanisms or combinations thereof:

- (a) Dedication and acceptance by the County.
- (b) Common ownership of the open space by a homeowner's association, which assumes full responsibility for its maintenance.
- (c) Deed-restricted, private ownership which shall prevent development and/or subsequent subdivision of the open space land and provide the maintenance.

In the event that any private owner of open space fails to maintain same, the County may in accordance with the Open Space Plan and following reasonable notice, demand that deficiency of maintenance be corrected, and enter the open space to maintain same. The cost of such maintenance shall be charged to those persons having the primary responsibility for maintenance of the open space.

Section 2.02-5 Off-Street Parking and Loading

1. Purpose

The purposes of this Section are to ensure adequate provision of on-site parking and loading space, to improve traffic circulation and minimize vehicular and pedestrian conflicts, to reduce the expense of paving, and to promote the aesthetic appeal of parking lots.

2. Land to Provide Parking

Required off-street parking must be provided on the same lot or parcel as the principal use for which it is required; however, street separation is permissible.

3. Numerical Requirements, Off-Street Parking

When any new development is commenced or when any existing development is enlarged by 10% or more, or the use changed, provision shall be made for off-street vehicular parking facilities on the same lot in accordance with the standards of this Section.

Off-street parking provided to comply with the provisions of this Section shall not be reduced below the requirements herein.

Table 6 Off-Street Parking Requirements	
Use	Required Off-Street Parking Spaces
Amusement-Coin Operated, Video Arcades, etc.	6.0 per 1,000 sq. ft. of GFA
Animal Shelter & Pounds	1.0 per 1,000 sq. ft. of GFA
Antique Store	1.0 per 350 sq. ft. of GFA
Apartment Development	1.5 per dwelling unit <i>plus</i> 1.0 per every 5 units for visitor parking
Apparel & Accessory Stores	1.0 per 350 sq. ft. of GFA
Aquarium	2.0 per 1,000 sq. ft. of GFA
Attached Multi-Plex Dwelling Projects	See Apartment Development, Condominium Development, or Townhouse Development
Automotive, Repair & Services	1.0 per 300 sq. ft. of GFA <i>plus</i> 1.0 per 5,000 sq. ft. of gross land area
Automotive/Recreational Vehicle/Boat Dealers	2.0 per 1,000 sq. ft. of GFA <i>plus</i> 1.0 per every 20 vehicle display spaces
Barber/Beauty Shops/Tattoo Facilities	1.0 per each employee <i>plus</i> 2.0 per chair
Bed & Breakfast Inns	1.0 per guestroom <i>plus</i> 1.0 per each employee
Billard/Pool Halls	1.0 per 200 sq. ft. of GFA
Book Stores	1.0 per 350 sq. ft. of GFA
Bowling Centers	5.0 per lane
Broadcasting & Telecommunications	1.0 per 500 sq. ft. of GFA
Business Services	1.0 per 350 sq. ft. of GFA
Camera & Photography Supply	1.0 per 350 sq. ft. of GFA
Campgrounds, RV Parks	1.5 per RV / campsite or dwelling unit <i>plus</i> 1.0 per employee
Car Washes	Mechanical: 1.0 per every 2 employees <i>plus</i> 1.0 per manager / owner <i>plus</i> stacking spaces equal to 5 times the maximum capacity of auto washing unit. Self-Service: Stacking spaces equal to 5 times the maximum capacity.
Cemeteries	None
Churches	1.0 per every 4 seats in the main assembly room
Clubhouses – Development Specific	1.0 per 350 sq. ft. of GFA
Communication Tower Antenna	None
Condominium Development	2.0 per dwelling unit
Correctional Institution	1.0 per each employee on largest shift <i>plus</i> 1.0 per 25 inmates
Crematories	1.0 per 500 sq. ft. of GFA
Day Care Services (Nursery School)	1.0 per 300 sq. ft. of GFA with designated drop-off & stacking.
Depository Institutions, Banks	5 stacking spaces per drive-in window <i>plus</i> 1.0 per each employee on largest shift <i>plus</i> 1.0 per 300 sq. ft. of GFA
Drug Stores	1.0 per 350 sq. ft. of GFA

Dwelling, Single-Family & Duplex, Two-Family	2.0 per dwelling unit
Fairs, Carnivals	By individual review
Fire Departments, EMS	4.0 per bay
Fireworks	1.0 per 350 sq. ft. of GFA
Flea Markets	1.5 per stall
Florists	1.0 per 350 sq. ft. of GFA
Fuel Dealers	1.0 per 500 sq. ft. of GFA
Funeral Chapels (except crematories)	5 spaces <u>plus</u> 1.0 per every 2 seats in the main assembly room
Furniture, Home Furnishings	1.0 per 350 sq. ft. of GFA
Gasoline Service Stations-Full Service	1.0 per each employee on largest shift <u>plus</u> 3 for each service rack or car wash
Gasoline Service Stations-Self Service	1.0 per 600 sq. ft. of GFA
Gift, Novelty & Souvenir Shops	1.0 per 350 sq. ft. of GFA
Golf, Driving Range-only	1.0 per tee <u>plus</u> 1.0 per each employee on largest shift
Golf, Miniature, Putt-Putt	1.0 per hole <u>plus</u> 1.0 per each employee on largest shift
Golf, Par 3-only	2.0 per hole <u>plus</u> 1.0 per each employee on largest shift
Government, Executive, Legislative, General	1.0 per 350 sq. ft. of GFA
Gravestones, Monuments	1.0 per each employee
Grocery Store-Convenience, (i.e.7-11)	1.0 per 100 sq. ft. of GFA
Grocery Store-Supermarket	1.0 per 350 sq. ft. of GFA
Hardware Stores	1.0 per 350 sq. ft. of GFA
Health Services-Urgent Care (No beds)	1.0 per 150 sq. ft. of GFA
Health, Home Care Services	1.0 per 500 sq. ft. of GFA
Hobby, Toy & Game Shops	1.0 per 350 sq. ft. of GFA
Holdings, Investment Companies	1.0 per 350 sq. ft. of GFA
Hospitals, Institutions-Medical (Beds)	1.0 per each bed <u>plus</u> 6.0 per 1000 s.f. of office & administrative area
Hotels, Rooming Houses, Lodging, Motels	1.1 per room or suite <u>plus</u> 1.0 per every 3 patrons of maximum capacity of each meeting/banquet room <u>plus</u> 50% of spaces otherwise required for accessory uses (i.e. restaurants, lounges, etc.)
Industry-Heavy, Publishing, Manufacturing, Distributing	1.0 per company vehicle left on premises <u>plus</u> 1.0 per each employee on largest shift
Industry-Light	2.0 per every 3 employees
Jewelry Shops	1.0 per 350 sq. ft. of GFA
Junk Yards, Salvage Yards	1.0 per each employee PLUS 1.0 per business vehicle <u>plus</u> 1.0 per 350 sq. ft. GFA
Laundries/Dry-cleaning-Coin Operated	1.0 per 150 sq. ft. of GFA
Laundry, Cleaning & Garment Services	1.0 per 500 sq. ft. of GFA
Lawn & Garden Equipment & Supply Stores	1.0 per 350 sq. ft. of GFA
Libraries	1.0 per 350 sq. ft. of GFA <u>plus</u> 1.0 per each employee on largest shift
Liquor Stores	1.0 per 350 sq. ft. of GFA
Manufactured Home Parks	2.0 per dwelling unit
Marina/Marina with Landing	3.0 per every 4 slips <u>plus</u> 10% of spaces large enough for cars with boat trailers
Medical & Dental Laboratories	1.0 per 500 sq. ft. of GFA
Merchandise Stores (General)	1.0 per 350 sq. ft. of GFA
Mining	2.0 per every 3 employees
Mixed-Use Projects/Mixed Use Projects – Residential Only	Calculate by breaking down uses per this Table
Mobile Home Dealers	1.0 per every 10 mobile homes on display <u>plus</u> 1.0 per 300 sq. ft. of office space with a minimum of 5 spaces
Monasteries, Convents	1.0 per every 6 residents <u>plus</u> 1.0 per each employee <u>plus</u> 1.0 per every 5 chapel seats (if possible)
Motor Freight Transport	1.0 per each employee on largest shift <u>plus</u> 1.0 per truck parked on site
Motorcycle Dealers	1.0 per 600 sq. ft. of GFA
Multi-Family	See Attached Multi-Plex Dwelling Projects

Museums, Art Galleries	1.0 per 350 sq. ft. of GFA
Night-Club, Cocktail Lounge, Tavern, Disco, Bar	1.0 per every 3 seating accommodations <u>plus</u> 1.0 per every 2 employees on largest shift or 1.0 per 100 sq. ft. of GFA, whichever requires the greatest number of spaces
Nursing & Personal Care Facilities	1.0 per every 5 patient beds <u>plus</u> 1.0 per each employee on largest shift
Office Administrative/Professional Services	1.0 per 350 sq. ft. of GFA
Offices & Clinics of Physicians	1.0 per 150 sq. ft. of GFA
Paint, Glass & Wallpaper	1.0 per 350 sq. ft. of GFA
Parcel Delivery Services	1.0 per 250 sq. ft. of GFA
Parks & Playgrounds, Public/Non-Athletic	1% of land area
Patio Homes	2.0 per dwelling unit
Pawn Shops	1.0 per 350 sq. ft. of GFA
Photographic Studios, Portraits	1.0 per 350 sq. ft. of GFA
Physical Fitness Facilities	1.0 per 300 sq. ft. of GFA
Produce Stand	1.0 per 350 sq. ft. of GFA
Racetracks	1.0 per every 4 seats provided
Racquetball/Handball	1.0 per 200 sq. ft. of GFA
Refuse Systems, Sanitary Landfills, Dumps	See Waste Management Facilities(Section 3.17)
Rehabilitation, Vocational Services	1.0 per 350 sq. ft. of GFA
Residential Care, Congregate Care, Assisted Living	1.0 per 500 sq. ft. of GFA
Restaurant/Food Service-with inside or outside seating	1.0 per every 3 seats-including dining & drinking areas <u>plus</u> 2.0 for every 3 employees on largest shift
Restaurant/Food Service- Drive-through only	1.0 per 150 sq. ft. of GFA <u>plus</u> area for 8 stacking spaces for the first drive-in window & 6 stacking spaces for the additional drive-in window
Rifle/Shooting Range-Outdoor	1.0 per target area <u>plus</u> 1.0 per each employee
Scrap Metal Processor	1 per 40,000 square feet of gross land area (inside screened area) not to exceed 12 spaces + 1 per employee + 1 per company vehicle.
School, College, University	5.0 per classroom <u>plus</u> 10 administrative spaces
Schools, Elementary, Secondary	2.0 per classroom <u>plus</u> 5 administrative spaces
Schools, Fine Art, Music, Dance, Vocal	1.0 per 200 sq. ft. of GFA
Schools, High Schools	5.0 per classroom <u>plus</u> 10 administrative spaces
Schools, Vocational, Commercial, Trade	5.0 per classroom <u>plus</u> 10 administrative spaces
Shopping Centers	1.0 per 250 sq. ft. of GFA
Skating/Ice Rink	1.0 per 200 sq. ft. of GFA or individual review
Sporting Goods & Bicycle Shops	1.0 per 350 sq. ft. of GFA
Stables, Horseback Riding, Boarding, etc.	1.0 per 200 sq. ft. of GFA or individual review
Stadium, Arena, Athletic Field	By individual review
Swimming Pool – Public	2.0 per 100 sq. ft. of water surface area
Swimming Pool – Development Specific	1.0 per 100 sq. ft. of water surface area
Tax Return Preparation Services	1.0 per 350 sq. ft. of GFA
Taxation, Finance, Monetary-Public	1.0 per 350 sq. ft. of GFA
Tennis Club	2.0 per court <u>plus</u> 1.0 per 200 sq. ft. of clubhouse floor area in excess of 1,000 sq. ft.
Tennis Courts	2.0 per court
Terminal, Truck	1.0 per 250 sq. ft. of floor area devoted to office space <u>plus</u> 2.0 per company vehicle operated from premises
Theaters-Indoor	1.0 per every 4 seats provided
Theaters-Outdoor	1.0 per every 5 patrons at maximum capacity, or per individual review
Townhouse Development	2.0 per each unit
Transportation Services	1.0 per 500 sq. ft. of GFA
Transportation, Air	1.0 per 250 sq. ft. of GFA
Transportation, Bus	1.0 per 250 sq. ft. of GFA
Travel Agency	1.0 per 350 sq. ft. of GFA
Truck Stops	1.0 per 600 sq. ft. of GFA

Veterinary Services	1.0 per 250 sq. ft. of GFA
Video Tape Rental	1.0 per 250 sq. ft. of GFA
Warehousing	1.0 per 10,000 sq. ft. or minimum of 5 spaces
Warehouses-Mini	1.0 per on-site employee with a minimum of 3 spaces
Waste Management Facility(Section 3.17)	1.0 per each employee <i>plus</i> 1.0 per business vehicle <i>plus</i> 1.0 per 350 sq. ft. of office space
SPECIAL LAND USES (unique land uses)	The minimum number of parking spaces required for a use not specifically mentioned in this section shall be determined by Planning Department staff.

3. Numerical Requirements, Off-Street Loading

All uses shall provide off-street loading space sufficient for their requirements. Such space shall be arranged so that no vehicle being loaded or unloaded in connection with normal operations shall stand in or project into a public street, walk or alley.

4. Design Standards

Required off-street parking shall be designed so that all movement onto a public street shall be in a forward motion, and meet the following standards:

(a) Parking Dimensions

Parking stalls shall be not less than nine (9) feet by 18 feet, except that a maximum of 30 percent of the total number of stalls may be 8.5 feet by 18 feet. However, the dimensions of all parallel parking stalls shall be not less than eight (8) feet by 22 feet. Minimum isle width shall be as follows:

90 degree parking	24 feet
60 degree parking	18 feet
45 degree parking	13 feet
30 degree parking	11 feet

(b) Parking Construction

- (1) Parking lots with 20 or more spaces shall be surfaced with asphalt, concrete, porous asphalt, porous concrete, or brick pavers. However, expansive impervious surface parking lots shall be avoided. In their design, parking lots shall be broken down into sections as appropriate for the type and size of development, and shall be separated by landscaped dividing strips, berms and similar devices.
- (2) Parking lots intended to provide for off-street parking shall be improved with a minimum 6-inch stabilized aggregate base course and a minimum 1½-inch asphalt or concrete surface course or equivalent. A Professional Engineer may design, and submit for approval, an alternate paving design of at least equivalent durability. However, the surface course must be of the materials found in (1).
- (3) For parking provided in excess of the spaces required by Table 6, porous brick pavers or cellular confinement systems that use grassing should be used.
- (4) Parking areas for Rural Event Venues, including rural wedding venues, agritourism facilities and natural/passive park facilities, regardless of the number of spaces required, may be surfaced with grass or gravel, in lieu of the surfaces listed above.

(c) Drainage

Parking lots shall be designed so as not to drain into or across public sidewalks or on adjacent property, except into a natural watercourse or a drainage easement. In developed areas where this condition may be impossible to meet, the County may exempt the developer from this requirement, provided that adequate provision is made for drainage.

(d) Separation from Walkways and Streets

Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys, and required yards and buffer areas by a wall, fence, curbing, or other protective device approved by the Planning Department staff.

(e) Entrances and Exits

Landscaping, curbing or other approved barriers shall be provided along boundaries to control entrance and exit of vehicles or pedestrians. All off-street parking areas shall be designed so that all movement onto a public street is in a forward motion. Entrance and exit driveways to public streets and alleys in the vicinity of street intersections must be located at least forty (40) feet, measured along the curb line, from the intersection of the nearest curb line.

(f) Marking

Parking lots with 20 or more spaces shall be marked by painted lines, curbs or other means to indicate individual spaces. Signs or markers, as approved, shall be used as necessary to ensure efficient traffic operation of the lot.

(g) Lighting

Adequate lighting shall be provided if off-street parking spaces are to be used at night. Equipment for lighting parking facilities shall be arranged so that light does not interfere with traffic or adjoining residential areas.

5. Maintenance

All off-street parking areas shall be maintained in a clean, orderly, dust-free, and weed-free condition at the expense of the owner or lessee and not used for the sale, repair, or dismantling or servicing of any vehicles or equipment, except for service and auto repair stations.

6. Parking Space for the Physically Handicapped

When off-street parking is required for any building or use, except for residential dwellings with fewer than 20 units, parking for the handicapped shall be included when calculating the overall parking requirements for such building or use, based on the following formula:

<u>Number of Required Spaces</u>	<u>Number of Spaces Reserved for Handicapped Persons</u>
Up to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
Over 500	2% of total required

Parking spaces for the physically handicapped shall measure 12 feet by 18 feet or 8 feet in width, with an adjacent access isle 8 feet in width, and shall be located as close as possible to ramps, walkways, and entrances. Parking spaces should be located so that physically handicapped persons are not compelled to wheel or walk behind parked cars to reach entrances, ramps and walkways. (Refer to Appendix E-1)

7. Stacking Lanes for Drive Through Facilities

Each drive through facility shall provide stacking lanes long enough to accommodate drive through traffic and ensure that on-site circulation will not interfere with traffic movement on adjacent streets.

8. Joint Use of Off-Street Parking Lots

Up to 50 percent of the parking spaces required for (1) theaters, public auditoriums, bowling alleys, dance halls, clubs, churches and religious institutions may be provided and used jointly by (2) financial institutions, offices, retail stores, repair shops, service establishments, and similar uses not normally open, used, or operated during the same hours as those listed in (1); provided however, that written agreement assuring their retention for such purposes shall be properly drawn and

executed by the parties concerned, approved as to form and content by the County Attorney, and shall be filed with the application for a building permit.

9. Approval of Parking and Off-Street Loading Plans and Layouts

Designs and plans for areas to be used for off-street parking and off-street loading shall be subject to approval by the Planning Department staff, who may withhold a permit or take other action if the layout of either would create avoidable safety or traffic congestion problems, pending acceptable modification of the layout, or appeal to the Board of Zoning Appeals.

Section 2.02-6 Multiple Buildings on a Lot

Except for single-family, detached residential dwellings, including manufactured/mobile homes (as defined in Section 3.03-1), there is no limit on the number of principal buildings or structures which may be built or located on a lot or parcel; provided all applicable requirements of this Ordinance shall be met.

Two single-family, detached residential dwellings, including manufactured/mobile homes (as defined in Section 3.03-1), or any combination of two such dwellings may be established on a single lot or parcel; provided the dimensional requirements on Table 3 shall be met for both dwellings as if they were established on separate lots, and so arranged to ensure public street access, building setback and lot conformance with Section 2.05-4 in the event the property upon which the dwellings are located is subsequently subdivided for sale or transfer. For the purposes of this section, 25-foot flag lots shall not be allowed. The minimum public street frontage required for each dwelling is fifty (50) feet.

Multiple dwelling units are prohibited on lots located on roads built in accordance with the Private Street Design Section 2.05-3 or lots located on a Road of any lesser standard.

Single family dwellings may be located on non-residential parcels provided all applicable requirements of this ordinance are met.

Section 2.02-7 Access to Property/Curb Cuts for Non-Residential Uses

All Commercial/Industrial developments must take access from a paved State, County or Municipally maintained road.

Section 2.03 Land Development in Flood Hazard Areas

All development must conform to the Spartanburg County Flood Damage Prevention Ordinance, Ordinance # 0-04-01, adopted January 12, 2004.

Section 2.04 Land Development in the Vicinity of the Spartanburg Downtown Memorial Airport

Section 2.04-1 Purpose

The purpose of this Section is to protect the dual interests of the airport and neighboring land uses, and to:

- (1) Protect and promote the general health, safety, economy, and welfare of the airport environs;
- (2) Prevent the impairment and promote the utility and safety of the airport;
- (3) Promote land use compatibility between the airport and surrounding development;
- (4) Protect the character and stability of existing land uses in the vicinity of the airport; and
- (5) Enhance environmental conditions in the areas affected by airport operations.

Section 2.04-2 Applicability

This Section shall apply to all areas, referred to as zones, within an established Airport Environ District shown on the Airport District Map for the Spartanburg Downtown Memorial Airport, which map is

hereby adopted and declared to be a part of this Ordinance and is on file in the County Planning Department.

Section 2.04-3 Airport Zones Defined

There are hereby created four Airport Environ Zones, defined as follows:

Zone 1

Zone 1 is defined by those areas exposed to an annual average noise level between 60 and 65 decibels as measured utilizing A-weighted day-night sound levels (Ldn) methodology.

Zones 2 and 3

Zones 2 and 3 are defined as being exposed to an annual average noise level in excess of 65, but not more than 75 decibels as measured utilizing A-weighted day-night sound level (Ldn) methodology.

Zone 4

Zone 4 is defined as being exposed to an annual average noise level in excess of 75 decibels as measured utilizing A-weighted day-night sound level (Ldn) methodology.

Section 2.04-4 Prohibited Uses

Prohibited uses within any of the four zones include any use which would:

- (1) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
- (2) Diminish the ability of pilots to distinguish between airport lights and other lights;
- (3) Result in glare in the eyes of pilots using the airport;
- (4) Impair visibility in the vicinity of the airport; and create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft using the airport.

Section 2.04-5 Use Restrictions

Table 8 establishes the types of land uses which are compatible within and which may be permitted in each zone, based upon its respective tolerance for noise.

Future development within each zone shall be governed by Table 8, which assigns use compatibility by zone, based on the following:

- (1) No New Development: A clear incompatibility exists between future development and unavoidable aircraft noise.
- (2) Noise Restrictions Applicable: Potential incompatibility exists due to noise exposure from proximity to a runway which can be avoided if certain noise attenuation restrictions are met, as required by this section.
 - a. To ensure compatibility with adjacent land uses, Manufactured Home Parks will be allowed where the Park is over 45 acres and contiguous to a municipality.
- (3) No Use Restrictions: A clear compatibility exists between the proposed land use and airport.

Section 2.04-6 Noise Restrictions

Noise restrictions shall apply within the zones identified by Table 8.

Where permitted within such zones, residential dwellings and portions of buildings where the public will be received, shall be structurally designed and constructed to achieve an outdoor to indoor Peak Noise Level Reduction (NLR) of at least 30 Db (decibels). All other permitted uses and structures shall be exempt from this Section.

Normal construction can be expected to provide an NLR of 20 Db, thus the actual required reduction is only 10 Db. Lowering the NLR shall be achieved through incorporation into the design and

construction of all proposed uses, sound insulation materials and methods for improving acoustic insulation performance.

A description of such methods and materials shall accompany all building applications for uses affected by this Section and shall be subject to approval by the County prior to the issuance of a building permit.

Table 8				
Land Use Compatibility Performance Standards				
Land Uses	Compatible Land Use Zones			
	Zone 4 Ldn>75	Zone 3 Ldn 70-75	Zone 2 Ldn 65-70	Zone 1 Ldn <65
RESIDENTIAL Low density (less than 1 DUA)*				
RESIDENTIAL Medium density (1-4 DUA)				
RESIDENTIAL High density (5 or more DUA)				
MANUFACTURED HOMES Single lots or parks #				
COMMERCIAL General retail				
COMMERCIAL Airport related				
COMMERCIAL Highway related				
SERVICES Professional and personal				
RECREATIONAL Indoor and cultural activities				
INSTITUTIONAL Schools, churches, hospitals, nursing home				
INSTITUTIONAL Governmental				
RECREATIONAL (<2 acres) Playgrounds, neighborhood parks				
RECREATIONAL (>2 acres) Community and regional parks				
RECREATIONAL Golf courses, riding stables, water recreation				
RECREATIONAL Spectator sports, outdoor assembly				
WHOLESALE Warehouses, transportation, freight				
INDUSTRIAL Light and heavy				
AGRICULTURAL (except livestock) Crops, forestry				
OPEN SPACE USES Utilities, quarries, cemeteries, vacant land				
*DUA = dwelling units per acre; # Allowed in limited circumstances (see Sec. 2.04-5(2)(a))				

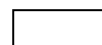
No New Development



Noise Restrictions Applicable



No Restrictions



Section 2.04-7 Lighting Regulations

No use, subdivision, or project in the Airport District shall have outdoor lighting or illumination arranged and/or operated in such a manner as to be misleading or pose a danger to aircraft operations.

Section 2.04-8 Regulations Applicable to Existing Structures

The owner of any existing structure or vegetation that is currently penetrating any airport zone surface shall permit the installation, operation, and maintenance thereon of whatever markers and lights deemed necessary by the Federal Aviation Administration, or the South Carolina Aeronautics Commission to indicate to the operators of aircraft in the vicinity of an airport the presence of an airport obstruction. These markers and lights shall be installed, operated, and maintained at the expense of the Airport Operator.

However, the regulations prescribed in this Section shall not be construed to require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of an existing use. Nothing contained herein shall require any change in the construction, alternation, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

Section 2.04-9 Variances

Any person desiring to erect or increase the height or size of any structure not in accordance with the regulations prescribed in this Section may apply for a variance from such regulations to the Board of Zoning Appeals (the Board), in accord with the provisions of Article 1. The Application for a variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace.

Additionally, no application for a variance to the requirements of this Ordinance may be considered by the Board unless a copy of the application has been furnished to the Airport Operator for advice as to the aeronautical effects of the variance. If the Airport Operator does not respond to the application within 15 days after receipt, the Board may act on its own to grant or deny the application for a variance.

Any permit or variance granted, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, may be so conditioned as to require the owner of the structure in question to install, operate, and maintain at the owner's expense, such markings and lights as may be deemed necessary by the Federal Aviation Administration, the South Carolina Aeronautics Commission, and the Airport Operator.

ARTICLE 3 CONDITIONAL USE REGULATIONS

The regulations contained in this Article are intended to better the impact and improve the siting of certain uses, buildings, and projects whose characteristics could adversely affect surrounding property and environmental conditions. For purposes of this Ordinance, these uses are classified as Conditional Uses. Standards and criteria over and above those set forth elsewhere in this Ordinance are imposed herein on all such conditional uses, listed below, to enhance land use compatibility.

Reference	Section
Patio and Zero Lot Line Housing Projects	3.01
Attached Multi-Plex Dwelling Projects	3.02
Manufactured Homes	3.03
Manufactured Home Parks	3.04
Accessory Apartments	3.05
Home Occupations	3.06
Auction Barns and Auction Houses	3.07
Commercial Kennels, and Certain Agricultural Uses	3.08
Mining Operations	3.09
Motor Speedway or Testing Tracks	3.10
Outdoor Gun or Skeet Range	3.11
Sexually Oriented Businesses	3.12
Camps & Recreational Vehicle Parks	3.13
Bulk Storage and Distribution Facility for Fuel Products and Liquid Asphalt Distribution Terminals	3.14
Off-Site Hazardous Chemical Storage	3.15
Coin Operated Amusements, Cash Payouts	3.16
Waste Management Facilities	3.17
Communication Towers & Antennas	3.18
Junk and Salvage Yards	3.19
Accessory Buildings and Uses	3.20
Temporary Uses	3.21
Nuclear and Hazardous Waste Disposal	3.22
Certain Public Service Uses	3.23
All Other Commercial and Industrial Uses	3.24
Tattoo Facilities.....	3.25
Flea Markets, Swap Meets, and Open-Air Markets.....	3.26
Asphalt Batch Plants	3.27
Scrap Metal Processor	3.28
Mixed-Use Projects/Mixed-Use Projects–Residential Only	3.29

Section 3.01 Patio and Zero Lot Line Housing

Due to the unique design features of patio and zero lot line housing, the following design requirements shall supplement other applicable requirements of this Ordinance and govern the development of such uses.

1. Minimum lot area shall be 4,000 square feet per unit.
2. Where a unit is to be constructed at or on the property line, a five-foot private maintenance easement shall be provided on the adjoining lot.
3. Front yard setbacks shall be as prescribed by Table 3.
4. Direct access of a patio house shall be limited to minor streets. Where a patio home complex fronts on a collector or major street, no more than two access points shall be allowed. No direct access for individual houses shall be permitted on collector or major streets.
5. Projects shall be served by public water and sewer facilities.
6. Projects consisting of twenty-five (25) or more units shall include at least 10 percent of the project site in common open space, in accord with the requirements of Section 2.02-4.

Section 3.02 Attached Multi-Plex Dwelling Projects

The following design requirements shall supplement other applicable requirements of this Ordinance and govern the development of Attached Multi-Plex Dwelling Projects. An Attached Multi-Plex Dwelling Project shall consist of at least one building with three (3) or more attached units on a single parcel of land or two (2) or more buildings each with two (2) attached units on a single parcel of land. Any such development shall be categorized as an apartment development, condominium development, or townhouse development, depending upon ownership arrangements and Building Code requirements.

Below are the requirements that Attached Multi-Plex Dwelling Projects have in common. Specific requirements for each type of Attached Multi-Plex Dwelling Projects type shall be found in separate sections immediately following this section.

1. Density shall not exceed:
 - Eight (8) units per acre on minor streets, minor residential streets, and major residential streets
 - Twelve (12) units per acre on collector streets
 - No maximum on arterial streets
2. Bufferyards shall be as required by Section 2.02-2 for the specific type of project.
3. All telephone and electric service utilities shall be underground in all Attached Multi-Plex Developments where feasible.
4. Setbacks and frontage requirements shall be governed by Table 3 Setbacks and Other Requirements.
5. The current International Building Code requirements shall be adhered to, paying particular attention to the firewall requirements.
6. Due to the differing design and ownership features associated with apartment developments, condominium developments, and townhouse developments the following requirements shall supplement the above requirements:
 - a. Townhouse Developments**
 1. Not more than eight (8) townhouse units may be joined together.
 2. Projects consisting of twenty-five (25) or more units shall include at least 10 percent of the project site in Common Open Space, in accordance with the requirements of Section 2.02-4 Common Open Space.

3. Direct vehicular access of a townhouse shall be limited to minor streets. Where the project fronts a collector or major street, no more than two access points shall be allowed. No direct access for individual units shall be permitted on collector or major streets.

b. Condominium Developments

1. Projects consisting of twenty-five (25) or more units shall include at least 15 percent of the project site in Common Open Space, in accordance with the requirements of Section 2.02-4 Common Open Space.
2. The site for a condominium project must be at least one acre in size.
3. Any centralized garbage and refuse pickup and other utility areas shall be enclosed and screened from view by fencing, walls or shrubbery.
4. Direct vehicular access of a condominium shall be limited to minor streets. Where the project fronts a collector or major street, no more than two (2) access points shall be allowed. No direct access for individual units shall be permitted on collector or major streets.

c. Apartment Developments

1. Projects consisting of twenty-five (25) or more units shall include at least fifteen (15) percent of the project site in Common Open Space, in accordance with the requirements of Section 2.02-4 Common Open Space.
2. The site for an apartment project must be at least two (2) acres in size.
3. Garbage and refuse pickup and other multi-family utility areas shall be provided, enclosed and screened from view by fencing, walls or shrubbery.
4. Interior development streets, parking areas, dwelling entranceways and pedestrian walks shall be provided with sufficient illumination to minimize hazards to pedestrians and vehicles utilizing the same. Lighting shall be so arranged as to reflect away from adjoining properties.
5. Off-street parking areas shall not open directly onto a public street, but shall be provided with access drives or other controlled access. Access drives shall not serve as part of a specified parking area and shall be kept clear of parked vehicles. On-street bay parking shall not be permitted on public rights-of-way. For specific parking space requirements see Table 6 - Off-Street Parking Requirements.

Section 3.03 Manufactured Homes

Section 3.03-1 Definitions

For purposes of this Ordinance there are the following types of manufactured homes: Residential Designed Manufactured Homes, Standard Designed Manufactured Homes, and Mobile Homes, the definitions of which are found in Article 6.

Section 3.03-2 Use of Mobile Homes, Manufactured Homes, Travel Trailers, and RVs

No mobile home or manufactured home shall be used for any purpose other than that for which it was designed.

Further, no recreational vehicle or travel trailer shall be used or permitted for permanent residential use. These vehicles are not built in compliance with the HUD Standards or the International Residential Code and, as such, shall not be allowed for permanent residential use.

A recreational vehicle may be set up for a period of up to 90 days within a twelve-month period for the purposes of living on site while building a residence.

Section 3.03-3 Location

Manufactured Homes, Residential Designed, when meeting the requirements of this section and other applicable requirements of this Ordinance shall be permitted anywhere in the unincorporated areas of

Spartanburg County, unless specifically prohibited by deed restrictions, prohibitions contained elsewhere in this Ordinance, or other applicable regulations.

Manufactured Homes, Standard Designed, when meeting the requirements of this section and other applicable requirements of this Ordinance shall be permitted; (1) on existing lots of record as of May 21, 2012; (2) as a second residence on a lot of record with a single-family detached dwelling, in accordance with Section 2.02-6; (3) in a Manufactured Home Park, in accordance with Section 3.04; and (4) in an approved subdivision, accessible by and fronting on a minor public street. While direct access to and frontage on minor, collector or major streets is allowed, in those cases where a corner lot is created (through the planning/construction of a new street), the manufactured or mobile home will front and take access on the internal street.

Mobile Homes, as defined by this Ordinance, shall not be permitted or established within the jurisdiction of this Ordinance. Where in existence at the time of adoption of this Ordinance, such uses may be continued in accordance with the provisions of Section 4.06, Nonconformities, provided such uses are maintained in habitable condition as defined by and subject to the conditions of Section 3.03(5) and 3.03(6). Furthermore, it shall be unlawful for any person, firm, or legal entity to bring into Spartanburg County any manufactured housing or mobile home constructed prior to 1976, unless the manufactured unit can be certified to meet June 1976 HUD Standards for Construction.

Section 3.03-4 Exception

Manufactured Housing structures and mobile homes currently on the tax rolls of Spartanburg County built prior to 1976 may be relocated within Spartanburg County provided they are first inspected by the Building Codes Department and meet this Ordinance's Habitability requirements prior to electrical service being released.

Section 3.03-5 Setup

All manufactured housing shall:

- a. Be installed in accordance with the Manufacturer's Installation Manual. In the absence of such a Manual, the home must be installed in accordance with the requirements of Section 19-425-42 of the South Carolina Manufactured Housing Board Regulations.
- b. Be under-skirted around the entire home with brick, masonry, vinyl, or similar materials designed and manufactured for permanent outdoor installation and be tied down per the South Carolina Manufactured Housing Board Regulations.
- c. Have constructed at all egress doors steps and landings conforming to the latest adopted edition of the International Residential Code. These steps and landings must be anchored securely into the ground.
- d. The owner of a mobile home who obtains a replacement mobile home has 30 days from the date of electrical power transfer or 90 days from the issue date of a moving permit, whichever is less, to remove the original mobile home from the property or meet the requirements contained in Table 3 of this Ordinance.
- e. Be provided with a sanitary sewer system approved by DHEC. Evidence of such approval shall accompany each and every permit request to install a manufactured home.
- f. Be served by a separate electric meter. It shall be unlawful for any such home to receive electricity except by use of this separate meter. Any existing home not in compliance with this Section upon the effective date of this Ordinance shall be served by a separate meter within one hundred eighty (180) days of the effective date, or be declared by a code enforcement officer to be in violation of this Ordinance, and processed accordingly as provided for in Section 1.20 Penalties for Violations. It shall be unlawful for any public utility or electrical supplier to connect power to any manufactured home in the absence of an approved permit issued by the appropriate County Official to establish said home.
- g. No Manufactured Home shall have the electrical service installed until porches, steps, tie downs and skirting requirements have been met.
- h. Permit Required for Individual Mobile Homes and Manufactured Homes

No mobile home or manufactured home shall be parked, located or permanently placed on an individual lot, parcel or Manufactured Home Park Space without a manufactured/mobile home

permit being issued by the County's permitting authority in accordance with S.C. Code 1976, § 31-17-320. A permit is also required when ownership is transferred regardless of whether the mobile/manufactured home is relocated. No permit shall be issued except in conformity with the provisions of this Section.

- i. A current Spartanburg County decal shall be displayed on the mobile/manufactured home so as to be clearly visible on the main door or from the street.
- j. The proper address shall be posted on the home so that it is visible from the street as required by the Spartanburg County Road Naming and Property Numbering Ordinance (No. 599) (See County Code, Chapter 62, Article 3).

Section 3.03-6 Habitability

No manufactured home or mobile home built prior to June 15, 1976 shall be permitted, used or occupied nor shall public utilities be extended to or activated in any such home unless and until the home has been inspected and found to be habitable by the Building Official or his designee.

The term "habitable" as used herein means that there is no defect, damage, or deterioration to the home which creates a dangerous or unsafe situation or condition; that the plumbing, heating, and electrical systems are in safe working order; that the walls, floor, and roof are free from any holes, breaks, loose or rotting boards and are structurally sound; and that all exterior doors and windows are in place. Further, the term habitable shall include the provision of the following facilities.

- a. **Sanitary Facilities** – Every manufactured and mobile home shall contain not less than a kitchen sink, lavatory, tub or shower, and a water closet all in good working condition and properly connected to an approved water and sewer system. Every plumbing fixture and water and waste pipe shall be properly installed and free from defects, leaks, and obstructions.
- b. **Hot and Cold Water Supply** – Every manufactured and mobile home shall have connected to the kitchen sink, lavatory, and tub or shower cold and hot running water. All water shall be supplied through an approved distribution system connected to a potable water supply.
- c. **Heating Facilities** – Every manufactured and mobile home shall have heating facilities which are properly installed and maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms and bathrooms. Where a central heating system is not provided, each mobile or manufactured home shall be provided with an alternative system, approved by the Building Official.
- d. **Cooking and Heating Equipment** – All cooking and heating equipment and facilities shall be installed in accordance with Federal Manufactured Home Construction and Safety Standards.
- e. **Smoke Detector** – Every mobile and manufactured home shall be provided with an approved listed smoke detector, installed in accordance with the manufacturer's recommendations and listing. When activated, the detector shall provide an audible alarm.

Section 3.04 Manufactured Home Parks

Section 3.04-1 Purpose

The purpose of this section is to address the unique needs of Manufactured Home Parks, in order that they may be considered a safe and healthy residential option to the residents of Spartanburg County. The County has an interest in maintaining and improving the supply of affordable housing for its citizens.

Section 3.04-2 Compliance with the Definition of a Manufactured Home Park

The following shall be used in determining compliance with the definition of a Manufactured Home Park found in Article 6:

- a. Any manufactured or mobile home on a parcel(s) shall be counted toward the total number of Manufactured Home Park Spaces even if the home is unoccupied, used for storage, or not currently connected to electricity. This count also includes a manufactured/mobile home occupied by the property owner as a legal residence.

- b. Separating the ownership of manufactured/mobile homes or Manufactured Home Park Spaces into two or more legal entities for the purpose of avoiding being defined as a Mobile Home Park is not allowed unless the requirements for a subdivision and the dimensional requirements of Table 3 can be met. If the manufactured/mobile homes or Manufactured Home Park Spaces are adjacent or across the street from each other and their management is not clearly handled as separate entities, then they shall be considered part of a single Manufactured Home Park.
- c. All such “parks” in Spartanburg County, new or pre-existing this ordinance, will be subject to requirements for licensing and inspection found in Section 3.04-5 and shall register with Spartanburg County within one year of May 21, 2012.

Section 3.04-3 Site Plan for New or Expanding Manufactured Home Parks

The establishment or expansion, and operation of a Manufactured Home Park shall be shown on a site plan professionally-drawn by an engineer or surveyor, shall comply with the design and development standards contained in this ordinance, and shall include the following information:

1. General: A required development plat or park plan at a scale of not less than 1"=20 feet or not more than 1"=100 feet shall contain the following information:
 - Proposed name of Manufactured Home Park;
 - North arrow, graphic scale, and written scale;
 - Name of record owner(s), developer(s), and surveyor(s) or engineer;
 - A vicinity map, for the purpose of locating the proposed park; and
 - Correct Assessor's Office Parcel Identification Number(s).
2. Existing Site Data
 - a. Total tract boundaries of the park, and a statement of total acreage of the property;
 - b. All existing rights-of-way, easements, sewer lines, fire hydrants, utility transmission lines, storm drainage ditches, water courses, buildings, and all other significant man-made or natural features within the proposed park;
 - c. All existing streets on or abutting the park, including names, right-of-way widths, pavement widths and approximate grades; and
 - d. The 100-Year Flood Boundary from the most current Spartanburg County FEMA Flood Insurance Rate Maps (FIRM).
3. Proposed Site Data
 - Street rights-of-way, pavement widths, grades, and street names;
 - Preliminary plans for sanitary sewerage disposal systems, storm sewers, water, electricity and gas lines, showing connections to existing systems or proposals for developing new systems, storm sewer profiles, cross-sections and sizes;
 - Other easements and rights-of-way, including location, dimensions, and purposes;
 - Topographic maps with a contour interval of 5 feet;
 - Contour changes to be made by grading, if any;
 - Location, size, and number of proposed and existing Manufactured Home Park Space and all existing and proposed automobile parking spaces for each unit in accordance with Section 3.04 (12), as well as any planned common parking areas;
 - Location, width, and plantings of bufferyard areas;
 - Centerline profile for any newly constructed interior streets;
 - Location of common open space, if required by Section 3.04-5 (14);
 - Location of all solid waste containers and screening of containers, as required by Section 3.04-4 (15); and
 - E-911 addresses as required by Ordinance No. 599. (See also County Code Chapter 62, Article 3.) and as approved by the County E911/Addressing staff.

Section 3.04-4 Requirements for the Establishment or Expansion and Operation of Manufactured Home Parks

All required site improvements shall be installed prior to placement of units in the park. The establishment or expansion, and operation of a Manufactured Home Park shall comply with the following design and development standards:

1. Adherence to Existing Regulations and Guidelines

All Manufactured Home Parks must adhere to any applicable Federal, State, or County regulations or guidelines, including but not limited to DHEC Regulations, the Property Addressing and Road Naming Ordinance (See Code Chapter 62, Article 3.), and the Assessor's Mobile Home Registration process.

2. Water and Sewer

All proposed Manufactured Home Parks shall be served by public water and sewer systems or other community systems, plans of which shall be approved by DHEC.

3. Lighting

A Manufactured Home Park containing five (5) or more homes must be lighted at night with electric overhead vapor lamps no more than four hundred (400) feet apart along interior streets and within amenity and common areas. Lighting shall be arranged so as to reflect away from adjoining properties, unless such light direction is dictated by safety concerns. Lighting shall use full cut off fixtures which give the property owner maximum directional control of site lighting.

4. Signage, Names

All Manufactured Home Parks containing five (5) or more units must provide a sign of at least six (6) square feet indicating the name of the park.

Park names shall not be the same as or phonetically similar to other park or subdivision names.

5. Streets-Interior

- (a) All interior streets shall have a minimum fifty (50) foot right-of-way and be constructed on a prepared soil base that has had all tree stumps and other vegetation removed to a depth of two (2) feet below sub-grade and properly compacted. No permanent parking or structures shall be permitted in the right-of-way.
- (b) The paved portion of the street shall be at least 16 feet wide for a park with fewer than 50 homes and 20 feet wide for a park with more than 50 homes. The street must consist of at least 1.5 inches of compacted tar and gravel on a 4-inch compacted stone base or at least 1.5 inches of compacted asphalt surface on 2 inches of compacted asphalt base.
- (c) Entrances must either be aligned with opposing exterior streets or there shall be at least 125 feet between the entrance and the existing street measured centerline to centerline.
- (d) Projects in excess of one hundred (100) units shall have a second twelve (12) foot exit lane and an entrance lane of sixteen (16) feet. Transition from the entrance/exit lanes to the internal street system shall begin not less than sixty (60) feet from the street right-of-way line at the entrance.
- (e) A paved or piped ditch is required along any section of roadway that is in excess of a 5% grade.
- (f) All dead-end roadways shall terminate in a "cul-de-sac" with a minimum turning radius of thirty-five (35) feet, exclusive of parking. In lieu of a "cul-de-sac," other methods to achieve vehicular turnaround as set forth in Section 2.05-2 must be provided.
- (g) All road names are subject to approval by the Planning and Development Department in accordance with Spartanburg County Ordinance No. 599 - Road Naming and Property Numbering. (See County Code Chapter 62, Article 3.)
- (h) To the extent not in conflict with subsection (b) above, construction of all streets shall be in compliance with Spartanburg County Standard Specifications for Construction of Roads. The Spartanburg County Public Works Department, Engineering Division, shall review and approve all street plans.

- (i) A “Letter of Compliance”, issued by a registered/licensed engineer, must be submitted, assuring that the construction of the roads and drainage system conforms to this Section.
- (j) In order to expand a Manufactured Home Park by more than 10 Manufactured Home Park Spaces, the main roadway inside the park (leading to the expanded Manufactured Home Park Spaces) must be paved to at least the width of the current driving surface or a minimum of 16 feet, whichever is greater, and a depth of 1½ inches. The number of new Manufactured Home Park Spaces added after July 19, 2004, shall be cumulative.

6. Drainage

The land shall be so graded, paved areas so pitched and storm drains and catch basins so located and sized as to provide rapid run-off of storm waters and avoid undue accumulations of water under the normal range of weather conditions. Drainage and sedimentation plans shall be required in accordance with the Storm Water Management Ordinance of Spartanburg County (No. 09-02). (See County Code Chapter 30, Article IV.)

7. Installation

All proposed homes, including replacements, shall be installed in accordance with the installation requirements of Section 19-425.42 of the South Carolina Manufactured Housing Board Regulations.

8. Numbering

Permanent numbers shall be placed on each mobile or manufactured home and shall be located in accordance with the requirements of the Road Naming and Property Numbering Ordinance No. 599. (See County Code Chapter 62, Article 3).

9. Access

No Manufactured Home Park Space shall have direct access to a public street, but shall instead access an internal driveway system.

10. Density

The maximum density shall not exceed eight (8) manufactured homes or mobile homes per acre with public water and public sewer or as approved by DHEC.

11. Setbacks and Spacing

- a. Spacing between manufactured homes, common buildings (laundry, etc), and accessory buildings shall meet the requirements of Table 3.
- b. The setbacks from exterior streets shall meet the requirements of Table 3.
- c. The setbacks of manufactured homes from interior streets shall be 25 feet from the street centerline.
- d. All building structures and mobile homes shall be setback from the park perimeter as found in Table 3. The requirements of this section may be superseded by the bufferyard requirements since the bufferyard may be wider than the side or rear setback.

12. Parking

Two off-roadway parking spaces shall be provided for each designated Manufactured Home Park Space in accordance with Table 6. Each parking space shall be 9 feet wide and 18 feet long and shall be paved.

Parking on roadways in the Manufactured Home Park is not permitted. Signs shall be posted at sufficient intervals stating such.

13. Bufferyards

Bufferyards shall be provided on the perimeter of the park or court in accordance with the requirements of Section 2.02-2.

14. Common Open Space

Projects consisting of twenty-five (25) or more units, whether a new park or an expansion of an existing park to a total of 25 units or more, shall include at least 15 percent of the total project site

in designated common open space, in accordance with the requirements of Section 2.02-4-Common Open Space. The area shall be suitable for active recreation.

15. Household Waste Removal

In Manufactured Home Parks containing five (5) or more homes, dumpsters shall be easily accessible to the residents for the collection and disposal of refuse. Bulk waste containers shall be provided at an average of at least 1.5 cubic yards for every three (3) manufactured homes. Dumpster sites shall be screened from public rights-of-way. Collection shall be on a weekly basis to ensure that containers do not overflow.

A garbage pickup service may be substituted, but such service must be continuously maintained with at least weekly pick up to ensure that containers do not overflow.

16. No recreational vehicle or travel trailer shall be used or permitted. These vehicles are not built in compliance with the HUD Standards or the International Residential Code and, as such, shall not be allowed.

17. Operational Requirements

All grounds and common buildings located within Manufactured Home Parks are expected to be maintained in a clean, sanitary and safe manner, the Manufactured Home Park Spaces kept clear of refuse, debris and unnecessary clutter, and all refuse shall be stored, collected and disposed of in such a manner as not to create a nuisance, vector attractant, breeding or harborage problem, in accordance with Spartanburg County's Property Maintenance Ordinance and South Carolina DHEC Regulation 61.40.

Section 3.04-5 Licensing, Inspection, and Annual Fees for Manufactured Home Parks

1. Licensing and Fees

- a. A license shall be required to open and/or operate a Manufactured Home Park and shall be subject to annual renewal due June 15th. The license fee shall be set per the Fee Schedule adopted by Resolution of County Council.
- b. or an owner who fails to renew the annual license by the deadline, there shall be a monthly late fee equal to half of the above base rate.
- c. n owner may not renew a license if his/her park is not in compliance with this ordinance. Late fees will continue to accrue for those parks that are found to be non-compliant.
- d. Late fees will continue to accrue for an owner who is in compliance and does not pay the annual license fee.
- e. In either case (c. or d.), failure to comply with the requirements of this ordinance may result in the revocation of license to operate a park. After the annual fee is 60 days delinquent, the owner shall be considered in violation of this ordinance for the lapsed license.
- f. A Manufactured Home Park license is not transferrable.
- g. Successors or assigns of a Manufactured Home Park may be responsible for payment of any delinquent or due fees, penalties or fines.

2. Annual Inspection; Violation

- a. All Manufactured Home Parks registered in Spartanburg County shall undergo an annual inspection to ensure compliance with this Ordinance.
- b. When a violation is determined, notice shall be given in writing by the code enforcement officer, together with an established time period within which the violation must be corrected.
- c. A park owner whose park, upon annual inspection, has been found to be in violation shall not be allowed to renew the license, and no mobile/manufactured home moving permits will be issued for said park until violations are resolved.
- d. A Manufactured Home Park license may be revoked by the Spartanburg County Environmental Enforcement Department Director for a violation of this Ordinance or other applicable regulations governing the operation of such uses based on inspection of the premises.

3. Suspension of License

- a. Failure to correct the violation(s) within the established time period will result in license suspension. When a license is suspended, all occupants of the park shall be notified of the suspension and be given notice to vacate the park within ninety (90) days.
- b. Any person who has received notice that his license will be suspended unless certain conditions or practices at the Manufactured Home Park are corrected, may request and shall be granted a hearing on the matter before County Council by filing a petition with the Planning and Development Department. The petition for such hearing must be filed within 10 calendar days following the day on which delivery of the notice of license suspension was delivered to such person. If no petition is filed within 10 calendar days following the delivery of the notice of license suspension, the license shall be deemed to have been automatically revoked.
- c. A Manufactured Home Park, upon the owner's loss of license, based on violations of this Ordinance shall meet all Unified Land Management Ordinance requirements in order to reopen. Otherwise, the park must be closed and all manufactured/mobile homes disposed of by the park owner.
- d. The provisions of this section can be enforced through appropriate court or legal action.

Section 3.05 Accessory Apartments

A single detached accessory dwelling unit no greater than 1/3 the floor area of the principal dwelling may be permitted, provided all applicable requirements of Table 3 are met and other public agencies have been satisfied.

Section 3.06 Home Occupation

A home occupation, as defined by this Ordinance, shall meet the following requirements.

1. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
2. The home occupation shall be conducted entirely within the residence, except where the residence is located on two or more acres, in which case, part or all of the occupation may be conducted in an accessory building, provided that a total of no more than 50 percent of the floor area of the residence be used in the conduct of the home and meet all setback requirements of Table 3 for Accessory Uses.
3. No exterior indication of the use shall be evident other than a sign of two (2) square feet or less in size.
4. No more than one (1) person not residing in the residence shall be employed.
5. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
6. There is no alteration of the residential character of the building and/or premises.

Section 3.07 Auction Barns and Auction Houses

Auctions Barns and Auction Houses shall be considered land uses incompatible with residential neighborhoods due to the impacts of noise, traffic, and operating hours.” As a result, any such use proposed for Spartanburg County shall comply with the following standards:

1. Proposed structures shall take access only on collector and arterial streets. Parking will be required to meet the same requirements as required for places of public assembly, which is one space for each four places of public assembly seats based on maximum capacity.
2. No such use may be located within 500 feet of an individual residential structure or within 500 feet of a platted subdivision of 25 or greater lots.

3. No outside speakers or audible auction activities shall be allowed for any such use.
4. Proposed structures must be fully enclosed and all sales and items displayed for sale must be contained within enclosed buildings.
5. The minimum lot size for any such use shall be Two Acres.
6. Proposed structures shall be located 60 feet from the front Right-of-Way line at which street access is located, 20 feet from the rear property line and 15 feet from the side property lines.
7. Front setback on an arterial street for any such use shall be 50 feet and the front setback on a collector street shall be 40 feet.
8. There shall be a minimum distance of 20 feet between any and all proposed structures.
9. The maximum height of any proposed structures shall be 35 feet plus 1 per 1 additional side and rear yard setback.
10. Any such use is classified as High Intensity Commercial for establishment of required buffer yards.

Section 3.08 Commercial Kennels, Veterinary Services, and Certain Agricultural Uses and Crematories

The above referenced uses shall be located no closer than 1,000 feet from any residential subdivision, multi-family development, or mobile home park of 25 units or more and 500 feet to any adjacent residence other than the principal residence. In addition to the distance separation, a Class 3 bufferyard shall be required for referenced uses requiring the 1,000 feet of separation and a Class 4 bufferyard for referenced uses requiring the 500 feet of separation. Incineration of animals or animal refuse shall be permitted under the above conditions. Veterinary clinics that have no outdoor pens or incineration are exempt from this regulation. Commercial kennels and certain agricultural uses, including stockyards, livestock auction houses, livestock feed lots, poultry houses, pig parlors, dairy barns, packing houses, farm processing operations (e.g., cider mills, dairies, poultry, or meat processing) with six (6) or more employees, and other agricultural support uses that create sustained noise and odor problems, shall be located and operated in accord with DHEC regulations.

Section 3.09 Mining Operations

A. Mining

Due to the land disturbing nature of these operations, the potential of air and water pollution, and noise and vibration from explosives, mining operations shall be subject to the following conditions:

1. A mining permit must be obtained from the South Carolina Department of Health and Environmental Control (DHEC) prior to securing a County permit. The mining permit shall have been issued within six (6) months of the date of the request for the County permit.
2. Mining Operations shall not be located on Minor Streets
3. Any and all applicable requirements specified by Table 3b shall be met.

B. Sand Dredging

Sand Dredging Operations with less than 5 acres of Disturbed Mining Area shall be allowed on Minor Streets under the following conditions. Sand Dredging Operations with 5 or more acres of disturbance shall follow the Mining provisions in Section 3.09(A). Disturbed Mining Area shall be defined as the area of land or water from which sand has been removed, or upon which sand has been deposited, including the location of on-site processing, stockpiles, settling ponds, and mining vehicle operation.

1. A mining permit must be obtained from the South Carolina Department of Health and Environmental Control (DHEC) prior to securing a County permit. The mining permit shall have been issued within six (6) months of the date of the request for the County permit.
2. Any and all applicable requirements specified by Table 3b must be met.
3. Any Sand Dredging Operations, or expansion of an existing operation creating a new access, shall submit a proposed Access Plan and must receive approval of the plan. This Plan shall show the anticipated routing of all truck traffic to the nearest Collector Street.
 - a. Sand Dredging Operations are only allowed access by roads that are paved.
 - b. Any roads or bridges to be utilized must be capable of handling the additional traffic and weight loads of the mining activity. If they are not, they must be improved as needed to handle that traffic and weight. However, the County nor State are required to make and/or fund the improvements. The entity responsible for the maintenance of such facilities will be asked to review the condition of any roads and bridges contained in the Access Plan and report that information along with required improvements to the Planning and Development Department. This entity may be the South Carolina Department of Transportation, the Spartanburg County Department of Public Works, or a municipality.

Section 3.10 Motor Speedways or Testing Tracks

Land uses of this Section are declared to be incompatible with residential development, and many nonresidential uses. To enhance compatibility, the following development standards shall apply:

Dirt tracks shall not be permitted.

Bufferyards specified for heavy industrial uses shall be required around all sides of the facility.

A Storm Water Management and Sediment Reduction Plan, as defined in the County's Storm Water Ordinance # 497 [This ordinance has been replaced by the Storm Water Management Ordinance of Spartanburg County (No. O-09-02). (See also County Code Chapter 30, Article IV.)]

Section 3.11 Outdoor Gun or Skeet Range

Due to potential danger and noise generated by these uses, the following criteria shall govern their location in Spartanburg County.

The use shall be oriented away from inhabited areas.

The site upon which the use is proposed shall be suitable in size and topography to insure the safety of surrounding residents as determined by the Spartanburg County Planning Department Staff. (Refer to Table 3.)

Section 3.12 Sexually Oriented Businesses

Owing to the potentially deleterious effects as a result of the location or concentration of sexually oriented businesses within the County, such uses in addition to meeting the requirements of Table 3 shall be permitted, operated and regulated in accord with the requirements of Ordinance No. 670, as amended; said Ordinance herein adopted and incorporated in its entirety by reference.

Section 3.13 Camps and Recreational Vehicle Parks (SIC 703)

Camps and recreational vehicles (RV) parks shall comply with the following site and design standards.

1. Exposed surfaces shall be covered or protected with vegetative growth capable of preventing soil erosion.
2. The site shall be developed in a manner that preserves natural features and landscape.
3. The following dimensional requirements shall serve as parameters beyond which development shall not exceed.
4. No site shall be located less than 150 feet from drinking water supply or 300 feet from a comfort station.
5. Maximum density shall not exceed 15 vehicles per acre, with minimum 10-foot separation.
6. Bufferyards shall be as specified by Section 2.02-2.
7. Areas designated for parking and loading or for circulation shall be physically separated from public streets. All one-way drives shall be 12' wide, and two-way drives shall be 20' wide, and shall be located at least 150 feet from any street intersection. All interior streets shall be private and not public, and shall be constructed with a 4" compacted stone travel-way approved by the County Engineer. Street grades shall not exceed 12 percent.
8. Each park site shall be serviced by public water and sewer or other systems approved by DHEC.
9. Durable, watertight, refuse containers, with fly-tight covers sufficient to contain all refuse, shall be provided at each service building and sanitary waste station, or at a central storage area readily accessible and located not more than 300 feet from any camp or picnic site unless provided at the campsite. Refuse containers shall be provided at the rate of eight cubic feet (60 gallons) for each five campsites or the equivalent thereof if containers are provided at individual sites.
10. The site, if located on a corner lot, may access a minor road, when both roads are maintained by the South Carolina Department of Transportation, notwithstanding the limitation in Table 3b that prevents a site from accessing a minor road.

Section 3.14 Bulk Storage and Distribution Facility for Fuel Products and Liquid Asphalt Distribution Terminals

The intent of this section is to manage and regulate the bulk storage, blending, transfer, and distribution of Fuel Products and Liquid asphalt Distribution Terminals. It is not intended to include retail gasoline stations, convenience stores selling gasoline, retail sales of Fuel Products, or businesses who, due to operational requirements, Fuel Products for internal use. Due to considerations for the public health and safety and potential pollution to the environment, such uses being built or expanded shall be permitted in Spartanburg County only under the following conditions. An expansion of a facility includes expansion of tank capacity, new tanks or structures, or adding to the acreage of a site.

1. A site plan shall be prepared by an individual licensed to practice engineering and/or land surveying in the State of South Carolina, as applicable. The site plan must show the Facility's property boundaries; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), right-of-ways and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, tanks, dikes, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show adjacent property lines, existing water wells, and surface water bodies. The plan shall show all buildings, to include all dwellings, and places of Extensive Group Assembly on adjacent properties. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
2. All facilities shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road.
3. Entrance/exists shall provide a minimum 50-foot turning radius.
4. A storm water runoff and sedimentation plan as defined by the County's Storm Water Ordinance No. O-09-02, as amended, shall be required showing all on-site and off-site drainage. (See also County Code Chapter 30, Article IV.)]
5. Access to any Bulk Storage and distribution Facility for Fuel Products or Liquid Asphalt Distribution Terminal shall be controlled through the use of an 8-foot chain link fences topped with barbed wired that encloses the entire premises in order to prevent unauthorized access.
6. All structures and appurtenances shall be located and constructed to provide adequate safeguards and not constitute a hazard to adjoining and nearby uses and the general public.
7. Fuel Products shall be stored in accordance with the following storage capacity and height limits. However, the spacing and setback requirements in #8 of this Section must also be met.

Tank Type	Maximum Allowed Capacity (In or Adjacent to Heavy Industrial Areas)	Maximum Allowed Capacity (Adjacent to All Other Uses)	Height Limit
Under-ground (UST)	Unlimited	150,000 gallons/acre	Not Applicable
Above Ground (AST)	150,000 gallons/acre	100,000 gallons/acre	35 feet
AST or UST Within 1000 feet of a Fuel Product Pipeline* or within an Existing Bulk Storage and Distribution Facility	Unlimited	Unlimited	65 feet
* Fuel Product Pipeline in existence as of September 16, 2013			

Liquid Asphalt shall be stored in accordance with the following storage capacity and height limits. However, the spacing and setback requirements in #8 of this Section must also be met.

Tank Type	Maximum Allowed Capacity (In or Adjacent to Heavy Industrial Areas)	Maximum Allowed Capacity (Adjacent to All Other Uses)	Height Limit
Under-ground (UST)	Unlimited	150,000 gallons/acre	Not Applicable
Above Ground (AST)	150,000 gallons/acre	100,000 gallons/acre	35 feet

8. Spacing and Setbacks

- a. New Bulk Storage and Distribution Facility for Fuel Products or Liquid Asphalt Distribution Terminal.

Tanks or other storage vessels and dikes within a proposed Bulk Storage and Distribution Facility for Fuel Products or Liquid Asphalt Distribution Facility shall meet the setbacks and spacing requirements in the following table. The same setbacks that apply to industrial uses shall be used for other buildings and structures on the site. Table 3b requirements also apply.

Bulk Storage and Distribution of Fuel Products or Liquid Asphalt Distribution Terminal Spacing/Setback Requirements	
Property line	200 Feet; 50 Feet if adjacent to another Bulk Storage and Distribution Facility for Fuel Products
All Dwellings and Places of Extensive Group Assembly	1000 Feet
Drinking water well in current use	500 Feet
Surface water bodies	100 Feet
Rights-of-way/Easements	Outside ROW/Easement
These Spacing/Setback Requirements apply to tank cars and tank vehicles, as well as stationary tanks. Please see definition of Bulk Storage and Distribution. Measurements shall be taken from the nearest storage tank, dike, or fuel transfer area to the residential or other listed structure.	

- b. Expansion of Existing bulk Storage and Distribution Facility for Fuel Products or liquid Asphalt Distribution Terminal

The expansion or addition of tanks or other storage vessels and dikes within an Existing Bulk Storage and Distribution Facility for Fuel Products or an existing Liquid Asphalt Distribution Terminal shall meet the setbacks and spacing requirements in the following table. The same setbacks that apply to industrial uses shall be used for other buildings and structures on the site. Table 3b requirements also apply.

Bulk Storage and Distribution of Fuel Products Spacing/Setback Requirements for Expansion of Existing Facilities	
Property line	200 Feet; 50 Feet if adjacent to another Bulk Storage and Distribution Facility for Fuel Products
All Dwellings and Places of Extensive Group Assembly	500 Feet
Drinking water well in current use	500 Feet
Surface water bodies	100 Feet
Rights-of-way/Easements	Outside ROW/Easement
These Spacing/Setback Requirements apply to tank cars and tank vehicles, as well as stationary tanks. Please see definition of Bulk Storage and Distribution. Measurements shall be taken from the nearest storage tank, dike, or fuel transfer area to the residential or other listed structure.	

9. The following fire and safety requirements shall be reviewed and approved by the Spartanburg County Fire Marshal's Office prior to the issuance of a Development Permit.
- a. All storage facilities shall comply with the latest edition of the "Flammable and Combustible Liquids Code, NFPA 30" of the National Fire Protection Association.
 - b. Storage tanks must be protected by either an attached extinguishing system approved by the Fire Marshal or an American Petroleum Institute-approved floating roof.
 - c. Dikes
 - 1) Tanks or groups of tanks shall be diked to prevent the spread of liquid onto other properties, waterways, or drainageways. The volumetric capacity of the diked area shall not be less than 110 percent of the capacity of the largest tank within the diked area.
 - 2) Dikes or retaining walls shall be of earth, steel, concrete or solid masonry designed and constructed to be liquid tight and to withstand a full hydraulic head. Earthen dikes three (3) feet or more in height shall have a flat section at the top not less than two (2) feet in width. The slope shall be consistent with the angle of repose of the material of which the dikes are constructed. Dikes shall be restricted to an average height of not more than six (6) feet above the exterior grade unless means are available for extinguishing a fire in any tank. Dikes enclosing such tanks shall be provided at the top with a flareback section designed to turn back a boil-over wave. A flareback section shall not be required for dikes and walls enclosing approved floating roof tanks.
 - 3) Where provision is made for draining rainwater from diked areas, such drains shall normally be kept closed and shall be so designed that when in use they will not permit flammable liquids to enter natural watercourses, public sewers, or public drains. Where pumps control drainage from the diked area, they shall not be self-starting.
 - d. Onsite access to all storage tanks shall be provided by means of gravel or paved roadways.
 - e. A fire hydrant with sustained water flow rate of at least 1500 gallons per minute must be available on the site and hydrant(s) situated in an area of low risk in case of a fire emergency.
 - f. All Bulk Storage and Distribution Facilities for Fuel Products and Liquid Asphalt Distribution Terminals shall provide to the County in digital format upon obtaining all approvals and prior to the issuance of the County permit: (a) a spill plan; (b) contingency plans for moving product in leaking or damaged tanks to backup tanks, and (c) an emergency preparedness and response plan that will be filed with the appropriate emergency service officials and the County's Office of Emergency Management. Any revisions shall also be filed with the aforementioned offices.

10. Approvals from Other Agencies

- a. Any Bulk Storage and Distribution Facility for Fuel Products or Liquid Asphalt Distribution Terminals proposing to locate within the jurisdiction of this Ordinance shall provide to the Ordinance Administrator a certificate from the State Fire Marshal's Office and/or the Compliance and Enforcement Division of the NPDES Permits Administration of DHEC, as applicable, and other state, federal or outside agency that regulates the facility indicating compliance with the rules and regulations administered by those agencies.
- b. When a land development application from a Bulk Storage and Distribution Facility for Fuel Products or a Liquid Asphalt Distribution Terminal requires a permit or approval from an outside agency and the applicant presents an application and site plan that is "approvable" under this ordinance, the Planning and Development Department will issue a letter to that agency, if required, stating that a land development permit will be issued upon receipt of their permit/approval as long as the proposed facility still meets the requirements of this Ordinance after obtaining their approval.
- c. The applicant must report any changes required by outside agencies upon their review that affect a change in the submitted site plan and submit a revised site plan.
- d. All required permits and approvals must be obtained from outside agencies, as applicable, prior to the County issuing a land development permit. Only until such certification is received shall the facility be permitted for occupancy by Spartanburg County.

11. Maintenance

- a. No loose combustible material, empty or full drums or barrels, shall be permitted within the diked area.
 - b. All storage tanks shall be maintained in a leak-proof condition with an adequately painted, rust free exterior surface.
12. Nothing contained herein shall be intended to preempt or abrogate the requirements for a Bulk Storage and Distribution Facility for Fuel Products or a Liquid Asphalt Distribution Terminal to adhere to the requirements of state or federal agencies.

Section 3.15 Off-Site Hazardous Chemical Storage

The purpose of this section is to manage the off-site storage of Hazardous Chemicals. Due to considerations for the public health and safety and potential pollution to the environment, such uses being built or expanded shall be permitted in Spartanburg County only under the following conditions. An expansion of a facility includes expansion of storage capacity, new construction, or adding to the acreage of the site. This Section is not intended to allow for permanent or long-term storage of hazardous chemicals or hazardous chemical waste.

1. A site plan shall be prepared by an individual licensed to practice engineering or land surveying in the State of South Carolina, as applicable. The site plan must show the Facility's property boundaries; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; the location and identification of waste handling areas; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show adjacent property lines, existing water wells, and surface water bodies. The plan shall show all buildings, to include all dwellings and places of Extensive Group Assembly on adjacent properties. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
2. All facilities shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road.
3. Chemicals shall be stored on impermeable flooring so that soils and ground water sources will not be contaminated and the storage shall meet all applicable State and Federal regulations.
4. A Storm Water Management and Sediment Plan, regardless of size, shall be developed as defined in County Ordinance No. O-09-02, as amended, showing all on-site and off-site drainage. (See also County Code, Chapter 30, Article IV.)
5. Access to any Off-Site Hazardous Chemical Storage facility shall be controlled through the use of an 8-foot chain link fence topped with barbed wire that encloses the entire premises in order to prevent unauthorized access.
6. Off-Site Hazardous Chemical Storage Facilities shall meet the following setbacks and spacing requirements, along with applicable requirements found in Table 3b.

Off-Site Hazardous Chemical Storage Spacing/Setback Requirements	
Property line	500 Feet
All Dwellings and Places of Extensive Group Assembly	1000 Feet
Drinking water well in current use	500 Feet
Surface water bodies	100 Feet
Rights-of-way/Easements	Outside ROW/Easement

7. In addition to determining whether the stored chemical(s) trigger the requirements of this Section, the Spartanburg County Fire Marshal's Office shall review and approve the following fire and safety requirements prior to the issuance of a Development Permit.
 - a. A fire hydrant with sustained water flow rate of at least 1500 gallons per minute must be available on the site and hydrant(s) situated in an area of low risk in case of a fire emergency.
 - b. The site shall include an on-site containment area for the Hazardous Chemical so that a leak or spill is contained entirely on the facility's property and thus prevented from entering the surface or subsurface drainage system, man-made or natural, within the County.
 - c. All facilities storing Hazardous Chemicals off-site shall provide to the County in digital format upon obtaining all approvals and prior to the issuance of the County permit: (a) a spill plan; (b) contingency plans for moving product in leaking or damaged tanks or containers to backup vessels, and (c) an emergency preparedness and response plan that will be filed with the appropriate emergency service officials and the County's Office of Emergency Management. Any revisions shall also be filed with the aforementioned offices.
8. Approvals from Other Agencies
 - a. Any Off-Site Hazardous Chemical Storage Facility proposing to locate within the jurisdiction of this Ordinance shall provide to the Ordinance Administrator a certificate from the State Fire Marshal's Office, the Department of Health and Environmental Control, or other outside agency (Environmental Protection Agency (EPA) and others) that regulates the facility indicating compliance with the rules and regulations administered by those agencies.
 - b. When a land development application from an Off-Site Hazardous Chemical Storage Facility requires state government, federal government or other outside agencies' permit or approval and the applicant presents an application and site plan that is "approvable" under this ordinance, the Planning and Development Department will issue a letter to that agency, if required, stating that a land development permit will be issued upon receipt of their permit/approval as long as the proposed facility still meets the requirements of this ordinance after obtaining their approval.
 - c. The applicant must report any changes required by outside agencies upon their review that affect a change in the submitted site plan and submit a revised site plan.
 - d. All required permits and approvals must be obtained from outside agencies, as applicable, prior to the County issuing a land development permit. Only until such certification is received shall the facility be permitted for occupancy by Spartanburg County.
9. Nothing contained herein shall be intended to preempt or abrogate the requirements for an Off-Site Hazardous Chemical Storage Facility to adhere to the regulations of state or federal agencies.

Section 3.16 Coin Operated Amusement Devices, Cash Payouts

No coin operated amusement device which provides payouts authorized by Section 17-19-60 of the South Carolina Code of Laws shall be operated in a non-permanent structure such as a tent, mobile home, trailer or temporary structure. The provisions of this section shall not apply to any location with machines:

1. licensed before May 30, 1993; or
2. not involving payouts authorized by Section 17-19-60 of the Code of Laws of South Carolina.

Section 3.17 Waste Management Facilities

Legislative Findings of Fact and Policy Intent: All of the provisions and procedures set forth in this ordinance are derived from and based upon County Council's findings of fact in reference to the unique and peculiar attributes of Spartanburg County including its population projections, density and distribution, its highways and feeder roads, terrain, soil, industrial and commercial propensities, water resources, climate and seasonal effects, present and future environmental projections, law enforcement capabilities, property values, public facilities, residential uses, parks and recreational facilities,

churches and commercial uses, affects upon tax revenues, quality of life, and adverse secondary effects. Based upon all those findings, County Council has concluded as a matter of fact that the provisions are necessary and required to avoid or retard the deterioration of quality of life in Spartanburg County and the deterioration of commercial, business and industrial viability in Spartanburg County. All of those findings are the basis for the requirements and governing provisions of this ordinance which is also enacted pursuant to 4-9-25 of the Home Rule Act as necessary for the preservation of health, order and good government in Spartanburg County.

The requirements of this section shall apply to all new waste management facilities and to expansions of all existing waste management facilities as defined herein.

The facilities covered under this section include, but are not limited to, the following:

Solid Waste Landfills (SC Code of Regulations 61-107.19)

<u>New DHEC Classifications</u>	<u>Old Classifications</u>
Class One Landfill	Land Clearing Debris Landfills
Class Two Landfill	Construction and Debris Landfills and Industrial Solid Waste Class I Landfills
Class Three Landfill	Municipal Solid Waste Landfills, Industrial Solid Waste Class II Landfills, and Industrial Solid Waste Class III Landfills

Other Waste Management Facilities covered by this Section:

Composting and Wood Chipping/Shredding Facilities (SC Code R.61- 107.4)
 Infectious Waste Management Facilities (SC Code R.61-105)
 Recovered Materials Processing Facilities
 Recycling Facilities
 Short Term Structural Fills (SC Code R.61-107.19)
 Waste Incinerators
 Waste Processing Facilities
 Waste Transfer Stations

3-17.1 Definitions

For purposes of Section 3.17 the following definitions shall apply:

“Composting and Wood Chipping/Shredding Facility” means a facility that receives yard trash and land-clearing debris and prepares it to be used as mulch, etc. These facilities do not bury waste. DHEC registers these facilities, but does not issue a permit.

“Disposal” means the discharge, deposition, injection, dumping, spilling or placing of any waste into or on any land or water, so that the substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater. Incineration of waste shall be considered a form of disposal for purposes of this Section.

“Facility” means all contiguous land, structures, other appurtenances and improvements on the land used for managing waste. A facility may consist of several management units. Junk and salvage yards shall not be included in this definition.

“Incineration” means the use of controlled flame combustion or other techniques to thermally break down solid, liquid, or gaseous combustible wastes, producing residue that contains little or no combustible materials. For purposes of this ordinance, waste-to-energy facilities, pyrolysis facilities and any form of high temperature-high energy waste management facilities shall be classified as incineration facilities.

“Incinerator” means a facility or device engaged in or used for incineration as defined herein.

“Infectious waste” means any used material which is: generated in the health care community in the diagnosis, treatment, immunization, or care of human beings; generated in embalming, autopsy, or necropsy; generated in research pertaining to the production of biologicals which have been

exposed to human pathogens; and generated in research using human pathogens. This includes discarded articles that may cause puncture or cuts, such as needles, syringes, lancets, or scalpel blades; microbiologicals, such as specimens, cultures, human pathogenic agents, culture dishes, etc.; blood and blood products; pathological waste, including human tissues and bodily fluids; contaminated animal waste; isolation waste; and other waste as set forth in SC Code R.61-105. Infectious Waste does not include those wastes defined by SC DHEC as hazardous waste; radioactive and nuclear wastes; infectious waste generated by a private household; and other such exemption as defined by SC DHEC regulations.

“Infectious Waste Management Facility” means a facility engaged in waste management where the waste is infectious waste. Hospitals, nursing and personal care facilities, dentist offices, medical offices, laboratories, clinics, and medical treatment centers, and other similar patient care facilities are exempt from this definition if the waste generated is collected on a schedule or treated on site whereby the storage does not constitute a nuisance or risk to human health. Mortuaries and tattoo and body piercing facilities shall be similarly exempted.

“Landfill” means an engineered land burial facility for the disposal of waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment.

“Person” means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity

“Processing” means to reduce or alter the volume, biological, chemical, and/or physical characteristics of waste through processes prior to delivery of such waste to a recycling, resource recovery facility or to any waste management facility.

“Processing facility” is any combination of structures, machinery, or devices utilized to reduce or alter the volume, biological, chemical, or physical characteristics of waste through processes (such as baling or shredding) prior to delivery of such waste to a recycling or resource recovery facility or to a waste treatment, storage, or disposal facility, and excludes collection vehicles.

“Recovered material” means those materials which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

“Recovered Materials Processing Facility” means a facility engaged in the recycling, storage, processing, resale and/or reuse of recovered materials.

“Recyclable material” means those materials which are capable of being recycled and which would otherwise be processed or disposed of as waste.

“Recycling” means any process by which materials that would otherwise become waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

“Recycling Facility” means any facility engaged in the recycling of recyclable materials.

“Residence” means a structure or part of a structure that has been used as a residence or for which a permit has been issued by the County containing dwelling units or rooming units, including single-family or two-family houses, multiple dwellings, boarding or rooming houses, apartments, manufactured home parks, dormitories, or fraternity or sorority houses. Residences, for the purpose of this section, shall also include commercial, overnight-stay services such as hotels, motels, or tourist cabins.

“Separation” means the sorting of waste into its various components prior to recycling or disposal.

“Short term structural fill” is restricted temporary land-filling for future beneficial use where hardened concrete, hardened asphaltic concrete, bricks, masonry blocks and land-clearing debris may (under a DHEC permit-by-rule) be disposed of in a area of one (1) acre or less for a period not to exceed twelve (12) months. Such sites must be registered and approved by SCDHEC, but do not require consistency with the Spartanburg County Solid Waste Plan.

“Solid waste” means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agriculture

operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

“Storage” means the containment of waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such solid waste; provided, however, that storage in containers by persons of waste resulting from their own activities on their property, leased or rented property, if the waste in such containers is collected on a schedule whereby the storage does not constitute a nuisance or risk to human health, shall not constitute storage. The term does not apply to containers provided by or under the authority of the County for the collection and temporary storage of residentially generated wastes prior to disposal.

“Subdivision, Residential” means an application for a subdivision or a subdivision approved by the County as defined in Article 6 of this Ordinance.

“Transfer station” means a combination of structures, machinery, or devices at a place or facility where waste is taken from collection vehicles and placed in other transportation units, with or without reduction of volume, for movement to another waste management facility.

“Treatment” means any technique designed to change the physical, chemical, and/or biological characteristics or composition of any waste so as to render it safe for transport, amenable to storage, recovery, or recycling, safe for disposal, or reduced in volume or concentration.

“Waste” means any substance or material whether it is in solid, liquid, semi-solid, or contained gaseous form that is defined as a waste by South Carolina Department of Health and Environmental Control regulations or any U.S. EPA regulation. This definition includes, but is not limited to, solid waste and infectious waste. Any recyclable material or recovered material shall be considered a waste until such time as the recyclable material or recovered material has been converted to a product with a viable market. Speculation that a market exists does not constitute viable.

“Waste management” means the systematic control, by any technique, of the storage, treatment, processing, incineration, transfer, recycling, recovery, separation, and/or disposal of waste.

“Waste management facility” means a “facility” engaged in “waste management”. A junk or salvage yard shall not be included in this definition. Convenience centers and drop-off centers are exempt from this definition.

“Waste-to-Energy” means the incineration process whereby waste is converted into thermal energy to generate steam that drives turbines for electricity generation.

To the extent that a term is not defined in the Unified Land Management Ordinance and is defined in the South Carolina Code of Laws or Regulations that definition shall apply. Other terms shall carry their customary and ordinary meaning.

3.17-2 Waste Management Facility Standards

3.17-2.1 General Requirements

All Waste Management Facilities and Sites shall be subject to the following:

1. The Planning and Development Department shall not begin the review of an application for a permit until the applicant has submitted a complete application to the Planning and Development Department, as determined by staff. If staff determines the application to be incomplete, the applicant will be notified in writing of the deficiencies within fourteen calendar days of receipt of the application.
2. All applicants must submit four (4) hard copy sets and one (1) PDF set of the following plans for the specific type of facility being proposed.

- a. Vicinity plan that shows the area within one-half mile of the property boundaries of the facility in terms of: the existing and proposed land uses within that area at the time of permit application; and, residences, public and private water supply wells, known aquifers (Class Two and Class Three Landfills only), surface waters (with quality classifications), access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the facility. The plan shall be on a scale of not greater than 500 feet per inch unless otherwise approved by the Planning and Development Department.
 - b. Site plan that shows the facility's property boundaries, as certified by an individual licensed to practice land surveying in the State of South Carolina; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; the location and identification of waste handling areas; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show property lines, existing wells, and surface water bodies. The plan shall show all buildings, to include residences and schools, on adjacent properties. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
 - c. A full set of storm water plans shall be submitted to the Engineering Division of the Public Works Department.
 - d. If the owner of the site on which the waste management facility is to be placed is not the project applicant, written permission must be obtained from the owner to apply for the project's approval.
3. If a waste management facility land development application requires South Carolina Department of Health and Environmental Control (DHEC) permitting and is "approvable" under this ordinance, the Planning and Development Department will issue a letter to DHEC stating that a land development permit will be issued upon receipt of the DHEC permit so long as the proposed waste management facility still meets the requirements of this ordinance after obtaining approval from DHEC.
 4. All required permits and approvals must be obtained from the DHEC, as applicable, prior to the County issuing a land development permit.
 5. Waste management facility operators shall provide an estimate of daily, weekly, and monthly truck trips broken out by the size, type, and load capacities of vehicles. County staff will examine public road access to the site and make a determination based on the above data and the construction of the road, regardless of functional road classification, regarding the adequacy and safe use of the public road to support projected truck traffic resulting from projects on county roads. If the capacity of the road is found to be inadequate, the project will not be approved. Waste management facilities will not be allowed on minor streets in any case, except for structural fill projects of less than one acre where it is determined that the road is capable of handling anticipated loads.
 6. No Waste Management Facility shall be established within 1000 feet of the following Scenic Corridors: SC Highway 11 (Cherokee Foothills Scenic Highway), SC Highway 9, SC Highway 56, SC Highway 110 (Battleground Road), SC Highway 30 (J Verne Smith Parkway), Interstate 85 and Interstate 26. Waste Management Facilities with outdoor processes or storage shall be prohibited on any Federal Aid Primary Highway unless screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the highway. (SC Code of Laws, Title 57, Chapter 27 Junkyard Control, as amended)
 7. The provisions of Article 2 for Heavy Industrial Uses shall apply to all Waste Management Facilities unless the requirements for certain types of Waste Management Facilities are specified otherwise herein. Table 6 specifies off-street parking for Waste Management Facilities.
 8. Access to any Waste Management Facility shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent illegal dumping and unauthorized access as demonstrated by the applicant with the concurrence of staff.

9. Dust, odors, fire hazards, litter and vectors shall be effectively controlled at all waste management facilities so they do not constitute nuisances or hazards.
10. Open burning at any waste management facility shall be prohibited.
11. Setback measurements shall be made from the nearest point of improvement (including any structure, parking, landfill footprint, etc.) on the subject property to the property line of the neighboring use (residence, residential subdivision, school, daycare, church, hospital, public park or airport). Setbacks from drinking water wells, surface water bodies, easements, right of ways, and wetlands shall be measured from the nearest point of improvement on the subject property to the feature itself.

3.17-2.2 Solid Waste Landfills

Landfills shall be subject to the General Requirements for all Waste Management Facilities in addition to the following:

A. Class One Landfills

1. A Class One Landfill shall accept only trees, stumps and wood chips which have not come into contact with petroleum products or hazardous contaminants.
2. The height/gradient of fill materials shall not exceed a 3 to 1 side slope ratio and shall not exceed the highest adjoining natural grade.
3. All materials and activities shall be screened in such a fashion as not to be visible from off-site.
4. A Class One landfill shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

CLASS ONE LANDFILLS Spacing/Setback Requirements	
Property line	50 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	200 feet
Drinking water well	100 feet
Surface water bodies	100 feet
Utilities	50 feet
Rights-of-way	50 feet
Wetlands	Compliance with USACE

5. Upon DHEC certification of proper closure, a plat showing the boundaries of the disposal area of the closed disposal facility with the type and location of the solid wastes disposed of at the facility shall be submitted to the Spartanburg County Planning Department and recorded in the Spartanburg County Register of Deeds Office. The recorded plat shall state that the land contained herein has been used for a Class One Landfill.

B. Class Two Landfills

1. The height/gradient of fill materials shall not exceed a 3 to 1 side slope ratio and shall not exceed a height of 100 feet from the highest adjoining natural grade.
2. A Class Two Landfill shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

CLASS TWO LANDFILLS Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	1000 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	50 feet
Airport *	10,000 (Turbojet) 5,000 (Turboprop)
Wetlands	Compliance with USACE
* Requires landfill owner with a landfill within these distances to demonstrate that the landfill does not pose a bird hazard.	

- Upon DHEC certification of proper closure, a plat showing the boundaries of the disposal area of the closed disposal facility with the type and location of the solid wastes disposed of at the facility shall be submitted to the Spartanburg County Planning Department and recorded in the Spartanburg County Register of Deeds Office. The recorded plat shall state that the land contained herein has been used for a Class Two Landfill.

C. Class Three Landfills

- The facility shall be enclosed by an eight-foot chain link fence with evergreen screen with a minimum height not less than eight feet at maturity or a wall structure as illustrated by Section 2.02-2, on all sides visible from streets.
- The height/gradient of fill materials shall not exceed a 3 to 1 side slope ratio and shall not exceed a height of 100 feet from the highest adjoining natural grade.
- A Class Three Landfill shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

CLASS THREE LANDFILLS Spacing/Setback Requirements	
Property line	200 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	1000 feet
Drinking water well	500 feet—up gradient 750 feet—side gradient 1000 feet—down gradient
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	50 feet
Airport	10,000 feet (Turbojet) 5,000 feet (Turboprop) 6 miles (New Landfill)
Wetlands	Compliance with USACE

4. Upon DHEC certification of proper closure, a plat showing the boundaries of the disposal area of the closed disposal facility with the type and location of the solid wastes disposed of at the facility shall be submitted to the Spartanburg County Planning Department and recorded in the Spartanburg County Register of Deeds Office. The recorded plat shall state that the land contained herein has been used for a Class Three Landfill.

D. Short-Term Structural Fill

A Short-term Structural Fill is exempt from the vicinity plan and site plan requirements. Instead a plat delineating the fill area, surrounding land uses, wells, water bodies, and easements shall be submitted to the Planning Department.

A notice, along with the above-mentioned plat, shall be recorded in the Register of Deeds Office to put future purchasers on notice that short term structural fill was placed on the site. The notice shall include a list of the specific materials used as fill.

SCDOT right-of-way Structural Fill sites that are directly related to road construction are exempt from these requirements if the fill is within the road right of way.

Structural Fills shall meet the General Requirements for Waste Management Facilities and the following requirements:

- a. The materials utilized for fill must not have been contaminated by hazardous contaminants, petroleum products, or painted with lead-based paint. Structural fill may not provide a sound structural base for building purposes.
- b. A Structural Fill shall meet the following setbacks and spacing requirements.

STRUCTURAL FILL Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	200 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet
Between structural fills on same property	500 feet

3.17-2.3 Other Waste Management Facilities

Except as noted, the following facilities are subject to the General Requirements listed above.

A. Waste Incinerators

A Waste Incinerator shall meet the following setbacks and spacing requirements.

WASTE INCINERATORS Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet

Utilities	50 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

B. Recycling Facilities and Recovered Materials Processing Facilities

All Recycling Facilities and Recovered Materials Processing Facilities as defined in this Article shall be subject to the following requirements.

A Recycling Facility or a Recovered Materials Processing Facility whose operation is totally contained within a building and that does not deal with Hazardous Chemicals as defined in this Ordinance, produce noxious or foul odors, or produce noise in excess of 45 decibels shall be considered under this Ordinance as Industrial Uses.

- 1) Recycling Facilities and Recovered Materials Processing Facilities shall also comply with the provisions of Article 2 to the extent that it does not conflict with this Section.
- 2) All outside storage of material shall be in sturdy containers or enclosures which are covered, secured, and maintained in good condition, or shall be baled or pelletized.
- 3) The site shall be maintained free of litter and any other undesirable materials, shall be cleaned of loose debris on a daily basis, and shall be secured from unauthorized entry and removal of materials when attendants are not present.
- 4) If the facility is open to the public, space shall be provided on-site for the anticipated peak load of customers to circulate, park, and deposit recyclable materials.
- 5) Recycling Facilities and Recovered Materials Processing Facilities shall meet the following setbacks and spacing requirements.

RECYCLING FACILITIES and RECOVERED MATERIALS PROCESSING FACILITIES Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

C. Waste Transfer Stations

A Waste Transfer Station shall meet the following setbacks and spacing requirements.

WASTE TRANSFER STATION Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet

Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

D. Waste Processing Facilities

A Waste Processing Facility shall meet the following setbacks and spacing requirements.

WASTE PROCESSING FACILITIES Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

E. Composting and Wood Chipping/Shredding Facilities

Composting and Wood Chipping Facilities will follow the same setback/ spacing requirements as Class One Landfills.

3.17-2.4 Infectious Waste Management Facilities

Infectious Waste Management Facilities shall be subject to the following requirements in addition to the General Requirements listed above:

1. In addition to the application requirements described for all waste facilities, infectious waste facilities shall provide to the County upon obtaining DHEC approval: (a) a spill plan; (b) contingency plans for alternate treatment, storage and/or disposal sites, and (c) an emergency preparedness and response plan that will be filed with the appropriate emergency service officials and the County's Office of Emergency Management.
2. Storage of waste must not be outdoors. Storage buildings must display the universal biohazard symbol, must be locked, and must allow access to authorized personnel only.
3. The facility must be connected to the public sanitary sewer system.
4. Infectious Waste Facilities shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

INFECTIOUS WASTE FACILITIES Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	Compliance with USACE

Section 3.18 Communication Towers

The intent of this Section is to aid in the siting of Communication Towers in the County of Spartanburg by establishing regulations, which allow for the harmonious co-existence of Communication Towers with other land uses. It is also the intent of this Section to reduce the impact of Communication Tower by providing setbacks from residential property, encouraging Communication Tower locations in commercial/industrial areas, and encouraging co-location of Communication Towers and innovative locations (i.e., church steeples, other nonresidential buildings, outdoor advertising signs, water tanks and electric transmission towers, etc.) when technically feasible.

Section 3.18 shall apply to any tower or antenna used for communication purposes. It includes any new tower and/or antenna location unless it is a previously approved communication tower that is not being increased in height for the purposes of accommodating the additional equipment.

Section 3.18-1 Standards

The following standards shall apply for the permitting of Communication Towers:

Section 3.18-1.1 A pre-application conference with the Development Project Team review Staff from the Planning Department is required prior to applying for a development permit.

Each applicant for an antenna and or tower shall provide to the Planning Department an inventory of its existing towers that are either within Spartanburg County or within one-quarter mile of the border thereof, including;

1. correct, up-to-date information on the Assessor's map and parcel reference,
2. map showing exact location on the parcel,
3. height,
4. design,
5. number of antenna that can be accommodated on the tower,
6. year constructed,
7. correct street address, and
8. current co-locators.

The Planning Department may share such information with other applicant applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate antennas within Spartanburg County, provided however that the Planning Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

The applicant must provide expert testimony that demonstrates to the satisfaction of the Planning Department that any existing tower, building, or other structure within one-half (½) mile of the proposed site is unavailable, at a reasonable cost or other business terms, to accommodate the equipment or purpose for which a new tower or an existing tower's increase in height is proposed. The need for structural or equipment modifications shall not alone be sufficient to demonstrate non-availability. Any one or more of the following shall be considered to demonstrate non-availability:

- i. Evidence with reference to EIA-RS 222, in its current adopted revision, that the structural capacity of existing and approved towers cannot accommodate the planned equipment and cannot be reinforced to accommodate the planned equipment at a reasonable cost. The applicant shall be required to calculate the capacity of existing or approved towers based on information on file with the County or requested from the tower owner if supplied.
- ii. Evidence that the planned equipment may and/or will cause objectionable radio frequency interference with other existing or planned equipment on that tower, which cannot be made better at a reasonable cost.
- iii. Evidence that existing or approved towers do not have space to locate the planned equipment where it can function effectively and at the strength of signal required by the FCC.

- iv. Evidence that the addition of the planned equipment to existing or approved towers would result in non-ionizing electromagnetic radiation (NIER) levels in excess of those permitted by OST-65 and ANSI C95.1 or any revisions thereto, or any adopted local standard.
- v. Evidence that the fees and/or cost to be charged to the collocating company, or contractual provisions required by the owner, including the cost to adapt existing facilities to the proposed use based on comparable terms, exceed the current fair market value to locate on a build to suit tower.

Section 3.18-1.2 Setbacks from Property Lines and Certain Residential Uses

A Communication Tower shall be set back from all property lines of the parcel on which it is located, a distance equal to the height of the Communication Tower minus twenty (20') feet, except as modified below: Towers shall also observe external setbacks from certain residential land uses as described below. See Table 3 for additional information.

- a. A Communication Tower with a center point closer than one thousand (1,000') feet from the nearest property line of any platted residential subdivision, as defined herein, containing twenty-five (25) or more lots, shall observe a setback from the nearest property line in the subdivision(s) as set forth below. Also, a Communication Tower that has a total of fifty (50) Dwelling Units, as defined herein, located within a one thousand (1,000') foot radius from the center point of the Communication Tower shall observe a setback, as set forth below, from the nearest residential structure, but not to include residential structures on the subject property upon which the Communication Tower is to be constructed.
 - i. For a Communication Tower, which is less than two hundred (200') feet in height from the ground on which it rests, the setback shall be two (2) times the height of the Communication Tower from the nearest residential structure or the nearest applicable residential subdivision property line, whichever applies.
 - ii. For a Communication Towers, which is two hundred (200') feet or more in height from the ground on which it rests, the setback shall be three (3) times the height of the Communication Tower from the nearest residential structure or the nearest applicable residential subdivision property line, whichever applies.
- b. For the purpose of measuring the applicable setback, distance measurements on monopole and guyed Communication Towers will be made from the center point of the Communication Tower. Distance measurements on lattice Communication Towers will be made from the closest legs of the lattice Communication Tower to the point of reference.

All guy wires (if any) shall be located within the applicable setback, and no residential dwelling (except one located on the same parcel) shall be located within any applicable setback.

- c. The height of the Communication Tower shall be the distance from the ground on which the Communication Tower rests to the top of the tower structure.
- d. For purposes of Section 3.18-1.2(a) a platted residential subdivision is defined as being either that shown in an approved final or summary plat as defined in Section 1 of this ordinance, together with any additional adjacent phases to such plat shown on a subsequently approved final or summary plat, or a map showing a subdivision of land which was recorded in the Office of the Register of Deeds for Spartanburg County prior to November 2, 1977, together with any additional adjacent phases to such subdivision of property shown on a subsequently recorded map.
- e. For purposes of Section 3.18-1.2(a) and for purposes of determining the number of dwelling units within the one thousand (1,000) foot radius from the center point of the Communication Tower, a Dwelling Unit shall be defined as a single unit providing complete, independent living facilities designed, arranged, used or intended for use by one or more persons living together and maintaining a common household, and which shall include permanent provisions for living, sleeping, eating, cooking and sanitation, (but excluding lodging units located in hotels or motels), including and limited to the following types of residences:
 - i. Single Family Dwelling: A building designed, constructed and used for one dwelling unit.
 - ii. Two Family or Duplex Dwelling: A building designed, constructed or reconstructed and used for two dwelling units that are connected by a common structural wall. However, for purposes of determining the number of dwelling units within the one thousand (1,000)-foot radius of the

Communication Tower site, any two-family or duplex dwelling will only be considered as a single dwelling unit. Furthermore, a two-family or duplex dwelling shall not include any such structure(s) utilized for the housing of transients.

- iii. Limited Multiple Family Dwelling: A building designed, constructed, or reconstructed and used for more than two (2) Dwelling units but for no more than five (5) Dwelling units, with each Dwelling unit having a common wall with any other Dwelling unit. However, for purposes of determining the number of dwelling units within the one thousand (1,000) foot radius of the Communication Tower site, any Limited Multiple Family Dwelling will only be considered as a single dwelling unit. Furthermore, a Limited Multiple Family dwelling shall not include any such structure(s) utilized for the housing of transients.
- iv. For purposes of Section 3.18-1.2(a), a dwelling unit shall not be defined as including the following types of residences:
 - 1. Multiple Family dwelling: A building designed, constructed, or reconstructed and used for more than five (5) Dwelling units, with each Dwelling unit having a common wall with any other Dwelling unit.
 - 2. Resident Group Care Homes: A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A Group Care Home may include nursing homes, extended care facilities, retirement homes, halfway houses, recovery homes, and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care.
 - 3. Mobile Home Parks: A lot or lots used, designed or intended to be used for the purpose of supplying parking spaces for three (3) or more occupied mobile/manufactured homes and which includes, buildings, structures, or enclosures used or intended to be used as a part of such mobile home park, but not including a Mobile Home Subdivision as defined by the Spartanburg County Unified Land Management Ordinance.
- f. To encourage the location of Communication Towers in commercial and industrial areas, the required setback for Communication Towers located in areas of Medium/High Intensity Commercial, Industrial, and/or Institutional areas, including properties containing apartment buildings, shall be as follows:
 - i. If the proposed tower is within 1000 feet of the residential uses described in Section 3.18 1-2(a), then the tower must be set back from that residential use as described in that section. As long as the proposed structure can meet said setback, it may take advantage of the 30-foot setback as described in this section.
 - ii. Thirty (30') feet from the property line of the property on which the Communication Tower is located provided the setback requirement of the height of the Communication Tower minus 20 feet is on like use property. Otherwise, the setback shall be the height of the tower minus 20 feet from the property line of the property on which the Communication Tower is located.
 - iii. For the purpose of measuring the applicable setback, distance measurements on monopole and guyed Communication Towers will be made from the center point of the Communication Tower. Distance measurements on lattice Communication Towers will be made from the legs of the lattice Communication Tower.
 - iv. For purposes of Section 3.18-1.2(d), and for purposes of determining the applicability of the setbacks set forth in this Section 3.18-1.2 (2)(d), the Medium/High Intensity Commercial, Industrial, and/or Institutional use must exist over an area of five (5) or more acres within one (1) or more contiguous Medium/High Intensity Commercial, Industrial, and/or Institutional use properties regardless of common ownership. In addition to those uses considered to be Medium/High Intensity Commercial, Industrial, and/or Institutional as set forth in Article Six of the Spartanburg County Unified Land Management Ordinance, the use of any subject property shall be considered to be Medium/High Intensity Commercial, Industrial, and/or Institutional so long as any one of the following conditions exist:
 - 1. The property has a present and ongoing Medium/High Intensity Commercial, Industrial, and/or Institutional use;

2. The property was last used for Medium/High Intensity Commercial, Industrial, and/or Institutional purposes, the use is not presently ongoing or active, but the use of the property has not been changed;
 3. The property is undeveloped but its location and proximity to other uses make it highly unlikely to be developed for residential purposes such as commercial and/or industrial properties located along the boundaries of interstates.
- v. For purposes of Section 3.18-1.2(d), and for the purpose of determining the amount of property subject to Medium/High Intensity Commercial, Industrial, and/or Institutional use, subject to the conditions set forth herein, the land area of any easements or rights of way touching upon or located within any property may be included in the calculation, but any such land area included shall not exceed fifty (50%) percent or two and one-half (2.5) acres of the total five (5) acres. The Planning Department staff shall make the consideration of any land area of any easements or rights of way on a case by case basis. The Planning Department staff shall take into account all relevant information, including, but not limited to, the existence of a transitional commercial area, in considering any land area of any easements or rights of way.

The applicant for the construction of a Communication Tower in an area of Medium/High Intensity Commercial, Industrial, and/or Institutional use pursuant to this Section 3.18-1.2(d), shall not be required to lease or purchase the entire five (5) acres but only so much land area that is necessary for its purposes and to meet the setback requirements set forth herein.

The Spartanburg Planning Department Staff shall conduct a survey of land uses for each proposed Communication Tower location proposed in a commercial and/or industrial area and make a finding of fact for the Public record. To encourage the location of Communication Towers and/or antennae on existing buildings and structures, only the height of the Communication Tower and/or antennae (and not the building or structure on which the Communication Tower and/or antennae are located) shall be considered in determining any required setback under this Section 3.18-1.2(d).

For purposes of Section 3.18-1.2(d), and for purposes of determining the applicability of the setbacks set forth in this Section 3.18-1.2(d), the definition of Medium/High Intensity Commercial, Industrial and/or Institutional areas shall not include properties containing churches, synagogues or any other building improvements for the purpose of religious worship.

Section 3.18-1.3 Two (2) copies of a site development plan (in lieu of the information required in Table 2 for a Minor Land Development site plan) shall be drawn to scale and show, at a minimum, the following information;

1. the height and precise location of the tower on the parcel (as most previously subdivided) along with guy anchors, if any,
2. any new property lines/lease property lines that may be a result of the project,
3. all applicable setbacks, including the herein-described setbacks from certain residential uses,
4. transmission buildings and other accessory uses,
5. access,
6. landscaped areas,
7. fence, and
8. adjacent land uses.

Section 3.18-1.4 All proposed Communication Towers shall provide for controlled access to the Communication Tower facility with an eight (8') foot high chain link fence surrounding the Communication Tower facility and any guy wire abutments. Access to the tower shall be through a locked gate.

In addition, a row of evergreen shrubs capable of forming a continuous hedge at least five (5') feet in height shall be provided around the outside perimeter of the fence to the extent the outside perimeter is not otherwise obscured by existing trees and natural vegetation.

The owners and their agents shall be responsible for maintaining all required landscaping material in a healthy condition, replacing unhealthy or dead plant materials by the next planting season. Replacement material shall be as described in the previous paragraph.

Section 3.18-1.5 All Communication Towers shall be constructed to accommodate at least two (2) additional communication antennas. The applicant must submit an affidavit stating that space on the proposed tower will be made available to future users when technically possible at a comparable market rate.

Section 3.18-1.6

- a. With the exception of Communication Towers for aeronautical purposes, Communication Towers may not penetrate any imaginary surface, as described in Chapter 14 of the Code of Federal Regulations, Federal Aviation Regulation (FAR) Part 77 as amended, associated with existing or proposed runways at any publicly owned airport. All Communication Towers located within the first 12,000 feet of the approach surface on an existing or proposed runway, or within the horizontal surface associated with such runway(s) as described in FAR Part 77, shall be lighted. Strobe lights during the daylight and twilight hours and red lights shall illuminate such Communication Towers during nighttime hours.

Prior to issuance of a building permit, applicants shall provide documentation that the proposed Communication Tower has been reviewed by the Federal Aviation Administration (FAA), if so required, and that finding of no hazard to air navigation has been determined.

The applicant shall also provide copies of the site development plans for comment to Greenville-Spartanburg International Airport and Spartanburg Downtown Memorial Airport to be delivered at least ten (10) days prior to staff approval. Prior to approval, documentation must be received by the Spartanburg County Planning Department that the proposed Communication Tower has been reviewed by each of the said airports and that neither airport has an objection. If either airport has an objection to the proposed Communication Tower, an Advisory Conference composed of Airport officials, County Officials, and representatives of the communication company's shall be convened. The results and findings of such conferences shall be presented to the County Planning and Development staff for evaluation and final action. Because proximity and lighting of Communication Towers near these aeronautical facilities affects the safety of the public, careful consideration should be given to the results and findings and such may be grounds for denial of the issuance of a permit or requiring that certain additional requirements be imposed as a condition for the issuance of a permit.

- b. Care shall also be taken in locating Communication Towers in the vicinity of any private airport whether or not it is open to the public.
- c. All Communication Towers shall be lighted in accordance with Federal Aviation Administration Circular 70-7460, "Obstruction Marking and Lighting," as amended from time to time.
- d. Communication towers not requiring FAA painting/marketing shall have either a galvanized finish or be painted a dull blue or gray finish.

Section 3.18-1.7 All Communication Towers shall be designed and constructed so as to withstand winds in accordance with ANSI/EIA/IIA 222 (latest revision) standards.

Section 3.18-1.8 No advertising of any type may be attached to a Communication Tower. However, a Communication Tower and/or antenna may be placed upon an outdoor advertising sign subject to the requirements of Section 3.18-1. The placement of a Communication Tower and/or antenna upon an outdoor advertising sign shall not change the principal nature or classification of the outdoor advertising sign.

Section 3.18-1.9 Communication towers shall be removed at the owner/operators expense within 120 days of the date such tower ceases to be used for its intended purpose.

Section 3.19 Junk and Salvage Yards

Section 3.19-1 Findings

Spartanburg County finds that junkyards:

- (1) Pose a hazard to the health, safety, and general welfare of the citizens of Spartanburg County;
- (2) Depreciate the value of surrounding property;
- (3) Pose environmental and fire hazards;
- (4) Are a breeding ground for mosquitoes or other insects, snakes, rats and other pests;
- (5) Pose a threat of injury to children and other individuals who may be attracted to the premises;
- (6) Are a visual blight and patently offensive to the aesthetic quality of the environment of Spartanburg County

Section 3.19-2 Purpose

To preserve the physical integrity of established neighborhoods for the quiet enjoyment of family, safety of children, and the maintenance of residential property values; to protect the citizens and residents of Spartanburg County from possible injury at junkyards; to achieve responsible economic growth in areas of Spartanburg County that is compatible with growth and development in nearby areas; to protect the public from health nuisances and safety hazards by controlling vectors, concentration of volatile or poisonous materials, and sources of danger to children; and to preserve and enhance the natural scenic beauty of areas in the vicinity of the primary and secondary roads of Spartanburg County, it is declared to be in the public interest of Spartanburg County, and necessary and proper for the general welfare, convenience, safety and health of the people of the County, to regulate the operation and maintenance of junkyards in areas adjacent to public roads and highways within Spartanburg County, including those regulated by the South Carolina Department of Highways and Public Transportation to the extent that this division is not in conflict with such regulations. Spartanburg County Council hereby finds and declares that junkyards which do not conform to the requirements of this ordinance are public nuisances.

Section 3.19-3 Fencing and Screening

All junkyards shall be enclosed on all sides by one of the following that shield the junkyards from view:

1. A chain link fence with evergreen screening of an approved type; or
2. Where evergreen screening is not possible, a chain link fence with vinyl strips or slats woven into the fence fabric may be used upon approval by the ordinance administrator; or
3. A wooden or masonry privacy fence; or
4. Other type material which has been given approval by the ordinance administrator.

Section 3.19-4 General Requirements

1. Anchoring - All metal or wooden fence posts shall have at least one-fourth of their length below ground level and shall be set in hard packed clay or concrete. All metal fence posts shall be treated with an anti-corrosive coating. All wooden posts shall be pressure treated or creosote coated lumber.
2. All junkyard business shall be conducted entirely within the screened area of the property.
3. No junk shall be stacked, stored or maintained at a height greater than the opaque screen around the junkyard.
4. Adequate off-street customer parking must be provided, and must be graveled or paved in an acceptable manner.
5. If a junkyard closes, it must comply with the provisions of Section 3.19-5 for new junkyards to re-open. Evidence of closing shall be established by inspection of the property, written notification or non-renewal of a junkyard permit.

6. Any person, company, business or corporation not covered by this division or exempted from this division shall comply with state statutory law regarding disposition of abandoned or derelict motor vehicles as provided by S.C. Code Ann. § 56-5-5610, 56-5-5810, et. seq. and 44-67-10 et. seq. (1976).
7. All junkyards shall be maintained to protect the public from health nuisances and safety hazards. The Spartanburg County Health Department may inspect each junkyard to determine that the junkyard does not create a nuisance or safety hazard. Should a nuisance or safety hazard be identified, the owner, operator or maintainer shall submit satisfactory evidence to the health department and planning department that the nuisance or safety hazard has been eliminated. Failure to comply with this provision shall result in revocation of permit as well as other penalties and remedies for violation of this division.

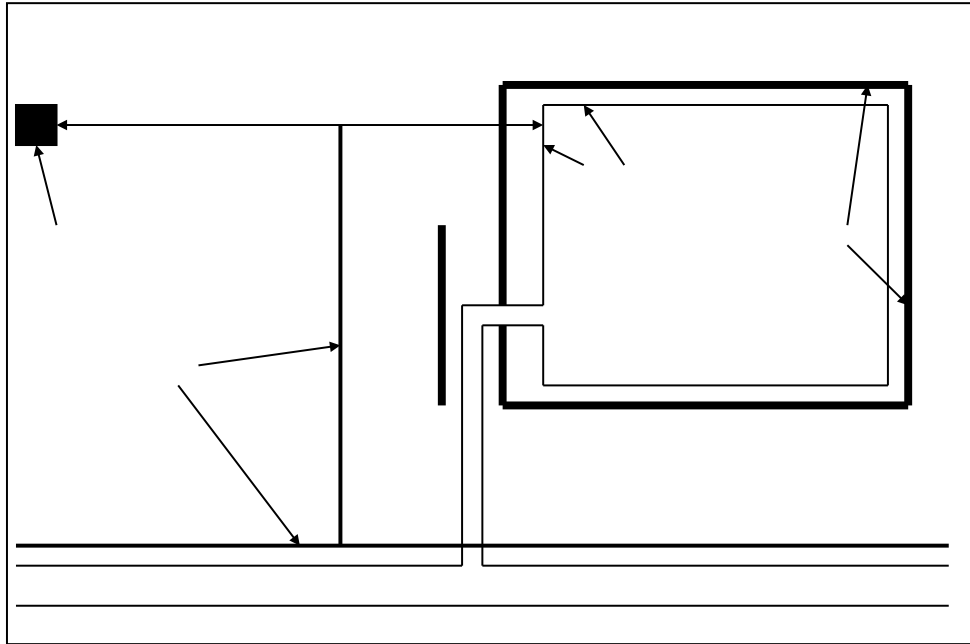
Section 3.19-5 Operation of New Junkyards

The following standards shall be applicable to junkyards that open, re-open, or begin operations or business after December 31, 1999:

1. New junkyards shall be situated on a continuous parcel of at least five acres excluding rights-of-way that are undivided by road rights-of-way or public dedication.
2. Have a minimum front lot line of 100 feet on a public right-of-way. Wrecker, towing and impoundment services as defined by Section 3.19-7(e) of this ordinance, shall have a minimum front lot line of sixty (60) feet on a public right-of-way. Reference minimum sixty (60) foot front lot line requirement for commercial property pursuant to the Development Standards Ordinance.
3. All driveway entrances shall be from side property lines. The centerline of the driveway shall not be closer than 30 feet from the side property line. An opaque gate shall be utilized. The view toward the gate from the adjacent property shall be screened by a continuous hedge row not less than 30 feet wider than the gate.
4. Have a minimum setback to the fence from front, side and rear property lines excluding road rights-of-way of at least 50 feet. Wrecker, towing and impoundment services as defined by Section 3.19-7(e) of this ordinance, shall have a minimum setback to the fence from front, side and rear property lines excluding road rights-of-way of at least 25 feet.
5. No junkyard shall be established closer than 1,000 feet to a church, school, daycare center, nursing home, health care facility, hospital, public building, public recreation facility, a concentration of ten or more contiguous residences, or closer than 500 feet from any single residence. An on-site residence at the junkyard by the owner or its agent is permitted. No junkyard shall be established closer than 1,000 feet of the following scenic corridors: S.C. Highways 9, 11, 56, 110 (Battleground Road), and U.S. Highways 26 and 85.
6. The junkyard shall be entirely surrounded by an opaque fence at least eight feet in height or by either a woven or welded wire (11-gauge minimum) or chain link fence a minimum of 8 feet in height and with an opaque evergreen screen with a minimum height of not less than eight feet when mature. The evergreen vegetation shall be planted between the property line and the outbound side of the fence. The distance spacing of the evergreen vegetation from the fence and the property line should allow for maintenance of the mature vegetation from inside the property line. Evergreen vegetation that serves as screening shall be of an approved type that can reach a minimum height of eight feet when mature from the date planted and shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken screen (without gaps or open spaces) will exist to a height of at least eight feet along the length of the fence surrounding the junkyard. The evergreen screen shall be maintained as a continuous, unbroken screen for the period the property is used as a junkyard. Acceptable species include, but are not limited to, Ligustrum, Euonymus, Leyland Cypress, White Pine, Cedar, Arborvitae, Hemlock, and upright varieties of Junipers, Holly and Yew. Each owner, operator, or maintainer of a junkyard shall utilize good husbandry techniques by pruning, mulching, and fertilizing, so that the vegetation can reach a height of eight (8) feet within five years of the date planted and will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.
7. A junkyard plan prepared by the owner or operator of any new junkyard shall be submitted prior to the junkyard permit being granted by Spartanburg County. The plan shall indicate setbacks, location of public rights-of-way, all proposed structures, all structures within 500 feet of a junkyard,

driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions of junkyard, gross acreage, owner(s)' name(s), address(es), preparer of plan name(s) and address(es). Submission of information shall establish pre-existing conditions. Plan may be drawn at a scale of one inch equals 400 feet or less.

8. When, for reasons of topography, it is determined by the ordinance administrator that the fencing and screening requirements of the new junkyard will not produce a result that sufficiently shields the junkyard from view and otherwise preserves the policy and intent of this division, the following alternatives are available:
 - a. The junkyard may locate at the site if its fenced boundaries are no closer than 1,000 feet to any adjacent residence; or
 - b. Topographic features shall be graded to adjacent roadway levels so that the provisions for fencing and screening can be effective; or



- c. The developer of a junkyard may seek another site that is more suitable to junk yard development.
9. In addition to the spacing requirements of paragraph five (5) and nine (9) herein, all junkyards established after December 31, 1999 shall be restricted to property located in areas characterized by light, medium or heavy "Industrial Uses" as defined by this Ordinance and shown on the Future Land Use Map in the approved "Spartanburg County Comprehensive Plan."

Section 3.19-6 Licensing, Inspection, and Annual Fees for Junkyards

1. Licensing and Fees
 - a. A license shall be required to open and/or operate a junkyard and shall be subject to annual renewal due January 1st. The license fee shall be set per the Fee Schedule adopted by Resolution of County Council.
 - b. For an owner who fails to renew the annual license by the deadline, there shall be a monthly late fee equal to half of the above base rate.
 - c. An owner may not renew a license if his yard is not in compliance with this ordinance. Late fees will continue to accrue for those yards that are found to be non-compliant.
 - d. Late fees will continue to accrue for an owner who is in compliance and does not pay the annual license fee.

- e. Failure to comply with the requirements of this Ordinance may result in the revocation of license to operate a junkyard. After the annual fee is 60 days delinquent, the owner shall be considered in violation of this Ordinance for the lapsed license.
- f. A Junkyard license is not transferrable.
- g. Successors or assigns of a junkyard shall be responsible for payment of any delinquent or due fees, penalties or fines.

2. Annual Inspection; Violation

- a. All junkyards registered in Spartanburg County shall undergo an annual inspection to ensure compliance with this Ordinance.
- b. When a violation is determined, notice shall be given in writing by the code enforcement officer, together with an established time period within which the violation must be corrected.
- c. A junkyard license may be revoked by the Spartanburg County Environmental Enforcement Department Director for a violation of this Ordinance or other applicable regulations governing the operation of such uses based on inspection of the premises.

3. Suspension of License

- a. Failure to correct the violation(s) within the established time period will result in license suspension.
 - b. Any person who has received notice that his license will be suspended unless certain conditions or practices at the junkyard are corrected, may request and shall be granted a hearing on the matter before the Board of Zoning Appeals by filing a petition with the Planning and Development Department. The petition for such hearing must be filed within ten calendar days following the day on which delivery of the notice of license suspension was delivered to such person. If no petition is filed within ten calendar days following the delivery of the notice of license suspension, the license shall be deemed to have been automatically revoked.
 - c. A junkyard, upon the owner's loss of license based on violations of this Ordinance, shall meet the requirements of all County Ordinances in order to reopen. Otherwise, the yard must be closed.
4. Providing false or incorrect information on any application form, registration form, permit form or license renewal form under this division shall constitute a misdemeanor. Any license not containing the current mailing address of the license holder or the current mailing address of the record owner of the parcel of land upon which the junkyard is located, is void. Any application form submitted by a lessee or tenant for a license under this division shall contain the signature and current mailing address of the landlord, leaser, or record owner constituting an affirmation that the license applicant is in fact a lessee or tenant of the landlord, leaser, or record owner of the parcel of land upon which the junkyard is located.

Section 3.19-7 Exemptions

Although the following are junkyards as defined by this ordinance and are subject to the provisions of this section, the following limited exemptions are granted:

- a. Service stations are exempt from Section 3.19-5 and Section 3.19-6 of this division. All other provisions of this division shall apply. A service station is any establishment or place of business which provides retail sales of fuel, lubricants, air, water or other items for the operation or maintenance of motor vehicles or for making mechanical repairs, servicing or indoor washing of motor vehicles.
- b. Wrecker, towing and impoundment services, as defined herein, are exempt from the five (5) acre requirement of Section 3.19-5(1) for the operation of new junkyards under this ordinance. All other provisions of this division shall apply including the fencing and anchoring requirement of Sec. 3.19-3. A wrecker, towing or impoundment service is any establishment or place of business which provides towing or temporary storage services of no more than twenty five (25) currently licensed and currently registered motor vehicles which have been wrecked, or whose possession is by virtue of court order, a copy of which is in the possession of the proprietor of such service or affixed to the vehicle. Temporary storage is defined as not exceeding ninety (90) days from the date possession or custody of the vehicle is obtained except when possession is pursuant to a court order.

Section 3.20 Accessory Buildings and Uses/Non-Residential

(1) Accessory Uses to Observe Required Setbacks

Unless specifically provided herein, all accessory uses and structures shall observe the required setback requirements on Table 3.

(2) General Requirements

- a. There is no limit to the number of accessory buildings.
- b. Accessory uses shall observe the setback requirements for the principal use to which they are accessory when located contiguous to a residential use.

(3) Location

Without exception, no accessory use may be located in a required bufferyard area. Accessory buildings and uses are permitted anywhere within the buildable area of a lot or parcel unless specifically regulated. They may be permitted within required yards and setback areas, but not in bufferyards, under the following conditions:

a. Off-Street Parking and Loading Space

Off-street parking and loading spaces are permitted in required yards and setback areas

b. Buildings, Sheds, and Structures for Dry Storage; Greenhouses

Building sheds and structures for dry storage and greenhouses may be located in rear yard and rear setback areas only.

c. Swimming Pools, Tennis Courts, Recreational Uses

These uses may be located in required rear yard and side yards; provided said uses shall be no closer than 10 feet to the nearest property line, and shall have all lighting shielded or directed away from adjoining residences.

d. Ground Supported Communication and Reception Antennas

These uses may be located in required rear and side yards only, and if located in the buildable area shall not extend or be located in front of any principal building.

e. Fences and Walls

May be located in all required yards and along any property line.

Section 3.21 Temporary Uses

All temporary uses shall submit a sketch plan for review, and upon approval shall be issued a temporary permit. The uses listed in this Section are not a complete list and staff will determine the proper category of a temporary use not listed. Temporary uses, their location, duration, and conditions applicable thereto, are as follows:

1. Fairs, Carnivals, Festivals, and Outdoor Concerts with no public sponsorship

Uses with less than 500 attendees/day shall be located in an area where there are less than 10 residential dwellings with 500 feet radius of a circle located in the center of the proposed site. Uses with 1000 or more attendees/day shall locate in a area where there are less than 10 residential dwellings with 1000 feet radius of a circle located in the center of the proposed site and shall take access from a collector or arterial roadway. Maximum length of stay shall be (15) days for fairs and carnivals and (3) days for festivals and concerts. Extensions of the temporary permit may be considered by staff for good cause. Operations for such uses shall cease between 12:00 PM midnight and 6:00 AM. Off street parking shall be provided at the rate of 3 persons/car and all parking areas shall be roped off.

2. Religious Tent Meetings

Religious meetings in a tent or other temporary structure shall not exceed (30) consecutive days per permit. Extensions of the temporary permit may be considered by staff for good cause. The tent/structure shall not be closer than 400 feet to any residential dwelling. Uses with more than 1000 attendees/day shall take access from a collector or arterial roadway. Off street parking shall be provided at the rate of 3 persons/car and a parking area shall be roped off.

3. Seasonal uses such as Snow Cone Stands, Firework Stands, Produce Stands, Christmas Tree Sales Lots, Haunted Houses, Haunted Trails and Similar Uses

Uses in this category may be issued a temporary permit for a period of up to 90 days. Temporary structures must remain out of the road right of way. Adequate parking shall be provided and parking may not be so arranged that vehicles are forced to back into traffic on the primary access street. Sites used for these purposes shall not be used for another (6) months for any temporary use.

4. Modular Real Estate Sales Office

Real estate sales offices, representing sales of land on which the use is located may be permitted for up to 2 years, provided no cooking or sleeping accommodations are maintained in the structure. Extensions of the temporary permit may be considered by staff for good cause.

5. Modular Contractor's Office

Contractor's office and equipment sheds may be permitted for a period covering the construction phase of the project but not to exceed 2 years provided that such office be placed on the property to which it is appurtenant. Extensions of the temporary permit may be considered by staff for good cause.

6. Temporary Shelter

When fire or natural disaster has rendered a single family or duplex residence unfit for human habitation, the temporary use of a mobile home located on the single family or duplex lot during rehabilitation of the original residence or construction of a new residence is permitted, provided that (a) adequate water and sewer facilities are available, (b) maximum length of the permit shall be (6) months, (c) the mobile home shall be removed from the property upon issuance of a Certificate of Occupancy for the new or rehabilitated residence. Extensions of the temporary permit may be considered by staff for good cause.

7. Clean Up After Use

The site on which a temporary use is located shall be cleared of all debris at the end of the time for which the use is permitted and cleared of all temporary structures in connection therewith. Failure to do so shall constitute a violation of this Ordinance.

8. Temporary Rural Event Venue

Uses in this category may be issued a temporary permit for a period of up to 90 days. Extensions of the temporary permit may be considered by staff for good cause. Temporary structures and vehicles must remain out of the road right of way. Adequate parking shall be provided and parking may not be so arranged that vehicles are forced to back into traffic on the primary access street. Staff may require necessary documents or plans to verify how the structure will be utilized temporarily.

Section 3.22 Nuclear Wastes and Hazardous Waste Management and Disposal Facilities

Due to consideration for the public health and safety as well as potential pollution to the environment, nuclear waste and hazardous waste management and disposal facilities are prohibited from locating new facilities or expanding existing facilities in Spartanburg County.

Section 3.23 Certain Public Service Uses

Section 3.23-1 Uses Identified

Due to the nature of certain public uses and the need to locate such uses in various areas of the County, the following uses or expansion of said uses thereto must be located on adequate streets:

- Prisons
- Area-wide Sewerage Treatment Facilities
- Cemeteries

The Planning Commission, at a regular monthly meeting, reviews and approves these uses. The Planning Commission may impose special requirements for these uses to protect public health and safety. These special requirements may include, but are not limited to, the following:

1. Full disclosure of all emergency procedures and an analysis of the adequacy of those procedures;
2. Environmental analysis of water and air quality.
3. Roads accessing these uses, where significant truck traffic is projected, must be upgraded to meet the County's industrial/commercial road standards.
4. Bufferyard requirements.

Section 3.24 All Other Commercial and Industrial Uses

1. Road Access

Any commercial or industrial use will take its primary access off the highest classified street onto which it fronts.

2. Setbacks and Other Requirements

See Table 3 for specific setbacks, lot frontage, and related requirements. See Table 4 for bufferyard requirements. See Table 6 for Off-Street Parking Requirements.

Section 3.25 Tattoo Facilities

In order to enhance land use compatibility between tattoo facilities and certain other land uses, the following development standards shall apply:

1. A permit must be obtained from the South Carolina Department of Health and Environmental Control (DHEC) prior to securing a County permit. The permit shall have been issued within six (6) months of the date of the request for the County permit.
2. Location of Tattoo Facilities
 - a. The place of business cannot be located within one thousand feet of a church, school, or playground.
 - b. There must be a 500-foot spacing between tattoo facilities.
 - c. A tattoo facility cannot be located within 500 feet of a bar.
 - d. These distances shall be computed by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare from the nearest point of the grounds in use as part of the church, school, or playground.
3. A tattoo facility shall not be allowed as a home occupation.
4. No tattoo facility shall be operated in a non-permanent structure such as a tent, mobile home, trailer or temporary structure.

5. Meet any and all applicable requirements specified by Table 3- Commercial Setbacks and Other Requirements, Table 4-Side and Rear Bufferyard Requirements, and Table 6-Off-Street Parking Requirements.

Section 3.26 Flea Markets, Swap Meets, and Open-Air Markets

Applications for flea markets, swap meets, and other open-air markets shall include a site plan professionally-drawn by an engineer or surveyor to scale of the layout of buildings, sales area, driveways, walkways, and parking spaces. The information required to support an application is found in Table 2 under the category of Minor Land Development.

Farmer's markets shall be exempt from these requirements.

The following regulations apply:

1. The use shall have a minimum of at least two acres with principal access along a collector or higher capacity road. An encroachment permit must be obtained from the appropriate agency.
2. No flea markets, swap meets, or other open-air markets shall be developed within 200 feet of a residential structure or within 200 feet of the nearest property line of a residential subdivision containing 25 or more lots. No business sales or activities shall be allowed within this setback (residential separation area). The distance shall be measured from the closest portion of improved area of the site (including parking) containing the market.
3. Setbacks shall be as follows:
 - Front - 50 feet
 - Rear - 30 feet
 - Side - 30 feet

No sales activity shall be allowed in setbacks. The residential separation requirement in #2 will supersede other setbacks.

4. The site shall conform to all building and mechanical codes. Any DHEC requirements must be met.
5. Customer parking and vehicular traffic shall be separated from vendor areas during operating hours. In no case shall vendors set up in the customer parking area. Customer parking and traffic shall not be allowed in vendor sales areas.
6. Parking shall be provided in accordance with the provisions of Article 2, Section 2.02-5.
7. In addition to any buffers required under Article 2, Section 2.02-2, Table 4, flea markets, swap meets, and other open-air markets shall provide landscape screening at the street. This buffer, which must begin at least 15 feet off the right of way and wrap around the sides of the market property so as to screen the operation from the view of the roadway, must include a combination of evergreen trees and shrubs that will create an opaque screen within two years. The minimum tree size at planting shall be six or more feet in height and two or more inches in trunk diameter at the height of 18 inches above the ground. There shall be no parking between the landscape screening and the road.
8. All sales items must be returned to storage and not left out overnight. Covering sale items with a tarp or other material is not an acceptable means of storage.
9. No RVs or campers shall be allowed on the property overnight.
10. Goods shall not be sold from enclosed trucks or trailers.
11. Owners of vacant or abandoned, non-residential properties shall not allow transient merchants or vendors to offer goods for sale on their property. Transient merchants or vendors shall not be permitted by Spartanburg County to sell from vacant or abandoned, non-residential properties notwithstanding the permission of the property owner.
12. Sale of merchandise is prohibited in road rights-of-way. In no case shall a merchant or vendor set up in a way that obscures the view of the traveling public.
13. There shall be no less than one (1) trash receptacle per 75 feet of aisle space.

14. This Section does not include roadside agricultural stands as described in the South Carolina Right to Farm Statutes (S.C. Code Ann. §§ 46-45-10 to 46-45-80).

Section 3.27 Asphalt Batch Plants

Due to considerations for the public health and safety and potential pollution to the environment, Asphalt Batch Plants shall be permitted in Spartanburg County only under the following conditions:

1. A site plan shall be prepared by an individual licensed to practice engineering or land surveying in the State of South Carolina, as applicable. The site plan must show the Facility's property boundaries; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, tanks, dikes, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show adjacent property lines, public parks, schools, religious institutions, hospitals, day care facilities, and nursing homes. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
2. All facilities shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road.
3. Entrance/exits shall provide a minimum 50-foot turning radius.
4. A storm water runoff and sedimentation plan as defined by the County's Storm Water Ordinance No. O-09-02, as amended, showing all on-site and off-site drainage. (See also County Code, Chapter 30, Article IV.).
5. All structures and appurtenances shall be located and constructed to provide adequate safeguards and not constitute a hazard to adjoining and nearby uses and the general public.
6. Asphalt Batch Plants shall follow the Heavy Industry buffer requirements in Table 4 Bufferyards.
7. Approvals from Other Agencies
 - a. Any Asphalt Batch Plant proposing to locate within the jurisdiction of this Ordinance shall provide to the Ordinance Administrator a certificate from the Department of Health and Environmental Control or other outside agency that regulates the facility indicating compliance with the rules and regulations administered by those agencies.
 - b. When a land development application from an Asphalt Batch Plant requires state government, federal government or other outside agencies' permit or approval and the applicant presents an application and site plan that is "approvable" under this ordinance, the Planning and Development Department will issue a letter to that agency, if required, stating that a land development permit will be issued upon receipt of their permit/approval as long as the proposed facility still meets the requirements of this ordinance after obtaining their approval.
 - c. The applicant must report any changes required by outside agencies upon their review that affect a change in the submitted site plan and submit a revised site plan.
 - d. All required permits and approvals must be obtained from outside agencies, as applicable, prior to the County issuing a land development permit. Only until such certification is received shall the facility be permitted for occupancy by Spartanburg County.
8. Meet any and all applicable requirements specified by Table 3.
9. Nothing contained herein shall be intended to preempt or abrogate the requirements for an Asphalt Batch Plant to adhere to the regulations of state or federal agencies.

Section 3.28 Scrap Metal Processor

The intent of this section is to provide standards for Scrap Metal Processing sites so as to distinguish them from the Recycling requirements found in Section 3.17 Waste Management Facilities and Section 3.19 Junk and Salvage Yards.

All Scrap Metal Processors as defined in Article 6, Definitions shall be subject to the following requirements except Indoor Scrap Metal Processors, as defined by this Ordinance, which shall be considered as Industrial Uses, and except locations operated by Scrap Metal Processors which do not involve the handling of scrap metal.

Section 3.28-1 Application and Site Plan Submittal

1. The Planning and Development Department shall not begin the review of an application for a permit until the applicant has submitted a complete application to the Planning and Development Department.
2. All applicants must submit four (4) hard copy sets and one (1) PDF set of the following plans for the specific type of facility being proposed.
 - a. A site plan shall be prepared by an individual licensed to practice engineering and/or land surveying in the State of South Carolina, as applicable. The Site plan must show the facility's property boundaries, as certified by an individual licensed to practice land surveying in the State of South Carolina; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, buffers/screening, gates, roads, parking areas, drainage culverts, and signs; required setbacks and spacing; the delineation of the total facility area including planned staged development of the facility's construction and operation; the location and identification of metal scrap handling areas; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show property surface water bodies. The plan shall show all structures, to include residential and school properties within 1000 feet. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
 - b. After conditional approval by the Planning and Development Department of the site plan described in subsection 2(a), a full set of plans as defined by the County's Storm Water Management Ordinance No. O-09-02, as amended, shall be submitted to the Engineering Division of Public Works for review and approval. Final approval shall be contingent upon approval by the Engineering Division of the Public Works Department. (See also County Code, Chapter 30, Article IV.)
 - c. If the owner of the site on which the Scrap Metal Processor is to be placed is not the project applicant, written permission must be obtained from the owner to apply for the project's approval.
3. All required permits and approvals must be obtained from other entities, as applicable, prior to the County issuing a land development permit.

Section 3.28-2 Standards

1. All Scrap Metal Processors shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road. Scrap Metal Processors shall not be allowed on Minor Streets. County staff will examine public road access to the site and make a determination based on the data provided by the applicant and the construction of the road, regardless of functional road classification, regarding the adequacy and safe use of the public road to support projected truck traffic resulting from projects on county roads. If the construction and/or capacity of the road is found to be inadequate pursuant to professional engineering standards, the project will not be approved.
2. Entrance/exits shall provide a minimum 50-foot turning radius.
3. The view toward any driveway entrances shall be screened or positioned as necessary in a manner such that materials stored in the open are not visible through the driveway entrance.

4. Scrap Metal Processors shall be situated on a parcel of at least five contiguous acres that are undivided by road rights-of-way or public dedication.
5. The Scrap Metal Processing property must have a minimum front lot line of 100 feet on a public right-of-way.
6. Parking shall be provided in accordance with Table 6.
7. All Scrap Metal Processor business shall be conducted entirely within the screened area of the property.
8. No scrap metal shall be stacked, stored or maintained at a height greater than 75 feet.
9. An on-site residence at the Scrap Metal Processing site which is used by the business owner or its agent is permitted.
10. Setbacks and Spacing
 - a. Setback and spacing requirements shall be as follows:

SCRAP METAL PROCESSOR Spacing/Setback Requirements	
Property line	50 feet
1-24 Residences	500 feet (measured from source of noise to primary residential structure)
25+ Residences	1000 feet (measured from source of noise to primary residential structure)
Residential subdivision with 25 or more platted lots	1000 feet (measured from source of noise to primary residential structure)
School, daycare, church, nursing home, residential healthcare facility, public building, hospital or public recreation facility or park	1000 feet (measured from source of noise to nearest school, daycare, church, nursing home, residential healthcare facility, public building, hospital or public recreation facility or park property line)
Surface water bodies (except storm water pond)	Outside of right-of-way without approval from right-of-way holder
Utility rights-of-way	Outside of right-of-way without approval from right-of-way holder

- b. Setback measurements shall be made from the source of noise on the subject property to the property line of the neighboring use or to the primary structure as set forth in the table above. Setbacks from surface water bodies and utility rights of way shall be measured from the nearest point of improvement on the subject property to the feature itself.
- c. For the purposes of this Section, source of noise shall include any non-office structure, metal storage area, grinder, crane, shredder, shearer, or other machinery or fixed equipment capable of producing noise in excess of 80 decibels as measured at the property line of the Scrap Metal Processor, but excluding parking areas.
- d. In addition to the Setback/Spacing Requirements Table above, no Scrap Metal Processor shall be established within 1000 feet of the following Scenic Corridors: SC Highway 9, SC Highway 56, SC Highway 110 (Battleground Road), SC Highway 80 (J Verne Smith Parkway). Scrap Metal Processors shall be prohibited on or within 1000 feet of SC Highway 11 (Cherokee Foothills Scenic Highway). No person shall establish, operate, or maintain a Scrap Metal Processor, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of Interstate 85 and Interstate 26, unless screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the aforementioned interstates, or otherwise obscured from sight. If the Ordinance Administrator determines that the above-mentioned screening requirements will not produce a result that shields the Scrap Metal Processor from view of the interstates set forth herein, a Scrap Metal

Processor shall be compelled to engage in land grading or the erection of additional screening, but only to the minimum extent required to achieve the desired screening.

- e. Have a minimum setback to the fence from front, side and rear property lines excluding road rights-of-way of at least 50 feet.

11. Screening

- a. Where a Scrap Metal Processor's property abuts or adjoins residential uses, public parks, schools, religious institutions, hospitals, day care facilities, nursing homes, office/institutional uses, light industry, commercial uses or public roadways, a continuous visual screen shall be provided and maintained between any improvements on the Scrap Metal Processor's property and the property line with such other properties. The screen shall be a minimum 8-foot wall, opaque fence, berm, or evergreen plant material or combination thereof.
- b. Where required evergreen vegetation that serves as screening shall be of an approved type that shall reach a minimum height of eight feet within five years from the date of final inspection and shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken screen (without gaps or open spaces) will exist to a height of at least eight feet along its length. The evergreen screen shall be maintained as a continuous, unbroken screen for the period the property is used for Scrap Metal Processing.
- c. Acceptable species include, but are not limited to, Ligustrum, Euonymus, Cedar, Arborvitae, Hemlock, Leyland Cypress, and upright varieties of Junipers, Holly and Yew. The species to be planted must meet the required height of 8 feet within 5 years. White Pine is not acceptable for screening.
- d. Each owner, operator, or maintainer of a Scrap Metal Processing site shall utilize good husbandry techniques by pruning, mulching, and fertilizing, so that the vegetation can reach a height of eight (8) feet within five years of the date planted and will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

12. Health and Safety

- a. Dust, odors, fire hazards, litter and vectors shall be effectively controlled at all Scrap Metal Processing sites so they do not constitute nuisances or hazards.
- b. Open burning at any Scrap Metal Processing site shall be prohibited.

Section 3.29 Mixed Use Projects/Mixed Use Projects—Residential Only

The purpose of a Mixed-Use Project is to utilize innovative land planning and site design concepts that support a high quality of life and integrate a variety of uses into a unified development and, therefore, create opportunities for more desirable living and working environments. This project type is intended to be used to encourage land developments with lasting value. It is further intended to achieve economies in land development, maintenance of street systems and utility networks while providing building groupings for privacy, usable and attractive public open space, green space, buffer zones, safe circulation, natural storm water features, and the general well-being of the inhabitants.

Section 3.29-1 Application and Approval of Mixed-Use Projects

The application process for Mixed-Use Projects will follow that of a Major Land Development and will include all items identified in Section 3.29. Project applicants are required to attend a Pre-Application Meeting.

Section 3.29-2 Qualifications for Mixed-Use Project

In order to qualify for a Mixed-Use Project, the site must meet the following criteria:

- 1. Project site must be at least five (5) acres in size.
- 2. One of the project site entrances must be within 1,500 linear feet measured along the roadway to the intersection with a Collector or Arterial Street.

3. Only the Conditional Uses numbered 3.01-3.06, 3.20-3.21, and 3.24-3.26 may be included in Mixed Use projects.

Section 3.29-3 Design Requirements

1. Compatibility with Surrounding Areas: The architectural style must reflect the character of the area, especially in historical or natural areas. Compatible character is identified based on densities/intensities, lot size and dimensions, street and block grid pattern, building height, building mass and scale, colors and materials used (See Section 2.3.5 of the Performance Zoning Ordinance.), hours of operation, exterior lighting, landscaping, and siting of service areas.
2. A Mixed-Use Project must include at least two different uses from the following: Residential Single Family, Attached Multi-Plex Development Project, Commercial, Office, Institutional, and Light Industrial. The percentage of any use shall not be less than ten (10) percent of the acreage of the project.
3. Mixed-Use Projects (including Mixed-Use Project – Residential Only). Any portion of the project that is subdivided must remain an identifiable part of the integrated development and remain subject to the recorded restrictive covenants and the requirements of the property owners' association.
4. Parking shall be determined based on the individual uses as found in Table 6 in Section 2.02-5 Off-Street Parking and Loading. Parking may be located on adjacent property or across a Minor Road.
5. The project will require no internal buffers to separate uses. Instead, a landscaping plan will be required that includes buffering the perimeter of the project as required by Table 4 Side and Rear Bufferyard Requirements in Section 2.02-2 and canopy trees (per Section 6.2.54 of the Performance Zoning Ordinance) along any perimeter roadway unless the road has been designated as an Appearance Corridor in the PZO in which case it will follow these requirements in the PZO. The purpose of the buffer area is to minimize any potential adverse impact between adjacent land uses and across minor streets to promote land use compatibility. For projects that are expected to have high levels of noise and light, an enhanced perimeter buffer will be required that will mitigate the noise and light to the levels found in the PZO, Section 2.3.70 Noise and Light. All landscaping and screening shall be shown on the project site plan.
6. Height will be regulated by Table 3a and Table 3b. An existing building that is to be reused as a part of the Project shall be allowed to remain at its existing height and setback as long as it does not pose a danger to the public.
7. Mixed uses in the same building are allowed.
8. Common Open or Green Space Requirements - The total common open or green space within a Mixed-Use Project shall be a minimum of 20% percent of the gross acreage of the project. The definition of Common Open Space is found in Section 2.02-4. For Mixed-Use Projects that are entirely non-residential, the required open space may be 10% of the gross acreage of the project.
9. Adjacent public blueways, trails, or parks should be connected by integrating them into the project design through dedicated easements.
10. Signs - All proposed signage shall be in character with the surrounding area, the locations shall be shown on the site plan, and signs shall follow the requirements for Business Signs in the Performance Zoning Ordinance, Article 7, Chapter 7. Mixed-Use Projects on Minor Streets shall follow the requirements for an Appearance Corridor – S1 found in Section 7.7.50.
11. Access and Circulation - A circulation system shall be designed so as to provide for safe and convenient access to dwelling units, open space, community facilities, commercial uses, and light industrial uses in Mixed-Use Projects. At least two principal vehicular access points are required for projects having 1000 trips per day (per the required traffic study in #13), separated by no less than 300 feet if located on the same road. Principal vehicular accesses may be located on the property's frontage on two different roads. In any case, the road system shall be designed to permit smooth traffic flow and minimum hazards to vehicular, bicycle, or pedestrian traffic. Adequate access and circulation for emergency and service vehicles shall be provided. If the site cannot accommodate two principal access points, one principal entrance must be provided together with:

- a. a secondary access through an inter-neighborhood tie, or
- b. a boulevard section containing a median with no less than 20-foot-wide travel lanes on either side that runs for a distance of at least 100 feet.

All outparcels fronting on existing roads shall be required to access the internal road system and shall not be permitted to access the existing county or state road.

12. Cross-access easements shall be required for shared storm water facilities, parking, access, or other shared facilities.
13. Traffic and Operational Safety Studies shall be required by the Engineering Division of the Spartanburg County Public Works Department for developments with at least 100 peak hour trips. If there are known issues and/or concerns, then the County shall require a Traffic Impact Study even if the expected peak trip generation is less than 100 trips. The recommendations of the study shall be implemented subject to the County's approval.
14. Access to SCDOT-maintained roads will meet State requirements for Traffic Impact Studies.
15. Sidewalks, walking trails and bicycle lanes shall be encouraged.

Section 3.29-4 Qualifications for Mixed-Use Project Density Bonus

- A. In order for a Mixed-Use Project to qualify for a density bonus, the site must meet the following criteria:
 1. Project site must be at least ten (10) acres in size and must be identifiable as an integrated development even if it is subdivided.
 2. Must be a site where a textile mill exists or previously existed, an industrial site abandoned for at least five (5) years, a site listed on the National Register of Historic Places, or a Significant Historic Site if declared so by the Spartanburg County Council by resolution.
 3. In lieu of #2 in Section 3.29-3 above, a minimum of five (5) percent of the gross floor area must be a different use. If eighty (80) percent of the frontage of the parcel is located on a Minor Road, then the second required use may be reduced to two (2) percent of the gross floor area.
- B. The density bonus shall be applied as follows:
 1. Residential Density on a Collector Road shall not exceed 25 units per acre.
 2. Residential Density on a Minor Road shall not exceed 15 units per acre.

In order to enhance compatibility with the surrounding area, the following items shall be required for the density bonus.

1. Signage Plan shall be subject to the standards under Appearance Corridor S-1 criteria, Article 6.

Section 3.29-5 Plan Requirements

The plans shall be prepared in accordance with the standards set forth in this Ordinance and the following including, but not limited to:

1. The applicant shall demonstrate compliance with the following requirements. A plan is recommended.
 - a. lighting per Section 2.3.90 in the PZO
 - b. glare (photometric) per Section 2.3.93 of the PZO
 - c. noise per Section 2.3.80 of the PZO
 - d. an amenities plan to determine landscaping and parking requirements
2. Identify the on-site transportation circulation system, including all public and private streets, existing or projected transit corridors, pedestrian and bicycle pathways, and how such on-site improvements will connect with existing adjacent facilities.

3. Identify streams, wetlands, stream and wetland buffers (as required by the Spartanburg County Storm Water Design Manual - Stream Protection and Restoration), open space, floodplains as required by the Floodplain Ordinance, Sections 38-64; and
4. Architectural renderings and elevations per Section 2.3.50 of the Performance Zoning Ordinance.
5. Signage Plan as required in 3.29-3 above, as applicable.

Section 3.29-6 Changes to a Mixed-Use Project

- A. The uses allowed in the Mixed-Use Project shall remain those that were approved by the Planning and Development Commission. Any additions to or changes in the Mixed-Use Project plan after it has been approved shall be resubmitted to the Planning and Development Commission for approval. These include:
 1. Increasing the density,
 2. Changing the outside (exterior) boundaries of the project,
 3. Changing the location or amount of land devoted to specific land use,
 4. Significantly changing the exterior appearance from what is shown on approved plans, or
 5. Shifting locations of buildings, proposed streets, public or private ways, utility easements, parks or other public open spaces, or other features of the approved plan.
- B. A change in an approved use will require an application and review by the Planning and Development Department Staff to ensure that the project remains in compliance with this Ordinance.

ARTICLE 4 – GENERAL AND ANCILLARY REGULATIONS

The regulations set forth in this Article are intended to clarify, supplement, or modify the regulations set forth elsewhere in this Ordinance.

Section 4.01 Application of Regulations

The regulations established herein are declared to be the minimum requirements necessary to carry out the purposes of this Ordinance. These regulations are the minimum standards for all site clearing, development, buildings, structures, or alterations to land or structures within the jurisdiction of this Ordinance.

No part of a yard, open space, or off-street parking required in connection with any building for the purpose of complying with the regulations of this Ordinance shall be included as part or all of the required yard, open space, or off-street parking for another building or structure, except as hereinafter provided.

Section 4.02 Exceptions and Modifications

1. Setbacks - Corner Lots

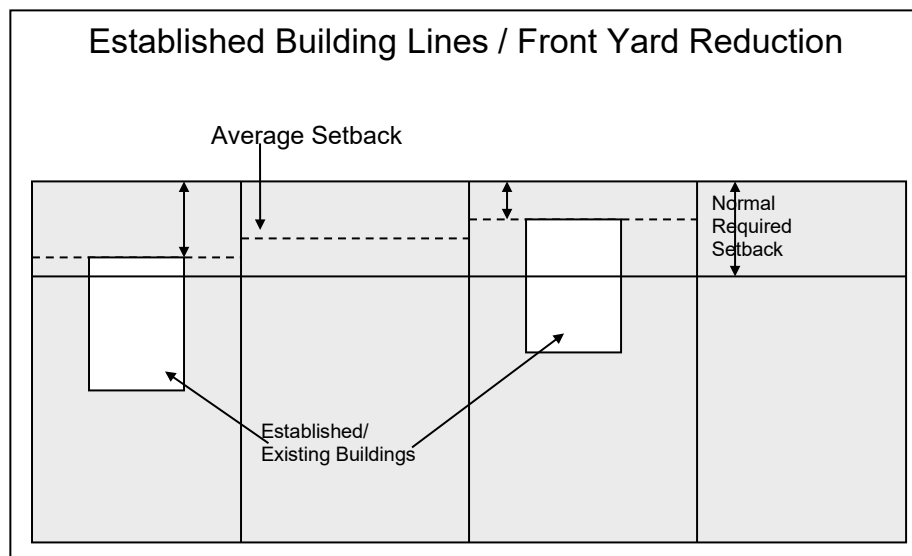
The setback from the street upon which the principal building will face shall be the minimum required front yard setback. The setback from the street upon which the side of the building will face shall be established by Table 3 for the use in question.

2. Setbacks - Partially Developed Areas

Where the majority of lots in a block fronting on the same side of a street between two intersecting streets are lawfully occupied with buildings having greater or lesser front yard depth than required by these regulations, no building hereafter erected or altered shall vary in the front yard setback by more than five (5) feet from the average depth of said existing front yard setbacks without written approval of contiguous property owners. However, in no case shall setbacks be less than 15 feet.

Section 4.03 Measurements

1. Yards, Setbacks, Buildable Area



The required front, side, and rear yards for individual lots, as set forth for by Table 3 shall be measured inward toward the center of said lot from all points along the respective front, side, and rear property lines of the lot. Once the yard areas of a given lot have been established, the remaining area of the lot which is not included in any required front, side, or rear lot shall be known as the "buildable" area within which the approved structure(s) shall be placed.

2. Height

The height of a building or structure shall be measured from the lowest grade elevation of the structure or from the base of a tree when computing height in the Airport Environ Zones, to the highest point of the building, structure, or tree.

Section 4.04 Conversion of Residential Property

When the conversion of a house to a commercial use is proposed, the house shall be made to meet all applicable codes for commercial buildings. Where a house will be used for a dwelling and a commercial use, that section of the house that will be open to the public shall meet all requirements for a commercial building. All parking, landscaping, buffering, and other requirements of this Ordinance for the commercial use of the property shall be met.

Section 4.05 Transitioning Land uses on Arterial Streets

In cases where it is determined by the Planning Department staff that residential land uses along arterial streets are in the process of transitioning to commercial, industrial, and office development, Planning Department staff, upon review and approval of the Planning Director, has the option of reducing the required bufferyard between an existing residential use and a proposed commercial or office use by one bufferyard class increment. The Planning Department staff will utilize the future land use map of the County Comprehensive Plan to assist in evaluating these transitioning area requests.

Section 4.06 Nonconformities

Section 4.06-1 Continuation (Grandfather Clause)

Nonconforming uses, buildings, or structures are deemed by this Ordinance to be incompatible with new permitted construction.

Section 4.06-2 Types of Nonconformities

Land uses may be nonconforming with respect to this Ordinance in the following ways:

- a. Violates height requirements
- b. Insufficient bufferyard
- c. Insufficient setback from street right-of-way or property line
- d. Excessive density as defined by the floor area ratio
- e. Excessive impervious surface ratio
- f. Not enough parking or loading spaces
- g. Does not conform with respect to the size and spacing of curb cuts
- h. Does not conform with respect to entrance/exit spacing
- i. Does not conform with respect to access to the street system (road classification system)

Except as otherwise provided nonconforming uses may not be enlarged, extended, reconstructed or structurally altered except in compliance with the provisions of this Article.

Section 4.06-3 Existing Nonconforming Use

1. Continuation

A use that is in existence at the effective date of this Ordinance may continue provided it does not require an increase in the total square footage of buildings or other structures or change to a more intense land use. Such buildings or other structures may be structurally altered or reconstructed as long as the total square footage of such buildings does not increase. Existing mining operations may continue until the existing body of ore or rock is exhausted.

2. Nonconforming Sexually Oriented Business

Any sexually oriented business lawfully operating on the effective date of this Ordinance that is in violation of this Ordinance shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a use identified on Table 3 within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

3. Nonconforming Manufactured Home Parks

This Section shall regulate Manufactured Home Parks which are legal nonconformities.

A. Measurement of Period until Required Compliance

The period until required compliance for each nonconforming manufactured home park, as described in B., shall be measured from the effective date of May 21, 2012.

B. Required Conformance of a Manufactured Home Park

Any Manufactured Home Park, which is a legal nonconformity, may be continued for a period of two years, without increasing the degree of nonconformity. After two years, the Manufactured Home Park may continue only through compliance with lighting and garbage removal requirements found in Section 3.04-4 (3) and (15).

C. General Provisions

1. Abandonment

Whenever all manufactured/mobile homes within a Manufactured Home Park are removed or become unoccupied for a continuous period of 12 months, the Manufactured Home Park may be reestablished only through compliance with all the requirements applicable to a new park.

2. Damage

If a structure in a legally nonconforming Manufactured Home Park is damaged or destroyed during the period until required compliance, the structure may be repaired or replaced without increasing the degree of nonconformity. After the period until required compliance, a damaged structure may be repaired or replaced only in compliance with Section 3.03 and 3.04.

3. Vacant Single Non-Conforming Structures

A non-conforming structure that has been removed for one year or more may not be replaced unless it can comply with the requirements found in this Ordinance

4. Repairs and Alterations

Nothing in this Section shall be deemed to prevent the ordinary maintenance and repair of a structure in a legally nonconforming Manufactured Home Park. However, no alterations are allowed except in compliance with Sections 3.03 and 3.04.

5. Change in Use

If a nonconforming Manufactured Home Park is replaced by another allowed use, and the owner wishes to reestablish the Manufactured Home Park before the 12-month abandonment period for the park elapsed, the reestablished park must comply with all requirements applicable to a new park.

6. Nonconformity and Highway Expansion

The relocation of a road right-of-way by the South Carolina Department of Transportation or Spartanburg County Public Works shall not be deemed to create or increase nonconformity with respect to the required setback from the road right-of-way. When a park is located on more than one right-of-way, each of its frontages shall be treated separately under this Section.

4. Non-Conforming Bulk Storage and Distribution Facility for Fuel Products

Bulk Storage and Distribution Facility for Fuel Products which are legal nonconformities are subject to the applicable requirements of non-conforming uses and structures found in this Article, except as follows.

- a. A nonconforming use of this kind may hereafter be replaced or brought back online on the parcel as it existed on September 16, 2013.
- b. The County Fire Marshal must receive an inspection report from the American Petroleum Institute on any bulk storage tank/vessel that is put back into service.

5. Nonconforming Flea Markets

This section shall regulate Flea Markets which are legal nonconformities.

a. Abandonment

If a Flea Market is unoccupied for a continuous period of 12 months, the Flea Market may be reestablished only through compliance with all the requirements applicable to a new Flea Market in Section 3.27

b. Damage

If a structure within a legally nonconforming Flea Market is damaged or destroyed during the period until required conformance, the structure, may be repaired or replaced without increasing the degree of nonconformity. After the period until required compliance above, a damaged structure may be repaired or replaced only in compliance with Section 3.27.

c. Repairs and Alterations

Nothing in this Section shall be deemed to prevent the ordinary maintenance and repair of a structure in a legally nonconforming Flea market. However, no alterations are allowed except in compliance with Section 3.27.

6. Nonconforming Scrap Metal Processors

- a. Existing Scrap Metal Processors in operation on 2/17/2013 shall be exempt from Section 3.29 and allowed to continue operation, but only as to such Existing Scrap Metal Processors' locations which are in operation on 2/17/2013 or which have final site plan approval on 2/17/2013 and which commences operation within six months after the effective date. Where the Existing Scrap Metal Processor's property abuts or adjoins residential property, school property, church property, or recreational property or parks and along the front of public roadways, the Existing Scrap Metal Processor shall remain subject to and comply with all the fencing and screening requirements of Section 3.19-3.

- b. An Existing Scrap Metal Processor shall be allowed to expand its land area by 20 percent onto contiguous properties and shall be exempt from the requirements of Section 3.29-2 except the following subsections of Section 3.29-2: subsection 11(Screening) and subsection 12 (Health and Safety).
- c. Existing Scrap Metal Processors wishing to expand in excess of 20 percent may request a variance from the Planning Commission.
- d. If an Existing Scrap Metal Processor closes, it must re-open within twelve (12) months or else it must comply with the provisions of Section 3.29 in order to re-open.

Section 4.06-4 Intermittent Use

The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a non-conforming use and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

Section 4.06-5 Change of Nonconforming Use

Land uses existing on the effective date of this Ordinance may expand to any size provided the use can meet setback, bufferyard and parking requirements of this Ordinance.

A change to a more intense land use or movement of buildings/structures on site may be permitted if the new or relocated use can meet bufferyard, setback requirements, parking requirements, curb cut size and spacing requirements, and entrance/exit requirements if applicable.

Section 4.06-6 Replacement of Nonconforming Use

A use that is destroyed beyond 50 percent of the fair market value immediately prior to the damage must meet all applicable requirements of this Ordinance in order to rebuild or reconstruct.

A use that is damaged 50 percent or less of fair market value immediately prior to the damage may repair or reconstruct such use, provided that repair and reconstruction are completed within twelve (12) months of the date of damage and provided the use is no greater size or land use intensity.

Section 4.06-7 Extension of Use within Existing Building

The nonconforming use of a building may be hereafter extended throughout those parts of a building which are primarily arranged or designed for such use at the time of enactment of this Ordinance.

Section 4.06-8 Discontinued Nonconforming Uses

If a use which was in existence and occupied on the date of enactment is discontinued for a period of six (6) months or more, it must comply with the Ordinance in as much as it is physically possible to do so in order to reopen. Discontinued for the purpose of this section is defined as the discontinuation of occupancy and utility services which can be clearly documented by the utility provider (i.e., electricity, water, sewer, gas, and telephone).

The provisions of this section shall not apply to any residential use.

Section 4.06-9 Lot of Record

Where a lot of record existed before September 30, 1974, or where a lot of record was created in accordance with applicable county ordinances between the dates of October 1, 1974, and December 31, 1999, and does not contain sufficient land to conform to the dimensional requirements of this ordinance or where such lot does not have sufficient frontage on a privately or publicly maintained road or street, such lot may nonetheless be used as a building site for a single-family dwelling or one manufactured home, and the Building Official is hereby authorized to issue a permit for the use of the property which conforms to the requirements (setbacks, heights, bufferyards, parking, etc.) established in Table 3 of this Ordinance. Applicable setback requirements shall not be reduced by more than twenty-five (25%) by the Planning Department staff. Setback reductions greater than twenty-five (25%) percent shall be referred to the Board of Appeals for consideration and final action.

ARTICLE 5 – REESTABLISHMENT, POWERS AND DUTIES OF SPARTANBURG COUNTY PLANNING COMMISSION AND BOARD OF ZONING APPEALS

Section 5.01 Spartanburg County Planning Commission

Section 5.01-1 Reestablishment of Planning Commission

The Spartanburg County Planning Commission is hereby reestablished under the provisions of the S.C. Code, §6-29-320.

Section 5.01-2 Powers and Duties of the Planning Commission

It is the function and duty of the Planning Commission to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the unincorporated areas of Spartanburg County. The Planning Commission may make, publish, and distribute maps, plans, and reports and recommendations relating to the development of its area of jurisdiction to County officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens. The Planning Commission, its members and employees, in the performance of its functions, may enter upon any land with consent of the property owner or after ten days' written notification to the owner of record, make examinations and surveys, and place and maintain necessary monuments and marks on them, provided, however, that the Planning Commission shall be liable for any injury or damage to property resulting therefrom. In general, the Planning Commission has the powers as may be necessary to enable it to perform its functions and promote the planning of its political jurisdiction.

In the discharge of its responsibilities, the Spartanburg County Planning Commission has the power and duty to:

1. Prepare and revise periodically plans and programs for the development and redevelopment of its area of jurisdiction; and
2. Prepare and recommend for adoption to the County Council as a means for implementing the plans and programs in its area:
 - a. Land use (Zoning) ordinances to include district maps and appropriate revisions thereof;
 - b. An official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it;
 - c. A landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;
 - d. A capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by County Council for implementation prior to preparation of the capital budget;
 - e. Policies or procedures to facilitate implementation of planning elements; and
 - f. Regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted. In overseeing the administration of subdivisions and major land developments, the Planning Commission has the authority to:
 1. To Hear and Decide Appeals from staff decisions where it is alleged there is error in any order, requirement, decision, or determination made by the staff in the administration of subdivision and/or major land development applications.
 2. To grant variances in specific cases from the regulations pertaining to subdivisions and major land developments as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in the unnecessary hardship so that the spirit of the Ordinance shall be observed, public

safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship if the Commission finds:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- b. These conditions do not generally apply to other property in the vicinity;
- c. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the area.

The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

Section 5.01-3 Composition of the Commission

The Planning Commission shall consist of nine members appointed by County Council for overlapping terms of four (4) years. Three (3) members first appointed shall serve two (2) years, three (3) members first appointed shall serve three (3) years, and three (3) members first appointed shall serve four (4) years.

Of the nine (9) members, six (6) shall be appointed from council districts, one (1) from each district. Three members shall be appointed at large.

To the extent possible, membership shall represent a broad cross section of the interests and concerns of the Spartanburg Community, and shall be representative of the racial and gender composition of the County. No member shall be the holder of an elected public officer in Spartanburg County.

Members shall serve until their successors are appointed and qualified.

Section 5.01-4 Compensation

Compensation will be provided to members of the Planning Commission at an amount of compensation determined by Spartanburg County Council. Reimbursement for actual expenses incurred in the performance of official duties may be paid from budgeted funds pursuant to reimbursement policies and procedures for employees of the County. Spartanburg County will also provide training and workshop training for Commissioners.

Section 5.01-5 Removal of Members

County Council may remove members of the Planning Commission at any time for cause. The existence of cause shall be discussed by the Council in executive session as permitted by the Freedom of Information Act, South Carolina Code, §30-4-70(a)(1), and the determination of removal shall be by vote in public session declaring a vacancy in the position without a statement of cause. Any fact which, in the discretion of Council, is deemed to adversely affect the public interest, including lack of attendance at meetings, may constitute cause.

Section 5.01-6 Organization and Rules of Procedure

The Planning Commission shall organize, elect officers, and adopt rules of procedure as required by South Carolina Code, §6-29-360.

Section 5.02 – Spartanburg County Board of Zoning Appeals

Section 5.02-1 Reestablishment of Board of Zoning Appeals

The Spartanburg County Board of Zoning Appeals is hereby reestablished under the provisions of the South Carolina Code, §6-29-780 and Chapter 2 of Article 9 of the Spartanburg County Performance Zoning Ordinance.

Section 5.02-2 Powers and Duties of the Board of Zoning Appeals

The Board of Zoning Appeals shall have the following powers and duties:

1. **To Hear and Decide Appeals, Generally.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcement officer of this Ordinance.
2. **To Grant Variances, Generally.** To authorize upon appeal in specific cases a variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in the unnecessary hardship so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship if the Board makes and explains in writing the following findings:
 - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
 - b. These conditions do not generally apply to other property in the vicinity;
 - c. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the area will not be harmed by the granting of the variance.

The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

Section 5.02-3 Decisions of the Board of Zoning Appeals

In exercising the above powers, the concurring vote of two-thirds of the members present and voting shall be required to reverse, wholly or in part, or modify any order, requirement, decision, or determination of the County Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, and to that end, shall have the powers of the officer from whom the appeal is taken and may direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and, in case of contempt may certify such fact to the Circuit Court having jurisdiction.

All final decisions and orders of the Board shall be in writing and be permanently filed in the office of the Board as public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board which must be delivered to parties of interest by certified mail.

ARTICLE 6 – DEFINITIONS

Words not defined herein shall have the meanings stated in the Standard Building Code, Standard Plumbing Code, Standard Gas Code, or Standard Fire Prevention Code. Words not defined in the Standard Codes shall have the meanings in Webster's Ninth New Collegiate Dictionary, as revised.

Words in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

The word "shall" is always mandatory.

The word "may" is permissive.

The word "lot" includes the word "plot" or "parcel."

The word "person" includes a firm, association, organization, partnership, trust company, or corporation, as well as an individual.

The word "used" or "occupied" as applied to any land or building shall be construed to imply that said land or building is in actual use or occupancy and shall be construed to include the words "intended," "arranged," or "designed to be used or occupied."

The term "Planning Commission" refers to the Spartanburg County Planning Commission, as reestablished by Article 6 of this Ordinance.

The term "Council" refers to the Spartanburg County Council.

Other words and terms defined herein are as follows:

Abutting – Sharing a common border; physically touching.

Airport – Any landing area, runway, or other facility designed, used, or intended to be used either publicly or by any person or persons for the landing or taking off of aircraft including all necessary taxiways, aircraft storage and tie down areas, hangars, and other necessary buildings and open spaces.

Aviation Easement – The right of aircraft to fly above the plane formed by the approach, transition, horizontal, and conical zones as defined in Ordinance No. 75 of Spartanburg County and to generate noise not to exceed levels projected in the 1995 Ldn noise contours as defined in this ordinance.

Airport Hazard – Any structure, tree, or use of land which obstructs the airspace required for or is otherwise hazardous to the flight of aircraft in landing or taking off at the airport.

Area of Shallow Flooding – A designated AO or VO Zone shown on Flood Insurance Rate Maps (FIRM) with base flood depths of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard – The land in the flood plain subject to a one percent or greater chance of flooding in any given year.

Asphalt Batch Plant – An establishment engaged in manufacturing asphalt-type roofing materials, asphalt and tar paving mixtures and paving block made of asphalt and various compositions of asphalt or tar with other materials to be used in building or construction; and the recycling of old asphalt into asphalt-type material. This does not include a Temporary Asphalt Batch Plant. These facilities are also known as hot mix asphalt plants, drum mix plants, or batch mix plants among others.

Asphalt Batch Plant, Temporary – A temporary Asphalt Batch Plant on an active construction site that processes asphalt only for use in a particular construction project and only for the duration of that project.

Asphalt Distribution Terminal, Liquid – Facility where liquid asphalt is received from a petroleum refinery and stored for distribution to an Asphalt Batch Plants.

Bar – (Also, Nightclub, Tavern, Pub, Cocktail Lounge, Disco) – An area primarily devoted to the servicing of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages (percentage of alcohol sales exceeds food sales).

Base Flood – The 100-year flood elevation at any point within the flood plain of any given stream as determined by the Federal Emergency Management Agency on their Flood Boundary and Floodway Maps (FHBM) #450176, dated November 15, 1982.

Big-Box Retail – A singular retail or wholesale user who occupies no less than 50,000 square feet of GFA, typically requires high parking to building area ratios.

Breakaway Wall – A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Buildable Area – That portion of any lot which may be used or built upon when the front, side and rear yard, open space, and applicable buffer area requirements have been met.

Building – Any structure built for support, shelter, or enclosure for any occupancy or storage.

Building, Accessory – A subordinate structure on the same lot as the principal or main building or use occupied or devoted to a use incidental to the principal use. Included in this definition are private garages, storage sheds, workshops, domestic animal shelters, pool houses, etc., when detached from the principal buildings, and carports attached to the principal building when at least 75 percent open or unenclosed.

Building, Alteration – Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, or removal of any structure.

Building, Principal – A building in which is conducted, or in which is intended to be conducted, the main or principal use of the lot on which it is located.

Bulk Storage and Distribution – The manufacture of or the receiving of liquids, gases, or solids by truck, tank vessel, pipelines, tank car, or tank vehicle, and storing, processing, or blending them in bulk for the purpose of distributing such liquids, gases, or solids by truck, tank vessel, pipeline, tank car, tank vehicle, portable tank, or container.

Bulk Storage and Distribution Facility – A facility where Bulk Storage and Distribution occurs which has a combined capacity of 100,000 gallons or more. The facility may include terminal facilities, bulk stations, surge and storage tanks.

Bulk Storage and Distribution Facility for Fuel Products, Existing – A Bulk Storage and Distribution Facility for Fuel Products that existed as of September 16, 2013.

Business, Permanently Maintained – Any business which has at least one employee present at the site, providing goods and/or services to the community and available to the public for at least 36 hours per week on at least 4 days per week for 48 weeks per year. The activity, or a major portion of it, must be conducted from a permanent building, modular unit, or an open air use which the applicant can prove is considered part of the real estate and is taxed as a commercial use by the Spartanburg County Tax Assessor's Office.

Canopy Tree – A deciduous tree that forms the top layer of vegetation in a forest. Examples of such trees include oaks, hickories, maples, poplars, and others.

Certificate of Occupancy – A document allowing the occupancy or use of a building or certifying that the structure or use has been constructed or will be used in compliance with all applicable provisions of this Ordinance and the Building Code.

Church – A building or structure or group of buildings or structures, other than a private dwelling, where organized religious services are usually conducted.

Cluster Home Development – A development design technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive features.

Commercial Use – Any use or establishment of which the primary activity is the offering of goods or services to the public for a fee or other compensation. Lawful home occupations shall not be considered commercial uses for purposes of this ordinance. Any use meeting the definition of industry as well as of commercial use shall be considered industry.

Conditional Use – A use of land or structure that, owing to special characteristics attendant to its operation or installation, is subject to specified conditions different from the general development requirements of this Ordinance.

DBH – Diameter at breast height, or the diameter (in inches) of a tree measured at four and one-half (4½) feet above the existing grade.

Density – The number of dwelling units per acre of land developed or used for residential purposes. Density requirements in this Ordinance are expressed in dwellings units per gross acre; that is, per acre of land devoted to residential use is based on the total land area within a development tract or subdivision, excluding nothing.

Developer – An individual, partnership, or corporation (or agent therefore) that undertakes the activities covered by these regulations.

Development – Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

DHEC – South Carolina Department of Health and Environmental Control.

Distressed Property – A vacant commercial or industrial building which, after a 30-month period of reasonable marketing efforts, has not been sold, leased, or otherwise placed into service.

Domestic Animal Shelter – A pen, shelter, or structure where no more than three dogs or small domestic animals, not to include horses, cows, goats, swine including pot-bellied pigs, sheep, ponies, grazing animals, and fowl of any kind, are boarded and kept.

Drainage – The removal of surface water or groundwater from land by drains, grading, or other means.

Drainage way – Minor watercourses where water is concentrated which are defined either by topography or by the presence of intermittent or perennial streams or by legal description.

Driveway – A paved or unpaved area used for ingress and egress of vehicles and allowing access from a street to a building or other structure or facility.

Dwelling – A building or portion of a building arranged or designed exclusively for human habitation.

Dwelling, Apartment – (See dwelling, multi-unit)

Dwelling, Condominium – A multiplex dwelling unit in which the dwelling unit is individually owned, and the land is held in common.

Dwelling, Detached – A single dwelling unit, surrounded by open space or yards and which is not attached to any other dwelling by any means.

Dwelling, Duplex – A building containing two dwelling units.

Dwelling, Group Occupied – A dwelling unit occupied by five (5) or more individuals unrelated by blood, marriage, adoption, or guardianship living together as a single housekeeping unit.

Dwelling, Mobile Home – A single family dwelling that is wholly, or in substantial part, fabricated in an off-site manufacturing facility for installation or assembly at the building site, designed to be a permanent residence, and built prior to the enactment of the *Federal Manufactured Housing Construction and Safety Standards, June 15, 1976*.

Dwelling, Multi-Family – A building containing three (3) or more dwelling units on a single parcel of land.

Dwelling, Patio House – A single-family detached dwelling unit. It is built on a small lot generally enclosed by walls which provide privacy.

Dwelling, Quadraplex – A build containing four (4) dwelling units.

Dwelling, Residential Designed Manufactured Home – A single-family dwelling built according to the *Federal Manufactured Housing Construction and Safety Standards (245 CFR 3280) HUD Code*, which:

- a. Has a minimum width over 20 feet (multiple-section);

- b. Has a minimum of 900 square feet of enclosed living area;
- c. Has a nominal minimum 3:12 roof pitch; and has a type of shingle commonly used in standard residential construction;
- d. Is covered with an exterior material customarily used on site-built homes, including vinyl or aluminum lap siding, wood, masonite, or other materials similar to the exterior siding commonly used in standard residential construction; and
- e. Has a roof overhang of not less than eight (8) inches.

Dwelling, Single-Family – A building containing one (1) dwelling unit.

Dwelling, Standard Designed Manufactured Home – A single family dwelling unit built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which does not meet the definition of a Residential Designed Manufactured Home.

Dwelling, Townhouse – A series of attached single-family dwelling units on separate lots which may or may not have a common roof and are separated from each other by common vertical walls.

Dwelling, Triplex – A single building containing three (3) dwelling units.

Dwelling, Zero Lot Line – A zero lot line dwelling is a single-family detached unit which instead of being centered on a lot, is placed against at least one of the side lot lines.

Dwelling Unit – A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Easement – A right-of-way granted to another party for specific limited use.

Elevated Building – A non-basement building constructed to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, (post and piers), shear walls, or breakaway walls.

Evergreen Tree – A coniferous or deciduous tree that remains green throughout the year.

Family – One or more persons related by blood, marriage, adoption, or guardianship, and not more than five (5) persons not so related, except that mentally and physically handicapped persons for whom care is provided on a 24-hour basis shall be construed to be a family, in accord with the provisions of 6-7-830 of the South Carolina Code of Laws.

Family, immediate – The children, grandchildren, sibling, or parents of an individual, whether by blood, marriage or legal adoption.

Farmer's market – The seasonal offering of home-grown agricultural products directly to the consumer in an open-air market or pre-designated area where the vendors are generally individuals who have raised the vegetables or produce or taken the same on consignment for retail sale.

Federal Manufactured Home Construction and Safety Standards – Regulations promulgated by the Department of Housing and Urban Development (HUD) governing the design and construction, strength and durability, transportability, fire resistance, energy efficiency, and quality of manufactured housing. These standards also set performance requirements for heating, plumbing, air conditions, thermal, and electrical systems.

Flea market – Any activity:

- (i) at which two or more persons offer personal property for sale or exchange; and
- (ii) at which a fee is charged for the privilege of offering or displaying personal property for sale or exchange; or
- (iii) at which a fee is charged to prospective buyers for admission to the area where personal property is offered or displayed for sale or exchange; or
- (iv) regardless of the number of persons offering or displaying personal property or the absence of fees, at which personal property is offered or displayed for sale or exchange if the event is held more than two days per month or more than twelve days per calendar year.

The term flea market is interchangeable with and applicable to “swap meet,” “open air market,” “jockey lot” or other similar terms where events are held under a semi-enclosed building or shelter

or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business. Such activities that take place in a fully enclosed and secured building shall be treated in this Ordinance as medium-high intensity commercial use.

This term does not include sidewalk sales or other such merchandise owned by shopping centers or individual retail operations, sales conducted by nonprofit organizations, farmer's markets, or residential yard sales.

Flood - A general and temporary condition of partial or complete inundation of normally dry land areas.

Flood Hazard Boundary Map (FHBM) – An official map issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard are defined.

Flood Insurance Rate Map (FIRM) – An official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones.

Flood Insurance Study – An official study provided by the Federal Emergency Management Agency.

Flood-resistant Material – Any building material capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage which requires more than low-cost cosmetic repair.

Floodway – The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floor – The top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include floor of a garage used solely for parking vehicles.

Floor Area Ratio – An intensity measure of land use derived at by dividing the total floor area of a building by the total site area.

Fuel Product – Any solid, gas or liquid that is used for fuel purposes and which is detonable, ignitable, or flammable. This term shall include, but not be limited to butane, propane, hydrogen, petroleum, diesel, natural gas, ethanol, methanol and other fuels and bio-fuels.

Garage, Private – (As defined by the Standard Building Code.)

Garage, Public – (As defined by the Standard Building Code.)

Gross Floor Area (GFA) – The sum of the floor area for each of a building's stories measured from the exterior limits of the faces of the structure, including basement floor area. It does not include unenclosed porches or any floor space in an accessory building or in the principal building which is designed for parking of motor vehicles.

Group Assembly, Limited – A meeting place at which the public is assembled regularly or occasionally for the purposes of, but not necessarily limited to, schools, daycares, churches, hospitals, banquet halls, auditoriums, conference centers, stadiums, theaters, public parks, and public or private clubs and lodges with occupancy levels of less than 200.

Group Assembly, Extensive – A meeting place at which the public is assembled regularly or occasionally for the purposes of, but not necessarily limited to, schools, daycares, churches, hospitals, banquet halls, auditoriums, conference centers, stadiums, theaters, public parks, and public or private clubs and lodges with occupancy levels of 200 or greater.

Habitable Dwelling – A dwelling meeting the minimum habitability requirements of this Ordinance, and other applicable regulations.

Hazard to Air Navigation – An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Hazardous Chemical – Any gas, liquid or solid that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released. Materials and substances considered as Hazardous Chemicals shall be those contained within the listing published by the Environmental Protection Agency, as amended, under the provision of the Toxic Substances Control Act of 1976. A further listing of such materials

is found in Regulation No. 61-79.1 of the Rules and Regulations of the State of South Carolina, appended to the 1976 Code of Laws, as amended.

Height – The vertical distance of a structure or vegetation. In measuring for setbacks over 35 feet as found in Tables 3a and 3b, height measurements shall be taken from the ground adjacent to the building on the side where the setback is required.

High Intensity Commercial – Uses in this category may have some or all of the following characteristics:

- ♦ Drive-through windows or service lanes;
- ♦ Large scale and size; High traffic generation rates (300 or more vehicle trips/1000 square feet gross floor area);
- ♦ Live entertainment, amplified music or other activities that regularly generate noise that can be heard outside the building or off the premises;
- ♦ A type of business typically open for operation after 9 p.m. or before 6 a.m.;
- ♦ Outdoor storage of equipment, materials, and trash; and
- ♦ Servicing of vehicles and equipment.

Home Occupation – Any use of the principal building/structure on a residential lot which is incidental to the use for dwelling purposes and conducted for compensation by the resident thereof.

Improvement – Any man-made immovable item which becomes part of, placed upon, or is affixed to real estate.

Individual Waste Disposal System – A system which will treat and dispose of domestic sewage from a single house or residence without creating a nuisance or a potential health hazard.

Industry – The processing or handling of goods other than in a retail setting. Processing includes the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity or any other treatment thereof in such a manner as to change the form, character or appearance thereof. Handling of goods includes storing and shipping goods and specifically includes storage elevators, truck storage yards, warehouses, wholesale storage and similar activities.

Industry, Light – An industrial use or building which, (1) does not utilize process water and which does not produce waste water, (2) contains all aspects of the industrial process within the building, (3) does not exceed a maximum height of two stories and a maximum floor area ratio of 50 percent, and (4) does not produce sound pressure (noise) level in excess of 45 decibels, measured at the nearest property line; (5) does not typically involve more than six trips per day of heavy trucks; and (6) does not involve regular or frequent maintenance or on-site operation of refrigerator or other heavy trucks;

Industry, Heavy – Any industrial use not classified as Light Industry.

Institutional Use – The use of land, buildings or structures for public and non-profit purposes, including religious, charitable, educational and health, and includes such uses as churches, places of worship, public or private schools, community centers, hospitals, etc.

Junkyard or Salvage Yard – terms used interchangeably to describe any business (property, structures) registered as such by Spartanburg County and whose purpose is to buy, sell or trade wrecked, dismantled or disabled motor vehicles or parts thereof, dismantled or inoperable industrial or commercial equipment, or machinery being salvaged for parts. These terms include vehicle dismantlers; auto salvage yards; auto recyclers; pick-a-part yards; and property used for wrecker, towing and impoundment purposes. The term does not include scrap metal processors.

Kennel – Any building(s), facility/facilities, or land that is used for the care or housing of dogs, cats, or other household pets for the purpose of breeding, boarding, training, show, grooming, or sale and where profit or reward is the intended end purpose. Uses that do not involve outdoor facilities for housing, boarding, training, or exercise are exempt from this definition.

Land Development – The changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, commercial parks, shopping centers, industrial parks, manufactured home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

Letter-of-Credit – See definition of Performance Guarantee.

Lot – A parcel or single tract of land. The terms “lot”, “lot of record”, “property”, or “tract”, whenever used in this Ordinance are interchangeable.

Lot, Corner – A lot located at the intersection of two or more streets.

Lot, Flag – a lot with access provided to the bulk of the lot by means of a narrow corridor or stem/pole.

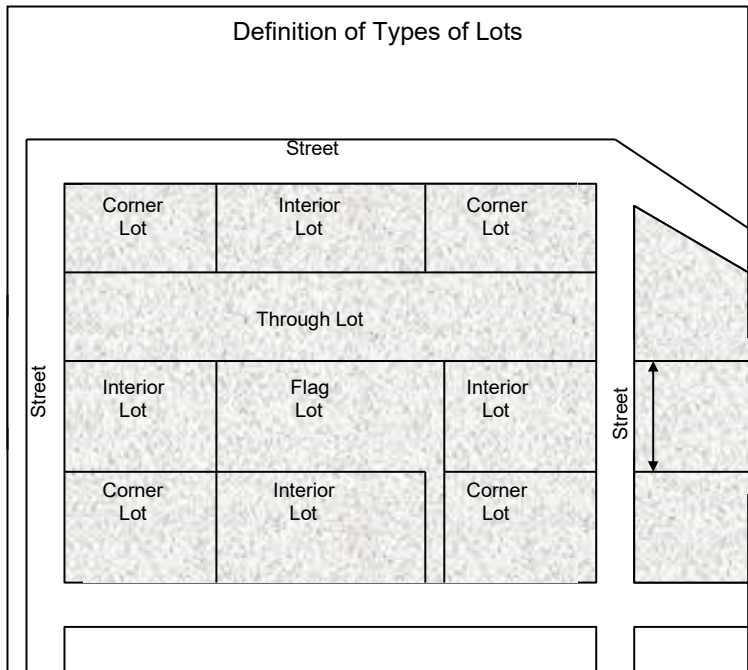
Lot, Interior – A lot, other than a corner lot, which has frontage on only one street other than an alley.

Lot, Reverse or Double Frontage – A lot having frontage on two non-intersecting roads, as distinguished from a corner lot.

Lot Area – The area contained within the boundary line of a lot.

Lot Depth – The horizontal distance between front and rear lot lines.

Lot Width – The width of the lot at the front building line.



Lot Frontage – Lot width measured at the street lot line. When a lot has more than one street lot line, lot width shall be measured, and the minimum lot width required by this Ordinance shall be provided, at each such line.

Lot Line – A line bounding a lot which divides one lot from another or from a street or any other public or private space.

Lot of Record – A parcel of land, created and recorded in compliance with all county ordinances at the time of recordation or that were recorded on or before September 30, 1974. Lots of record may or may not be buildable lots.

Lot of Record, Nonconforming – A parcel of land, which was created and/or recorded which was not in compliance with all County Ordinances at the time of creation and/or recordation or which was not approved by the Spartanburg County Planning Commission.

Low Intensity Commercial – Uses in this category have low traffic generation rates (less than 20 vehicle trips per day and/or 1,000 square feet gross floor area), operate primarily during the day, and do not include vehicle service stations, convenience stores, liquor stores, eating or drinking establishments.

Manufactured Home – A Manufactured Home, Residential Designed or a Manufactured Home, Standard Designed.

Manufactured Home Park – Three or more Manufactured/Mobile Homes or Manufactured Home Park Spaces which are located adjacent to one another and operated in a coordinated manner. The park may be located on a single parcel or multiple parcels. Multiple adjacent manufactured homes must meet the requirements for a Manufactured Home Park or the requirements of the subdivision regulations and Table 3 of this ordinance.

Manufactured Home, Residential Designed – A single-family dwelling built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which:

- a. Has a minimum width of 20 feet (multiple-section);
- b. Has a minimum of 900 square feet of enclosed living area;
- c. Has a minimum nominal 3:12 roof pitch; and has a type of shingle commonly used in standard residential construction;

- d. Is covered with an exterior material customarily used on site-built homes, including vinyl or aluminum lap siding, wood, masonite, or other materials similar to the exterior siding commonly used in standard residential construction; and
- e. Has a roof overhang of not less than eight (8) inches.

Manufactured Home, Standard Designed – A single-family dwelling unit built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which does not meet the definition of a Residential Designed Manufactured Home.

Manufactured Home Park Space – A plot or ground within a manufactured home park designed for the accommodation of one unit.

Mobile Home – A single-family dwelling that is wholly, or in substantial part, fabricated in an off-site manufacturing facility for installation or assembly at the building site, designed to be a permanent residence, and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards HUD Code, June 15, 1976.

Medium Intensity Commercial – Typical uses in this category include entertainment uses and commercial uses such as auto accessory stores, blueprint and photostat stores, bowling alleys, private indoor clubs, commercial and trade schools (e.g., dance studios, schools for martial arts), funeral homes, mortuaries, garden supply and/or greenhouses (provided all sales on premises are retail), grocery stores and supermarkets (excluding convenience stores), hospitals, hotels/motels, ice cream stores, etc.

Mixed-Use Project – A Mixed-Use Project is a development which shall include at least two different uses from the following: Residential Single Family, Residential Multi-Plex Development, Commercial, Office, Institutional, and Light Industrial in one integrated project. The uses shall be planned and built per the percentages prescribed in the Ordinance.

Mixed-Use Project - Residential Only – A Mixed Use Project is a development which must include both Single Family Residential and an Attached Multi-Plex Development Project as described in Section 3.02 of this Ordinance. The uses shall be planned and built per the percentages prescribed in the Ordinance.

Modular Building Unit or Modular Structure – Any building of closed construction, regardless of type of construction or occupancy classification, other than a mobile or manufactured home, constructed off-site in accordance with the applicable codes, and transported to the point of use for installation or erection.

Nonconformity – A nonconformity is any lot of record (see Lot of Record-Nonconforming), use, building, structure or vegetation in existence prior to the effective date of this Ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the Ordinance.

Non-residential Use – A principal use of land for other than residential purposes, i.e. commercial, industrial, institutional.

Off-Site Hazardous Chemical Storage Facility – An establishment providing storage for Hazardous Chemicals for a period not to exceed two (2) years. These locations are not part of a manufacturing plant that uses Hazardous Chemicals in a manufacturing process on their site. Further, Off-site Hazardous Chemical Storage does not refer to active chemical distribution warehouses.

Open Space Ratio – The open space ratio is a measure of the intensity of land use. It is arrived at by dividing the total amount of open space within the site by the Total Site Area.

Parcel – A land area bounded by property lines that is recognized as such by the Spartanburg County Assessor's Office and which has been assigned a parcel identification number (PIDN) by the Spartanburg County Assessor's Office.

Park-Private – These are lots or parcel of land devoted to recreational pursuits both active and passive. The facilities can range from open landscaped area to tot lots, playgrounds, neighborhood parks, and playfields.

Park-Public – A public facility open for recreation, with commercial activities for recreational uses only, open space and public gardens.

Performance Guarantee (Letter-of-Credit) – A financial guarantee to ensure that all improvements, facilities, or work required by this Ordinance will be completed in compliance with the Ordinance, regulations, and the approved plans and specifications of a development.

Perimeter – The outermost property line in a development.

Plat – A map showing a plan for the development of land which is submitted for approval and is ultimately in final form for recording.

Playground – A place, other than grounds at a private dwelling, that is provided by the public or members of a community for recreation.

Public Improvement – Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for such public needs as: vehicular and pedestrian circulation systems, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility and energy services.

Public Sponsorship – Sponsorship provided by local government or quasi-public organization (e.g., fire district, rescue squad, water district).

Premises – A lot, plot, or parcel of land including the buildings or structures thereon, under control by the same owner or operator together with all adjacent land.

Right-of-Way – A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied or occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer and other similar uses; generally, the right of one to pass over the property of another.

Road – See definition of Street.

Roadside Stand – A temporary structure not permanently affixed to the ground with no space for customers inside and readily removable in its entirety, which is used solely as a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market.

Rural Event Venue – an intermittent use located in a rural setting, on a parcel of at least 5 acres, that may utilize temporary or permanent structures for the purpose of holding a private event to include weddings and private social events.

School – A building or structure or group of buildings or structures, other than a private dwelling, where the usual processes of education are conducted.

Scrap Metal Processor – Any person, firm or corporation whose principal business sells scrap metal to steel mills, foundries, exporters or other entities for re-melting, reusing, recycling, or other uses. Such firms or corporations are those operating from a fixed location and utilizing heavy machinery such as cranes, balers, grinders, and shearers for processing and manufacturing iron, steel, or non-ferrous metallic scrap.

Scrap Metal Processor, Existing – A Scrap Metal Processor in operation at a fixed location in Spartanburg County on [the effective date of this amendment].

Scrap Metal Processor, Indoor – A Scrap Metal Processor whose operations are contained wholly within an enclosed building and whose noise decibel level does not exceed 45 at any adjoining property line.

Shoulder – The graded part of a right-of-way that lies along the edge of the main pavement (main traveled way). This area of the roadway is often used to park vehicles in emergencies.

South Carolina Manufactured Housing Board – The Board authorized by State Statute to regulate the construction, repair, modification, installation, tie-down, hook-up, and sale of manufactured homes in South Carolina, which Board has adopted for regulation of manufactured homes the Federal Manufactured Housing Construction and Safety Standards, promulgated by HUD, and contained in the Board's Manufactured Housing Regulations, May 26, 1990.

Stall, flea market – An area (such as tables, booths, spaces, rooms, etc) within a flea market or open air market that is rented to an individual retailer.

Street – Any thoroughfare (drive, road, highway, avenue, boulevard, etc.) which has been dedicated, deeded or designated for vehicular traffic, public or private.

Street, All Weather – A street or road constructed on a compacted sub-base of suitable material with a compacted stone base, a cross-section consisting of a crowned center, shoulders stabilized side slopes and a drainage system.

Street, Arterial – A street/road that carries traffic from region to region. These streets/roads are intended to provide for high speed travel between or within communities or to and from collectors and expressways. The concept of service to abutting land should be subordinate to the provision of travel service and major traffic movement.

Street, Collector – A street that connects minor streets to the highway systems major and high-speed arterial roads. The collector street provides both land access service and traffic service within residential neighborhoods, commercial and industrial areas. Collector roads form barriers between neighborhoods and are designed for higher speeds and traffic volumes than minor streets.

Street, Cul-de-sac – A street with a single common ingress and egress and with a turnaround at the end.

Street, Major Residential – an access street that provides frontage for residential lots and may carry a small amount of residential streets. Generally these streets serve 116 or more dwelling units and have an average daily traffic (ADT) volume greater than 1600.

Street, Minor Residential – A street that has the sole purpose of providing frontage for service and access to residential lots. These streets carry only traffic having either origin or destination on the street itself. Generally these streets serve 115 dwelling units or fewer, and have an average daily traffic (ADT) of 1159 vehicles or fewer.

Street, Public – Any street that serves two or more properties and is not necessarily within the maintenance responsibility of any public entity, but not to include private driveways. Property owners along said street have full and free access and may have one dwelling per lot of record.

Street/Road, Minor – a street/road that serves traffic to and from residences and a small amount of low intensity commercial development. A minor street/road typically serves up to 140 dwelling units and has an average daily traffic (ADT) of 1400 vehicles or fewer.

Structure – (As defined by the Standard Building Code.)

Structural Alteration – Any change in the supporting members of a building, such as the bearing walls, beams, or girders, or any change in the dimension or configuration of the roof or exterior walls.

Substantial Improvement – Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures, which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: (1) any project of improvement to a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions (does not include Americans with Disabilities Act compliance standards); or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure. Permits shall be cumulative for a period of five years.

Tattoo Facility or Tattoo Parlor – Any room, space, location, area, structure, or business, or any part of these places where the business of tattooing is conducted.

Temporary Use – A prospective use, intended for a limited duration, and not involving the placement of permanent buildings or structures.

Transient merchant or vendor – Any person who engages in the temporary business of the retail sale and delivery of goods, wares or merchandise within the jurisdiction of Spartanburg County, and who does not operate inside a permanent structure that meets the commercial standards of this ordinance and the International Building Code. This definition shall not include merchants having regularly established places of business within the county if they are operating from their established place of business, persons who have obtained a temporary use permit from Spartanburg County, persons making sales at any annual fair, festival, annual celebration or observance, or regularly employed route salespeople.

Travel Trailer or Recreational Vehicle – A structure that (1) is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and (2) is

designed for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a mobile or manufactured home or modular unit.

Understory Tree – A small deciduous tree that forms the layer of vegetation under the canopy trees in a forest. Examples of such trees include dogwoods, sourwoods, fruit trees and others.

Use – The purpose or activity for which land or any building thereon is designed, arranged or intended, or for which it is occupied or maintained.

Use, Accessory – See Building, Accessory.

Use, Principal – The primary purpose for which land is used.

Use, Temporary – A temporary use is one established for a fixed period of time with the intent to discontinue such use upon the expiration of such time. Such uses do not involve the construction or alteration of any permanent structure.

Vacant Lot – An unimproved lot which is classified as vacant by the Spartanburg County Assessor's Office.

Variance – A modification of the area regulations of this Ordinance, where such modification will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

Vegetation – Any object of natural growth.

Wetlands – Areas of one-quarter (.25) acre or more where standing water is retained for a portion of the year and unique vegetation has adapted to the area. Jurisdictional wetlands are those over which the U.S. Corps of Engineers has permitting jurisdiction.

Yard – An open space that lies between the principal or accessory building or buildings and the nearest lot line.

Yard, Front – A yard extending the full width of the front of a lot between the front (street) right-of-way line or property line and the front building line.

Yard, Rear – A yard extending the full width of the lot in the area between the rear lot line and the rear building line.

Yard, Required – That part of a yard between a lot line and the minimum required building setback line, within which no structure shall be located except as provided by this Ordinance.

Yard, Side – A yard extending the full length of the lot in the area between the side lot line and a side building line.

Yard Sale – All general sales open to the public, conducted from or on a residential premise for the purpose of disposing of personal property including, but not limited to, all sales entitled “garage,” “yard,” “attic,” “porch,” “room,” “backyard,” “patio,” or “rummage” sale. Selling items purchased for the purpose of resale (on an ongoing basis) shall not be considered a yard sale, but a business and shall meet the commercial requirements of this Ordinance, including buffers, setbacks and parking requirements.

ARTICLE 7 – LEGAL STATUS PROVISIONS

Section 7.01 Conflict with Other Laws

Whenever the regulations of this Ordinance require a greater width or size of yards, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statutes, the requirements of this Ordinance shall govern. Whenever the provisions of any other statute require more restrictive standards than are required by this Ordinance, the provisions of such statute shall govern.

Section 7.02 Validity

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Section 7.03 Repeal of Conflicting Ordinances

The following ordinances and parts of ordinances in conflict herewith are repealed to the extent necessary to give this Ordinance full force and effect.

1. Spartanburg County Development Standards Ordinance, No. 452, and subsequent amendments thereto.
2. Spartanburg County Flood Damage Prevention Ordinance, No. 365, and subsequent amendments thereto.
3. Spartanburg County Subdivision Regulations, No. 429, and subsequent amendments thereto.
4. Spartanburg County Mobile Home Ordinance, No. 477, and subsequent amendments thereto.
5. Spartanburg County Junkyard Control Ordinance, No. 453, and subsequent amendments thereto.
6. Spartanburg County Sign Ordinance, No. 359, and subsequent amendments thereto.
7. Spartanburg Downtown Memorial Airport Environs Ordinance, No. 549.
8. Spartanburg County Multi-Family Development Ordinance, No. 336.

Section 7.04 Effective Date

This Ordinance shall take effect and be in force from and after 5:00 PM on December 31, 1999.

Section 7.05 Enforcement

1. All enforcement procedures, remedies, legal and equitable, processes, and penalties, provided in enabling statutes for local government ordinance violations, including ordinance summons, injunctions, mandamus, stop orders and warrants, and other applicable provisions of Section 56-7-80, et seq. and Section 6-29-950(a) et seq., Code of South Carolina 1976, are hereby adopted and incorporated by reference as if fully set forth.
2. The County Administrator is authorized to prescribe and approve such administrative policies and procedures, including forms, as he may deem appropriate for the proper administration and enforcement of this ordinance.

ENACTED AND ORDAINED into an Ordinance this 20th day of December 1999, by the Spartanburg County Council.

Chairman, County Council

ATTESTED:

County Administrator

PARKING STANDARDS

