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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.

APPELLATE CASE NO. 2025-000416

McDaniel Jones, LLC Respondent,

v.

City of Greenville Planning Commission Appellant.

RECORD ON APPEAL
VOL. II of II

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

McDaniel Jones, LLC,
Plaintiff,
v.
City of Greenville Planning Commission,
Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-05094

**DEFENDANT CITY OF GREENVILLE
PLANNING COMMISSION'S
MOTION FOR SUMMARY
JUDGMENT**

TO: LUKE A. BURKE AND BRUCE W. BANNISTER, ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant will, at such day, time, and location determined by the Court, move for an order granting Defendant's summary judgment in the within action.

The motion is made pursuant to Rule 56, South Carolina Rules of Civil Procedure, on the grounds that the law and evidence in this case establishes that there is no genuine issue of material fact and that Defendant is entitled to judgment as to all causes of action as a matter of law.

In further support of this Motion, Defendant will file a memorandum in support hereof along with exhibits supporting Defendant's position.

Respectfully submitted,

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Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

McDaniel Jones, LLC,
Plaintiff,
v.
City of Greenville Planning Commission,
Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-05094

**DEFENDANT CITY OF GREENVILLE
PLANNING COMMISSION'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

This memorandum is submitted on behalf of the Defendant City of Greenville Planning Commission in support of its motion for summary judgment as to all causes of action alleged by the Plaintiff.

BACKGROUND

This is a regulatory takings case filed by Plaintiff McDaniel Jones, LLC against the City of Greenville Planning Commission (hereinafter City; Planning Commission). The action arises out of the purchase by Plaintiff of 808 McDaniel Avenue on July 26, 2018 for \$1,430,000. (Exhibit 1 - Deed to McDaniel Jones.) Plaintiff is a single purpose limited liability company organized for the purpose of purchasing, subdividing, and selling the property, which comprises 1.86 acres. The property fronts McDaniel Avenue but also borders Jones Avenue, which runs roughly parallel to McDaniel Avenue. At the time of the purchase, a single home was situated on the property. (Exhibit 2 - 808 McDaniel Avenue Before Aerial View.) The property was zoned R-9, Single-Family Residential District. (Exhibit 3 - 9.14.18 Initial Application.)

Plaintiff's owner Mark Cothran desired to raze the existing home and subdivide the property into seven lots, with four lots fronting on McDaniel Avenue and three on Jones Avenue.

Plaintiff applied to the Planning Commission for permission to subdivide the property. The initial application was submitted on September 14, 2018. (Exhibit 3 - 9.14.18 Initial Application.) A large magnolia tree on the property would have been removed under the proposal, but City planning staff determined that the tree was a historical tree and would have to be protected. (Exhibit 4 - Letter Kinney to Graham.)

Public opposition to the application was swift and intense. Written comments against the proposal were submitted by a number of neighborhood residents. (Exhibit 5 - Public Comments to First Application.) Plaintiff revised its plans for the property.

A second application was filed with the Planning Commission on December 12, 2018. (Exhibit 6 - 12.12.18 Second Application.) The revised application purported to leave the magnolia tree in place protected by a conservation easement. The number of lots set aside for development was reduced to six, with lots again fronting on both McDaniel and Jones Avenues.

As part of the application process, public notice of the proposed subdivision was published. (Exhibit 7 - Public Notice Second Application.) Public opposition to the subdivision remained ardent. The City received at least 20 written statements from individual opponents to the subdivision. A petition opposing the subdivision was submitted to the Planning Commission on January 2, 2019 which was signed by many residents from the community. (Exhibit 8 - Public Comments to Second Application; Exhibit 9 - 1.2.19 Petition to Planning Commission.)

A mandatory neighborhood meeting was conducted by Plaintiff's representatives on January 9, 2019. Numerous opponents attended and expressed their opposition. A representative of the

Plaintiff prepared a summary of the comments made by the opponents. (Exhibit 10 - 1.9.19 Neighborhood Meeting Attendance Sheets; Exhibit 11 - 1.9.19 Austin Allen Neighborhood Meeting Minutes.)

Prior to the Planning Commission meeting to consider the application, Mark Cothran met with several representatives of the neighborhood during which their concerns about the plan were raised. Mr. Cothran told the representatives that he intended to proceed with the six lot subdivision and that he would not reduce the number of lots. (Exhibit 12 - Sam Outten Statement to Planning Commission.)

The Planning Commission considered the application at a public hearing on January 17, 2019. (Exhibit 13 - Planning Commission Hearing Transcript.) Many opponents attended the hearing. A representative for Plaintiff presented the application. No one else spoke in favor of the proposal. Eleven neighborhood residents spoke against the application. At the end of the public comments segment, Planning Commission members suggested to Mr. Cothran that a five lot subdivision would be approved. Plaintiff refused to reduce the proposal by one lot. (Exhibit 14 - Deposition of Mark Cothran, p. 75, lines 10 through 15; p. 84, line 21 through p. 85, line 9.)

The Planning Commission voted unanimously to deny the application. (Exhibit 15 - Planning Commission Hearing Transcript p. 74-77.) Written notice of the denial dated February 13, 2019 was mailed to representatives of Plaintiff. The notice advised Plaintiff that “reducing the number of residential lots could potentially address [the Planning Commission’s] compatibility concerns....” (Exhibit 16 – Feb 13, 2019 letter to Jay Martin from Michael Frixen, Development Planner.) Plaintiff did not submit a revised application. Instead, Plaintiff appealed the Planning Commission’s decision to the Court of Common Pleas. The matter was heard and on September

1, 2020, Judge Edward W. Miller entered an order denying the appeal. (Exhibit 17 - 9.1.20 Order of Judge Miller.)

Plaintiff did not appeal Judge Miller's order. Plaintiff did not pursue the Planning Commission's suggestion to reapply with a five lot subdivision. Instead, Plaintiff sold 808 McDaniel Avenue on October 2, 2020 for \$1,400,000. (Exhibit 18 - Deed from McDaniel Jones to McBrides.) Currently a new, single family residence is being constructed on the property. (Exhibit 19 - 808 McDaniel Avenue Current Aerial View.)

On November 5, 2020, Plaintiff filed a complaint with this Court alleging that the decision of the Planning Commission constituted a regulatory taking. On December 12, 2022, Plaintiff filed an amended complaint adding a cause of action alleging violation of Plaintiff's rights to equal protection under the Fourteenth Amendment to the United States Constitution.

The City has answered the Complaint, denying liability and asserting several affirmative defenses. Specifically, the City denies that the Planning Commission's decision amounted to a regulatory taking and denies that its decision was an unconstitutional denial of Plaintiff's equal protection rights.

SUMMARY OF CITY'S POSITION

The City's position is that first, Plaintiff fails to present sufficient evidence to establish the necessary elements of a regulatory taking. Second, Plaintiff cannot establish that the Planning Commission's decision violated Plaintiff's right to equal protection under the law. As to the regulatory takings claim, the Planning Commission's decision was only a preliminary zoning decision. The denial was not a classic, confiscatory taking. The decision merely prevented Plaintiff from subdividing the property into six lots as opposed to a lesser number. At most, the Planning

Commission's denial of the application resulted in a diminution in value, not a denial of Plaintiff's ability to redevelop and subdivide the property. At all relevant times Plaintiff was aware that approval by the Planning Commission of the application would be required, and that there would be public opposition to the plan. Plaintiff's subjective expectations that it could maximize its profit by subdividing the property into six lots is irrelevant to the question of whether a taking occurred.

Second, as a matter of law Plaintiff cannot establish that its constitutional right to equal protection was violated by the Planning Commission's decision. The Equal Protection Clause does not prohibit different treatment of people in different circumstances. If there was disparate treatment, the Planning Commission can point to numerous reasons justifying its decision to deny the preliminary application. There were numerous rational bases for denying the application, including the intense public opposition to a six lot subdivision. Therefore the denial of the application did not rise to the level of a constitutional deprivation of rights.

I. THE DENIAL OF PLAINTIFF'S SUBDIVISION APPLICATION DID NOT AMOUNT TO A REGULATORY TAKING

In the regulatory takings context, the question of whether a taking has occurred is a question of law for the court. Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 314, 737 S.E.2d 601, 619 (2013); . Columbia Venture, LLC v. Richland County, 413 S.C. 423, 776 S.E.2d 900 (2015). South Carolina recognizes that an inverse condemnation claim is a regulatory taking challenge that is governed by the standards set forth in Penn Central v. City of New York, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). See Sea Cabins on the Ocean IV Homeowners Association, Inc. v. City of North Myrtle Beach, 345 S.C. 418, 430, 548 S.E.2d 595, 601 (2001); Columbia Venture, LLC v. Richland County, 413 S.C. at 447, 776 S.E.2d at 913.

The Takings Clause of the Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. The typical taking that will require just compensation is a direct government appropriation or physical invasion of private property. Dunes West Golf Club, LLC, 401 S.C. 280, 313, 737 S.E.2d 601, 618 (2013). Absent a direct physical invasion, government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster. Such regulatory actions may be compensable under the Fifth Amendment. Clayland Farm Enterprises, LLC v. Talbot County, Maryland, 987 F.3d 346 (4th Cir. 2021). (Citations omitted.) However, federal and state case law indicate that nearly all the value of property must be taken before a court should find that a regulatory taking has occurred.

To determine whether a governmental action such as the Planning Commission's decision in this case was an unconstitutional regulatory taking, the court must balance "a complex of factors, including (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct, reasonable, investment-backed expectations; and (3) the character of the governmental action." Clayland Farm Enterprises, LLC, 987 F.3d 346, 353. (Citations omitted.) The first two factors—economic effects and investment-backed expectations—are primary among those factors. Id. South Carolina law follows the federal law on the subject. See generally Dunes West Golf Club, LLC, supra.

In this case, the Planning Commission's denial of Plaintiff's application did not constitute a regulatory taking. All three of the Penn Central factors favor the City's position that an unconstitutional taking did not arise from the Planning Commission's denial of Plaintiff's application.

Penn Central Factor: Economic Impact of Governmental Action:

The economic impact of the Planning Commission's decision clearly favors the City. As explained below, case law establishes that mere diminution in value does not rise to the level of a taking in the constitutional sense. Plaintiff did not lose the ability to make money off the property. The Planning Commission did not prohibit Plaintiff from developing the property into multiple lots, or from building a new home on the site. The property retained market value. These factors indicate the impact on Plaintiff's ability to exercise its ownership (its "bundle of property rights") was insufficient to establish a taking. The denial of one traditional property right by a governmental act does not necessarily amount to a taking. At least where an owner possesses a full bundle of property rights, the destruction of one strand of the bundle is not a taking, because the aggregate has to be viewed in its entirety. See Braden's Folly, LLC, 439 S.C. 171, 201, 886 S.E.2d 674, 690 (2023); Andrus v. Allard, 441 U.S. 51, 64-67, 100 S.Ct. 318, 62 L.Ed.2d 201 (1979).

An action by the government that restricts a developer's plan to develop property is not a taking merely because it prohibits the most beneficial use of the developer's property. United States Supreme Court decisions have uniformly rejected the proposition that diminution in value, standing alone, can establish a taking, and the taking issue in the context of land use regulations is resolved by focusing on the uses the regulations *permit*. Dunes West Golf Club, LLC, 401 S.C. 280, 317, 737 S.E.2d 601, 621.

The Takings Clause does not create an affirmative obligation for local governments to make good on speculative private investments or to increase property owners' property values. Pulte Home Corporation v. Montgomery County, Maryland, 909 F.3d 685, 696 (4th Cir. 2018). Neither diminution in property value nor even a substantial reduction of the attractiveness of the property

to potential purchasers establishes a taking. Esposito v. South Carolina Coastal Council, 939 F.3d 165 (4th Cir. 1991).

The Planning Commission's decision did not physically take Plaintiff's property. It did not deprive Plaintiff of all or nearly all of the economically beneficial use of the property. It merely rejected Plaintiff's request to subdivide the property into six lots. A reduction in the number of houses that an owner may build is a diminution in value and is not a taking. FIC Homes of Blackstone, Inc. v. Conservation Commission, 41 Mass.App.Ct. 681, 673 N.E.2d 61 (1996), citing Moskow v. Commissioner of Dept. of Environmental Management, 427 N.E.2d 750 at 753, which in turn cites Penn Central at 438 U.S. at 130-131, 98 S.Ct. at 2662 in which the United States Supreme Court said: "'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole...."

Plaintiff bought the property for \$1,430,000; it sold the property for \$1,400,000 *one month after the Circuit Court denied Plaintiff's appeal of the Planning Commission's decision*. Prior to selling the property, Plaintiff declined to pursue offers made to purchase the property for \$1.65 million and \$1.85 million. (Exhibit 20 - Plaintiff's Answer to Defendant's Interrogatory 8.) Assuming Plaintiff acted reasonably in selling the property at a \$30,000 loss, Plaintiff sustained a two percent diminution in value. Such a diminution in value, even if it could be linked to the Planning Commission's decision, establishes the property retained 98 percent of its value.

Plaintiff contends that the diminution in value is much greater. Plaintiff retained an appraiser who has opined that the fair market value of the property, had the Planning Commission voted to

approve the six lot subdivision, would have been \$2,510,000. (Exhibit 21 - Plaintiff's Answer to Defendant's Interrogatory 4.) Accepting this valuation for the purposes of this motion only, the diminution in value (the difference between the appraiser's opinion and the price for which Plaintiff sold the property) is \$1,110,000, or 44 per cent. Federal and South Carolina courts consistently have held that a diminution in value of this degree is insufficient to establish a taking. The Fourth Circuit Court of Appeals has found that an 83 per cent diminution in value was insufficient to establish a regulatory taking. See Pulte Home Corp., 909 F.3rd 685, 696 (4th Cir. 2018).

In Henry v. Jefferson County Com'n, 637 F. 3d. 269 (4th Cir. 2011), the Court of Appeals observed that the United States Supreme Court has found no regulatory taking when presented with diminutions in value of 75% (Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 384, 47 S.Ct. 114, 71 L.Ed. 303, (1926)) and 92.5% (Hadacheck v. Sabastian, 293 U.S. 394, 405, 36 S.Ct. 143, 60 L.Ed. 348 (1915)). The South Carolina Supreme Court also cited these cases while rejecting a developer's regulatory taking argument in Dunes West Golf Club, 401 S.C. 280, 317, 737 S.E. 2d 601, 621 (2013).

Plaintiff cannot recover consequential damages in a takings case. Collateral damages, which include lost business profits and goodwill, are not recoverable in a federal or state takings claim. The landowner is not entitled to compensation for profits that would have been made if the property had been converted to its highest and best use and skillfully managed. Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 534 S.E.2d 270 (2000), Mibbs, Inc. v. South Carolina Dept. of Revenue, 337 S.C. 601, 524 S.E.2d 626 (1999). The economic impact of the Planning Commission's decision favors the position of the Planning Commission.

Penn Central Factor: Reasonableness of Investment-Backed Expectations:

The reasonableness of Plaintiff's investment-backed expectations favors the City. Plaintiff's expectation that a six lot subdivision of 808 McDaniel Avenue would be approved was unreasonable. As explained below, courts analyzing a developer's expectations hold that the continuation of the existing use of the property must be the owner's primary expectation.

A valid regulatory takings claim must be premised on a property right that was in existence at the time the owner purchased the property. Clayland Farms, LLC 987 F.3rd at 354. Continuation of the existing use of the property is the property owner's primary expectation when considering an owner's investment-backed expectations for the property; a reasonable investment-backed expectation must be more than a unilateral expectation or an abstract need. Dunes West Golf Club, LLC. In this case, Plaintiff sought to expand the existing use of 808 McDaniel Avenue from a single family residential lot to a six lot subdivision. The necessary premise to establish a regulatory taking is, therefore, lacking.

Case law instructs that the court should evaluate Plaintiff's investment-backed expectations through an objective lens. The subjective expectations of Plaintiff are irrelevant. The critical question is what a reasonable owner in Plaintiff's position should have anticipated. Courts are to look at (1) whether the challenged regulation interferes with the existing use of the property; (2) the degree to which the property's general locale is subject to regulation; and (3) whether the property owner acquired the land after the regulation went into effect. Braden's Folly, LLC v. City of Folly Beach, 439 S.C. 171, 886 S.E.2d 674 (2023). It is undisputed that 808 McDaniel Avenue was within the city limits, and that the city's zoning laws applied to the property. Plaintiff acquired the property knowing it was in the City and was on notice that the City's zoning

procedures would apply. The Planning Commission's denial of Plaintiff's application did not interfere with the property's existing use; it was Plaintiff that sought to change the existing use.

Mark Cothran, an experienced real estate investor, is the sole and managing member of Plaintiff. (Exhibit 22 - Plaintiff's Answer to Defendant's Interrogatory 11.) Mr. Cothran is a sophisticated businessman, owning as many as 28 limited liability corporations. (Exhibit 23 - Deposition of Cothran, p. 12, lines 9-21.) Plaintiff, through Mr. Cothran, was aware at the time it purchased the property that in order to develop the property into a subdivision an application for a preliminary plat would have to be made to the Planning Commission, and that the Planning Commission would decide whether to approve or deny such application after receiving input from planning staff and interested members of the public. Plaintiff was aware prior to the Planning Commission considering the application that Plaintiff would have to participate in a public meeting to discuss and take questions about the proposed subdivision.

Plaintiff, through Mr. Cothran, was aware of the public opposition early on. (Exhibit 24 - Deposition of Cothran, p. 43, line 23 through p. 44, line 1.) Plaintiff knew the opponents had multiple concerns about the impact a six lot subdivision would have on what had historically been a single family residence. Opponents expressed concerns about increased traffic congestion; safety issues; stormwater increase; risks to the existing historic magnolia tree on the property; the potential negative impact on the tree canopy on surrounding properties; and proposed lot sizes and homes inconsistent with that of the neighborhood. (See Public Comments to First and Second Application; 1.2.19 Petition to Planning Commission; Planning Commission Hearing Transcript.)

The January 2, 2019 petition was presented to the Planning Commission by residents opposed to the subdivision. The petition quoted from City Code Section 19-6.9.1: *General purpose and intent. This section is intended to achieve neighborhood compatibility, maintain the harmony and*

character of established single-family areas, and guide residential infill development to occur in an orderly and desirable manner.

The petition identified major areas of concern to the petitioners: neighborhood compatibility; construction issues; traffic; tree canopy (Exhibit 25 - referring to City Code Section 19-6.9.1 (D) which sets forth the purpose and intent of the ordinance ...*(D) To preserve and protect existing tree canopy to the extent practicable and to ensure future tree canopy consistent with established single-family residential areas.* At least 96 residents signed the petition.

Prior to the Planning Commission hearing, Mr. Cothran met with several members of the neighborhood. Sam Outten, whose home is across the street from Plaintiff's property, testified to the Planning Commission that Mr. Cothran refused to agree to any change in the proposal, including their request that the number of proposed lots be reduced. (Exhibit 12 - Sam Outten Statement to Planning Commission.)

A neighborhood meeting was conducted by Plaintiff's representatives on January 9, 2019. Numerous opponents of the proposed subdivision attended and expressed their opposition. Austin Allen, a representative of Plaintiff who attended the meeting, prepared a summary of the comments made by the opponents. (Exhibit 11 - 1.9.19 Austin Allen Neighborhood Meeting Minutes.) Mr. Allen noted that one of the attendees said that "A 4 lot subdivision would make a lot more sense and be much more reasonable and comparable to what is on McDaniel and Jones."

The public opposition did not sway Plaintiff, and on January 17, 2019, Plaintiff presented its six lot proposal to the Planning Commission. As noted above, public opposition was again intense. Plaintiff was offered the opportunity to revise its plan. The Planning Commission made it clear both at the hearing and in the notice of denial that a five lot subdivision would be a more acceptable

proposal. Plaintiff declined and instead appealed the decision to the Court of Common Pleas, and when the appeal was denied, Plaintiff sold the property one month later for less than it had paid for it.

The legitimate concerns about changing the use of the property from its historic use as a single residence and about the proposed subdivision's impact on traffic, safety, and the land management ordinance's purposes, including the admonition to "encourage quality development to blend with existing development" and to "facilitate the creation of a convenient, attractive, and harmonious community" (see Exhibit 25), would have caused a reasonable investor to reduce the number of proposed lots. Plaintiff's failure to do so was the result of its unreasonable investment-backed expectations.

Penn Central Factor: The Character of the Governmental Action:

The character of the governmental action also weighs in favor of the City.

The regulatory takings doctrine seeks to "identify regulatory actions that are functionally equivalent to the classic taking, in which government directly appropriates private property or ousts the owner from his domain". Dunes West Golf Club, LLC, 401 S.C. 280, 314, 737 S.E.2d 601, 619. The Planning Commission's decision did not rise to this level. If a regulation is merely a public program adjusting the benefits and burdens of economic life to promote the common good, the regulation will pass constitutional muster. Braden's Folly, LLC, 439 S.C. 171, 210, 886 S.E.2d 674, 696 (2023). The character of the governmental action in this case is a denial of a preliminary plat for the subdividing of 1.86 acre lot into six lots, coupled with the invitation to submit a plan with one fewer lot.

Plaintiff sought to maximize its investment by splitting the existing property into multiple properties; the more lots that Plaintiff could secure from the Planning Commission, the more money Plaintiff would make. The mere refusal by the Planning Commission to assist a developer to enhance the value of its property to its hypothetical maximum potential because of traditional zoning concerns is not a compensable taking. See Henry v. Jefferson County Com'n, 637 F.3d 269, 277 (4th Cir. 2011).

The Fourth Circuit Court of Appeals has explained that local governments must be able to control the density of development in order to prevent overcrowding in schools, clogging of streets, overload on sewer facilities, degradation of the environment, and a host of other concerns. Managing the density of development-even if it disappoints a particular developer-is thus a crucial goal of land use planning and not an unconstitutional taking. Quinn v. Board of County Commissioners for Queen Anne's County, Maryland, 863 F.3d 433, 441 (4th Cir. 2017).

The Planning Commission's decision did not deprive Plaintiff of its right to own, use, develop, and sell 808 McDaniel Avenue. While Plaintiff argues that the decision diminished the value of the property, diminution in value does not establish an unconstitutional taking. Also, the impact of the denial must be so profound as to be confiscatory to amount to a taking. The Planning Commission's denial was not confiscatory; it was a zoning decision that affected only the density of the proposed use of the property, not the right of the developer to develop it. The only reasonable conclusion is that Plaintiff has failed to establish a regulatory taking by the Planning Commission.

II. THE PLANNING COMMISSION'S DECISION DID WAS NOT A VIOLATION OF PLAINTIFF'S EQUAL PROTECTION RIGHTS

The Planning Commission did not violate Plaintiff's equal protection rights when it denied the application for a six lot subdivision. There were multiple rational reasons why the Planning Commission denied the proposal, not the least of which was the indisputable public opposition to the plan. The decision was "fairly debatable". There is no proof that the decision was the result of intentional, invidious discrimination against Plaintiff. Even if the decision was not technically perfect, it did not rise to the level of a constitutional deprivation of rights.

The Court of Appeals decision in Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009) is instructive and provides several guiding principles that support the City's position. Harbit involved a developer whose rezoning application was denied by the city. The developer sued, alleging numerous causes of action, including one for equal protection violation. The lower court ruled in favor of the city, and the developer appealed. The Court of Appeals affirmed the lower court's decision. The Court of Appeals pointed out that rezoning is a legislative matter, and that the legislative body's decision in zoning matters is presumptively valid. The Court explained that "[t]he governing bodies of municipalities clothed with authority to decide [rezoning issues] are better qualified by their knowledge of the situation to act upon these matters than are the courts, and their decisions will not be interfered with unless there is a plain violation of the constitutional rights of citizens...[The] determinative question is whether the city council's refusal to change the zoning of the owner's property is so unreasonable as to impair or destroy the owner's constitutional rights...*We cannot insinuate our judgment into a review of the city council's decision but must leave that decision undisturbed if the propriety of that decision is even 'fairly debatable'.*" 382 S.C. at 391, 675 S.E.2d at 779-780 (Citations omitted, emphasis supplied.) In the case before this

Court, the Planning Commission determined “that the size and configuration of the proposed lots were not compatible with the existing development patterns along McDaniel and Jones Avenues...these discrepancies informed the Commission’s determination that the proposed subdivision was incompatible with the existing character and development pattern of the established surrounding neighborhood.” (Exhibit 16 - February 13, 2019 letter to Jay Martin from Michael Frixen, Development Planner.) The decision was supported by neighborhood testimony presented to the Planning Commission. For example, Tom Snider, a resident of the neighborhood, testified that the proposed subdivision contained lots narrower than those of surrounding homes, and that if permitted they would “create an incompatibility that destroys the harmony and character of the street”. Mr. Snider described the proposed lots as “like a set of piano keys against the rest of McDaniel”. (Exhibit 26 - Snider hearing testimony, Planning Commission Hearing Transcript pp. 37-39.)

As discussed in the City’s argument in opposition to Plaintiff’s regulatory taking claim, there were other reasons presented to the Planning Commission that made the propriety of its decision “fairly debatable”. Concerns about safety, increased traffic, the potential harm to the magnolia tree and the overall tree canopy of the neighborhood, all supported the decision of the Planning Commission. The Harbit court explained that “[w]hile all of the residents’ concerns might not be well-founded, City Council’s response to public opposition does not rise to the level of a constitutional violation”. 382 S.C. at 391; 675 S.E.2d at 780. Quoting the court in Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach, 420 F.3d 322,329 (4th Cir.2005), the Court said, “[T]he Fourth Circuit Court of Appeals determined the city council’s improper denial of the zoning application in response to public opposition did not rise to the level of a constitutional violation

because ‘matters of zoning are inherently political, and it is a zoning official’s responsibility to mediate disputes between developers and local residents’”.

The record in this case reflects that the Planning Commission tried valiantly to offer a reasonable compromise; however, the compromise attempt was rejected by Plaintiff. The Planning Commission’s decision may not have been perfect, but it was not an *unconstitutional* exercise of its authority.

The Fourth Circuit Court of Appeals, in Van Der Linde Housing, Inc. v. Rivanna Solid Waste Authority, 507 F.3d 290 at 293 (4th Cir.2007), underscored the political nature of the job of Planning Commissions, and shows why Plaintiff cannot establish an equal protection claim against the City: “The [United States] Supreme Court has described the rational basis standard of review as ‘a paradigm of judicial restraint.’ It is emphatically not the function of the judiciary to sit as a ‘super legislature’ to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights, nor proceed along suspect lines.” Van Der Linde explains that a plaintiff claiming a violation of equal protection rights “bears the heavy burden of negating every conceivable basis which might reasonably support the challenged classification.” Id. Thus Plaintiff in this case is obligated to prove *that there was no evidence submitted to the Planning Commission on which the Commission could base its decision to deny the application.* This burden of proof cannot be met since there is incontrovertible evidence of intense public opposition to Plaintiff’s application. This opposition by itself establishes a rational basis for the decision which defeats Plaintiff’s equal protection claim. See Dunes West Golf Club, LLC, 401 S.C. 280, 295-296, 737 S.E.2d 601, 608-609 (citing with approval Sowers v. Powhatan County, 347 Fed.Appx. 898, 903-04 (4th Cir. 2009), which holds public opposition furnishes a rational basis for differential treatment in zoning decisions.)

The Fourth Circuit Court of Appeal has explained why courts are loathe to involve themselves in local property and zoning matters like this one:

While an equal protection claim must be rooted in an allegation of unequal treatment for similarly situated individuals, a showing of such disparate treatment, even if the product of erroneous or illegal state action, is not enough by itself to state a constitutional claim...If disparate treatment alone were sufficient to warrant a constitutional remedy, then every blunder by a local authority, in which the authority erroneously or mistakenly treats an individual differently than it treats another who is similarly situated, would rise to the level of a federal constitutional claim.... Zoning is inescapably a political function. Indeed, it is the very essence of elected zoning officials' responsibility to mediate between developers, residents, commercial interests, and those who oppose and support growth and development in the community...

...Land-use decisions are a core function of local government. Few other municipal functions have such an important and direct impact on the daily lives of those who live or work in a community. The formulation and application of land-use policies, therefore, frequently involve heated political battles, which typically pit local residents opposed to development against developers and local merchants supporting it. Further, community input is inescapably an integral element of this system. Subdivision control is an inherently discretionary system that allows—indeed, sanctions—compromise and negotiation between developers and the planners who represent the community. Resolving the routine land-use disputes that inevitably and constantly arise among developers, local residents, and municipal officials is simply not the business of the federal courts.... Accordingly, federal courts should be extremely reluctant to upset the delicate political balance at play in local land-use disputes.

Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810 (4th Cir. 1995), at pp. 825, 828-829 (Citation omitted).

Plaintiff's equal protection claim against the City is fundamentally flawed. There is no evidence that the Planning Commission intended to discriminate against Plaintiff by denying its application. The Planning Commission had a rational basis to deny the application for a six lot subdivision. Intense public opposition was a factor that caused the Planning Commission to suggest a five lot subdivision to which Plaintiff, fully aware of the public opposition, said no. Whether or not Plaintiff was treated differently than similarly situated owners might have been treated, such

disparate treatment did not rise to the magnitude of an unconstitutional deprivation of equal protection.

The Equal Protection Clause requires that the states apply each law, within its scope, equally to persons similarly situated, and that any differences of application must be justified by the law's purpose. Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009).

Conversely, the Equal Protection Clause does not prohibit different treatment of people in different circumstances under the law; instead, the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Id.

To prevail on an equal protection claim, the Plaintiff must demonstrate that it has been treated differently from others with whom it is similarly situated, and that the unequal treatment was the result of intentional or purposeful discrimination. Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001); Whaley v. Dorchester County Zoning Board of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999.) If this showing is made, the court should proceed to the second step and “determine whether the disparity in treatment can be justified under the requisite level of scrutiny”. Morrison, 239 F.3d 648, 654. When a party has not alleged that it was deprived of a fundamental right or that it was subjected to discrimination based on a suspect classification, a court “will uphold the distinctions drawn by [the defendant] if they were ‘rationally related to a legitimate state interest.’” Pulte Home Corp. v. Montgomery County, 909 F.3d 685, 693 (4th Cir. 2018). To rebut a defendant’s rational reasons for treating a plaintiff differently, the plaintiff carries the “heavy burden of negating every conceivable basis which might reasonably support the challenged classification.” Van der Linde Housing, Inc. v. Rivanna Solid Waste Authority, 507 F.3d 290, 293 (4th Cir. 2007).

Here, there is no evidence that the denial of its application was motivated by discriminatory goals, such as revenge, illegitimate animus, or ill will on the part of the Planning Commission. Dunes West, 401 S.C. at 295, 737 S.E.2d at 609). One seeking to show discriminatory enforcement in violation of the Equal Protection clause must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced. Even assuming a governmental entity is not enforcing an ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of a constitutional equal protection violation. Harbit, 382 S.C. at 396, 675 S.E.2d at 783. The City's written notice of denial shows the Planning Commission was letting Plaintiff know that a reasonable alternative to the six lot proposal was available. The letter of denial advised Plaintiff that "The Commission's discussion further indicated that reducing the number of residential lots could potentially address their compatibility concerns and bring the development into closer compliance with the City's Infill Standards". The Planning Commission's denial of the application was not based on purposeful discrimination and did not "rise to the level of a constitutional equal protection violation".

Plaintiff's equal protection argument also fails because there are no similarly situated property owners who applied for a subdivision plat and were granted the application. "Similarly situated" means the other entities "are in all relevant respects alike" to Plaintiff. Nordlinger v. Hahn, 505 U.S.1,10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992).

Plaintiff's proposal for 808 McDaniel Avenue was not similarly situated to other permit applications in the area. The property's location, bordering both McDaniel and Jones Avenues, and its close proximity to Augusta Street, were unique features. It was also unique in that a single lot containing one house was proposed to be divided into six much smaller lots requiring six new curb cuts. The magnolia tree requiring preservation was another unique feature of the application.

Whether or not the court finds that the Planning Commission treated Plaintiff differently from similarly situated property owners, Plaintiff cannot negate every rational or conceivable basis that might reasonably support the denial. The public opposition to the application standing alone establishes a rational basis for the Planning Commission's denying the application. See Dunes West Golf Club, LLC, 401 S.C. 280, 295, 737 S.E.2d 601, 608-609 (citing with approval Sowers v. Powhatan County, 347 Fed.Appx. 898, 903-904 (4th Cir. 2009), "holding public opposition furnishes a rational basis for differential treatment in zoning decisions". Any of the concerns communicated to the Planning Commission by opponents to the application, e.g., increased traffic flow, proximity to existing busy intersection, potential stormwater runoff, risks to tree canopy, safety concerns from increased traffic flow and retention of stormwater, and incompatibility with the neighborhood, are rational reasons that would support the denial of the application.

The equal protection cause of action cannot be sustained.

CONCLUSION

A trial court properly grants summary judgment "if the pleadings, depositions, answers to interrogatories, and admission on file together with the affidavits, if any, show that there is no genuine issue as to material fact and that the moving party is entitled to a judgment as a matter of law. "Rule 56(c), SCRPC. When opposing a summary judgment motion, the non-moving party must do more than "simply show that there is a metaphysical doubt as to the material facts that must come forward with specific facts showing that there is a genuine issue for trial.'" Dunes Golf Club, LLC, 401 S.C. at 293, 737 S.E. 2d. at 607-608. A nonmoving party has to present facts that would permit a reasonable inference to be drawn from the evidence that creates an issue of fact at trial. Kitchen Planners, LLC v. Friedman 440 S.C. 456, 892 S.E. 2d. 297 (2023). The regulatory takings cause of action is a matter of law for the court to decide. The evidence establishes that the

Planning Commission's denial of Plaintiff's six lot subdivision was not a taking. It was a zoning decision that at worst resulted in some diminution in value but did not deprive Plaintiff of the bundle of rights relative to enjoyment of the property. Plaintiff's expectation that it could develop 808 McDaniel Avenue into a six lot subdivision without, or in spite of, fierce opposition from the neighborhood was unreasonable.

With regard to the equal protection cause of action, whether or not that claim conceivably could go to a jury, Plaintiff cannot show that there is a genuine issue of material fact for a jury to decide. Plaintiff cannot overcome the evidence that the Planning Commission had a rational basis for its decision to deny the application. Plaintiff "bears the heavy burden of negating every conceivable basis which might reasonably support the classification". Van Der Linde Housing, Inc., 507 F3d 290 at 293 (4th Cir 2007). As shown above, there was a plethora of reasons submitted to the Planning Commission's that supported its decision to deny the application. Any of those reasons, including the uncontroverted public opposition, provides the rational basis for the decision which is "fairly debatable" and which entitles the City to judgment. The City is entitled to an order granting judgement in its favor on both causes of action.

Respectfully submitted,

CASSIDY COATES PRICE, P.A.

s/V. Clark Price

V. Clark Price, SC Bar No. 04567

cprice@cassidycoates.com

P. O. Box 10529

Greenville, SC 29603

P: (864) 349-2600

F: (864) 349-0303

Attorney for the Defendant

November 2, 2023

Greenville, South Carolina

EXHIBIT 1

2018056048
DEED Book: DE 2543 Page: 5317 - 5319 3 Pgs
July 26, 2018 01:22:06 PM Cons: \$1,430,000.00
Rec: \$10.00 Cnty Tax: \$1,573.00 State Tax: \$3,718.00
FILED IN GREENVILLE COUNTY, SC *Timothy J. Hancey*

Grantee Address: P.O. Box 27049
Greenville, SC 29616

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that

TNB Financial Services, Successor Trustee U/W of C. E. Hatch

in consideration of **One Million Four Hundred Thirty Thousand and No/100 (\$1,430,000.00) Dollars**, to the Grantor in hand paid at and before the sealing of these presents by the Grantees, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **McDANIEL JONES, LLC**, its successors and assigns, forever, the following described property:

SEE ATTACHED EXHIBIT "A"

This conveyance is made subject to all restrictions, setback lines, zoning ordinances, easements and rights of way, if any, as may appear of record or on the subject property.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, as joint tenants with rights of survivorship and not as tenants in common, and the Grantee's heirs or successors and assigns, forever. And, the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and Grantee's heirs or successors against the Grantor and Grantor's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's hand and seal this 20th day of July, 2018.

Signed, sealed and delivered
In the presence of:

TNB Financial Services, Successor Trustee
U/W of C.E. HATCH

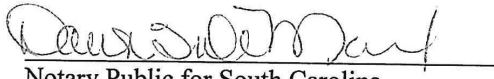
Daniel S. Day
Witness

By: *Cynthia J. Kelly, Market President, Sports*
Name: Cynthia J. Kelly (SEAL)
Title: Market President, Spartanburg

BT H. H. H.
Witness

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF GREENVILLE)

The foregoing instrument was acknowledged before me this 26th day of July, 2018 by
the Grantor.


Notary Public for South Carolina
My Commission Expires: 1-7-2023

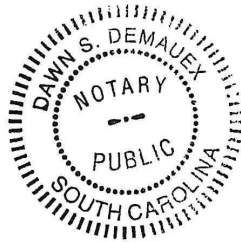
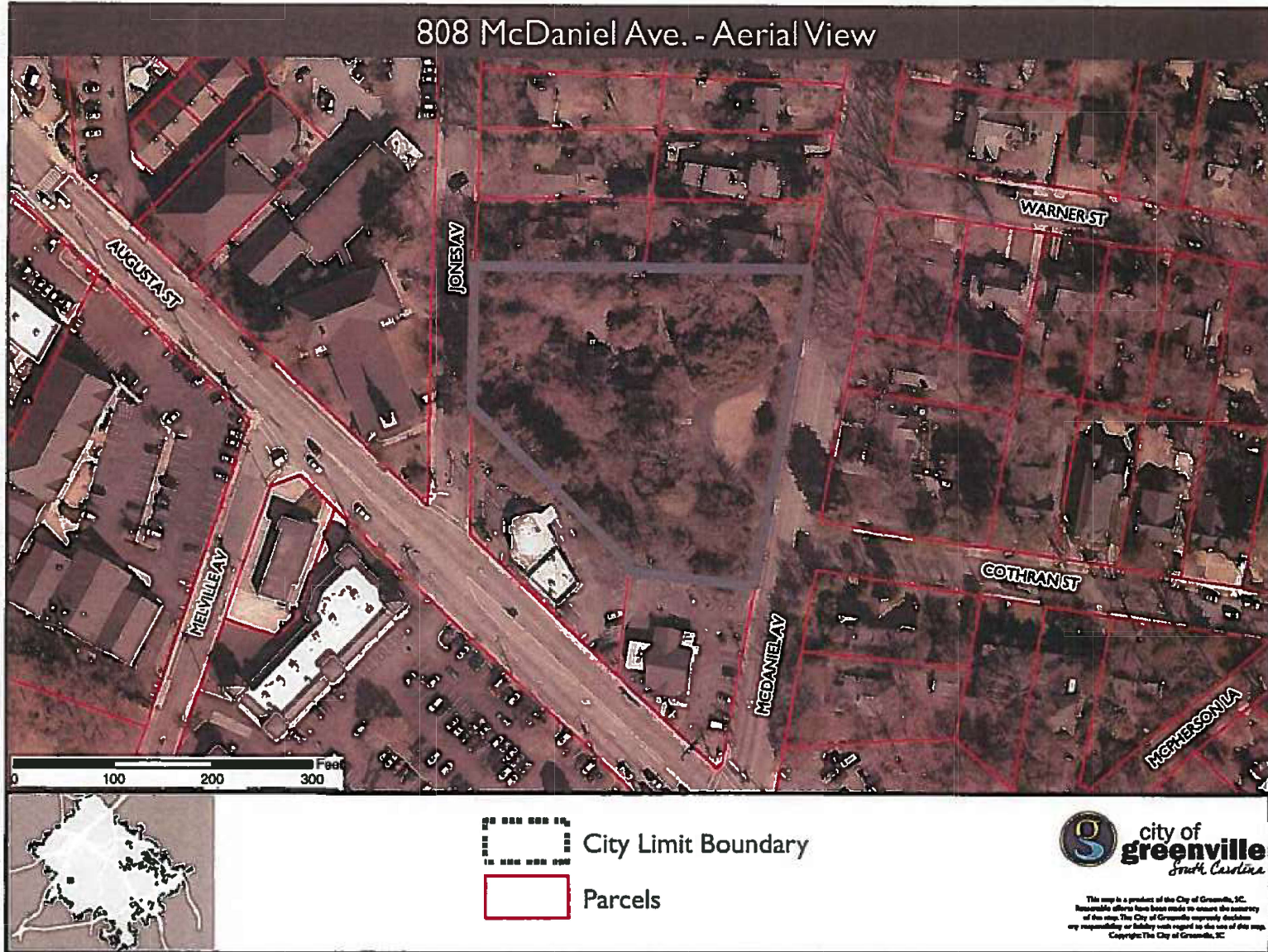


EXHIBIT "A"

All that certain piece, parcel or lot of land, together with any and all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as 1.86 acres (81,118 SF), as shown on plat prepared by C.O. Riddle Surveying Co., Inc., dated July 19, 2018 and recorded in the ROD Office for Greenville County, SC in Plat Book 1311 at Page 58 on July 26, 2018, and having according to said plat, such metes and bounds as are shown thereon.

This being the same property conveyed unto TNB Financial Services, Successor Trustee U/W of C.E. Hatch by deed of Bank Of America, N.A. Trustee under will of C.E. Hatch dated August 15, 2017 filed for record in the ROD Office for Greenville County, SC on August 38, 2017 in Deed Book 2520 at Page 350 – SEE ALSO CORRECTIVE DEED from Bank of American, N.A., Trustee under Will of C.E. Hatch dated July 18, 2018 and filed for record in the ROD Office for Greenville County in Deed Book 2543 at Page 4081 on July 24, 2018. This is a portion of the property conveyed to C. E. Hatch by deed of J. A. McDaniel dated April 4, 1916, and recorded in the ROD Office for Greenville County, SC, on April 11, 1916, in Book 34, at page 26. Estate of C. E. Hatch (died testate 10/29/71) Greenville County Probate File 1202-22; Deed from Hugh B. Hamilton, Jr., dated February 25, 1987 and filed for record in the ROD Office for Greenville County, SC, March 26, 1987 in Deed Book 1291 at Page 282

Greenville County Tax Map # 0217.00-05-007.00



city of greenville

APPLICATION FOR LAND DEVELOPMENT PERMIT

Contact Planning & Development (864) 467-4476

Office Use Only: 18-027

Application# SD (8-803) Fees Paid 800

Date Received 9/17/18 Accepted By _____

Date Complete _____ App Deny Conditions _____

APPLICANT/OWNER INFORMATION

*Indicates Required Field

	APPLICANT	PROPERTY OWNER
*Name:	<u>ARBORE ENGINEERING / JAY MARTIN</u>	<u>MCDANIEL JONES LLC</u>
*Title:	<u>PRINCIPAL</u>	<u>MARK COTHMAN / MEMBER</u>
*Address:	<u>10 WILLIAMSBY ST / GVL 29601</u>	<u>PO BOX 27049 / GVL 29616</u>
*Phone:	<u>864 235 3554 x 128</u>	<u>864 250 0820</u>
*Email:	<u>jay.martin@arborengineering.com</u>	<u>mark@cothmanproperties.com</u>

PROPERTY INFORMATION

*STREET ADDRESS 808 MCDANIEL AVENUE GVL 29605

*TAX MAP #(S) 0217000500100

*ZONING DESIGNATION R-9

ORIGINAL LOTS 1 *TOTAL ACREAGE 1.86 +/-

PROPOSED LOTS 7 *TOTAL ACREAGE 1.86 +/-

INSTRUCTIONS

- Please refer to **section 19-2.3.13, Land Development**, for additional information.
- All applications and fees (made payable to the City of Greenville) for land development permits must be received by the planning and development office no later than 5:00 pm of the date reflected on the attached schedule.
 - Minor Subdivision – (2 lots) \$300.00 - Summary Plat review, *administrative review*
 - ☒ Major subdivision – (3-10 lots) \$300.00 - Preliminary Plat review, *public hearing required*
 - Major subdivision – (11+ lots) \$550.00 - Preliminary Plat review, *public hearing required*
 - Multifamily development \$550.00 - *public hearing required*
- The staff will review the application for "sufficiency" pursuant to Section 19-2.2.6, Determination of Sufficiency. The staff will contact the applicant to correct any deficiencies which must be corrected prior to placing a land development application on the planning commission agenda. You are encouraged to schedule an application conference with a planner who will review your application for "sufficiency" at the time it is submitted. Call (864) 467-4476 to schedule an appointment.
- Land development applications require a public hearing before the planning commission and must be posted at least 15 days (but not more than 18 days) prior to the scheduled hearing date.
- Subdivision Plat format and content requirements are reflected in the Administrative Manual at Appendix 'F'.
- Multifamily Development plan format and content requirements are reflected in the Administrative Manual at Appendix 'H'. The information shall include at a minimum:
 - Completed application for land development permit;
 - Context map, showing relationship of proposed development to the surrounding neighborhood;

CITY OF GREENVILLE APPLICATION FOR LAND DEVELOPMENT PERMIT

Rev. 9/13/2017

PAGE 1 OF 2

- c. Photographs of surrounding area;
- d. Site plan, showing building(s) footprint, parking lot layout, pedestrian and vehicular access, internal walkways, amenities (i.e. Pool, playground, picnic area, etc.), and service areas (i.e. Dumpster pad/trash collection area, HVAC units, car wash area, etc.);
- e. Grading plan, showing existing and proposed topographic contours, storm drainage collection facilities, existing and proposed retaining walls (with top-of-wall and bottom-of-wall elevations for at least the ends of the walls and the high point of the walls);
- f. Building elevations, of all sides of the building(s), with exterior materials and colors indicated;
- g. Plan showing elevation of proposed buildings in relation to adjoining structures;
- h. Building floor plans;
- i. Landscape plan, showing existing vegetation that will remain and the new plants to be added; and
- j. Lighting plan, showing location of light fixtures (on the site and on the building), cut sheets of the proposed light fixtures, and wattage.

Please verify that all required information is reflected on the plan(s). Please submit two (2) paper copies and one (1) electronic version of the plan(s).

7. Please read carefully: The applicant and property owner affirm that all information submitted with this application; including any/all supplemental information is true and correct to the best of their knowledge and they have provided full disclosure of the relevant facts.

In addition the applicant affirms that the applicant or someone acting on the applicant's behalf has made a reasonable effort to determine whether a deed or other document places one or more restrictions on the property that preclude or impede the intended use and has found no record of such a restriction.

If the planning office by separate inquiry determines that such a restriction exists, it shall notify the applicant. If the applicant does not withdraw or modify the application in a timely manner, or act to have the restriction terminated or waived, then the planning office will indicate in its report to the planning commission that granting the requested change would not likely result in the benefit the applicant seeks.

8. To that end, the applicant hereby affirms that the tract or parcel of land subject of the attached application is is or is not is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the requested activity.

*Signatures	
Applicant	<i>[Signature]</i>
Date	9/14/2018
Property Owner/Authorized Agent	<i>[Signature]</i> Manager
Date	9/14/2018

STOP: To be filled when application submitted to Planning & Development (excluding Minor Subdivisions)	
AA	'Public Hearing' signs are acknowledged as received by the applicant
AA	Received information for public meeting
AA	Received information for materials board requirements





P.O. Box 2207 • 206 South Main St. • Greenville, SC 29609 • Phone: 864-467-4355

RE: Magnolia tree at 808 McDaniel Avenue

Mr. Graham,

I am writing to you regarding the magnolia tree located at 808 McDaniel Avenue.

On Tuesday, October 16th, the tree was inspected by two certified arborists with the city's Parks & Recreation Department: Drew Smith (Arborist Certification #SO-55498), and myself (Arborist Certification #AT-0678A). The tree was determined to be a *magnolia grandiflora* with a central trunk of 39.7". The tree has generated multiple suckers which, upon first glance, would appear to be individual trees. However, given the well-documented growth and reproductive pattern of *magnolia grandiflora*, and based upon inspection of roots, limbs, and trunks, it was our determination that what appear to be individual trees, are in fact secondary and tertiary trunks of the central 39.7" tree.

According to municipal code 19-6.3.2 (C) "A heritage tree is any tree greater than 20 inches in diameter and a historic tree is any tree greater than 30 inches in diameter and is located within any required setback or buffer area." Furthermore, municipal code 19-6.3.2 (C) (4) states that "Heritage or historic trees shall not be cut, removed, pushed over, killed, harmed, trimmed, sprayed, or destroyed without written approval by the Parks and Recreation Department."

Our determination is that the magnolia at 808 McDaniel Avenue is an 'historic tree' and shall not, by municipal code, be trimmed or destroyed without approval.

I hope this helps you in your determination, and please let us know if we can be of further assistance.

Thank you,

A handwritten signature in black ink, appearing to read 'E. Kinney'.



Edward A Kinney RLA, ISA
 Sr. Landscape Architect | Parks and Recreation
ekinney@greenvillesc.gov | www.greenvillesc.gov
 PHONE: 864-467-3296 | FAX: 864-467-5735

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
 ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

SD 18-027

**Public Comments
Received for Original Application
October 18, 2018 PC Meeting**

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

October 9, 2018

City of Greenville Planning Commission
206 S. Main St., 6th Floor
Greenville, SC 29601

Re: Proposed McDaniel Sub-Division - 808 McDaniel Avenue

To: Members of the City of Greenville Planning Commission:

We oppose the plan for a McDaniel sub-division at 808 McDaniel Avenue. A preliminary plan was submitted by Arbor Engineering Inc., for the proposed sub-division dated September 17, 2018. Other than that, we have received very little information from the developer, Cothran Properties, regarding their plans for this sub-division.

Cothran Properties proposes to put seven homes on this lot where currently one house is located. This would profoundly change this beautiful and historic neighborhood and the surrounding area. There is no justification for allowing such a drastic change to our neighborhood, even if some of the technical requirements for a sub-division are met. To suggest that this development is compatible with the neighborhood simply ignores reality. For these reasons set forth more fully below, the applicable ordinances of Greenville County require that the Planning Commission refuse approval for this subdivision as proposed.

1. Neighborhood Compatibility

A. 19-6.9.1 General Purpose and Intent

This section is intended to achieve neighborhood compatibility, maintain the harmony and character of established single family residential areas and guide residential infill development to occur in an orderly and desirable manner.

The basic proposal is to change significantly the character of the neighborhood by turning a lot on which one house is located into seven separate residences – five on McDaniel Avenue and two on Jones Avenue. As we understand it, the proposal is to take a beautiful wooded lot (which includes one of the most historic trees in the upstate of South Carolina), level/clear it, and build seven homes there of unknown size and design. While we respect the rights of the new property owners, such a change is not within either the letter or the spirit of 19-6.9.1. The mandate of 19-6.9.1 – “maintaining the harmony and character of established single family residential areas” – requires that this proposal be denied.

1

Received
10/11/2018
at 4:28 pm
SBP

Circuit Court Appeal 0108

2. Construction Issues

Building seven houses on a lot where one currently exists seems to us to be an extraordinary request because this construction could take five to ten years. Ongoing construction in a confined area for the next five to ten years would have a number of negative impacts on this neighborhood, and is clearly not promoting harmony or character in the neighborhood. Also, it would restrict the ability of some homeowners near this property to sell their homes because of potential buyer's unwillingness to purchase a home in a construction zone.

There would also be a number of safety and parking issues associated with having construction crews in our neighborhood for the next decade. Given the number of children who live near 808 McDaniel, this poses a serious safety concern. Stated differently, we can see no rationale for subjecting the residents of this neighborhood to living in a construction zone for many years to come, given these facts and circumstances.

3. Traffic

To our knowledge, no traffic impact analysis has been done to demonstrate that the proposed development will not pose an unacceptable burden on traffic on this end of McDaniel, on Augusta Road and surrounding streets. Traffic is already heavy at certain times of the day in this area. What impact adding seven houses would have on the traffic patterns has not been evaluated. Even if all other concerns were addressed, the Planning Commission should refuse approval of this proposed subdivision until a traffic study has been completed as provided for by 19-6.10.

4. Tree Canopy

Section 19-6.9.1 (D) provides as follows:

To preserve and protect existing tree canopy to the extent practicable and to ensure future tree canopy consistent with established single-family residential areas.

We understand that Cothran Properties intends to take out the beautiful magnolia tree on this lot. Alternatively, the buyer of the lot where the tree is located will take it down to build a house. This tree is a Greenville landmark, and serious consideration should be given to its destruction.

In addition to removing this beautiful old magnolia tree, Cothran Properties apparently intends to level the remaining lot so that substantially all of the trees on the property will be removed so that homes can be built.

If this development were allowed, instead of preserving and protecting the existing tree canopy, as required by 19-6.9.1(D), the Planning Commission would be allowing Cothran Properties to do the opposite - to level this beautiful lot full of trees to allow for seven houses to be built -

which cannot possibly provide for a tree canopy consistent with that established and existing on McDaniel Ave.

5. Garages

Section 19-6.9.4 provides as follows:

- (A) In established single family residential areas garages, carports and driveways, shall be constructed in the way to be consistent with the predominant development pattern and rhythm of the block
- (B) Attached garages/carports shall not open onto the front yard unless . . .

Garages cannot be put in the front yard of the homes to be built on these lots. Our understanding is that parking in the front yard is not allowed under 19-6.9.4. Since we do not know what is proposed with regard to parking/garages of the proposed development, there is no information that the plans comply with 19-6.9.4. At a minimum, the developer must submit a plan for parking/garages within the requirements of 19-6.9.4, and which this Commission approves. Certainly any proposal must take into account the character of the existing neighborhood, as the ordinance requires.

6. Storm Water

We have seen no proposal from the developer with regard to storm water or water retention. As stated earlier, it appears as if this lot will be leveled, which would likely to increase significantly the run-off from this lot. Even if that were not the case, it should be the responsibility of the developer to have a storm water plan to submit to the Planning Commission so it can be confident that the development of this property will not create water problems for the neighborhood.

7. Effect on Market Value

We are not aware of any evaluation or appraisal which has been done to assure the property owners in this neighborhood that property values will not be adversely affected. Property owners in this neighborhood have a right to expect that no proposed sub-division will be approved if it has a material negative impact on property values. Certainly, consideration of neighborhood compatibility must include whether or not a development will be allowed which has a negative economic impact on this community.

Conclusion

According to the Greenville County Ordinances:

"The purpose and intent of this chapter is to guide development in accordance with the existing and future needs of the city and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the property owners and residents of the city, and other members of the public."

Accordingly, The Planning Commission must reject this proposal consistent with the stated purpose of the ordinances cited above, and for all of the reasons contained in this letter.

Sincerely,

Kelly Wynn [REDACTED] McDaniel Ave

Melie Leaphant [REDACTED] McDaniel Ave

Susan Lind [REDACTED] Jones Ave

Charles Wynn [REDACTED] McDaniel Ave

Samuel V. Smith [REDACTED] McDaniel Ave.

Jeff. Dutton [REDACTED] McDaniel Ave.

[Signature] [REDACTED] Jones Ave.

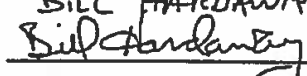
[Signature] [REDACTED] Jones Ave

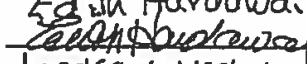
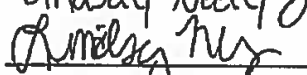
According to the Greenville County Ordinances:

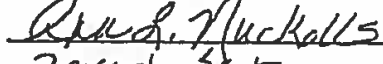
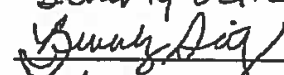
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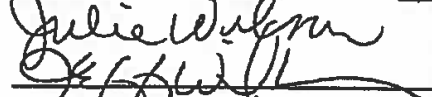
Sincerely,

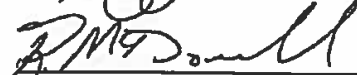
Bill Hardaway
 JONES AVE.

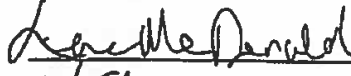
Edith Hardaway
 Jones Ave.
Lindsay Neely
 Jones Ave

Randy Nuckolls
 Jones Ave.
Beverly Bertz
 Jones Ave

L. L. R.
 Jones Ave.

Julie Wilgorn
 Jones Ave

R. McDonald
 Jones Ave

Loretta McDonald
 Jones Ave

K. R.
 Crescent Ave

Elizabeth Motley
 Jones Ave

Jim Hill [REDACTED] Jones Ave
John Messner [REDACTED] Pine Forest Dr
John Fort [REDACTED] Jones Ave
Jim Sj Sean Scapone [REDACTED] Jones Ave
Ann B Rangelius [REDACTED] Jones Ave
Pauline [REDACTED] Jones Ave

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"The purpose and intent of this chapter is to guide development in accordance with the existing and future needs of the city and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the property owners and residents of the city, and other members of the public."

Accordingly, The Planning Commission must reject this proposal consistent with the stated purpose of the ordinances cited above, and for all of the reasons contained in this letter.

Sincerely,

Ashley Delapour
Nancy Theodore [REDACTED] Cothran St.
Kathy Ladduth [REDACTED] McPherson Lane
Richard P. Kae Jr. [REDACTED] McPherson Lane
Clark Brooks [REDACTED] Warner St
Nicole Stern [REDACTED] Warner St.
Jim Maucher [REDACTED] McPherson Ln
AA Biale [REDACTED] Camille Ave
Sarah Long [REDACTED] Camille Ave.
KL [REDACTED] CAMILLE AVE
AMM [REDACTED] McPherson Lane

46

Lacy Surk [REDACTED] Camille Ave.

Alex St [REDACTED] Camille Ave.

Jay [REDACTED] Cothran St.

Elizabeth (Christine) [REDACTED] Camille Avenue

Ben [REDACTED] McPherson

Sarah [REDACTED] Afton Ct.

Rae [REDACTED] Afton Ct.

John [REDACTED] McIver St

Carrie [REDACTED] McIver St

ASH Glenn [REDACTED] Fairview Ave.

According to the Greenville County Ordinances:

"The purpose and intent of this chapter is to guide development in accordance with the existing and future needs of the city and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the property owners and residents of the city, and other members of the public."

Accordingly, The Planning Commission must reject this proposal consistent with the stated purpose of the ordinances cited above, and for all of the reasons contained in this letter.

Sincerely,

Jeanne Arden [REDACTED] Jones

Marlene Arden [REDACTED] Jones

W. Lewis McWhite [REDACTED] Jones Ave.

Jason Ballaway [REDACTED] Jones Ave

Bonnie Francis [REDACTED] McDaniel Ave.

John Francis [REDACTED] McDaniel Ave

John Francis [REDACTED] McDaniel Ave

Gilberty Connor [REDACTED] McDaniel Ave

Thay A. Jones [REDACTED] McDaniel Ave., 25605

W. Peterson [REDACTED] McDaniel Ave

Clare Phinney [REDACTED] Cleveland Street 01

Adam Bach [REDACTED] Cethron St.
Janie Bach [REDACTED] Cethron St.
Charles Pulliam [REDACTED] McPherson Lane
Lin Pulliam [REDACTED] McPherson Lane
NMAvinar [REDACTED] E. LANSDOWN DRIVE
Lillie Hawley [REDACTED] Tindal Ave

Michael Frixen

From: Planning
Sent: Tuesday, October 9, 2018 9:16 AM
To: Michael Frixen
Subject: FW: Opposed to dividing up 808 McDaniel lot per SD 18-027

From: Chris Fyock - [REDACTED]
Sent: Tuesday, October 9, 2018 9:06 AM
To: Planning <planning@greenvillesc.gov>
Subject: Opposed to dividing up 808 McDaniel lot per SD 18-027

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

To the Greenville Planning Commission:

I am writing to you to express my strong opposition to the proposed dividing up of the 808 McDaniel lot per SD 18-027. I live at [REDACTED] McDaniel which is 3 houses down on the same side of the road from 808 McDaniel. My concerns are as follows:

1. Dividing the 808 McDaniel lot could decrease the value of the surrounding properties such as mine.
2. It is a pity to destroy the current house on that lot as it is beautiful and has long been appreciated by those on McDaniel.
3. To divide that lot into seven will likely increase the traffic on an already too busy McDaniel Ave.
4. Seven new houses will change the historic character of the neighborhood.
5. The last thing the neighborhood needs is the chaos and commotion that will attend the significant construction involved in this plan.
6. I am worried that significant construction will harm the large tree in the front yard of 808 McDaniel.

I feel that the proposed plan to divide 808 McDaniel into 7 lots will not be in the best interest of those who live close by like me. Part of what is great about living in the Augusta Road area is that its historic nature is preserved and not quickly overturned. While renovation and update is often a good thing, I think that in this case the harm will outweigh the good.

Thank you for your consideration. Please contact me with any questions at [REDACTED]

Yours,
Christopher Fyock, MD

From: Claire Hall [REDACTED]
Sent: Tuesday, October 9, 2018 5:13 PM
To: Jonathan B. Graham <jbramham@greenvillesc.gov>
Subject: 808 McDaniel

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Jay,

I've known Mrs. Sally Roberts for 43 years, the prior owner of the house in question. Her grandfather owned a very large, white clapboard "farm" house on said property for years. He left it to Sally, she tore it down and built the existing contemporary around 1973-76. In the original deed the HUGE magnolia on the north perimeter of the driveway, was "NEVER TO BE TOUCHED" and therefore it was insured for 3 million by Lloyds of London for years! Up until several years ago.

Before anything else proceeds, you might want to check out that original deed, I don't think that can be gotten around? That tree probably takes up space of one WHOLE house in the 7 dwelling plan.....

Frankly, I'll be very disappointed and saddened if that beautiful magnolia, that has taken over 100 years to grow, is destroyed. Take the ugly contemporary!!! but please leave the tree.

Concerned citizen,

Claire Hall
[REDACTED] Meyers Drive
29805
[REDACTED]

Kimberly O'Neill

 *McDaniel Avenue*
Greenville SC 29615

October 10, 2018

Dear Mr. Graham,

I am writing in regards to the property on 808 McDaniel Avenue.

I understand there is a proposal for this home and lot to be subdivided into seven different home sites.

I would like to say that I am against this proposal. In order for this to happen the current home with its unique architecture, trees, and lawn would have to go. The very attributes that make our neighborhood so special would be sacrificed for this little development to be built. I am all for sharing our lovely neighborhood with others but not at this cost.

If I wanted to live in a subdivision where all the homes looked the same and they were on teeny tiny lots with no trees I could easily move to one of those places and save a good bit of money in taxes doing so. I chose to live where I do for a reason and that reason is now in jeopardy.

I am concerned about this new attitude that it is ok to take our lovely neighborhood and turn it into a generic cookie cutter subdivision. I hope that you will take the current residents of McDaniel Avenue and surrounding streets concerns into consideration when you decide on whether or not to approve this proposal.

Respectfully,

Kimberly O'Neill

Circuit Court Appeal 0120

Michael Frixen

From: Jonathan B. Graham
Sent: Friday, October 12, 2018 9:28 AM
To: Michael Frixen
Subject: FW: Lot at 800 McDaniel Ave.

Public comment for McDaniel Ave

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

From: Eston Rodgers [REDACTED]
Sent: Friday, October 12, 2018 9:05 AM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: Lot at 800 McDaniel Ave.

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

My wife and I feel that the proposed development of the lot at 800 McDaniel Ave is the appropriate use of the site. The use of this site is most definitely single family residential.

Carol T Rodgers
Eston Rodgers
[REDACTED] McDaniel Ave
Greenville, SC
[REDACTED]

Michael Frixen

From: Jonathan B. Graham
Sent: Friday, October 12, 2018 1:41 PM
To: Nancy Peterson
Cc: Michael Frixen
Subject: RE: 808 McDaniel

Ms. Peterson,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

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

From: Nancy Peterson [REDACTED]
Sent: Tuesday, October 9, 2018 2:05 PM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: 808 McDaniel

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Dear Mr Graham,

I was dismayed to read that the developer wanted to squeeze so many homes in that spot. Removing that magnificent tree is a sad sad thing. We pay no attention whatsoever to maintaining the character of our tree lined streets. When we lived in Mountain Brook, Alabama, trees over a certain size were not allowed to be removed without explanation and a plan for replacement. People love this neighborhood for its appearance, which seems to change negatively whenever a house changes hands. Any large lot becomes two or more lots with all vegetation removed.

I know my opinion holds no sway, but thank you for reading this!

Sincerely,

Nancy Peterson
[REDACTED] Fairview Avenue

Sent from my iPhone

Michael Frixen

From: Jonathan B. Graham
Sent: Friday, October 12, 2018 1:46 PM
To: Robert Neely
Cc: Michael Frixen
Subject: RE: comment on 808 McDaniel development

Mr. Neely,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

From: Robert Neely [REDACTED]
Sent: Tuesday, October 9, 2018 3:09 PM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: comment on 808 McDaniel development

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Dear Mr. Graham-

I am writing to express my concern about the proposed development at 808 McDaniel Avenue. It is clear that this development is in direct contrast with the neighborhood standards when it comes to lot size, which will negatively impact our neighborhood and our home values.

I also have a specific concern when it comes to the trolley stop located directly adjacent to this property. I am seriously worried that the plan to add five lots with driveways directly next to this trolley stop creates a safety issue when it comes to families like mine walking down that sidewalk to the stop while a significantly higher number of cars in closer proximity to this pedestrian destination. I would appreciate hearing the plans of how the city will ensure the safety of pedestrians with this development.

Thank you for your attention and for inviting neighbors to ask questions and raise concerns about this development idea.

Robert Neely
[REDACTED] Jones Avenue

Michael Frixen

From: Jonathan B. Graham
Sent: Friday, October 12, 2018 2:08 PM
To: John Cooter
Cc: Michael Frixen
Subject: RE: 808 McDaniel Ave.

Mr. Cooter,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

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

From: John Cooter <[REDACTED]>
Sent: Wednesday, October 10, 2018 11:34 AM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: 808 McDaniel Ave.

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

I live at [REDACTED] McDaniel Avenue. I object to the concept of dividing 808 into 7 lots. In my opinion, that is excessive for the land available; not to mention losing the beautiful magnolia tree that is in the front yard. A lesser number of larger lots would probably be acceptable.

Thank you for your consideration of my request. John A Cooter

Sent from my iPhone

Michael Frixen

From: Jonathan B. Graham
Sent: Friday, October 12, 2018 11:50 AM
To: [REDACTED]
Cc: Michael Frixen
Subject: RE: McDaniel Avenue sub-division

Mr. Fitzgerald,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

From: fitzgeraldal@charter.net [REDACTED]
Sent: Wednesday, October 10, 2018 12:39 PM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: McDaniel Avenue sub-division

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Mr. Graham:

Our household would be opposed to the proposed 7 lot subdivision because it sets an unintended consequence in motion. Once these 7 lots are approved other subdivisions will occur on lots similar in size. For example, we have a .49 acres size lot and your planning staff would probably approve 3 lots on our current 1 lot. That becomes too big of a temptation to builders to acquire older homes, like our 88 year old Willie Ward designed home, tear down the house and subdivide our lot into 3 lots.

Is that what we want for Greenville? Probably not! Do we want any lot of 1/2 acre to be a prime target of the city planning staff?

Has not the city planning staff bent over backwards for developers and builders enough by now? Yes- emphatically!

It is time for real adult leadership on development issues like this.

Very Sincerely,

Albert E. Fitzgerald
[REDACTED] Cleveland Street
Greenville, SC 29601

Sarah H. Roberts
[REDACTED] 2nd Fl
Greenville, SC 29605
October 12, 2018

City of Greenville Planning Commission
206 S. Main St., 6th Floor
Greenville, SC 29601

Ladies and Gentlemen

As I am sure you know, I lived on the land at 808 McDaniel Avenue for almost 50 years. The property has been in my family for over 100 years. My grandfather Chester Hatch planted the well-known magnolia tree in 1918. That one magnolia tree planted 100 years ago has become a magnolia forest, a sight to behold. Walk under it, the temperature plummets, the world quiets and birds sing. It has been compared to a rain forest.

Over 100 years of gardening and landscaping made this property into an earthly Eden. Home to hawks, owls and cotton tail bunnies; large trees...oaks, elm, dead-end cedars, a weeping cherry, a large fig tree and Florida crabapples across the front on McDaniel Avenue, to name just a few. There have been countless garden and pond tours with artists sprinkled around the yard. It was a privilege and a blessing to be able to raise three children there.

Unfortunately I reached the point where I could no longer manage the property and keep it up as required, so it needed to be sold. Due to a family crisis I was unable to attend the closing of the sale.

I am absolutely heartbroken by the way the present development proposal has totally disregards the potential of this in-town treasure. This land should be valued for its beauty and history. It is much too precious to be destroyed by irresponsible development not at all in keeping with the character of the property or the surrounding neighborhood. I never intended for this to happen to my friends who were my neighbors.

Sincerely there is a better way.

Thank you.
Sally Roberts
Sally Roberts

Michael Frixen

From: Jonathan B. Graham
Sent: Monday, October 15, 2018 9:21 AM
To: Ann Marie Bell
Cc: Michael Frixen
Subject: RE: Proposed subdivision of lots

Ms. Bell,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

From: Ann Marie Bell <[REDACTED]>
Sent: Friday, October 12, 2018 6:15 PM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: Proposed subdivision of lots

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Mr Graham,

I was unable to attend the meeting at the Augusta Street Library on the 10th. As a resident in the area near the proposed development I would ask the plans not be approved for subdividing the lots.

We are currently having issues on Pine Forest Drive Ext with a lot that was subdivided on the corner of Pine Forest Drive Ext and E Faris which was approved by the City changing the water flow velocity on our street.

Continued subdividing of lots not only impacts the neighbors, but puts a strain on our storm drain system. It impacts the aesthetics of the area in which we live, walk our dogs, play with our children.

Sincerely,

Ann Marie Bell
Sent from my iPhone

Michael Frixen

From: Jonathan B. Graham
Sent: Monday, October 15, 2018 9:29 AM
To: [REDACTED]
Cc: Michael Frixen
Subject: RE:

Ms. Carter,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

From: Trudi Carter [REDACTED]
Sent: Sunday, October 14, 2018 5:03 PM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject:

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Mr. Graham

I am opposed to the application number 0217000500700 regarding SD-18-027 for 808 McDaniel Ave.

After the fiasco of the McPherson Lane closing, I already have to go to on to McDaniel to turn on to Cothran to get to my house. Having 6 additional families trying to come out of their driveway would make this even worse.

To negatively impact the natural and historic beauty of the neighborhood by developing a single family parcel into 7 units is poor judgement if we are to maintain and protect the charm and character of our community neighborhoods. We are already negatively impacted with traffic resulting from overdevelopment that continues to put pressure on not only our infrastructure but also the safety of our streets. We must protect our green-space and not allow excessive projects like this to continue. Please deny the request as submitted. Respectfully,

Trudi Carter
[REDACTED] East Lanneau Drive
Greenville SC 29605
[REDACTED]

Michael Frixen

From: Jonathan B. Graham
Sent: Monday, October 15, 2018 9:30 AM
To: Wilbur Ravenhorst
Cc: Michael Frixen
Subject: RE: McDaniel rezoning

Mr. Ravenhorst,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

From: Wilbur Ravenhorst [REDACTED]
Sent: Sunday, October 14, 2018 6:59 PM
To: Jonathan B. Graham <jbgraham@greenville.gov>
Subject: McDaniel rezoning

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Dear Mr. Graham and members of the Planning Commission:

I am in favor of the application (# 0217000500700) regarding SD-18-027 for 808 McDaniel Ave. To take an oversized parcel and subdivide it to match the existing lot sizes of within the neighborhood is long overdue. As I look at the proposed subdivision, creating 7 lots of near equal size to much of the rest of the neighborhood only makes sense. The construction of new homes will be in keeping with the new homes that have been built on Jones Avenue and Camille Avenue within in the past few years. Both adjacent roads (Jones Avenue and McDaniel Avenue) have the infrastructure in place to support additional lots, including but not limited to sidewalks on both sides of each street, curb and gutter, wide roads to support on street parking and within walking distance of the City's trolley stop through the neighborhood. Please approve this project as submitted. Respectfully,

Wil Ravenhorst
[REDACTED] Sevier Street
Greenville, SC 29605

Michael Frixen

From: Jonathan B. Graham
Sent: Monday, October 15, 2018 9:31 AM
To: John Mills
Cc: Michael Frixen
Subject: RE: 808 McDaniel Avenue

Mr. Mills,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

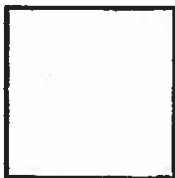
From: John Mills [REDACTED]
Sent: Sunday, October 14, 2018 9:08 PM
To: Jonathan B. Graham <jbgraham@greenville.gov>
Subject: 808 McDaniel Avenue
Importance: High

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments

Mr. Graham and members of the Planning Commission,

I am vehemently opposed to the application number 0217000500700 regarding SD-18-027 for 808 McDaniel Ave. The Planning Commission is completely ignoring the beauty of Alta Vista and its significance to the city of Greenville. Where does this stop? As the owner of [REDACTED] Belmont Avenue, the "Lanneau-Norwood home", my wife and I are appalled at how little foresight the Planning Commission is displaying with this decision. Is the Planning Commission even interested in protecting the asset of Alta Vista? You are clearly sending a signal to all builders to bid on homes so you can squeeze homes on a lot that is meant for one single family dwelling. What a joke. Negatively impacting the natural and historic beauty of the neighborhood by developing a single family parcel into 7 units is very poor judgement. Look at the additional traffic this will create, issue with infrastructure, green-space. I ask you to deny the request as submitted.

John Fulton Mills
[REDACTED] Belmont Avenue
Greenville, SC 29601



John Mills, Managing Partner



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Jessica A. Garrison

From: Mary Moore [REDACTED]
Sent: Sunday, October 14, 2018 6:00 PM
To: Planning
Subject: application # 0217000500700 regarding SD-18-027 for 808 McDaniel Ave.

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Att: Planning Commission

As a resident homeowner in the Augusta St. area, I oppose this project for all the reasons that have been mentioned - increased traffic, demolition of the current property, etc.

Please do not allow this. I will not be able to attend the 10/18 meeting.

Thank you,

Mary D. Moore
[REDACTED] Elsie Avenue
Greenville, SC 29605

Jessica A. Garrison

From: LEW Walker [REDACTED]
Sent: Sunday, October 14, 2018 6:55 PM
To: Planning
Cc: LEIGH WALKER
Subject: 808 McDaniel

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

We respectfully request that whatever happens to the property on 808 McDaniel does NOT include destruction of probably the largest residential magnolia tree in the state.

We have no objections to reasonable and planned development, but to destroy THAT tree to merely make room for a tiny lot to pad the developer's profit margin would be reprehensible acceptance on the part of the planning commission.

It's a small part of one of Greenville's wonderful streets and needs to be preserved. Let's leave this for future generations to enjoy.

Lew & Leigh Walker
[REDACTED] DeBraham Court

Sent from my iPad

Jessica A. Garrison

From: Kristi Tucker [REDACTED]
Sent: Sunday, October 14, 2018 8:35 PM
To: Planning
Subject: Concern for application for 0217000500700 with SD-18-027 for 808 McDaniel Ave

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

To Whom It May Concern:

My husband and I are Augusta Rd area residents and are extremely concerned about the future of 808 McDaniel Ave (application 0217000500700 with SD-18-027) . We know that you are planning to meet about the proposal to take it from a 1 house property to a 7 house property on October 18. However, sadly, we will be unable to attend and we wanted our voices to be heard.

We are very much against changing the zoning of this property to allow multiple houses to be built on it. If you allow these developers to build multiple houses on this 1.86 acre property, so much beauty will be lost. If anything, our city and state is so attractive because of all the green space and charm we have in and around Greenville and the state. If developers come in and continue to take away all of the green space and beauty, I am 100% sure that it would decrease its attractiveness and character. I am supportive of changes that have positive impacts, but the only impact I see of this change would be negative outcomes. The only positive that I see for anyone is the positive impact on the developers pocketbook after they sell the 7 houses.

We implore you all to vote NOT to change the zoning of 808 McDaniel Ave from the 1 house property to a multi house property. Please consider that there would be negative repercussions on our city if you do change the zoning. Think about the precedent you are setting in one of the most beautiful neighborhoods in Greenville.

Thank you,
Dr. Andy and Mrs. Kristi Donlan

Jessica A. Garrison

From: Courtney Kenna [REDACTED]
Sent: Sunday, October 14, 2018 4:56 PM
To: Planning
Subject: SD-18-027

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

I am writing in response to application number 0217000500700 on the property at 808 McDaniel Avenue. I believe this proposal should be denied. In fact, I would like to see the city STOP allowing developers to purchase private lots in the downtown areas. I am tired of developers making offers that homeowners cannot refuse. This leaves private individuals at a severe disadvantage when trying to purchase a home for its actual value. We are a family that has renovated two homes in the downtown Greenville area that could have otherwise been purchased and demolished by developers for a huge profit. Also, we are getting rid of many older homes that give the ZIP Code 29605 its appeal. And building too many CHEAP- looking new homes. It would be superior to LEAVE 808 McDaniel as is, rather than putting 7 new homes on tiny lots. And let someone renovate this older home.

In fact, I myself had been in communication with the owner of this home at 808 McDaniel for over a year trying to purchase it. She expressed a desire to save her family home and have another family living in the home. This was a piece of property that had been in her family for several generations. We would have liked to purchase this home and renovate it for our family. However, I'm sure a developer came along with a price higher than what an individual would have paid for this same lot. It sold almost immediately to a greedy developer. I didn't have a chance against someone with deep pockets that paid over market value of the home, I'm sure. I'm sick of these builders and developers sweeping in to buy all of the property in our area and putting up cheap-looking Hardiplank homes for a huge profit.

Further, I just bought another old home to renovate. I had to submit a "tree plan" proving that I wasn't going to cut down "too many" trees on my property. And I was planning to cut down only one dead dogwood tree 3" in diameter. I don't think it's fair to hold up the standard for my property and then allow this greedy developer to come in and chop down an insured tree, a beautiful old historic tree, in order to maximize his profit on this land. There's no other reason to cut down the tree, even if one were to approve him to put houses on the property. Even if he is given a permit, I argue that he should have to plan his neighborhood AROUND the existing tree, which is a landmark and beautiful (supposedly insured) specimen. So what if he can only fit fewer houses on the property. Everyone wins and he still makes a profit (albeit a little smaller profit).

I have really strong feelings on this particular property because I tried to buy it myself. Who knows how many other people would have loved to turn this into a beautiful family estate? The overdevelopment and greed must not be allowed to go on in our historic area.

Sincerely,

Courtney Kenna

SD 18-027

Jessica A. Garrison

From: Ctraderacm [REDACTED]
Sent: Sunday, October 14, 2018 3:01 PM
To: Planning
Subject: Opposition to application number is 0217000500700 regarding SD-18-027 for 808 McDaniel Ave

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Mr. Jay Graham
Planning & Development Manager
City of Greenville
206 South Main Street
Greenville, SC 29601
jbgraham@greenvillesc.gov

Dear Mr. Graham and members of the Planning Commission:

I am opposed to the application number 0217000500700 regarding SD-18-027 for 808 McDaniel Ave. To negatively impact the natural and historic beauty of the neighborhood by developing a single family parcel into 7 units is poor judgement if we are to maintain and protect the charm and character of our community neighborhoods. We are already negatively impacted with traffic resulting from overdevelopment that continues to put pressure on not only our infrastructure but also the safety of our streets. We must protect our green-space and not allow excessive projects like this to continue.

Please deny the request as submitted.

Respectfully,

Charles Trader
[REDACTED] Melville Ave.,
Greenville, SC 29605

Sent from my iPhone

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

Michael Frixen

From: Ctraderacm [REDACTED]
Sent: Monday, October 15, 2018 2:02 PM
To: Planning
Cc: Michael Frixen
Subject: Re: Opposition to application number is 0217000500700 regarding SD-18-027 for 808 McDaniel Ave

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Thank you Jessica. I also want to provide some additional specifics that cause me concern as follows:

By closing the McPherson Lane entrance to the neighborhood bordered by Augusta St, McDaniel Ave, E. Faris Road, and Lanneau Drive, City Council just re-routed around 500 neighborhood drivers per day onto the first five blocks of McDaniel Avenue and/or Lanneau Drive. (Reference the city engineers' May 2017 traffic report re: McPherson.) That's up to 500 MORE cars a day using the Augusta Road/McDaniel Ave intersection and driving by this proposed development and the additional McDaniel Avenue driveways.

Please include this information in my correspondence.

Thank you very much.

Charles Trader
[REDACTED] Melville Ave
Greenville, SC. 29605

Sent from my iPhone

On Oct 15, 2018, at 9:21 AM, Planning <planning@greenvillesc.gov> wrote:

Charles,

Your email has been received. It will be provided to the Planning Commission Board members for their review.

Thank you,

Jessica Garrison

From: Ctraderacm [REDACTED]
Sent: Sunday, October 14, 2018 3:01 PM
To: Planning <planning@greenvillesc.gov>
Subject: Opposition to application number is 0217000500700 regarding SD-18-027 for 808 McDaniel Ave

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Mr. Jay Graham
Planning & Development Manager
City of Greenville
206 South Main Street
Greenville, SC 29601
jggraham@greenvillesc.gov

Dear Mr. Graham and members of the Planning Commission:

I am opposed to the application number 0217000500700 regarding SD-18-027 for 808 McDaniel Ave. To negatively impact the natural and historic beauty of the neighborhood by developing a single family parcel into 7 units is poor judgement if we are to maintain and protect the charm and character of our community neighborhoods. We are already negatively impacted with traffic resulting from overdevelopment that continues to put pressure on not only our infrastructure but also the safety of our streets. We must protect our green-space and not allow excessive projects like this to continue.

Please deny the request as submitted.

Respectfully,

Charles Trader
[REDACTED] Melville Ave.,
Greenville, SC 29605

Sent from my iPhone

Michael Frixen

From: Jonathan B. Graham
Sent: Monday, October 15, 2018 9:32 AM
To: Frances Barnes Elliott
Cc: Mike Murphy; Michael Frixen
Subject: RE: 808 McDaniel - McDaniel/Jones major subdivision application hearing

Ms. Elliott,

Thank you for your comments. We will ensure that they are given to the members of the Planning Commission for their consideration of the matter before them.

Best regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

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

From: Frances Barnes Elliott
Sent: Sunday, October 14, 2018 9:31 PM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Cc: Mike Murphy <mmurphy@greenvillesc.gov>
Subject: 808 McDaniel - McDaniel/Jones major subdivision application hearing

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Dear Mr. Graham and members of the Planning Commission,

I have recently become aware of the planned subdivision of 7 homes to replace the single family residence at 808 McDaniel Avenue. I am writing to urge you to deny this request.

I live 2 blocks away at Warner Street. For 18 years, I returned to my home from Augusta Road on McPherson Lane. In May, City Council voted unanimously to make one block of McPherson Lane one way thus blocking that entrance to our neighborhood. Many of my neighbors and I objected but City Council did not care about our concerns. The city's unreasonable and inexplicable action increased the traffic on all other neighborhood streets and, important to this discussion - REROUTED MORE THAN 500 CARS A DAY FROM MCPHERSON LANE ONTO THE FIRST 4 BLOCKS OF MCDANIEL AVENUE. This is according to the city's own traffic count taken in May 2017. An even more important concern is that in closing McPherson, the city took away a point of access for emergency vehicles to get to our homes. So we are already at greater risk than before the city closed McPherson and now the city is considering making the remaining route for emergency response to us even more congested, slow, and difficult.

The only way my family and I can get to our home now from Augusta Road is by going through the Augusta Road /McDaniel Avenue Intersection which is already busy and dangerous. It requires sitting through the light multiple times at some times a day. At rush hour, the line of traffic on McDaniel Avenue waiting to turn both ways onto Augusta Road regularly backs up past Warner Street (2 or 3 or more blocks) so I can't turn left off my own street. To add to the

congestion at that intersection by adding more driveways to pour into the first block of McDaniel Avenue would be insane.

Not to mention destroying the natural beauty of that property enjoyed by all the adjoining neighborhoods. It was a stop on Christ Episcopal Church's Joyful Garden Tour in 2012 and features one of the oldest and largest magnolia trees in Greenville. The City Council seems to have a great focus on parks these days which I appreciate. Why doesn't the city buy that property and use it as an educational park for students? Or an oasis for the many many many many people who now frequent Augusta Road. And ask one or more of the many very active local garden clubs to adopt and maintain it.

There are many considerations and many ideas that could be beneficial to the neighborhood and the city but the idea of making that lot into a subdivision could be the worst. Right up there with destroying neighborhood connectivity by closing McPherson Lane, to the detriment of most neighborhood and city residents. When did the City of Greenville get into the business of making its citizens' lives worse?

Thanks for your consideration,
Frances Elliott
[REDACTED] Warner Street
Greenville, SC 29605
[REDACTED]

Jessica A. Garrison

From: Jessica Fowler [REDACTED]
Sent: Monday, October 15, 2018 11:44 AM
To: Planning
Subject: Thursday 10/18 Hearing for 808 McDaniel Avenue

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Good morning,

It has come to my attention as a resident of the Augusta Road area in Greenville that there is a proposed change being considered to the home at 808 McDaniel Avenue (application number is 0217000500700 SD-18-027). I am unable to attend the Thursday, October 18th meeting, but wanted to share my concerns.

Developers have applied to change this 1.86 acre property from a single home to a seven house property. This would most definitely change the neighborhood and the curb appeal of beautiful McDaniel Avenue. While I understand the Augusta Road area is highly sought after, I do not believe that taking one home lots and adding multiple homes (see homes between Wormy and Argonne at Faris or Osceola at Sunset for reference) is our best option. This takes away from the aesthetics of the neighborhood - large trees, sprawling lawns, space between homes, etc. We've already seen a similar change to the proposed one happen on Cureton St behind Zoe's Kitchen on Augusta. More is not always better in a historic area such as this.

Because of reasons stated above, I am opposed to the proposed changes and feel that making these changes would adversely affect the area. I urge you to consider the residents of McDaniel Avenue as you make this decision. I believe they deserve to be considered as much, if not more than the builders, as they are the ones who will remain after the project is complete. They'll be the ones who see a change in their property value/taxes, and experience more traffic in their neighborhood.

Please be mindful that changes like these may seem positive, but will have long term negative consequences on our hometown.

Thank you for your time,
Jessica Fowler

[REDACTED] Tomasse Avenue
[REDACTED] Greenville, SC 29605
[REDACTED]

BEN G. LEAPHART
McDaniel Avenue
GREENVILLE, SOUTH CAROLINA 29605

October 15, 2018

HAND DELIVERED
City of Greenville Planning Commission
206 S. Main St., 6th Floor
Greenville, SC 29601

Re: Proposed McDaniel Sub-Division - 808 McDaniel Avenue

Members of the City of Greenville Planning Commission:

My wife and I have lived at [REDACTED] McDaniel Avenue since 1978. This was our second house in Greenville. Our first we bought in 1973 at [REDACTED] Warner Street. Warner Street T-Bones into McDaniel directly across from our driveway, so as you can see we've lived in this area for 45 years. When we moved to Greenville my wife, who had visited her aunt and uncle on Lanneau Drive, had already fallen in love with this neighborhood. We have transitioned from the youngest couple in the neighborhood to now one of the oldest. As my wife and I discuss downsizing we never think of moving out of this neighborhood. This is why we are so concerned about the proposed subdivision and development of the property at 808 McDaniel which I think of as the Hatch property.

Most of my concerns have been covered in the neighborhood letter submitted to you under separate cover, so I wanted to concentrate on the density issue.

The clear intent of the infill sections of the city code is to achieve neighborhood compatibility, maintain the harmony and character of established single family residential areas and guide residential infill development to occur in an orderly and desirable manner. Mr. Cothran's proposed development accomplishes none of this.

Mr. Cothran's proposal would have 5 lots fronting on McDaniel Avenue running from the joint corner of the Warren's lot at [REDACTED] McDaniel to the joint corner of the Bank of America lot on the corner of McDaniel Avenue and Augusta Street. Greenville County tax maps show that the McDaniel Avenue frontage for the Hatch property totals 327.20 linear feet. The 6 adjacent lots running north up McDaniel Avenue to John Cooter's lot at the corner of McDaniel Avenue and Camille Avenue have a total of 476.70 linear feet. Mr. Cothran's proposal would cram 5 lots into 149.50 less linear feet than the immediate 6 lots to its north.

Another way to look at this is to start at our driveway. It is the beginning of the [REDACTED] block of McDaniel. If we include our lot and the Warren's lot, then going south toward Augusta Street to

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

Circuit Court Appeal 0142

include the 5 lots proposed by Mr. Cothran, there would be 7 lots in 469.20 linear feet of frontage. That's 7 lots in 9 less linear feet than the 6 existing houses and lots to the north of the Hatch property.

In addition if we look across the street from the Hatch property there are 3 houses fronting on McDaniel Avenue, from Warner Street to Cothran Street. Their total frontage is 325.73 linear feet.

One final issue involves total lot size in square feet. If we look at the square footage of the existing 6 lots adjacent to the Hatch property, starting with John Cooter's home at, [REDACTED] McDaniel Avenue, and move south to the joint front corner of the Warren's lot and the Hatch property the square footage of each lot looks like this:

Cooter, [REDACTED] McDaniel:	25,261.91 square feet;
Jeffrey, [REDACTED] McDaniel:	19,900.12 square feet;
Alexander, [REDACTED] McDaniel:	17,620.27 square feet;
Fyock, [REDACTED] McDaniel:	9, 078.30 square feet;
Leaphart, [REDACTED] McDaniel:	12,305.34 square feet;
Warren, [REDACTED] McDaniel:	11,952.85 square feet.

Across the street starting with the Elmore home at [REDACTED] McDaniel Avenue, at the corner of McDaniel Avenue and Warner Street and running south to the Outten home at the corner of McDaniel Avenue and Cothran Street, the square footage of each lot looks like this:

Elmore, [REDACTED] McDaniel:	11,671.88 square feet;
McNeil, [REDACTED] McDaniel:	10,072.40 square feet;
Outten, [REDACTED] McDaniel:	18,198.01 square feet.

The most square feet of any lot fronting on McDaniel Avenue in the proposed development plan is 10,260.

This neighborhood and others like it throughout the city are what make Greenville Greenville. This development is not compatible with the neighborhood. It is contrary to the purpose and intent of the infill regulations. I am concerned that the approval of this plan will set a precedent and cause a domino effect of incompatible development up and down McDaniel Avenue and on its cross and side streets. This would have an extremely detrimental effect on the neighborhood. Please do not let this happen to us and the city of Greenville.

Thank you for your attention.

Sincerely

Ben G. Leaphart



**city of
greenville**

APPLICATION FOR LAND DEVELOPMENT PERMIT
Contact Planning & Development (864) 467-4476

Office Use Only: SD 18-027
 Application # SD 18-803 Fees Paid _____
 Date Received 12/13 Accepted By MF/BW
 Date Complete _____ App Deny Conditions _____

APPLICANT/OWNER INFORMATION

*Indicates Required Field

APPLICANT		PROPERTY OWNER
*Name:	ARBOR ENGINEERING / JAY MARTIN	MC DANIEL JONES LLC
*Title:	PRINCIPAL	MARK COTHRAN / MEMBER
*Address:	10 WILLIAMSBY ST / GVILLE 29601	PO BOX 27049 / GVILLE 29616
*Phone:	864 235 3559 x 128	864 250 0828
*Email:	jaymartin@arborengineering.com	markcathan@properties.com

PROPERTY INFORMATION

*STREET ADDRESS 808 MC DANIEL AVENUE GVILLE 29605
 *TAX MAP #(S) 0217000500700
 *ZONING DESIGNATION R-9
 *# ORIGINAL LOTS 1 *TOTAL ACREAGE 1.86 +/-
 *# PROPOSED LOTS 6 *TOTAL ACREAGE 1.86 +/-

INSTRUCTIONS

- Please refer to **section 19-2.3.13, Land Development**, for additional information.
- All applications and fees (made payable to the City of Greenville) for land development permits must be received by the planning and development office no later than 5:00 pm of the date reflected on the attached schedule.
 - Minor Subdivision – (2 lots) \$300.00 - Summary Plat review, *administrative review*
 - ☒ Major subdivision – (3-10 lots) \$300.00 - Preliminary Plat review, *public hearing required*
 - Major subdivision – (11+ lots) \$550.00 - Preliminary Plat review, *public hearing required*
 - Multifamily development \$550.00 - *public hearing required*
- The staff will review the application for "sufficiency" pursuant to Section 19-2.2.6, Determination of Sufficiency. The staff will contact the applicant to correct any deficiencies which must be corrected prior to placing a land development application on the planning commission agenda. You are encouraged to schedule an application conference with a planner who will review your application for "sufficiency" at the time it is submitted. Call (864) 467-4476 to schedule an appointment.
- Land development applications require a public hearing before the planning commission and must be posted at least 15 days (but not more than 18 days) prior to the scheduled hearing date.
- Subdivision Plat format and content requirements are reflected in the Administrative Manual at Appendix 'F'.
- Multifamily Development plan format and content requirements are reflected in the Administrative Manual at Appendix 'H'. The information shall include at a minimum:
 - Completed application for land development permit;
 - Context map, showing relationship of proposed development to the surrounding neighborhood;

CITY OF GREENVILLE APPLICATION FOR LAND DEVELOPMENT PERMIT

Rev. 9/13/2017

PAGE 1 OF 2

- c. Photographs of surrounding area;
- d. Site plan, showing building(s) footprint, parking lot layout, pedestrian and vehicular access, internal walkways, amenities (i.e. Pool, playground, picnic area, etc.), and service areas (i.e. Dumpster pad/trash collection area, HVAC units, car wash area, etc.);
- e. Grading plan, showing existing and proposed topographic contours, storm drainage collection facilities, existing and proposed retaining walls (with top-of-wall and bottom-of-wall elevations for at least the ends of the walls and the high point of the walls);
- f. Building elevations, of all sides of the building(s), with exterior materials and colors indicated;
- g. Plan showing elevation of proposed buildings in relation to adjoining structures;
- h. Building floor plans;
- i. Landscape plan, showing existing vegetation that will remain and the new plants to be added; and
- j. Lighting plan, showing location of light fixtures (on the site and on the building), cut sheets of the proposed light fixtures, and wattage.

Please verify that all required information is reflected on the plan(s). Please submit two (2) paper copies and one (1) electronic version of the plan(s).

7. Please read carefully: The applicant and property owner affirm that all information submitted with this application; including any/all supplemental information is true and correct to the best of their knowledge and they have provided full disclosure of the relevant facts.

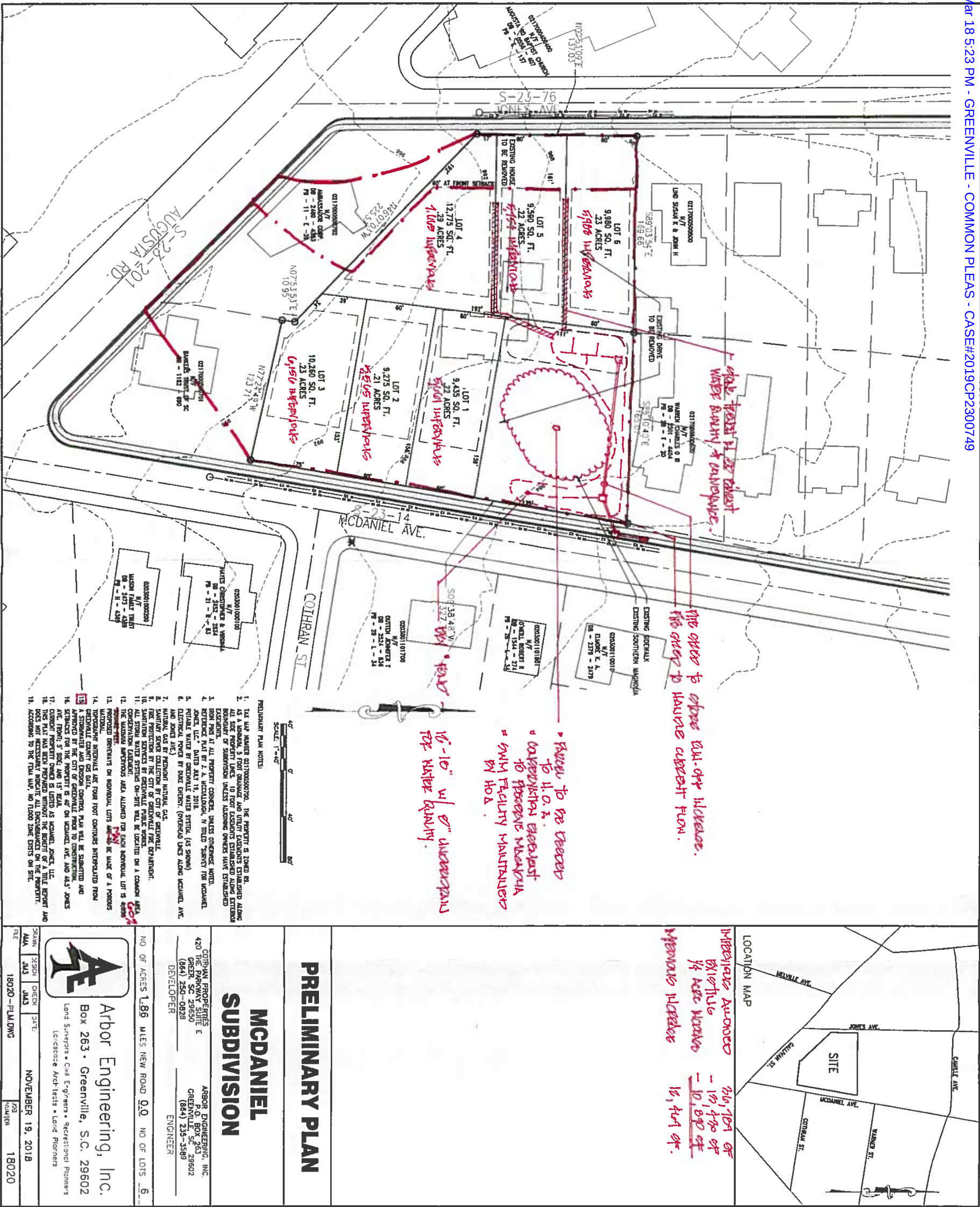
In addition the applicant affirms that the applicant or someone acting on the applicant's behalf has made a reasonable effort to determine whether a deed or other document places one or more restrictions on the property that preclude or impede the intended use and has found no record of such a restriction.

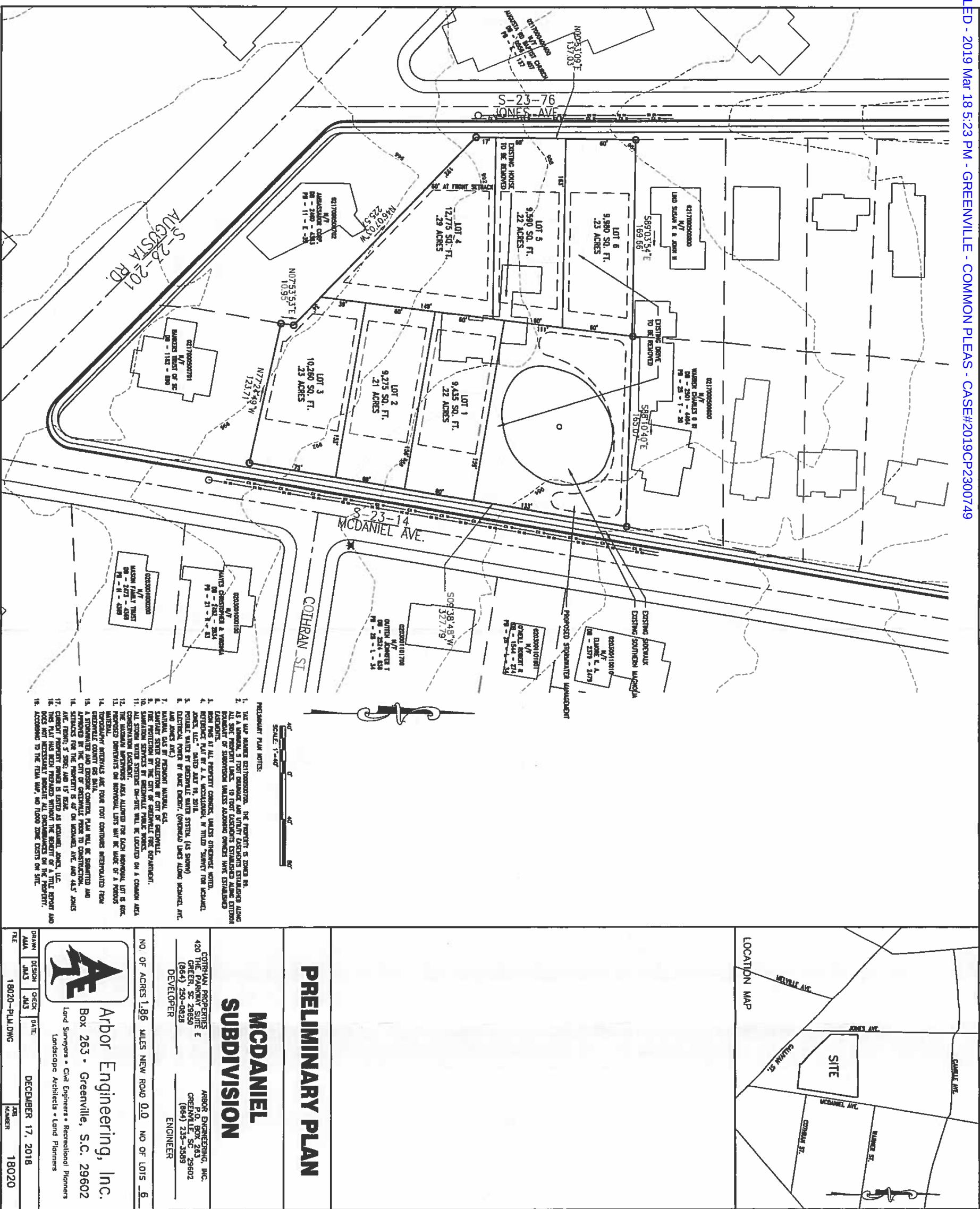
If the planning office by separate inquiry determines that such a restriction exists, it shall notify the applicant. If the applicant does not withdraw or modify the application in a timely manner, or act to have the restriction terminated or waived, then the planning office will indicate in its report to the planning commission that granting the requested change would not likely result in the benefit the applicant seeks.

8. To that end, the applicant hereby affirms that the tract or parcel of land subject of the attached application is ___ or is not ☒ restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the requested activity.

*Signatures	
Applicant	<i>[Signature]</i>
Date	12/12/2018
Property Owner/Authorized Agent	<i>[Signature]</i> Manager
Date	12/12/2018

STOP: To be filled when application submitted to Planning & Development (excluding Minor Subdivisions)	
AA	'Public Hearing' signs are acknowledged as received by the applicant
AA	Received information for public meeting
AA	Received information for materials board requirements







The City of Greenville, South Carolina
Public Notice

To: Property Owners, Owners of property located within 500 feet of the following Applications, and Neighborhood Association Representatives.
From: Planning and Development Staff
Subject: Upcoming Applications for January 17, 2019, Planning Commission Meeting
Date mailed: January 2, 2018

The City of Greenville Planning Commission will hold a Public Hearing on **Thursday, January 17, 2019, at 4:00 PM** in the **10th Floor Council Chambers at City Hall**, for the purpose of considering the following Applications:

OLD BUSINESS

- A. SD 18-027**
Application by Jay Martin for a **SUBDIVISION** of 1.86 acres located at **808 MCDANIEL AV** from 1 LOT to 6 LOTS (TM# 0217000500700)
- B. Z-26-2018**
Application by Dan Bruce for a **REZONE** of 19.4 acres located at **HAYWOOD RD and PELHAM RD** from R-6, Single-Family Residential District to PD, Planned Development District (TM#s 0278000200300, 0278000200301)
- C. MD 18-004 (MFD 18-978)**
Application by W. Norman Hamilton for a **MULTI-FAMILY DEVELOPMENT** on 3.7 acres located at **254 S PLEASANTBURG DR** (TM#s 0266000130100, 0266000130101)

NEW BUSINESS

- A. SD 18-032**
Application by Arbor Engineering for a **SUBDIVISION** of 1.38 acres located at **607, 611, and 617 N MAIN ST** from 3 LOTS to 25 LOTS (TM#s 0004000102100, 0004000101800, 0004000101900)
- B. SD 18-033**
Application by John Lattimore for a **SUBDIVISION** 0.705 acre located at **ZORA DR and WEBSTER RD** from 1 LOT to 4 LOTS (TM# 0199030100104)
- C. SD 18-034**
Application by Blue Bridge Properties LLC for a **SUBDIVISION** 0.15 acre located at **W PARK AV** from 1 LOT to 3 LOTS (TM# 0004000101500)
- D. SD 18-035**
Application by Integras - Dallas Rd, LLC for a **SUBDIVISION** of 81.12 acres located at **DALLAS RD** from 1 LOT to 65 LOTS (TM# M010020101500)
- E. SD 18-036**
Application by CAP Camperdown LLC for a **SUBDIVISION** of 1.022 acres located at **S MAIN ST, FALLS ST, E BROAD ST, and JAPANESE DOGWOOD LN** from 1 LOT to 4 LOTS (TM# 0061000304101)
- F. MD 18-005 (MFD 18-979)**
Application by Arbor Engineering for a **MULTI-FAMILY DEVELOPMENT** on 1.32 acres located at **317 WILKINS ST** (TM#s 0095000800500; 0106000200300)
- G. SN 18-992**
Application by Reid Hipp for a **STREET NAME CHANGE** to change BLISS WAY to JOSEPH MATHIS WAY in subdivision SD 18-021 located at **SUMLAR DR** (TM# 0201000101803)
- H. A 18-1035**
Application by John Batson Jr. for an **APPEAL** located at **103 MORNINGDALE DR** from Sec. 19-6.9 Single-family residential infill standards (TM# 0180000200400)
- I. Z-25-2018 (orig. public notice 12/17/18)**
Application by City of Greenville for a **STRATEGIC PLAN** to adopt the **WADE HAMPTON BOULEVARD STRATEGIC PLAN** for properties on BEVERLY LA, BROOKSIDE CIR, BUENA VISTA AV, CHICK SPRINGS RD, DUPONT DR, E STONE AV, GAY ST, ITASCA DR, MT ZION AV, MOHAWK DR, N CHURCH ST, N PLEASANTBURG DR, SPARTANBURG ST, STAG ST, TYTAN CT, WADE HAMPTON BLVD, and WELLINGTON AV (see project documents for TM#s)
- J. Z-28-2018**
Application by NAI Earle Furman, LLC for a **REZONE** of 63.69 acres located at **200 FAIRFOREST WAY** from I-1, Industrial District and S-1, Service District to S-1, Service District (TM# M011010100307)

Circuit Court Appeal 0149

K. Z-30-2018

- Application by City of Greenville for a **TEXT AMENDMENT** to Section(s) 19-3.2.2(O) RDV: Redevelopment district deleting part (3) buffer and parking exemptions for mixed-use developments

You are invited to review documents relating to these applications before the public hearing. Application materials are posted online at <https://greenvillesc.gov/642/Upcoming-Project-Applications> and available for inspection in the Planning and Development Office on the 6th floor of City Hall, 206 South Main Street, Greenville, between 8:00 AM and 5:00 PM, Monday through Friday. You may contact the Planning Office at 864.467.4476 for more information. Application materials are subject to change.

You will have the opportunity to voice your comments at the public hearing. Individuals sharing similar concerns are encouraged to appoint a spokesperson to represent their group. Alternatively, you may submit written comments to: Planning & Development Office, PO Box 2207, Greenville, SC 29602, by fax at 864.467.4510, or by email at planning@greenvillesc.gov.

Written comments must be received by 2PM Monday before the hearing in order to be given adequate time for consideration by the commission before the hearing. Comments received after 2PM Monday will be provided to the commission at the hearing. Please reference the application number and include your name and address on all correspondence. All comments will be made part of the public record.

In some cases the applicant may be required as part of the application process to hold a neighborhood meeting before the application is heard by the Commission. Property owners within 500' of the application site would then be notified by mail. A property owner that directly abuts the proposed project or owners of 20% of parcels within 500' may also request a meeting. Contact the Planning and Development Office for further instructions.

Following the public hearing, the Planning Commission will act upon the applications. The Commission's actions for the following types of applications constitute a **Recommendation to the City Council**:

- Matters pertaining to the Comprehensive Plan
- Amendments to the text of the Land Management Ordinance (Zoning/Land Development Regulations) – **Item K (New Business)**
- Amendments to the Zoning District Map (including 'Planned Developments' and 'Flexible Review Districts') – **Item B (Old Business); Item J (New Business)**
- Variances to the Stormwater Management Ordinance
- Planning-related studies and plans – **Item I (New Business)**

The City Council will consider these items at scheduled, public Meetings (two readings of an ordinance to either approve, or disapprove, a proposal are required). You will not receive a separate notice of those meetings, but you are invited to attend and register with the City Clerk if you wish to comment upon an Application at the Meeting(s). You may contact the City Clerk's Office at 864.467.4441 to verify the date of the City Council Meeting or refer to the meeting schedule reflected on the City's web site (www.greenvillesc.gov).

The Commission's action for the following types of applications constitutes a **Decision of the Planning Commission** (i.e., no further actions are required):

- Matters pertaining to the Design and Specifications Manual
- Approval of Land Development Permits (Major Subdivisions and Multifamily Residential Development proposals) – **Items A and C (Old Business); Items A, B, C, D, E, and F (New Business)**
- Approval of Final Development Plans for 'Planned Developments'
- Street name changes – **Item G (New Business)**
- Appeals from the Decisions of the Administrator relative to the Design and Specifications Manual, or sections 19-6.7 through 19-6.10 of the Land Management Ordinance – **Item H (New Business)**

All Public Comments Received for

SD 18-027

January 17, 2019 PC Meeting

(Comments for revised application)

Usher
[REDACTED] Jones Ave
Greenville, SC 29605

Greenville City Council
206 S. Main St

1/16/2019

Dear Mayor White and Members of the Greenville City Council,

I am writing to express concerns with the planned subdivision of the southernmost residential lot located between McDaniel Ave and Jones Ave. My residence is one of the older homes on Jones Ave. Through my ownership of this property, we have worked very diligently to restore and preserve the character of the home as well as the neighborhood. The city recognizes the trend in recent years of developers purchasing lots in our beloved neighborhoods, then subdividing them into as many lots as they can squeeze in for personal financial gain. The resulting tiny lots, with huge homes do not preserve the charm, character or integrity of our neighborhood. This proposed subdivide is not consistent with the existing development pattern of Jones Ave.

I am particularly concerned with the existing woodland and turf becoming driveways and roofs, which will negatively impact the rainwater runoff issues faced by all of us on Jones from Augusta to Camille. I'm not referring to the raging rivers coming down either side of Jones (which will increase in volume and size), but the increased runoff moving downhill from the proposed subdivided lot interior, through each lot until it pools in the last couple of lots before it spills onto Camille. Many of the homeowners have implemented methods and spent significant dollars in an effort to diminish the existing runoff issues. The lot to lot runoff will be increased by the proposed changes to the lot.

Finally, in recent years the residents of Jones worked long and hard to have traffic calming measures implemented on Jones. Speeding has improved on Jones significantly, but traffic volume has not decreased (which wasn't the intent). The proposed driveways for the 3 lots on the Jones side of this subdivision are in an extremely dangerous area. The island on Jones at Augusta was installed to slow down the traffic turning right from Augusta onto Jones. It did help, but that is still a very dangerous spot to be turning into or backing out of a driveway. Ask the 3-4 homeowners on that side of Jones who face major safety challenges now, downstream a bit from the proposed driveways.

I would like to see the city prevent these subdivisions from taking place at all moving forward, starting with this one. Please protect the charm, beauty and integrity of our old neighborhoods

Regards,

Chris Usher

[REDACTED]

Circuit Court Appeal 0074

Michael Frixen

From: Jonathan B. Graham
Sent: Wednesday, January 16, 2019 2:18 PM
To: Michael Frixen
Subject: FW: McDaniel Avenue Subdivision - please read

FYI...I hit send before including you on the cc line...

Thanks, Jay

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development



From: Jonathan B. Graham
Sent: Wednesday, January 16, 2019 2:18 PM
To: 'Virginia Hayes' <vhayes@cbcaine.com>
Cc: Wil Brasington <wbrasington@greenvillesc.gov>
Subject: RE: McDaniel Avenue Subdivision - please read

Ms. Hayes,

Thank you for sharing your comments with us. These comments have been placed in our file and will be shared with our Planning Commission.

Regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development



From: Virginia Hayes <vhayes@cbcaine.com>
Sent: Wednesday, January 16, 2019 12:40 AM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Cc: Wil Brasington <wbrasington@greenvillesc.gov>
Subject: McDaniel Avenue Subdivision - please read

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Dear Jonathan,

(cc: Wil Brasington)

I'm not sure if I will be able to attend the meeting on Thursday, January 17, 2019 . Therefore, I'm sending my thoughts on, and opposition to, the proposed McDaniel Avenue subdivision via email.

I have lived in the Alta Vista neighborhood for over 13 years on various streets. In 2014, my family and I purchased [REDACTED] McDaniel Avenue which is on the corner of McDaniel Avenue and Cothran Street, and across the street from the proposed development at 808 McDaniel.

One of the primary reasons we have lived in Alta Vista for so long (in addition to wonderful neighbors) is the uniqueness of the neighborhood. Alta Vista has some of the richest history in the Augusta Road area and is filled with homes of diverse architectural styles which are of historical significance, not to mention charming! All of this is what makes Alta Vista such a rich part of Greenville and its history.

As a long-term realtor in the Alta Vista area since 2005, I can say that my beliefs are shared not only with Alta Vista residents but with those who know and appreciate the area. In my business, I have found that Alta Vista is one of the most coveted areas to live which helps the area and local economy so much.

I hate to have such a wonderful neighborhood be ruined by this development which doesn't fit in because of...

1. **Increased Traffic** - By adding more homes on that small parcel of land, we are going to greatly increase the traffic in the area which is already horrible. I can barely get out of my street during certain times of the day due to McDaniel Avenue backing up almost to Jones Avenue.
2. **Non-Conformance to Neighborhood Architecture**- As a realtor, I work with clients in varying price ranges. I know what it costs to build and it's currently very expensive - especially if a builder knows it's in the 29605 or 29601 neighborhoods. For a home to be built with the style and materials of what you see in the older homes in the area, the budget could be closer to 2 million dollars after buying the lot, which isn't the typical buyer profile in the area. Therefore, what a buyer could build that would be more affordable would not fit in with the older architectural styles. And, I feel those with the largest budgets would prefer to build in Woodland Park at Cleveland Forest where there is less traffic and noise concerns. This home is part of the gateway into Alta Vista and McDaniel Avenue and really sets a precedence for the area so it's important to fit the style of the neighborhood.
3. **Non-Conformance to Neighborhood Lot Sizes** - the tearing down of the home and subdividing it into lots that are smaller than the typical lots in the area is concerning. If we allow this subdivision, what will prevent other large lots on McDaniel and surrounding streets not to be subdivided as well? If this occurs, Alta Vista will start losing it's charm due to a cookie-cutter look with increased traffic due to more homes on smaller lots. If that happens, the area will become a less desirable place to live. I feel the economic impact of this could be detrimental to Greenville as this area is one of the most thriving areas currently.
4. **Damage to a Historic Tree** - I know the large magnolia is protected by the Heritage Tree Act but installing a stormwater retention pond around it doesn't sound like a protection, but rather something that could be harmful. How can you ensure that this will be protected if the property is indeed subdivided?

I really appreciate your hard work on this matter and hope that the right decisions are made to keep Greenville's Alta Vista neighborhood the unique and special place that it is.

Feel free to call me anytime should you wish to discuss. I can be reached at [REDACTED]

Thank you,

Virginia

Virginia Hayes, REALTOR®

Ph: [REDACTED]
Fax: **864.255.8823**
Email: vhaves@cbcaine.com
Web: www.VirginiaHayes.com

Michael Frixen

From: Jonathan B. Graham
Sent: Wednesday, January 16, 2019 2:20 PM
To: Tom Snider; Wil Brasington
Cc: Michael Frixen
Subject: RE: 808 McDaniel subdivision comments

Mr. Snider,

Thank you for sharing your comments with us. These comments have been placed in our file and will be shared with our Planning Commission.

Regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development



From: Tom Snider <[REDACTED]>
Sent: Tuesday, January 15, 2019 7:34 PM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>; Wil Brasington <wbrasington@greenvillesc.gov>
Subject: 808 McDaniel subdivision comments

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

To the Planning Commission:

I oppose the application for the subdivision at 808 McDaniel.

The Greenville, SC Code of Ordinances section dealing with infill standards – which applies to this subdivision request – states that the intent of the infill regulation process is to **achieve neighborhood compatibility and to maintain the harmony and character of established single-family residential areas** (Section 19-6.9.1). This concept is important to residents of the neighborhood, and it is important to the Planning Commission.

A lot of the elements that we are discussing tonight have a qualitative component. I'd like to discuss an element that is quantitative and very simple – lot width.

The width of lots on a street is one of the defining characteristics of a street. If you have wide lots, and then subdivide one lot into several narrow lots, you create an incompatibility that destroys the harmony and character of that street. The application does this – it creates narrower lots than are found elsewhere on the streets.

McDaniel Avenue, between Augusta and Camille, contains 15 residential lots (not counting the lot being subdivided). Those 15 lots have an average width of 95 feet. The proposed subdivision has 195 feet of McDaniel frontage left after removing the magnolia space. To divide those 195 feet into any more than 2 lots, at 97.5 feet each, would change the character of the street, and should not be allowed. The developer wants to put three lots in that space – 60 feet, 60 feet, and 75 feet wide. This would look like a set of piano keys, against the rest of McDaniel. If you look at the entire length of McDaniel, from Augusta Street to E. McBee Avenue, there are occasionally lots as small as 60 feet, but they are always bordered by larger lots, so there isn't the visual congestion, and the harmony of the street is maintained. Nowhere on McDaniel are there three adjoining piano key lots.

Jones Avenue, between Augusta Street and Camille Avenue, contains 7 residential lots (not counting the lot being subdivided). These lots average 71 feet in width, and range from 70 feet to 72 feet, presenting a very consistent character. The proposed subdivision has 137 feet along Jones Avenue. To divide those 137 feet into any more than 2 lots, at 68.5 feet each, would change the character of the street, and should not be allowed. The developer wants to put three lots into that space – 60 feet, 60 feet, and 17 feet. This would be inconsistent and congested, and would destroy the harmony of the block.

Please uphold the infill ordinance, and maintain the character of these cherished neighborhoods, by limiting the subdivision of 808 McDaniel to no more than 2 lots on McDaniel and no more than 2 lots on Jones.

Sincerely,

Tom Snider

■ Camille Avenue

January 2, 2019

City of Greenville Planning Commission
206 S. Main St., 6th Floor
Greenville, SC 29601

Re: Proposed Sub-Division – 808 McDaniel Avenue

To: Members of the City of Greenville Planning Commission

We oppose the plan for a sub-division at 808 McDaniel Avenue. A revised preliminary plan was submitted by Arbor Engineering Inc., for the proposed sub-division dated December 17, 2018.

Cothran Properties proposes to put six homes on this lot where currently one house is located. This would profoundly change this beautiful and historic neighborhood and the surrounding area. There is no justification for allowing such a drastic change to our neighborhood, even if the technical requirements for a subdivision are met. To suggest that this development is compatible with the neighborhood simply ignores reality. For these reasons set forth more fully below, the applicable ordinances of Greenville County require that the Planning Commission refuse approval for subdivision of this property as proposed.

1. Neighborhood Compatibility

a. 19-6.9.1 General Purpose and Intent

This section is intended to achieve neighborhood compatibility, maintain the harmony and character of established single-family residential areas and guide residential infill development to occur in an orderly and desirable manner.

The basic proposal is to change significantly the character of the neighborhood by turning a lot on which one house is located into six separate residences – three on McDaniel Avenue and three on Jones Avenue. As we understand it, the proposal is to take a beautiful wooded lot, level /clear most of it, and build six homes of unknown, unspecified size and design. While we respect the rights of the new property owners, such a change is not within either the letter or the spirit of 19-6.9.1. The mandate of 19-6.9.1 – “maintaining the harmony and character of established single-family residential areas” – requires that this proposal be denied.

2. Construction Issues

Building six houses on a lot where one currently exists seems to us to be an extraordinary request because this construction could take five to ten years. Ongoing construction in a confined area for the next 5 to ten years would have a number of negative impacts on this

neighborhood, and it is clearly not promoting harmony or character in the neighborhood. Also, it would restrict the ability of some homeowners near this property to sell their homes because of a potential buyer's unwillingness to purchase a home in a construction zone.

There would also be a number of safety and parking issues associated with having construction crews in our neighborhood for the next five to ten years. Given the number of children who live near 808 McDaniel, this poses a serious safety concern. Stated differently, we can see no rationale for subjecting the residents of this neighborhood to living in a construction zone for many years to come, given these facts and circumstances. It should also be understood that one of the factors existing residents considered when acquiring their homes was that the neighborhood was already established and that they would not have to be exposed to the nuisance of accompanying construction of new homes.

3. Traffic

To our knowledge, no traffic impact analysis has been done to demonstrate that the proposed development will not pose an unacceptable burden on traffic on McDaniel Avenue, on Jones Avenue, on Augusta Street and surrounding streets. Traffic is already excessively heavy at certain times of day in the vicinity of 808 McDaniel given its proximity to the Augusta Street intersections with Jones Avenue and McDaniel Avenue. The impact of driveways for 6 new residences in place of the existing single residence will not only create additional traffic but will also pose a significant added safety hazard given their proximity to these intersections. Even if all other concerns were addressed, the Planning Commission should refuse approval of this proposed subdivision until a traffic study has been completed as provided for by 19-6.10.

4. Tree Canopy

Section 19-6.9.1 (D) provides as follows:

To preserve and protect existing tree canopy to the extent practicable and to ensure future tree canopy consistent with established single-family residential areas.

We understand that Cothran Properties has consented to preserve the old, large magnolia tree on the McDaniel Avenue side of the property in a conservation easement and deeding it over to a Homeowners Association (HOA) to be formed for the proposed six new residences. This action followed the designation of this magnolia as a "Historic Tree" which requires its preservation. We further understand that the proposed arrangement imposes the responsibility for the future care of the magnolia on the HOA. Frankly, we question the integrity of this responsibility. What happens, for instance, if the HOA declares bankruptcy at some future point in time? Given that this is not an uncommon occurrence, we believe that the preservation of the magnolia would be much better handled by a public entity or homeowner rather than a committee.

We further question whether the proposed subdivision will adversely affect the magnolia's root system as a result of adjacent construction activity and/or the proposed storm water

Proposed 808 McDaniel Avenue Subdivision Petition

management measures around the magnolia periphery. The storm water management provisions presently specify that a drainage pipe will be installed under the present footprint of the magnolia. It is quite evident that the magnolia's root system extends well beyond the tree's footprint. Has an independent arborist been engaged to provide an expert assessment of the impact of the proposed stormwater management provisions on the health of the magnolia?

There are a number of other large old trees on the property which would likely be removed to accommodate construction of six new dwellings. Those which remain would face significant risk of being adversely affected as a result of construction activity in their proximity. The removal of so much of the tree canopy would clearly have a significant negative impact on the existing neighborhood character.

If this subdivision were approved, instead of preserving and protecting the existing tree canopy, as required by 19-6.9.1(D), The Planning Commission would be allowing Cothran Properties and any dwelling contractors to do the opposite – to level this beautiful lot full of trees to make room for 6 new dwellings to be built – which cannot possibly provide for a tree canopy consistent with that established and existing on McDaniel Avenue.

5. Storm Water

The revised subdivision proposal suggests that storm water will be directed via subterranean gravel fields along some of the subdivided lot boundaries to a collection area to be created around the base of the magnolia and that this retention area consist of depression with a surrounding berm and drains tied into the McDaniel Avenue storm water piping. As noted above, we believe this provision risks harm to the historic magnolia root system and any other trees that have not been cleared from the property.

Furthermore, deeding the proposed magnolia parcel over to the HOA would assign responsibility for maintenance of the storm water collection area to the HOA. As noted above, this does not provide adequate assurance for the continued maintenance of this area into the future.

The developer's plan calls for runoff water from the front of the three proposed lots on Jones Avenue to flow onto Jones Avenue. This particular first block of Jones Avenue is a long block in which there are presently no storm water drains and which also ends up with storm water flowing from Augusta Street. The proposed additional dwelling and driveway coverage would certainly add to what is presently an excessive storm water burden on Jones Avenue.

The proposed stormwater management provisions appear to allow water to flow directly onto one of the adjacent Jones Avenue (Lind) lot. Shouldn't the plan include a berm to prevent this from occurring?

Overall, it is our understanding that the amount of impervious area will increase by at least 15,464sf. We believe this figure may be understated as the developer appears to have overstated the present amount of impervious area.

Proposed 808 McDaniel Avenue Subdivision Petition

For the reasons outlined above, we believe that the subdivision proposal's storm water provisions are inadequate and should not be approved.

6. Effect on Market Value

We are not aware of any evaluation or appraisal which has been done to assure the property owners in this neighborhood that property values will not be adversely affected. In fact, it would be reasonable to expect that increasing the dwelling density within a neighborhood and increasing traffic would have an adverse effect on property values. Property owners in this neighborhood have a right to expect that no proposed sub-division will be approved if it has a material negative impact on property values. Certainly, consideration of neighborhood compatibility must include whether or not a development will be allowed which has a negative economic impact on this community.

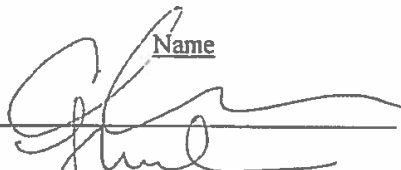
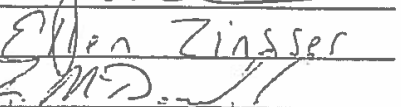
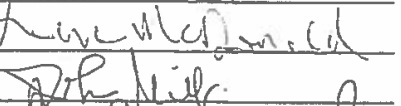
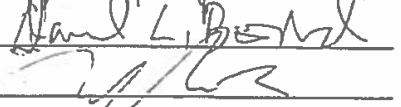
Conclusion

According to Greenville County Ordinances:

"The purpose and intent of this chapter is to guide development in accordance with the existing and future needs of the city and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the property owners and residents of the city, and other members of the public."

Accordingly, the Planning Commission must reject this proposal consistent with the stated purpose of the ordinances cited above, and for all of the reasons contained in this letter.

Sincerely,

<u>Name</u>	<u>Address</u>
	JONES AVE GREENVILLE
Ellen Zinsser	Jones Ave Greenville
	Jones Ave Greenville
David McDonald	Jones Ave Greenville
	Jones Ave Greenville
John Hill	Jones Ave Greenville
	Jones Ave Greenville, SC
David L. Bernal	Jones Ave Greenville, SC
	Jones Ave Greenville, SC

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

Address

5 | Page

Proposed 808 McDaniel Avenue Subdivision Petition

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Conclusion

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Accordingly, the Planning Commission must reject this proposal consistent with the stated purpose of the ordinances cited above, and for all of the reasons contained in this letter.

Sincerely,

<u>Name</u>	<u>Address</u>
Laura Carlson	Lanneau Drive
Anna Carlson	Lanneau Drive
Cory Cherry	Lanneau Drive
Dan E. Bagg	Lanneau Drive
Ashley Bagel	Lanneau Drive

TAYLOR
JONES AVENUE
GREENVILLE SC 29605

January 10, 2019

Greenville City Council Members;

I am writing to express my concern at a pending change in my neighborhood. The topic of my concern is a planned subdivision of the large residential lot on the south end of McDaniel and Jones Avenues. The current plan to subdivide this space into 6-7 separate lots is out of keeping with the surrounding area, and will substantially detract from the beauty and character of my neighborhood.

It's true that this lot is uniquely large compared to others in the neighborhood. I would expect any developer might wish to subdivide it into smaller parcels. But not all subdivisions are created equal. Dividing that single lot into seven parcels, six of which are then built out edge-to-edge with large houses, is not reasonable. It creates six new driveways entering high traffic intersections on McDaniel and Jones. It removes quiet natural space from the neighborhood. It removes a natural barrier to the noise and traffic of Augusta Road.

Most importantly, such a plan would destroy essentially all the trees on that property. In my opinion, large trees make a neighborhood; and those particular large trees provide shade, natural habitat, and character to the neighborhood I love. It would be a bitter pill to see them all cut down.

As noted before, I recognize that the subdivision of such a lot is probably inevitable. As with most things, subdivision is reasonable *in moderation*. The common-sense number of parcels for that land would be 2-3 subdivided lots. With a division into 2-3 lots, the road frontage and acreage per lot would be consistent with the current neighborhood; and a few large trees could presumably be preserved. And even if those trees are removed, such lots could still harbor natural landscapes, yards, and newly planted trees. Such a rational plan would preserve nature at least to some degree, consistent with the current neighborhood. If six new large houses are built on six very-small lots, that nature is gone from our neighborhood, forever.

I ask you to help restrain this developer activity in keeping with the character of the existing neighborhood, which I cherish and wish to protect as Greenville grows.

Respectfully,



Bill Taylor

[Redacted address block]

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

Circuit Court Appeal 0086

Michael Frixen

From: Jonathan B. Graham
Sent: Monday, January 14, 2019 2:00 PM
To: Vicki Sowinski
Cc: Michael Frixen
Subject: RE: 808 McDaniel

Ms. Sowinski,

Thank you for sharing your comments with us. These comments have been placed in our file and will be shared with our Planning Commission.

Regards,

Jonathan B. Graham, III, AIA
Planning Manager | Economic Development

Visit our website: GVL2040

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

From: Vicki Sowinski [REDACTED]
Sent: Monday, January 14, 2019 9:33 AM
To: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: 808 McDaniel

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Good morning, Jonathon

We live at [REDACTED] Mc Daniel Avenue and are totally opposed to the development proposed at 808 McDaniel. The developer knows our neighborhood and the issues we deal with here. Speeding and traffic congestion close to Augusta road are major problems for all of us. Adding more houses, drive ways, water run off, and construction vehicles for months and even years is not something any of us in the neighborhood will tolerate, nor should we have to tolerate. 808 is a beautiful piece of property. This plan proposed is for the almighty dollar for the developer and nothing more! The neighborhood and the families who live here should be taken into consideration. We are the ones who will have this nightmare day in and day out as the developer goes back to his home and stops at the bank on the way! The plan is ridiculous and should be voted down without question.
Vicki and Bob Sowinski

Sent from my iPhone

Michael Frixen

From: Planning
Sent: Monday, January 14, 2019 8:42 AM
To: Kristi Tucker
Cc: Michael Frixen
Subject: RE: Concern for application for 0217000500700 with SD-18-027 for 808 McDaniel Ave

Mrs. Tucker,

Your letter has been received and will be added to the file for 808 McDaniel. Your email will also be sent the Planning Commission members to review before the Hearing on January 17.

Thank you,

Jessica Garrison

From: Kristi Tucker - [REDACTED]
Sent: Sunday, January 13, 2019 9:30 PM
To: Planning <planning@greenvillesc.gov>
Subject: Re: Concern for application for 0217000500700 with SD-18-027 for 808 McDaniel Ave

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

To Whom It May Concern:

My husband and I are Augusta Rd area residents and are extremely concerned about the future of 808 McDaniel Ave (application 0217000500700 with SD-18-027) . We know that you are planning to meet about the proposal to take it from a 1 house property to a multi house property on January 17. Sadly, we will be unable to attend and we wanted our voices to be heard.

We are very much against changing the existing landscape and zoning of this property to allow multiple houses to be built on it. If you allow these developers to build multiple houses on this 1.86 acre property, so much beauty will be lost. If anything, our city and state is so attractive because of all the green space and charm we have in and around Greenville and the state. If developers come in and continue to take away all of the green space and beauty, I am 100% sure that it would decrease its attractiveness and character. I am supportive of changes that have positive impacts, but the only impact I see of this change would be negative outcomes. The only positive that I see for anyone is the positive impact on the developers pocketbook after they sell these multiple houses.

I have heard that the developer has decreased the amount of houses that he wants to build on this property from his original plan back in October. The amount of houses he wants to build are still concerning. Once he starts to change the landscape and alter the green space, all of the trees are at risk of dying, including the beautiful, historic Magnolia tree.

We implore you all to vote NOT to change the zoning of 808 McDaniel Ave from the 1 house property to a multi house property. Please consider that there would be negative repercussions on our city if you do change the zoning. Think about the precedent you are setting in one of the most beautiful neighborhoods in Greenville.

Thank you,
Dr. Andy and Mrs. Kristi Donlan

████ Jones Avenue
 Greenville, SC 29605

January 11, 2019

To: Greenville City Planning Staff
 Greenville City Planning Commission
 Greenville City Council

Dear Staff Members, Commissioners and Council Members,

In follow-up to the January 9th Neighborhood meeting regarding the proposed 808 McDaniel subdivision, we would like to reiterate to you our concerns and suggest ways they might be resolved.

<u>Concern</u>	<u>Remedies and/or Alternatives</u>
Stormwater Management - There is an existing drainage system along the Jones Avenue driveway that captures storm water which might otherwise flow onto the adjacent (417 Jones) property. In all likelihood, this system would be removed or, at least compromised during any post-subdivision construction. Installing a subterranean gravel channel along the property line risks compromising tree root systems. The developer's representative stated that no water would flow onto the adjacent 417 Jones Avenue lot when asked about this during the January 9th Neighborhood meeting but has no plan provision for insuring against it. - There are no storm water drains within the first block of Jones (between Augusta and Camille). The developer's representative claimed in the neighborhood meeting that there are but he was incorrect. Storm water, some of which emanates from Augusta Road runoff, runs all the way down Jones before flowing onto Camille to a drain almost all the way to McDaniel Avenue. - The proposed storm water management plan feeds water towards the magnolia which has recently been declared a Heritage Tree. It seems counter-intuitive to require preservation of the magnolia but then to allow the developer to use the property around it for storm water management. The storm water management calls for drain pipe to be installed inside the magnolia drip line and for the soil just outside the drip line to be disrupted for installation of retention/drainage depression. This will most certainly adversely affect the magnolia's well-being. Furthermore, the plan assigns maintenance responsibility to a subdivision HOA. With all due respect, the HOA members will not see or experience the effects of this area not being maintained as	• Install a berm within the lot(s) closest to the adjacent properties to assure no stormwater flows onto these adjacent properties. Implement measures to assure that the berm is preserved during and after any construction on the lots. • Reduce the number of lots and dwellings so that the amount of impervious terrain is not increased. • Stipulate that the developer finance the installation of storm water drains on Jones Avenue • Develop a storm water management plan that does not direct water into the plot within which the magnolia resides.

Page 1 of 3

Circuit Court Appeal 0090

Concern	Remedies and/or Alternatives
they will be uphill and on the other side of the magnolia from it – but the existing neighbors on the other side of the magnolia will – why should they be burdened with this?	
Tree Canopy - Augusta Road is a heavily traveled road with a high density of commercial businesses in the vicinity of 808 McDaniel. The large size of the existing property with only a single dwelling on it coupled with its numerous large trees and landscaping affords the surrounding neighborhood an effective Augusta Road buffer & transition – this tree canopy is integral to the neighborhood’s character. The projected post-subdivision lot pricing will necessitate building large homes to make the numbers work. This, in turn, will require removal of most if not all of the large trees presently on the property. - There are large trees along the boundary of the existing property whose roots will certainly be affected by future dwelling construction resulting from the proposed subdivision. For example, one oak near the 417 Jones property line with a 36 inch diameter has roots that would extend out at least 35 feet. Disturbing the roots of this tree could result in a future removal and replacement burden on neighboring homeowners if the tree subsequently died. We would hope that the Planning Commission would consider existing homeowner interests over those of a developer who stands to make a short-term financial gain and be long gone when these issues have to be resolved.	• An alternative would be to place fewer dwellings on this property – ideally preserving it as a single residence lot but certainly subdividing it into no more than 2 or 3 lots with only one facing Jones Avenue. • Conduct an existing property tree inventory and develop a sustainably enforceable plan for preserving them • Set up a developer funded reserve or escrow for a specified period of time (3 years post construction completion) to cover removal and/or replacement of any adversely affected trees.
McDaniel Avenue Traffic • The McDaniel Avenue-Augusta Road Intersection is already extremely busy with cars being stacked up during the morning and evening rush hours. The existing property has two driveways opening on McDaniel which were rarely used as the garage was accessed from another driveway on the Jones Avenue side of the property. Adding a 3rd McDaniel driveway in such close proximity to this intersection and having all 3 driveways now function as a primary means of entrance and egress for each of 3 new residences will increase the traffic congestion with greater accident and injury potential for the residents as well as McDaniel Avenue commuters. When questioned on this, the developer has said that this is a SC-DOT matter and he’s confident that they will not view it as a significant concern. The neighborhood does see it as a significant concern and hopes City Planning Staff, the Planning Commission and City Council will take an active interest in these traffic safety concerns.	• An alternative would be to place fewer dwellings on this property – ideally preserving it as a single residence lot but certainly subdividing it into no more than 2 or 3 lots.

Concern	Remedies and/or Alternatives
Jones Avenue Traffic - The Jones Avenue-Augusta Road intersection traffic has increased dramatically over the past 5-10 years. Traffic turning right off of Augusta onto Jones generally exceeds the 30mph speed limit. Driveway egress is challenging as it is for us – we look left prior to exiting our driveway and, with no traffic apparent, are routinely shocked by having cars ride right up to our bumper after turning onto the street. Allowing 2 more driveways, in addition to the single 808 McDaniel rear drive onto Jones Avenue, in such close proximity to Augusta is ill-advised risking accidents and injury. When questioned on this, the developer has said that this is a SC-DOT matter and he's confident that they will not view it as a significant concern. The neighborhood does see it as a significant concern and hopes City Planning Staff, the Planning Commission and City Council will take an active interest in these traffic safety concerns.	• An alternative would be to place fewer dwellings on this property – ideally preserving it as a single residence lot but certainly subdividing it into no more than 2 or 3 lots with only one facing Jones Avenue.
Neighborhood Character & Integrity - Neighboring homeowners chose this neighborhood recognizing it was established rather than a new development. The expectation was that we would reside without the nuisance accompanying new construction and confident in the existing character of the neighborhood. As it proposed, this subdivision will significantly change the character of the neighborhood. Although it may meet many of the zoning requirements, we would hope that the Planning Commission and City Council would stand up for the interests of existing neighbors versus those of the developer who aims to make a short-term gain on his investment with no long-term interest in the neighborhood.	• An alternative would be to place fewer dwellings on this property – ideally preserving it as a single residence lot but certainly subdividing it into no more than 2 or 3 lots.

We understand that the Planning Commission has a responsibility to confirm that City Planning Staff have effectively reviewed the proposal versus all ordinances, zoning requirements, etc. We hope that the Planning Commission recognizes an additional obligation to consider the impact of development proposals on the interests and quality of life of the surrounding neighbors and neighborhood.

Thank-you for your understanding and consideration of our concerns. We urge you not to approve the 808 McDaniel subdivision as presently proposed.

Respectfully,



John & Susan Lind

January 2, 2019

City of Greenville Planning Commission
206 S. Main St., 6th Floor
Greenville, SC 29601

Re: Proposed Sub-Division – 808 McDaniel Avenue

To: Members of the City of Greenville Planning Commission

We oppose the plan for a sub-division at 808 McDaniel Avenue. A revised preliminary plan was submitted by Arbor Engineering Inc., for the proposed sub-division dated December 17, 2018.

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2. Construction Issues

Building six houses on a lot where one currently exists seems to us to be an extraordinary request because this construction could take five to ten years. Ongoing construction in a confined area for the next 5 to ten years would have a number of negative impacts on this

neighborhood, and it is clearly not promoting harmony or character in the neighborhood. Also, it would restrict the ability of some homeowners near this property to sell their homes because of a potential buyer's unwillingness to purchase a home in a construction zone.

There would also be a number of safety and parking issues associated with having construction crews in our neighborhood for the next five to ten years. Given the number of children who live near 808 McDaniel, this poses a serious safety concern. Stated differently, we can see no rationale for subjecting the residents of this neighborhood to living in a construction zone for many years to come, given these facts and circumstances. It should also be understood that one of the factors existing residents considered when acquiring their homes was that the neighborhood was already established and that they would not have to be exposed to the nuisance of accompanying construction of new homes.

3. Traffic

To our knowledge, no traffic impact analysis has been done to demonstrate that the proposed development will not pose an unacceptable burden on traffic on McDaniel Avenue, on Jones Avenue, on Augusta Street and surrounding streets. Traffic is already excessively heavy at certain times of day in the vicinity of 808 McDaniel given its proximity to the Augusta Street intersections with Jones Avenue and McDaniel Avenue. The impact of driveways for 6 new residences in place of the existing single residence will not only create additional traffic but will also pose a significant added safety hazard given their proximity to these intersections. Even if all other concerns were addressed, the Planning Commission should refuse approval of this proposed subdivision until a traffic study has been completed as provided for by 19-6.10.

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We understand that Cothran Properties has consented to preserve the old, large magnolia tree on the McDaniel Avenue side of the property in a conservation easement and deeding it over to a Homeowners Association (HOA) to be formed for the proposed six new residences. This action followed the designation of this magnolia as a "Historic Tree" which requires its preservation. We further understand that the proposed arrangement imposes the responsibility for the future care of the magnolia on the HOA. Frankly, we question the integrity of this responsibility. What happens, for instance, if the HOA declares bankruptcy at some future point in time? Given that this is not an uncommon occurrence, we believe that the preservation of the magnolia would be much better handled by a public entity or homeowner rather than a committee.

We further question whether the proposed subdivision will adversely affect the magnolia's root system as a result of adjacent construction activity and/or the proposed storm water

management measures around the magnolia periphery. The storm water management provisions presently specify that a drainage pipe will be installed under the present footprint of the magnolia. It is quite evident that the magnolia's root system extends well beyond the tree's footprint. Has an independent arborist been engaged to provide an expert assessment of the impact of the proposed stormwater management provisions on the health of the magnolia?

There are a number of other large old trees on the property which would likely be removed to accommodate construction of six new dwellings. Those which remain would face significant risk of being adversely affected as a result of construction activity in their proximity. The removal of so much of the tree canopy would clearly have a significant negative impact on the existing neighborhood character.

If this subdivision were approved, instead of preserving and protecting the existing tree canopy, as required by 19-6.9.1(D), The Planning Commission would be allowing Cothran Properties and any dwelling contractors to do the opposite – to level this beautiful lot full of trees to make room for 6 new dwellings to be built – which cannot possibly provide for a tree canopy consistent with that established and existing on McDaniel Avenue.

5. Storm Water

The revised subdivision proposal suggests that storm water will be directed via subterranean gravel fields along some of the subdivided lot boundaries to a collection area to be created around the base of the magnolia and that this retention area consist of depression with a surrounding berm and drains tied into the McDaniel Avenue storm water piping. As noted above, we believe this provision risks harm to the historic magnolia root system and any other trees that have not been cleared from the property.

Furthermore, deeding the proposed magnolia parcel over to the HOA would assign responsibility for maintenance of the storm water collection area to the HOA. As noted above, this does not provide adequate assurance for the continued maintenance of this area into the future.

The developer's plan calls for runoff water from the front of the three proposed lots on Jones Avenue to flow onto Jones Avenue. This particular first block of Jones Avenue is a long block in which there are presently no storm water drains and which also ends up with storm water flowing from Augusta Street. The proposed additional dwelling and driveway coverage would certainly add to what is presently an excessive storm water burden on Jones Avenue.

The proposed stormwater management provisions appear to allow water to flow directly onto one of the adjacent Jones Avenue (Lind) lot. Shouldn't the plan include a berm to prevent this from occurring?

Overall, it is our understanding that the amount of impervious area will increase by at least 15,464sf. We believe this figure may be understated as the developer appears to have overstated the present amount of impervious area.

Proposed 808 McDaniel Avenue Subdivision Petition

For the reasons outlined above, we believe that the subdivision proposal's storm water provisions are inadequate and should not be approved.

6. Effect on Market Value

We are not aware of any evaluation or appraisal which has been done to assure the property owners in this neighborhood that property values will not be adversely affected. In fact, it would be reasonable to expect that increasing the dwelling density within a neighborhood and increasing traffic would have an adverse effect on property values. Property owners in this neighborhood have a right to expect that no proposed sub-division will be approved if it has a material negative impact on property values. Certainly, consideration of neighborhood compatibility must include whether or not a development will be allowed which has a negative economic impact on this community.

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Accordingly, the Planning Commission must reject this proposal consistent with the stated purpose of the ordinances cited above, and for all of the reasons contained in this letter.

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<u>Name</u>	<u>Address</u>
Sherry Tate	Camille Ave
Tom Snider	Camille Ave
Connie McDowell	Camille Ave
Lee Malon	McDaniel Ave.
Susan Lind	Jones Ave
~~Bob Atkinson~~	~~TINDAL AVE.~~
~~Wanda~~	~~McDaniel Ave.~~
~~Miss Leaphart~~	~~McDaniel Ave~~

Proposed 808 McDaniel Avenue Subdivision Petition

Name	Address
David Vickery	[REDACTED] Belmont Ave. 29601
[REDACTED]	[REDACTED] Jones Avenue
Caroline Henderson	[REDACTED] Crescent Avenue
Kate Wise	[REDACTED] Jones Ave
Griffin Wise	[REDACTED] Jones Ave
Amanda Parker	[REDACTED] Jones Ave
Andrew Parker	[REDACTED] Jones Ave
Julie Wilson	[REDACTED] Jones Ave
Jeff Wilson	[REDACTED] Jones Ave
Justin Burton	[REDACTED] Jones Ave
Walter D.	[REDACTED] Jones Ave
Kathleen C. Dumban	[REDACTED] Jones Ave
Stacy Burke	[REDACTED] Jones Ave
Myrtle	[REDACTED] Jones Ave
Beverly Day	[REDACTED] Jones Ave
Ann Rowland	[REDACTED] Jones Ave
Chloe Cui	[REDACTED] Jones Ave
Patrick Rawlins	[REDACTED] Jones Ave
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Johnnie Baker	[REDACTED] Jones Ave
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Ann Nickolls	[REDACTED] Jones Ave
Marlene Blanton	[REDACTED] Pinckney Ave

Proposed 808 McDaniel Avenue Subdivision Petition

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Kim Platong	29605
Keith Handkewey	Jones Ave / 6 th St, SC
Bill Handkewey	Jones Ave, Greenville, SC
Thomson Barnes Elliott	Warner St, Greenville, SC
Albert E. Fitzgerald	Cleveland St., Greenville, SC
Chris Riley	McDaniel Ave. Greenville, SC 29605
Rhonda Riley	" " " "
Brian H. H. H.	McPherson Lane, Greenville 29605
Mr. Einstein	Camille Ave. Greenville 29605
J. H. H.	Camille Ave Greenville 29605
Louis McIntire	Jones Ave 29605
Ch Roberts	McDaniel Ave 29605
John A. Cochr	McDaniel Ave 29605
John H. H. H.	E. PRENTISS AVE
Janey Hamel	Jones Avenue 29605
Karl Stephens	Jones Ave 29605
St. M. H. H.	Crescent Ave 29601
Michael R. E. H.	CAPERS ST. 29605
John R. H. H.	WATTS AVE 29601

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Sincerely,

<u>Name</u>	<u>Address</u>
Kelly Wain	[REDACTED] McDaniel Ave
Aaron Labryere	[REDACTED] M'Pherson Ln.
William Thompson	[REDACTED] Camille Ave.
Robert Thompson	" " "
Robert Thompson	" " "
Robert Thompson	" " "
Blaise Thompson	" " "
Sarah Long	[REDACTED] Camille Ave.

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

Address

Camille Ave.

McVain AR

McDaniel Ave

Warner St.

Warner St

Other in St.

Chloro Si

McPherson, La.

McPherson Ln

W. F. 7. 1755 Ave

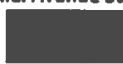
Cathryn St. 291605

$M \subseteq \text{Daniel Ave}$

James Ave 29605

Proposed 808 McDaniel Avenue Subdivision Petition

George C...



McDaniel Ave

For the reasons outlined above, we believe that the subdivision proposal's storm water provisions are inadequate and should not be approved.

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Sincerely,

<u>Name</u>	<u>Address</u>
Chris Fyock	McDaniel Ave
Rose Fyock	McDaniel Ave.
Y. Dutta	McDaniel Ave.
McDaniel	McDaniel Ave
Licki Swinski	McDaniel Avenue
Bob Swinski	McDaniel Avenue
Mary H. Seelen	Crescent Ct.
H. Daniel Sellers	Crescent Ct.

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Jessica A. Garrison

From: Melissa White
Sent: Thursday, January 17, 2019 2:35 PM
To: Planning
Cc: White Ben
Subject: 808 McDaniel Avenue

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

To Whom It May Concern,

I am writing regarding application 0217000500700 SD-18-027 for 808 McDaniel Avenue. This hearing is scheduled today, January 17, 2029 at 4 o'clock. Both my husband and I will be unable to attend but I wanted to express my thoughts.

Kelly Warren has put together a thorough petition as to why this particular proposal should be rejected. Both my husband, Benjamin White, and I have signed said petition.

While I believe the petition is more than comprehensive, I do want to say this. We were fortunate to purchase a home on McDaniel Avenue seven years ago during the recession as I have no doubt that we couldn't afford a home in this area today.

In the time we have lived here, traffic (both the amount and the speed) have increased dramatically. Nothing has been done to help remedy this on the portion of McDaniel where we live but two measures - the installation of speed monitors and just recently, the addition of bump outs - have been made to help remedy the speed at exactly the area where a developer is proposing the addition of six new homes. It simply makes no sense. We are spending city money to decrease speed while considering the addition of six new homes in this exact spot.

Existing residents who pay property taxes deserve to have their input taken into consideration. We are the ones who live here. The builder has only a momentary stake in our community.

I have not heard anyone suggest that we should reject this simply because "change is bad." What I have heard are legitimate concerns for the people whose homes surround this area. Concerns about traffic and water run off. Concerns about keeping the green space in the neighborhood consistent. In a desire to see Greenville continue to grow and develop, it seems we are only asking, "Can we do it?," and not "Should we?" I respectfully request that you truly listen to those who are fortunate enough to call Alta Vista home.

Warmly,

Melissa White

Circuit Court Appeal 0104

Christina Lancianese
[REDACTED] Blake St
Greenville, SC 29605

1-15-2019

To the Planning or Zoning Commission,

I was shocked but not surprised to see your sign at 808 McDaniel Ave. With the way developers and builders are pursuing properties these days, squeezing multi-family units into small lots - it is shocking!!

I must strongly protest that you change zoning on 808 McDaniel Ave - Why haven't the owners sold to one individual who will live there? You can't allow them to destroy the biggest MAGNOLIA tree in S.C.!!! Who would do that? WHY? There are plenty of spaces and lots around to squeeze in 4-6 homes - - - In Michigan especially (I was born + raised here in Greenville) there are strict laws about saving historic trees!! I stood with UPSTATE FOREVER to get a better tree ordinance - - It didn't help much at all!! Plus - added traffic on a corner - I don't care how many surveys you've done - -

Christina Lancianese

Proposed 808 McDaniel Avenue Subdivision Petition

January 2, 2019

City of Greenville Planning Commission
 206 S. Main St., 6th Floor
 Greenville, SC 29601

Re: Proposed Sub-Division – 808 McDaniel Avenue

To: Members of the City of Greenville Planning Commission

We oppose the plan for a sub-division at 808 McDaniel Avenue. A revised preliminary plan was submitted by Arbor Engineering Inc., for the proposed sub-division dated December 17, 2018.

Cothran Properties proposes to put six homes on this lot where currently one house is located. This would profoundly change this beautiful and historic neighborhood and the surrounding area. There is no justification for allowing such a drastic change to our neighborhood, even if the technical requirements for a subdivision are met. To suggest that this development is compatible with the neighborhood simply ignores reality. For these reasons set forth more fully below, the applicable ordinances of Greenville County require that the Planning Commission refuse approval for subdivision of this property as proposed.

1. Neighborhood Compatibility

a. 19-6.9.1 General Purpose and Intent

This section is intended to achieve neighborhood compatibility, maintain the harmony and character of established single-family residential areas and guide residential infill development to occur in an orderly and desirable manner.

The basic proposal is to change significantly the character of the neighborhood by turning a lot on which one house is located into six separate residences – three on McDaniel Avenue and three on Jones Avenue. As we understand it, the proposal is to take a beautiful wooded lot, level /clear most of it, and build six homes of unknown, unspecified size and design. While we respect the rights of the new property owners, such a change is not within either the letter or the spirit of 19-6.9.1. The mandate of 19-6.9.1 – “maintaining the harmony and character of established single-family residential areas” – requires that this proposal be denied.

2. Construction Issues

Building six houses on a lot where one currently exists seems to us to be an extraordinary request because this construction could take five to ten years. Ongoing construction in a confined area for the next 5 to ten years would have a number of negative impacts on this

neighborhood, and it is clearly not promoting harmony or character in the neighborhood. Also, it would restrict the ability of some homeowners near this property to sell their homes because of a potential buyer's unwillingness to purchase a home in a construction zone.

There would also be a number of safety and parking issues associated with having construction crews in our neighborhood for the next five to ten years. Given the number of children who live near 808 McDaniel, this poses a serious safety concern. Stated differently, we can see no rationale for subjecting the residents of this neighborhood to living in a construction zone for many years to come, given these facts and circumstances. It should also be understood that one of the factors existing residents considered when acquiring their homes was that the neighborhood was already established and that they would not have to be exposed to the nuisance of accompanying construction of new homes.

3. Traffic

To our knowledge, no traffic impact analysis has been done to demonstrate that the proposed development will not pose an unacceptable burden on traffic on McDaniel Avenue, on Jones Avenue, on Augusta Street and surrounding streets. Traffic is already excessively heavy at certain times of day in the vicinity of 808 McDaniel given its proximity to the Augusta Street intersections with Jones Avenue and McDaniel Avenue. The impact of driveways for 6 new residences in place of the existing single residence will not only create additional traffic but will also pose a significant added safety hazard given their proximity to these intersections. Even if all other concerns were addressed, the Planning Commission should refuse approval of this proposed subdivision until a traffic study has been completed as provided for by 19-6.10.

4. Tree Canopy

Section 19-6.9.1 (D) provides as follows:

To preserve and protect existing tree canopy to the extent practicable and to ensure future tree canopy consistent with established single-family residential areas.

We understand that Cothran Properties has consented to preserve the old, large magnolia tree on the McDaniel Avenue side of the property in a conservation easement and deeding it over to a Homeowners Association (HOA) to be formed for the proposed six new residences. This action followed the designation of this magnolia as a "Historic Tree" which requires its preservation. We further understand that the proposed arrangement imposes the responsibility for the future care of the magnolia on the HOA. Frankly, we question the integrity of this responsibility. What happens, for instance, if the HOA declares bankruptcy at some future point in time? Given that this is not an uncommon occurrence, we believe that the preservation of the magnolia would be much better handled by a public entity or homeowner rather than a committee.

We further question whether the proposed subdivision will adversely affect the magnolia's root system as a result of adjacent construction activity and/or the proposed storm water

management measures around the magnolia periphery. The storm water management provisions presently specify that a drainage pipe will be installed under the present footprint of the magnolia. It is quite evident that the magnolia's root system extends well beyond the tree's footprint. Has an independent arborist been engaged to provide an expert assessment of the impact of the proposed stormwater management provisions on the health of the magnolia?

There are a number of other large old trees on the property which would likely be removed to accommodate construction of six new dwellings. Those which remain would face significant risk of being adversely affected as a result of construction activity in their proximity. The removal of so much of the tree canopy would clearly have a significant negative impact on the existing neighborhood character.

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The revised subdivision proposal suggests that storm water will be directed via subterranean gravel fields along some of the subdivided lot boundaries to a collection area to be created around the base of the magnolia and that this retention area consist of depression with a surrounding berm and drains tied into the McDaniel Avenue storm water piping. As noted above, we believe this provision risks harm to the historic magnolia root system and any other trees that have not been cleared from the property.

Furthermore, deeding the proposed magnolia parcel over to the HOA would assign responsibility for maintenance of the storm water collection area to the HOA. As noted above, this does not provide adequate assurance for the continued maintenance of this area into the future.

The developer's plan calls for runoff water from the front of the three proposed lots on Jones Avenue to flow onto Jones Avenue. This particular first block of Jones Avenue is a long block in which there are presently no storm water drains and which also ends up with storm water flowing from Augusta Street. The proposed additional dwelling and driveway coverage would certainly add to what is presently an excessive storm water burden on Jones Avenue.

The proposed stormwater management provisions appear to allow water to flow directly onto one of the adjacent Jones Avenue (Lind) lot. Shouldn't the plan include a berm to prevent this from occurring?

Overall, it is our understanding that the amount of impervious area will increase by at least 15,464sf. We believe this figure may be understated as the developer appears to have overstated the present amount of impervious area.

Proposed 808 McDaniel Avenue Subdivision Petition

For the reasons outlined above, we believe that the subdivision proposal's storm water provisions are inadequate and should not be approved.

6. Effect on Market Value

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Pamela McDowell	Camille Ave
Lee Malon	McDaniel Ave
Susan Lind	Jones Ave
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Chaka Cui	[REDACTED] Jones Ave
Patrick Rawlins	[REDACTED] Jones Ave
Linda Lister	[REDACTED] Jones Avenue
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Kim Watson	[REDACTED] Jones Ave
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<u>Name</u>	<u>Address</u>
Kelly Wain	[REDACTED] McDaniel Ave
Aaron Labrecque	[REDACTED] McPherson Ln.
William Thompson	[REDACTED] Camille Ave.
Robert Thompson	" " "
Robert Thompson	" " "
Robert Thompson	" " "
Blaine Thompson	" " "
Sarah Long	[REDACTED] Camille Ave.

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Address

Camille Ave.

McViney AC

McDaniel Ave

Warner St.

Warner St

Other in St.

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14C Phereon. In

McPherson Ln

W. F. 91755 Ave

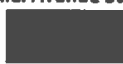
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4^c Daniel Ave

James Ave 29605

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Y. Dutta	McDaniel Ave.
McDaniel	McDaniel Ave
Licki Swinski	McDaniel Avenue
Bob Swinski	McDaniel Avenue
Mary H. Seelen	Crescent Ct.
H. Daniel Sellers	Crescent Ct.

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Neighborhood MeetingProject Name: MCDANIEL SUBDIVISIONLocation: AUGUSTA ROAD LIBRARY (100 LYDIA ST. GREENVILLE, SC 29605)Time of the meeting: 6:30Date: 01/09/2019Representative holding meeting: JAY MARTIN

Name	Street Address	Email
1 Meen Jeffrey	McDaniel Ave	
2 John Jeffrey	" " "	
3 ROBERTA HANLEY	TINDAL AVE 29605	
4 Elizabeth Baucum	McDaniel Ave. 29601	
5 LYDE BAUCUM	" " " "	
6 Aubrey Lind	Long Ave 29605	
7 ~~Michael McDaniel~~	~~McDaniel Ave~~	
8 Jan Outten	McDaniel Ave	
9 Sam Outten	McDaniel Ave.	
10 John Lind	Texas Dr	
11 Michael Friesen	City of Greenville	
12 Julie Garrett	McDaniel	
13 Albert E. Fitzgerald	Cleveland ST.	
14 ANDREW LONG	BONAVENTURE DR 29615	
15 Vic Rosenthal	Grand Run G'ville, SC 29605	
16 TOM SNIDER	CAMILLE AVE G'ville 29605	
17 CONNIE McDOWELL	" " " " "	
18 ANDREW L. MANDALAKE	SEVEN ST	
19 Chris Riley	McDaniel Ave Greenville SC 29605	
20 Rhonda Riley	" " "	
21 Brian Hunsford	McPherson Ln G'ville 29605	
22 Sherry Tate	Camille Ave G'ville 29605	
23 Liz & Dan Einstein	Camille Ave G'ville 29605	
24 Lewis McWhite	Texas Ave. 29605	
25 Erick Roberts	McDaniel Ave 29605	

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Name	Street Address	Email
1 John Carter	McDaniel	
2 Donald Harmon	E PRENTISS AVE	
3 James Harmon	James Ave 29605	
4 Mary Thelma	Cathran St 29605	
5 James Bach / Mary	Cathran St 29605	
6 Stephanie Buxolo	Crescent Ave 29601	
7 Amelre Weems	Cathran St 29605	
8 John + Dee Malone	McDaniel Ave 29605	
9 Ginger Ceb	McDaniel Ave	
10 Frances Barnes Elliott	Warner Street	
11 Dorothy Dore	Cleveland St GVL, 29601	
12 Kelly Taylor	James Ave 29605	
13 Chester Warren	McDaniel Ave 29605	
14 Kelly Warren	McDaniel Ave 29605	
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Neighborhood Meeting: 808 McDaniel Ave.**SD 18-803 ~~SD-18-303~~****January 9, 2019 at 6:30 pm located at the Augusta Road Library****Presented by Jay Martin of Arbor Engineering.****Meeting Notes taken by Austin Allen of Arbor Engineering.****Attendees were asked to sign in when entering the room.****Meeting began at 6:35**

This meeting was held to discuss a preliminary plan for the site located at 808 McDaniel Avenue. Jay Martin explained his role during this meeting, which is to keep the meeting on task and not repeat information already covered in the last meeting but to discuss changes and prior feedback. Jay then explains that we got feedback from the City of Greenville as well and getting the staff report from planning was what made us make the decision to table the project to the January meeting. Jay discusses that the feedback we got back had to deal with the magnolia tree, stormwater and increased curb cuts on McDaniel. Jay explains that the City of Greenville sent an arborist on site and declared the magnolia one tree and that we were not allowed to remove the tree. Because of the tree having to stay, the new plan shows the tree not on a lot but on a conservation easement held by the HOA. He then goes on to explain that the stormwater is also in the conservation easement and that since the stormwater management is in property owned by the HOA, it will be their responsibility to maintain all stormwater systems. Jay then goes on to explain how the stormwater system will capture water from the lots, sit on site for 24 hours then slowly be released through a drain on site into an existing structure on McDaniel. He then explains the requirements of stormwater and how the requirements work in terms of water quality and quantity. Jay then presents a new rendition of the site and that there is one less lot than last time. He then talks about how we are not doing the maximum number of lots and density we could get.

Questions Asked:

- Would you be willing to reduce lots from 6-4?
 - o Not at this time, we feel that we are requesting a not only reasonable amount of lots but a number allowed under City of Greenville ordinance.
- Have you had the same magnolia treated the same way as the one on this site somewhere else? Can you show evidence of this experience on another site at the planning commission?
 - o We have never dealt with a situation like this. However we will be outside the drip zone and critical root zone so that we do not cause damage to the root system.
- Have you conducted a tree inventory of the property?
 - o We have not but we are aware with what's on site and the magnolia tree is the only tree we are responsible for keeping. To remind you this isn't going to be mass graded and track homes built in. We do not plan on cutting any trees down. The

homeowner will be able to come in a buy a lot and use architecture techniques to work around the tree.

- Do you have time to complete a tree inventory by the planning commission meeting and present that to planning commission?
 - o We can go out and get the location of trees.
- Are those lots going to be big enough? How can you get a big house on their and save the trees?
 - o The trees in the middle of the lot probably won't be saved. The ones on the front of the lot will probably be the ones to save. Through architecture some of the trees will be able to be saved. The property owner will be able to make those decisions to help keep the trees.
- How will ingress/egress work on the lot with 17' road frontage?
 - o The owner will have a driveway and there will be plenty of room.
- Who will own the property the magnolia tree is on? What happens if the tree dies?
 - o The HOA will own the property. There will never be houses on this property ever again, a conservation easement will not allow it. It would just be a lot without the tree.
- What will the covenant and deed restrictions be on the houses on site? Will the covenant and deed restrictions not allow the property owner to cut down canopy trees?
 - o We do not know yet but there will be restrictions put onto the site. No the trees will not be protected by the covenant and deed restrictions. It will be the same as any home owner cutting down a tree on their property.
- Isn't there a tree protection ordinance?
 - o Neighbor answers not on residential properties.
- What is the road frontage of the lots?
 - o 60'.
- How far from the drip line of the magnolia to the Warren property line?
 - o Somewhere between 10'-15'.
- Would the assumption be that the drip line is at the end of the footprint?
 - o In this case yes, in all cases no. A like oaks root zone will go past the drip line. The way this tree replenishes itself the roots of the original tree will not spread as wide as the offspring trees have grown.
- Is the only obligation of the developer that the tree survives?
 - o The arborist in the room explains that if you told him that we were saving a tree and protecting a tree the way we were he would say that's great. (Chain-link Fence at the drip line)
- Sounds like the debate is if it's one tree or not? (Magnolia)
 - o No, that is not up for debate, the city has deemed that one tree so it is one tree.
- You aren't worried about the roots under the driveway?
 - o Those are outside the drip zone so even according to Clemson University and the arborist in the room, those roots are not considered critical.
- Will the width of the lots work with the size of the house?

- The lot widths are allowable under the code and we believe they are in keeping with what else is on McDaniel and Jones.
- Will the stormwater be maintained? By whom? Will it back up? How will that work?
 - It is not allowed to overflow and the structure doesn't work to allow it to overflow. We are either going to use a little fill or a little cut to create a small basin that will capture water and slowly release it. The measurements we do to calculate how big the basin needs to be takes care of that. The plans will also have to be reviewed and approved by the city so it will not back up and overflow. There is a maintenance agreement that gets recorded and legally makes the HOA responsible for the stormwater area. These areas will hold water so it will look like a pond. The reason for this is so that the stormwater basin can slowly clean and filter the water during release.
- Will there be a hydrology study done to take into account how much silt will be deposited during construction?
 - Yes that's exactly what will be done. That's what's included in water quality as well as erosion control. Jay goes into explaining a phase 1.
- Isn't a 10' distance required along the property line by the magnolia?
 - The building setback is currently 5', however there will not be a house on the conservation. However, the lot on Jones that is adjacent to John and Susan Lind's property will have a 5' building setback but will have a 10' drainage and utility easement. If the Lind property were to have this easement it would be 5' on their property and 5' on the property proposed.
- When do the covenants get established?
 - Covenant and deed restrictions are recorded at the time the final plat is to be recorded. If covenant and deed restrictions are recorded before the final plat then the covenant and deed restrictions don't refer to anything.
- What happens if the HOA does not take care of their stormwater responsibilities?
 - Legally the property owner will have to take care of this stormwater area. If not the City would come in and give a deadline to take care of the issue and if they don't there will be fines and other legal action brought on the homeowners.
- Will the french drains that run between the properties on Jones damage trees when constructed?
 - No these are low impact and will be shallow. There can also be things done such as root pruning that will not damage the roots but provide space for the drain.
- Has or will there be a traffic study done?
 - No, there will only be 30 trips per day added on both McDaniel and Jones. SCDOT will not be concerned with increasing 30 trips per day.
- Does the city take into consideration the added trips and extra traffic?
 - Neighbor answers that planning commission can.
- Has a stormwater plan been prepared and approved yet?

- o No, we do not to a stormwater plan until after the project has been approved by planning commission. We have worked with the city and provided to city staff our plan and they decided it was sufficient for a preliminary plat.
- Will the french drains be included in the covenant and deed restrictions?
 - o No they will be included in the stormwater plan which will be recorded under the stormwater management agreement. Jay then goes on to explain the difference between covenant and deed restrictions and a stormwater management agreement.
- Will the stormwater feature handle all of the sites stormwater?
 - o It will handle most of it. It can't capture all of it. There will not be any more water exiting the site.
- How will the grade on the properties on Jones Ave work to bring the water back to the stormwater facility on the McDaniel properties?
 - o There will be no mass grading or fill brought in or even cut. This is the reason for the french drains. The french drains will be tied into the houses on the other side that bring their water to McDaniel. All of this will be underground until it gets into the basins on the conservation easement.
- Recently we've gotten a lot of rain, when we get more than one inch where does it pop off?
 - o The first inch that we are taking care of is for water quality, the rest is for peak attenuation. You don't take care of peak attenuation at your house. Because we don't exceed 40% impervious we don't have to worry about peak attenuation.
- Your responsibility is take care of the first inch or rainfall on the entire property?
 - o Most of it, not all water will be able to be captured. Some water will always make it to the street.
- Who is the developer of the property?
 - o Mark Cothran.

Jay finishes the meeting by telling everyone in the meeting where and when planning commission is and making sure that there are no final question.

Meeting ends at 7:35.

Concerns Stated:

- There should be assurance to the city that this tree will not die because of the subdivision. As the representative of the client we would have no problem getting an assessment.
- We need a better tree ordinance in the city of Greenville. Jay agrees to this statement.
- The damage done to the lots could potentially damage trees on the property line and cause a cost for the neighbor down the road.
- There are a lot of cars parked on McDaniel already and there will be more with this subdivision.
- The intersections on Jones and McDaniel are already very busy.
- The roots of the magnolia are already under the driveway so the concern is there are roots outside the drip line and damaging those would kill the tree.
- 60' is not a very big lot considering the house sizes around this property.
- The neighbor thinks the marketability will be better with bigger lots.
- If planning commission approves the neighbors have no more say.
- There could be 6 different builders.
- The property on Tindall was mass developed and it still sits empty.
- The first catch basin Jones Ave is almost to Camille.
- Current plantings in the city and the way trees are taken care of now in the city is a real issue.
- A 4 lot subdivision would make a lot more sense and be much more reasonable and comparable to what is on McDaniel and Jones.

EXHIBIT 12
Deposition of PLANNING COMMISSION MEETING

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ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

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1 COMMISSIONER ELDRIDGE: 2 we've read your comments. 3 CHAIRPERSON TANKERSLEY: 4 we've read all of your comments. Your name and 5 address, sir. 6 MR. OUTTEN: 7 Good afternoon. My name is Sam Outten, O-u-t-t-e-n, and my wife, Jenny, and I live at 809 McDaniel 8 Avenue. The subdivision proposed by Cothran 9 Properties would put six homes on a lot where one 10 house is currently located. It is undeniable that 11 this would result in a drastic change to our beautiful 12 and historic neighborhood. Approval of this proposal 13 would change the character of our neighborhood 14 forever. So what is the reason you are being asked to 15 approve this proposal? The answer is that Cothran 16 Properties wants to maximize profit without concern 17 for the long-term effect it has on the neighborhood. 18 At a meeting with some of the neighborhood, some 19 of the neighbors on December 21, 2018, Mr. Cothran did 20 not try to hide this. He said to us, we are real 21 estate developers; we buy property to make money; that 22 is what we do. The neighbors understand and recognize 23 that Mr. Cothran has the right to develop this 24 property. However, the right to develop this property	1 proposal and agree with my comments, please raise your 2 hand. Thank you. [Silent audience response.] 3 CHAIRPERSON TANKERSLEY: 4 Name and address, please, sir. 5 MR. SOWINSKI: 6 Yes, good afternoon. My name is Bob Sowinski, 7 and my wife, Vickie, and I live at 640 McDaniel 8 Avenue. 9 MR. PAIT: 10 Just spell your last name, sir. I'm sorry. 11 MR. SOWINSKI: 12 Sowinski, S-o-w-i-n-s-k-i. I want to address a 13 couple of things here. As you all know and we all 14 know, the City has just installed on McDaniel Avenue 15 to a certain extent to our detriment as existing 16 owners of property on McDaniel Avenue these, whatever 17 you want to call them -- 18 UNIDENTIFIED MALE VOICE: 19 Death bunkers. 20 MR. SOWINSKI: 21 Pardon me? 22 UNIDENTIFIED MALE VOICE: 23 Death bunkers. 24 MR. SOWINSKI: 25 Death bunkers, yes. And living at 640 McDaniel
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1 has limits and constraints. Let's look at 19-6.9.1 of 2 the City of Greenville Ordinances. It states, 3 "General Purpose and Intent, This section is intended 4 to achieve neighborhood compatibility, maintain the 5 harmony and character of established single-family 6 residential areas and guide residential infill 7 development to occur in an orderly and desirable 8 manner." There can be no doubt that this proposal 9 would profoundly alter the harmony and character of 10 our neighborhood. 11 Mr. Cothran has been asked many times to reduce 12 the number of lots to three or four. He has 13 steadfastly refused. Mr. Cothran has refused to 14 balance his rights to develop the property with the 15 concerns of the neighbors and the effect of this 16 proposal on this neighborhood. 17 The Planning Commission has a choice to make and 18 voting on this proposal by Mr. Cothran. First, you 19 could deny the proposal for six lots and preserve our 20 beautiful and historic neighborhood consistent with 21 what is required by 19-6.9.1, or you can approve the 22 proposal, which is characterized by maximizing profit 23 and refusing to compromise. And as a result, 24 dramatically transform the character and harmony of 25 this neighborhood forever. If you are here on this	1 Avenue -- and just to give you some reference from 2 that, if you face our house, to the left is Skip and 3 Bobbie Francis. To our right is Belton and Kim 4 O'Neal. Right across the street from us is Jacob Mann 5 and his wife. And then Bobby Austell. But I have 6 seen the traffic already at about five o'clock, 4:30 7 in the afternoon backed up way beyond our house, 8 sometimes as far back as Crescent from Augusta Road, 9 and you see the cars just coming down McDaniel Avenue 10 like crazy. 11 I think the last thing in the world McDaniel 12 Avenue needs to do is ~~tear down one home and seek a~~ 13 way to construct six homes on that property. It makes 14 no sense whatsoever. Also, when you -- and I know 15 you've been looking at this. Also, when you are 16 thinking that you are going to build six homes on that 17 small piece of property -- and it's been touched on 18 here -- you're going to have sidewalks, you're going 19 to have driveways, you're going to have roofs that are 20 totally impermeable. And that water is going to run 21 down either Jones or McDaniel Avenue. And here's the 22 problem. Already when we have heavy rains in front of 23 my home, 640 McDaniel Avenue, the water is rushing -- 24 because there is a sanitary outlet right in front of 25 my home, but still the rainwater is rushing over the

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EXHIBIT 13
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Page 1 CITY OF GREENVILLE PLANNING COMMISSION MEETING JANUARY 17, 2019 IN RE: SD 18-027 The following is the transcription of a portion of the minutes of the regularly scheduled meeting of the City of Greenville Planning Commission held in Council Chambers, 10th Floor, 206 South Main Street, Greenville, South Carolina, on Thursday, January 17, 2019, commencing at approximately 4:01 p.m. JANE S. WEHUNT COURT REPORTER/TRANSCRIPTIONIST	Page 3 PLANNING COMMISSION MEMBERS PRESENT: Jason Tankersley, Chairperson Catherine Smith Jonathan Pait David Keller Diane Eldridge Meg Terry Trey Gardner STAFF PRESENT: Jonathan Graham, Planning & Development Manager Shannon Lavrin, Assistant Planning & Development Manager Brennan Williams, Development Planner Courtney Powell, Senior Planner Michael Frixen, Development Planner Chad Hall, Development Planner Calin Owens, Development Planner Michael Pitts, City Attorney Dwayne Cooper, Engineering Services Manager Clint Link, Civil Engineer Tracy Ramseur, Senior Economic Development Project Manager Edward Kinney, Parks & Recreation Drew Smith, Parks & Recreation																																												
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Page 5 1 I'm David Keller. I'm a lawyer, and I live off 2 Augusta Road or Street, depending on your point of 3 view. 4 COMMISSIONER TERRY: 5 Meg Terry. I'm an architect here in Greenville 6 and live in the North Main area. 7 COMMISSIONER GARDNER: 8 Trey Gardner. I'm a commercial banker here in 9 town and live in the Alta Vista neighborhood. 10 CHAIRPERSON TANKERSLEY: 11 We're all volunteers appointed by City Council to 12 serve on this board. Our responsibilities on the 13 Planning Commission include preparing the 14 Comprehensive Plan, conducting public hearings, making 15 recommendations to City Council on amendments to the 16 zoning map and the land management ordinance as well 17 as taking action on preliminary subdivision plats, 18 multi-family planned developments and final 19 development plans. 20 If you have not already picked up an agenda, 21 there are copies in the front lobby. The meeting will 22 be conducted in the following manner. Each item, the 23 Commission will hear a report from Planning staff. 24 After the staff report, the applicant will be given an 25 opportunity to present his or her application and	Page 7 1 and, once again, welcome to the meeting. Roll call. 2 MR. FRIXEN: 3 Meg Terry? 4 COMMISSIONER TERRY: 5 Here. 6 MR. FRIXEN: 7 Trey Gardner? 8 COMMISSIONER GARDNER: 9 Here. 10 MR. FRIXEN: 11 Catherine Smith? 12 COMMISSIONER SMITH: 13 Here. 14 MR. FRIXEN: 15 David Keller? 16 COMMISSIONER KELLER: 17 Here. 18 MR. FRIXEN: 19 Jonathan Pait? 20 COMMISSIONER PAIT: 21 Here. 22 MR. FRIXEN: 23 Diane Eldridge? 24 COMMISSIONER ELDRIDGE: 25 Here.
Page 6 1 demonstrate as it complies with relevant criteria. 2 Any member of the audience wishing to comment will be 3 given three minutes to do so. For those of you who 4 have lots of people here to speak about a given item, 5 we recommend that you promote a spokesperson. Things 6 that are repeated will be stopped. I'll just tell you 7 that now. We want the meeting to move quickly and 8 efficiently. Any questions asked by the Commissioners 9 will not be held against your time limit. At the 10 discretion of the Commission, the applicant may be 11 allowed three minutes for rebuttal. 12 All comments and questions will be directed to 13 me, the Chairperson, who will respond or direct the 14 question to the appropriate party for a response. Any 15 written comments submitted to the Planning Office will 16 or have been given to the Commission for consideration 17 in its decision. After all comments are offered, I 18 will close the public portion of the hearing. The 19 Commission will discuss and evaluate the information 20 presented in the context of its requirements and the 21 City code. The Commission will usually render a 22 decision on an item in this meeting. However, an item 23 may be continued to a date certain to allow parties 24 additional time to supplement information and to allow 25 further discussion. Please silence your cell phone,	Page 8 1 MR. FRIXEN: 2 And Jason Tankersley? 3 CHAIRPERSON TANKERSLEY: 4 Here. Do we have a motion to approve the 5 minutes from the December 20 meeting? 6 COMMISSIONER SMITH: 7 So moved. 8 COMMISSIONER ELDRIDGE: 9 Second. 10 CHAIRPERSON TANKERSLEY: 11 Vote by acclamation. All in favor? [Affirmative 12 responses from Commissioners] Any opposed? [No 13 response.] All right. Do we have all of our 14 affidavits and applications? 15 MR. FRIXEN: 16 Yes, sir. 17 CHAIRPERSON TANKERSLEY: 18 All right, sir. Now, for the acceptance of the 19 agenda, can someone make a motion on our deferred 20 items, please? 21 COMMISSIONER KELLER: 22 I'll make a motion we accept the revised agenda 23 revised on 1/16/19 to include the items deferred at 24 the request of the applicant. 25 COMMISSIONER ELDRIDGE:

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1 Second. 2 CHAIRPERSON TANKERSLEY: 3 Can we list them? 4 COMMISSIONER KELLER: 5 Oh, sure. Z-26-2018, SD 18-033, SD 18-035, 6 MD 18-005, and Z-28-2018. 7 CHAIRPERSON TANKERSLEY: 8 Do we have a motion to second, vote by roll call? 9 MR. FRIKEN: 10 Meg Terry? 11 COMMISSIONER TERRY: 12 Yes. 13 MR. FRIKEN: 14 Trey Gardner? 15 COMMISSIONER GARDNER: 16 Yes. 17 MR. FRIKEN: 18 Catherine Smith? 19 COMMISSIONER SMITH: 20 Yes. 21 MR. FRIKEN: 22 David Keller? 23 COMMISSIONER KELLER: 24 Yes. 25 MR. FRIKEN:	1 808 McDaniel Avenue from one lot to six lots. The 2 background on this project, if you will recall, the 3 applicant originally submitted a preliminary plat in 4 October 2018 and proposed seven residential lots, five 5 along McDaniel Avenue and two facing Jones Avenue. 6 Staff's original recommendation was for denial 7 primarily due to the lack of stormwater detail shown 8 on the plat. The original proposal would have 9 potentially resulted in the removal of the large 10 magnolia tree located in the northwest corner of the 11 property. The applicant requested to have the 12 application deferred to allow time for revisions and 13 to address staff concerns. The developer also 14 indicated they would meet with the adjacent property 15 owners to address some of the neighborhood concerns 16 which were documented in the original staff report 17 published on 10/12/18. 18 Following the request for deferral, two certified 19 arborists with the City Parks & Recreation Department 20 inspected the magnolia tree and determined it to be a 21 single organism consisting of a primary trunk of 39.7 22 inches in diameter with multiple secondary and 23 tertiary trunks. Because the central trunk is over 30 24 inches in diameter, the arborist determined that the 25 magnolia tree is a historic tree under the City's land
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1 Jonathan Pait? 2 COMMISSIONER PAIT: 3 Yes. 4 MR. FRIKEN: 5 Diane Eldridge? 6 COMMISSIONER ELDRIDGE: 7 Yes. 8 MR. FRIKEN: 9 Jason Tankersley? 10 CHAIRPERSON TANKERSLEY: 11 Yes. For those of you who are here for the 12 Haywood and Pelham, you are welcome to leave, because 13 we're not going to discuss that this evening. Anyone 14 for Webster and Zora Road, Dallas Road, Wilkins 15 Street, and Fairforest Way, all of these have been 16 deferred to another meeting. and I only ask this 17 because we're full, and the fire marshal is turning 18 people away. 19 There is one conflict of interest. That would be 20 myself, and that would be on Item E, SD 18-036. I 21 will be departing the room when that comes around. 22 Old Business, let's begin with SD 18-027. 23 MR. GRAHAM: 24 Thank you, Mr. Chair. This is an application by 25 Jay Martin for a subdivision of 1.86 acres located at	1 management ordinance. Per Section 19-6.3.2(C)(1)(d), 2 historic trees shall not be cut, removed, pushed over, 3 killed, harmed, trimmed, sprayed or destroyed without 4 written approval by the Parks & Recreation Department. 5 Accordingly, staff notified the applicant that the 6 revised application would need to address the historic 7 tree designation. 8 The applicant has met with several neighborhood 9 representatives and conducted a new neighborhood 10 meeting on 1/9/19 to present the revised application 11 before you this evening. Questions and concerns 12 shared at the neighborhood meeting for the revised 13 application were as follows: 14 • Concern about potential impacts to the magnolia 15 tree root system and long-term tree health; 16 • Concern about the potential loss of other 17 canopy trees on the residential lots; 18 • Questions about whether the restrictive 19 covenants and deed restrictions could include 20 provisions to protect the other canopy trees. 21 • Comments that the City's tree protection 22 ordinance is inadequate. 23 • Concerns about the proposed stormwater system 24 and long-term maintenance by the HOA. 25 • Concern about how deed restrictions and

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Page 13 1 covenants would be enforced. 2 • Concern about what happens to the project and 3 the property if the development is sold. 4 • Concern about consistency of the lots with the 5 existing development pattern in the neighborhood. 6 • Finally, concern about increased traffic from 7 the new driveways along McDaniel and Jones 8 Avenue. 9 Therefore, staff would note to the P.C. that the 10 revised application proposes to subdivide one lot into 11 seven total lots between McDaniel Avenue and Jones 12 Avenue one parcel away from where these roads 13 intersect with Augusta Street. Six of the lots are 14 proposed for residential development; three with 15 access from McDaniel Avenue, and the other three 16 oriented to Jones Avenue. An additional conservation 17 and stormwater lot is proposed to protect the 18 identified historic tree and provide the required 19 stormwater treatment for the proposed development. 20 The property is zoned R-9 Single Family 21 Residential District which allows for the type of 22 development proposed in this application. The 23 preliminary plat shows that the existing house and 24 associated driveways are to be removed. The six 25 proposed residential lots range from .21 to .29 acres	Page 15 1 along Jones Avenue provided that such reconfiguration 2 shall not result in any other lot becoming a 3 nonconforming lot at the building setback line. 4 Alternately, lots 4 and 5 may be combined into 5 single parcel. As mentioned the magnolia tree and 6 stormwater facilities are located on a separate parcel 7 with no residential homesite. This lot is presented 8 to be owned and maintained by an HOA comprised of the 9 other property owners in this new subdivision. 10 In addition, a conservation easement will be 11 placed on the property to protect the magnolia tree 12 and perpetuity. The conservation easement will be 13 owned by the City of Greenville. As noted previously, 14 the neighborhood residents have expressed concerns 15 about the proximity of the stormwater facility to the 16 magnolia tree and the potential impacts to the tree's 17 root system. The stormwater system is designed as a 18 series of infiltration trench drains that will collect 19 water from the subdivision lots and divert it towards 20 the stormwater treatment area shown on the plat above. 21 At that point, the water will be held for water 22 quality treatment purposes. Afterwards, the water 23 will enter pipes installed underground and flow into 24 the City storm drain on McDaniel Avenue. If approved, 25 staff recommends a condition that the developer work
Page 14 1 in size. The building envelope shown on the plat 2 appear to maintain the prevailing property width 3 pattern and front setback of existing residences along 4 the street as required by City infill standards, 5 Section 19-5.2.4(B)(1). Lot 4 is a triangular shaped 6 lot on the left-hand side of the drawing above with 7 17 feet of frontage on Jones Avenue expanding to 60 8 feet of frontage required at the building setback line 9 and 149 feet at the rear property line. All of the 10 other lots have at least 60 feet of frontage and meet 11 the lot dimensional requirements. The R-9 District 12 has a 60-foot minimum lot width requirement. Lot 13 width is defined as the distance between the side lot 14 lines at the front setback line as measured along a 15 line parallel to the front lot line or parallel to the 16 cord thereof. 17 After reviewing the land management ordinance, 18 there does not appear to be any requirement that the 19 lot frontage must equal the lot width. That becomes 20 important on the triangular-shaped lot. Standard 21 practice by Planning staff has been for every single- 22 family detached residential lot to have no less than 23 20 feet of frontage. Staff, therefore, recommends to 24 the Planning Commission a condition that Lot 4 be 25 re-configured to have at least 20 feet of frontage	Page 16 1 with the City's arborist and environmental engineers 2 to design and install the stormwater system with 3 minimal impacts to the magnolia tree's root system and 4 with the goal of ensuring long-term tree health. 5 Building setbacks and other applicable zoning 6 requirements including Section 19-6.9, Single Family 7 Infill Standards, must be met at the time of building 8 permits' submittal. Preliminary plat approval 9 authorizes the subdivision of land only and does not 10 constitute zoning or site plan approval. All approved 11 lots shall comply with the zoning district 12 requirements including building setbacks, building 13 height, permitted uses and all applicable site 14 development and design standards. Furthermore, the 15 applicant is responsible to submit an addressing 16 scheme at the time of the final plat submission. And 17 with that, staff concludes its presentation. 18 CHAIRPERSON TANKERSLEY: 19 Does anybody have questions for the staff? [No 20 response.] None, all right. Let's hear from the 21 applicant. Name and address, please. 22 MR. MARTIN: 23 My name is J.D. Martin. I live on Main Street in 24 Greenville, 401 North Main, Unit 301. I've been asked 25 to make this presentation tonight, and I guess

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1 throughout my professional career it's always a joyful
2 occasion when you get to present something that you
3 honestly feel is going to work for everybody. That's
4 a hard place to get. As I sat and thought about going
5 in today -- and I'm going to tie this back at the end
6 -- back early in the '80s, and one of the things that
7 was put out and people really got to understand is,
8 you really only get one chance to make a good first
9 impression. The second thing, even back in the '80s,
10 developers were taught you really need to have a
11 project that has wow. If you don't have wow, you're
12 probably not going to succeed. Wow is McDaniel
13 Avenue.

14 We have had numerous meetings and hear different
15 views. The developer started with a view; neighbors
16 started with a view; city codes and officials started
17 with a view. We've had lots of meetings. There have
18 been lots of concerns, been lots of issues that were
19 discussed. There have been lots of possible
20 solutions. In the last several months, this project
21 has come a long way from what was first presented to
22 City staff. A lot of progress has been made. And
23 without, honestly, the staff and everybody's input,
24 there was not a possibility of having a successful
25 project. I really think -- and I appreciate the staff

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1 My house will limit the stormwater runoff to adjoining
2 neighbors. My house will preserve and protect
3 existing trees with the same rights and
4 responsibilities that any other lot owner already has
5 in that neighborhood. And that's guaranteed by
6 ordinance, but I know that's what, if I'm building a
7 house, that's what I've got to do.

8 As I build my house, I know that the City staff
9 and the ordinances that are already in place will show
10 the path for everything to be done correctly. I know
11 I will have to have a site plan. I know I'm going to
12 have to sit down with the building officials, and I
13 know I'm going to have to explain how my house is
14 going to work and fit in with everybody else.

15 Myself and my five adjoining members will be
16 protected by covenants and deed restrictions that will
17 be required in conjunction with the final plat. The
18 final plat will be based on what you folks see today.
19 I am part of a community that will be addressing
20 stormwater in a creative, but a proven method. It's
21 not something that's new. It's something that has
22 been done before and will be done again. I am part of
23 a community and will be that is protecting 19,168
24 square feet of open space -- that's right at a half
25 acre -- with the guarantee that it will be here

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1 both in planning and in engineering, parks, meeting
2 with us, talking about it, what's good, what will
3 work, what can you do.

4 Everybody literally has had a voice in this
5 discussion except for one individual. He's been
6 totally left out from the table. And that is the
7 person who is going to buy this lot. Nobody's
8 addressed that. And I want to present to you in my
9 mind's eye what that potential purchaser is saying.
10 McDaniel Avenue is a wow. I love that street. Most
11 of you in this room do. You don't forget it. It
12 automatically comes with a good location. Where's my
13 house going to be? Do you know where the magnolia
14 tree is? That's where I am. That's where I'm going
15 to be.

16 As I think myself through if I was buying and
17 building here, I'd go through several things. I get
18 to live in a great neighborhood. The house that I am
19 planning and putting together is going to be
20 reflective of the other houses in the neighborhood.
21 My house will maintain the harmony and the character
22 of the surrounding houses in the neighborhood. My
23 house will minimize the negative impact of garages and
24 drives in this established community. My house will
25 minimize the visual impact of a retention facility.

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1 forever after we're all gone.

2 But most of all, I want to enjoy having the lot
3 where I have the same rights, no more and no less,
4 than all the people that I have chosen to join in the
5 community. I realize that I will need personal
6 guidance from professionals as this proceeds and I
7 need to follow the City codes and policies that are
8 already in place. And we sent over a series of
9 slides. I think that is added on to the end here. I
10 don't know the order they're in. Hey, that's a great
11 one to start with. It really is.

12 So we thought it would be interesting -- thank
13 you, sir. We thought it would be interesting when you
14 look at this chart and look at what could be done,
15 what has been done, and where we can go. The number
16 of lots that are allowed by straight ordinance is
17 nine. The original proposal that was here is seven.
18 The current proposal that you have is six. The number
19 of curb cuts allowed by ordinance, eight. The
20 original proposal that came in had seven. The latest
21 proposal that you have has six. The amount of open
22 space, originally, none -- in the original submission,
23 none. In the plan that you are looking at today,
24 19,618 square feet. The number of structures that can
25 be built by ordinance, nine. As requested, initially,

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seven. The current proposed plan has six.

And then there's been a lot of discussion about curb cuts and traffic and what is happening there. So on the McDaniel side, where the original submittal had 50 additional traffic count a day, the proposed one has 30. On Jones, it had 20 and when we're finished, it's going to have 30. So we'll address the traffic issue. We feel comfortable with it, and the houses would be reflective.

And if you will go down to the next slide for me, please, sir. I thought it interesting just to take the zoning map that you already have and you have seen, and take what is proposed and show it on the same map. And as you begin to look, unless I point out, that those are the lots that we're talking about, they all fit in with the lot size in the community. There's not a great deal of difference. Some are bigger; some are a little irregular shaped. They are different ways. And this is dealing with the lots that are across the street and adjacent. So unless somebody says, hey, there it is, you'd probably have a hard time picking it out.

The next slide, please, sir. This is not anything that's new. And if I have picked on someone's house in the room, I'm sorry. I don't mean

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UNIDENTIFIED MALE VOICE:

Last one.

MR. MARTIN:

That's the last one, good. With that said, and I'm speaking on behalf of the developer, I don't have any problem with any one of the comments Planning staff has suggested. It's doable. We have met with staff. We've met with our own professionals. There is expertise in Arbor Engineering and with other consultants that they work with that have looked at this. It can be done. Why can't it be done? And we are totally agreeable. Not to work with the City arborist with the magnolia tree would be stupid. And it's a matter of meeting on-site and coming back to this tree, looking at that tree, talking through and developing a plan for stormwater. And that has been done on one plan that was shown where we intend -- young folks today call them French drains. Those of us who are older call them sheet drains -- but ways to stop the flow of water, ways to get water where you want it to go without digging ditches and putting pipes in and tearing trees down and whatever you need to do. It's delicate. It's finesse. Similar procedures have been used in Greenville and, in fact, close to this site. Water has been a problem in

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it that way. McDaniel has been a desired place to be for a long, long time. I came to Greenville in 1973. It was a preferred place to be if you could get there. There have been many times on this street that pieces of property were split off and new houses were done. Some of those houses are built on lots that are 58 feet wide, 56 feet wide, but there never has been, what I would call, a really critical problem in the past because they usually were done one at a time. But the point is, with the lot size that is already there, you can do houses in numerous ways. There is no garage in the front. The drive goes past the house. It accommodates the guests that are coming in a different manner.

Next slide, please. And it's not just one place on McDaniel, it's multiple. There's another one, and here's another one. As we're people not really being told what they could or could not do, followed what my old professor at Clemson used to say, the mores of the society. Why in the world would I want to come into a neighborhood like this and do something weird? I want to be a part of the neighborhood. And as these houses and lots were cut off up and down the street, they all followed those guidelines. We intend to as well. Next slide, please.

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Greenville since Day One, and we need to be at the front of that to make it happen.

The tree has been one of the biggest issues all the way through. Conservation easements in my opinion is the better way of assuring protection. You're going to make sure it has a great chance to be there as long as you may think. And this particular tree, the way, I think, it has continued to propagate itself, it will probably outlive all of us, even the youngest person in this room. And we will work with the City arborist to make sure that's okay. And we really want to be delicate with what we do and working around that tree and how it's going to be handled, but it will be protected.

Every house -- and staff pointed this out to you. Every house that's proposed to be built on any of these lots will have to go to the City. They're going to have to have a site plan. And even today if you have an existing house and you start to make modifications, you get to come back down to the City and you have to address trees. What are you doing? Are there trees that you can keep? And if you are going to take some trees out, what do you do to ensure that we have trees in the future? You've seen that on Main Street. We had some species of trees that are

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1 old, tired. It just wasn't the place to do -- they've
2 been replaced. And this guarantees that you've got a
3 way to move forward to make sure you have tree
4 canopies in the future.
5 We look forward to working with the staff and we
6 look forward to your approval. And really think that
7 we have a project that when it's all said and done,
8 you're going to like, the neighbors are going to like,
9 and the trees are going to like. Thank you for your
10 time.
11 CHAIRPERSON TANKERSLEY:
12 Any questions for the applicant?
13 COMMISSIONER ELDRIDGE:
14 I just wanted to maybe explain the stormwater
15 system a little better, because it's a little
16 different than most from what I'm gathering. So if
17 you could just talk through how the stormwater system
18 actually works on the property.
19 MR. MARTIN:
20 Okay. There is one drawing, I think, that is in
21 your file that actually has some lines on it that
22 shows that.
23 COMMISSIONER ELDRIDGE:
24 Yeah, the red line.
25 MR. MARTIN:

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1 Am I right?
2 COMMISSIONER ELDRIDGE:
3 Do y'all have that one?
4 MR. MARTIN:
5 It's got red on it.
6 COMMISSIONER TERRY:
7 I have it.
8 MR. MARTIN:
9 Well, let's work from this one.
10 COMMISSIONER ELDRIDGE:
11 Do you guys have it?
12 CHAIRPERSON TANKERSLEY:
13 Stick to the microphone for us, please.
14 MR. MARTIN:
15 Yes, sir.
16 COMMISSIONER ELDRIDGE:
17 While they're getting that set up, can I ask you
18 a different question? So you said that you are able
19 to work with all of the Planning staff's
20 recommendations; is that correct?
21 MR. MARTIN:
22 Yes, ma'am.
23 COMMISSIONER ELDRIDGE:
24 So the 20-foot minimum on the front --
25 MR. MARTIN:

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1 Yes, ma'am, we can do that.
2 COMMISSIONER ELDRIDGE:
3 -- of that Lot 4 will still allow to meet the
4 standard? Okay. I just wanted to make sure we're
5 good.
6 [OFF THE RECORD]
7 MR. MARTIN:
8 All right. Stormwater is an interesting animal
9 in itself. It's hard to follow sometimes. Even
10 engineers get in debates about it and what works and
11 what doesn't work. But, generally speaking, we have
12 water that is falling in two directions. The high
13 point is at this end, and it's going in this direction
14 [indicating]. If -- I'm going to go backwards.
15 There's an existing storm sewer in the street. That's
16 where we're going to line up. There will be a pipe at
17 that area down this property line that will be sized
18 to hold the volume of water that's going to be
19 released off this site. And if you will notice, we
20 even are given storm events that we need to address.
21 I think we can do that.
22 The area right in here [indicating] is a
23 biological swell. We're trying to create a space when
24 we get water into it, it's the final polishing or
25 treatment of the water before it gets ready to leave

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1 the site. So if anything final is going to be
2 dropped, it will be dropped there. There will be --
3 the drains that we're talking about are in here
4 [indicating]. Sometimes those are done with no pipe.
5 I prefer to have slitted pipe embedded and fine stone
6 that lets everything through. It cleans it as it goes
7 down. It lets it into the pipe, and by slightly
8 pitching the pipe you can get the water where you
9 would like for it to go. So the intent is -- of
10 course, there will be a ridge on a house. Some of
11 that water will go to the street, across the beds and
12 grass areas through there the way every house has to
13 do on McDaniel. The balance of that water would be
14 caught as it flows over land in these drains and taken
15 to the lower end of the property to be released. The
16 details of that we will work out with the engineers on
17 staff here as well as the arborist to be sure that we
18 have a system that we think is workable and will do
19 what we say it's going to do. So it will be checked
20 several times going through.
21 I will note that there is a note in the comments
22 from engineering that they agreed they think we can do
23 this. Technically, we can get there.
24 CHAIRPERSON TANKERSLEY:
25 Mr. Martin, one more question as it relates to a

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1 related question to stormwater. Are you increasing or
2 decreasing the pervious area on the site?
3 MR. MARTIN:
4 There are rules and regs already in place that we
5 will abide by. Jay, what is that? Forty percent?
6 MR. GRAHAM:
7 Forty percent, yeah, on lots within the City of
8 Greenville and the pervious area will be increased.
9 COMMISSIONER GARDNER:
10 If I could just qualify what their referencing is
11 the infill standard. And the actual number is 60
12 percent, but it's a combination of site improvements
13 and building improvements. So the 40 percent is a
14 building coverage, but another 20 percent is allowed
15 for driveway, sidewalk to the front door, swimming
16 pool, other impervious type improvements.
17 CHAIRPERSON TANKERSLEY:
18 But we don't know what the coverage on the lot is
19 now, though?
20 MR. MARTIN:
21 We know what the coverage is on the entire site,
22 but we have guidelines that we have to do, and it will
23 go on a lot-by-lot-by-lot basis. But in today's
24 world, again, there are more choices today than in the
25 history of mankind. Things that you can do to make

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1 things porous that didn't used to be porous in the
2 past and ways to handle things to really mitigate any
3 negative stormwater.
4 CHAIRPERSON TANKERSLEY:
5 Thank you. Anybody else? [No response.] Thank
6 you very much.
7 MR. MARTIN:
8 Thank you very much. I appreciate it.
9 CHAIRPERSON TANKERSLEY:
10 Do we have anyone here to speak in favor of this
11 application?
12 COMMISSIONER ELDRIDGE:
13 I'm sorry, Mr. Chairman. I have a question for
14 the applicant, and I --
15 CHAIRPERSON TANKERSLEY:
16 Diane has a question for you, Mr. Martin.
17 COMMISSIONER ELDRIDGE:
18 I'm sorry, Mr. Martin. Where are you? I'm just
19 confused. The picture that I'm looking at, and it's
20 that crescent-shaped thing that kind of looks like a
21 retention pond to me. What is it?
22 MR. MARTIN:
23 It's right here [indicating]?
24 COMMISSIONER ELDRIDGE:
25 It's kind of a semi-circle around the trees. It

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1 looks -- and it's in red on my drawing. What is that?
2 MR. MARTIN:
3 Okay. I'm going to call it a bubble line.
4 Engineers like to do this. It's just saying in this
5 area this is where we intend to work, and we are
6 outside of any of the drip line and the feeding roots
7 of the tree.
8 COMMISSIONER ELDRIDGE:
9 Is that --
10 MR. MARTIN:
11 It's just a space.
12 COMMISSIONER ELDRIDGE:
13 So it's not like a --
14 MR. MARTIN:
15 No. No.
16 CHAIRPERSON TANKERSLEY:
17 I think that's where he was talking about they
18 were going to install the slitted pipes to --
19 COMMISSIONER ELDRIDGE:
20 Right. So it'll be flat?
21 MR. MARTIN:
22 Yeah. We're just trying to indicate this is
23 where we're going to work and, Diane, with that and
24 you well know as well as anybody is the protection you
25 do to start with. How many trees has Greenville lost

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1 because everybody thought hey, I can put that little
2 orange fencing up and it's good. We're not talking
3 about doing that. And we want to make sure that we
4 got everybody in the right place and right time. But
5 that's just a space that we know we're going to be
6 working.
7 COMMISSIONER ELDRIDGE:
8 All right, thank you.
9 MR. MARTIN:
10 Thank you, ma'am.
11 CHAIRPERSON TANKERSLEY:
12 Are you good now?
13 COMMISSIONER ELDRIDGE:
14 I'm good. Thank you.
15 CHAIRPERSON TANKERSLEY:
16 Everybody else is good? [No response.] So we
17 had no one to speak in favor? [No response.] All
18 right. We're going to start with everyone speaking in
19 opposition, but I want to remind you that when we
20 start hearing repetitive items, we're going to stop
21 it, because we promise we'll listen the first time.
22 COMMISSIONER ELDRIDGE:
23 And we have read --
24 CHAIRPERSON TANKERSLEY:
25 And we read --

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Page 33 1 COMMISSIONER ELDRIDGE: 2 We've read your comments. 3 CHAIRPERSON TANKERSLEY: 4 We've read all of your comments. Your name and 5 address, sir. 6 MR. OUTTEN: 7 Good afternoon. My name is Sam Outten, O-u-t-t- 8 e-n, and my wife, Jenny, and I live at 809 McDaniel 9 Avenue. The subdivision proposed by Cothran 10 Properties would put six homes on a lot where one 11 house is currently located. It is undeniable that 12 this would result in a drastic change to our beautiful 13 and historic neighborhood. Approval of this proposal 14 would change the character of our neighborhood 15 forever. So what is the reason you are being asked to 16 approve this proposal? The answer is that Cothran 17 Properties wants to maximize profit without concern 18 for the long-term effect it has on the neighborhood. 19 At a meeting with some of the neighborhood, some 20 of the neighbors on December 21, 2018, Mr. Cothran did 21 not try to hide this. He said to us, We are real 22 estate developers; we buy property to make money; that 23 is what we do. The neighbors understand and recognize 24 that Mr. Cothran has the right to develop this 25 property. However, the right to develop this property	Page 35 1 proposal and agree with my comments, please raise your 2 hand. Thank you. [Silent audience response.] 3 CHAIRPERSON TANKERSLEY: 4 Name and address, please, sir. 5 MR. SOWINSKI: 6 Yes, good afternoon. My name is Bob Sowinski, 7 and my wife, Vickie, and I live at 640 McDaniel 8 Avenue. 9 MR. PAIT: 10 Just spell your last name, sir. I'm sorry. 11 MR. SOWINSKI: 12 Sowinski, S-o-w-i-n-s-k-i. I want to address a 13 couple of things here. As you all know and we all 14 know, the City has just installed on McDaniel Avenue 15 to a certain extent to our detriment as existing 16 owners of property on McDaniel Avenue these, whatever 17 you want to call them -- 18 UNIDENTIFIED MALE VOICE: 19 Death bunkers. 20 MR. SOWINSKI: 21 Pardon me? 22 UNIDENTIFIED MALE VOICE: 23 Death bunkers. 24 MR. SOWINSKI: 25 Death bunkers, yes. And living at 640 McDaniel
Page 34 1 has limits and constraints. Let's look at 19-6.9.1 of 2 the City of Greenville Ordinances. It states, 3 "General Purpose and Intent, This section is intended 4 to achieve neighborhood compatibility, maintain the 5 harmony and character of established single-family 6 residential areas and guide residential infill 7 development to occur in an orderly and desirable 8 manner." There can be no doubt that this proposal 9 would profoundly alter the harmony and character of 10 our neighborhood. 11 Mr. Cothran has been asked many times to reduce 12 the number of lots to three or four. He has 13 steadfastly refused. Mr. Cothran has refused to 14 balance his rights to develop the property with the 15 concerns of the neighbors and the effect of this 16 proposal on this neighborhood. 17 The Planning Commission has a choice to make and 18 voting on this proposal by Mr. Cothran. First, you 19 could deny the proposal for six lots and preserve our 20 beautiful and historic neighborhood consistent with 21 what is required by 19-6.9.1, or you can approve the 22 proposal, which is characterized by maximizing profit 23 and refusing to compromise. And as a result, 24 dramatically transform the character and harmony of 25 this neighborhood forever. If you are here on this	Page 36 1 Avenue -- and just to give you some reference from 2 that, if you face our house, to the left is Skip and 3 Bobbie Francis. To our right is Belton and Kim 4 O'Neal. Right across the street from us is Jacob Mann 5 and his wife. And then Bobby Austell. But I have 6 seen the traffic already at about five o'clock, 4:30 7 in the afternoon backed up way beyond our house, 8 sometimes as far back as Crescent from Augusta Road, 9 and you see the cars just coming down McDaniel Avenue 10 like crazy. 11 I think the last thing in the world McDaniel 12 Avenue needs to do is tear down one home and seek a 13 way to construct six homes on that property. It makes 14 no sense whatsoever. Also, when you -- and I know 15 you've been looking at this. Also, when you are 16 thinking that you are going to build six homes on that 17 small piece of property -- and it's been touched on 18 here -- you're going to have sidewalks, you're going 19 to have driveways, you're going to have roofs that are 20 totally impermeable. And that water is going to run 21 down either Jones or McDaniel Avenue. And here's the 22 problem. Already when we have heavy rains in front of 23 my home, 640 McDaniel Avenue, the water is rushing -- 24 because there is a sanitary outlet right in front of 25 my home, but still the rainwater is rushing over the

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Page 37 1 curb into my yard. And now you put six roofs and 2 driveways and sidewalks on that piece of property. We 3 don't need that. There is a reasonableness here. 4 There is a reasonableness, but it's not six new homes. 5 CHAIRPERSON TANKERSLEY: 6 Thank you very much, sir. 7 MR. SOWINSKI: 8 Thank you. 9 CHAIRPERSON TANKERSLEY: 10 Name and address, please. 11 MR. SNIDER: 12 Tom Snider, S-n-i-d-e-r, 7 Camille Avenue. And 13 I oppose the application of the subdivision. The 14 ordinances, as we've heard before, the infill 15 ordinance says that the site's meeting the engineering 16 requirements and lot width requirements, the basic 17 requirements, that we are -- the regulation process is 18 to achieve neighborhood compatibility and maintain the 19 harmony and character of the established, single- 20 family, residential areas. And this concept is 21 important to the residents of the neighborhood and 22 it's important to the Planning Commission. A lot of 23 the elements we're discussing today have qualitative 24 aspects, but I'd like to discuss an element that is 25 quantitative and pretty straight forward.	Page 39 1 congestion, and the harmony of the street is 2 maintained. Nowhere on McDaniel are there three 3 adjoining piano key lots like this. Now on Jones 4 Avenue, on that section between Augusta and Camille, 5 there are seven residential lots not counting the lot 6 being subdivided. They average 71 feet in width and 7 range from 70 to 72 feet so they're very consistent. 8 Jones is a very consistent character. 9 To divide the proposed 137 feet into any more 10 than two lots at 68.5 feet each would change the 11 character of the street. It should not be allowed. 12 The developer wants to put three lots in that space, 13 60 feet, 60 feet, and 17 feet. This would be 14 inconsistent, congested and destroy the harmony of the 15 block. So we ask you to uphold the infill ordinance 16 and maintain the character by limiting the subdivision 17 to no more than two lots on McDaniel and no more than 18 two lots on Jones. And I'd like to see a show of 19 hands of people who agree with that comment. [Silent 20 audience response.] 21 CHAIRPERSON TANKERSLEY: 22 Name and address, please. 23 MR. FITZGERALD: 24 Albert Fitzgerald, 516 Cleveland Street. The 25 January 9 meeting that we had with Jane Martin
Page 38 1 It's lot width. Of course, lot width defines a 2 character of a street. If you have narrower lots, you 3 have a different look than if you have wide lots. 4 McDaniel is well known as a wide lot, beautiful 5 street. If you subdivide one lot into several narrow 6 lots, you create an incompatibility that destroys the 7 harmony and character of the street. This application 8 does this. It creates narrower lots that are found 9 elsewhere. 10 McDaniel Avenue between Augusta and Camille 11 contains 15 residential lots, not counting the lot 12 being subdivided. Those 15 lots have an average width 13 of 95 feet. The proposed subdivision has a 195 feet 14 of McDaniel frontage left after removing the magnolia 15 space. To divide those 195 feet into any more than 16 two lots at 97.5 feet each would change the character 17 of the street. So it should not be allowed under the 18 infill. 19 The developer wants to put three lots in that 20 space, 60 feet wide, 60 feet wide, and 75 feet wide. 21 This would look like a set of piano keys against the 22 rest of McDaniel. If you look at the entire length of 23 McDaniel from Augusta Street to East McBee, there are 24 occasionally lots as small as 60 feet. But they are 25 always bordered by larger lots, so it isn't the visual	Page 40 1 representing the developer, there were 45 Alta Vista 2 residents in attendance, and we took a poll then to 3 ask how many would approve the proposed six-lot 4 subdivision, and there were none that voted in favor. 5 All voted in opposition. 6 The high number of proposed lots also dooms all 7 of the canopy trees that are located on the property. 8 We asked the developer at the 9 January meeting for a 9 tree survey, and I have not seen any evidence that 10 that survey has been produced. We also asked that 11 those canopy trees be provided some extra protection; 12 there's been no evidence any extra protection has been 13 provided to any of the canopy trees there. Each 14 canopy tree absorbs 48 pounds of carbon annually and 15 an untold amount of carbon monoxide. And with the 16 traffic patterns we have on Augusta Road that's not 17 very far from this property and on Jones and McDaniel 18 Avenue, we have a tremendous amount of emission coming 19 from the vehicles that travel on all of those streets. 20 I'm also concerned about the proposed protection 21 of the southern magnolia tree. My concern is that the 22 proposed water drainage that J.D. did such a great job 23 with describing is really going to cause a problem for 24 the root system of the surviving roots after all of 25 the construction takes place. And southern magnolia

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1 trees are very susceptible to root rot. So if you
2 decide to use that as a water retention in the
3 drainage area, you have to be extra careful not to
4 cause root rot for that southern magnolia. I asked
5 the developers if they would provide us evidence of
6 where this proposed plan of reserving this magnolia
7 tree had been done somewhere else in Upstate, South
8 Carolina. That has not been provided, and I would
9 urge the Planning Commission to ask the planning staff
10 to have the developer identify a location where a
11 southern magnolia of approximately 75 years of age has
12 been treated in similar fashion so that we can be
13 assured that we're going to have a surviving tree.

14 I'm also concerned about the impact of losing all
15 the canopy trees to air quality standards in
16 Greenville. Right now Greenville has an air quality
17 rating by the EPA of "B," as in Bravo, not an "A" as
18 our surrounding counties. And that's with an air
19 quality monitor located down at Hillcrest Middle
20 School, not anywhere in the City of Greenville. You
21 can imagine what impact that may have if you're going
22 to take away all of the canopy trees on this property
23 from the air quality standards of McDaniel Avenue and
24 Jones Avenue and even the surrounding and attached
25 Augusta Road.

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1 Lastly, I want to tell you that one of my
2 grandsons became an Eagle Scout last summer. When he
3 was a Cub Scout, I was describing to him Greenville's
4 water shed and the impact it has on the quality of our
5 water here. And he looked at me and he said, "well,
6 about an air shed?" And I looked at him for about 30
7 seconds and had to pause and say, "well, our big trees
8 provide us with the air shed, because they absorb so
9 much carbon monoxide all the time."

10 CHAIRPERSON TANKERSLEY:

11 Thank you, sir.

12 MR. FITZGERALD:

13 Thank you, too.

14 CHAIRPERSON TANKERSLEY:

15 Name and address, please.

16 MR. WARREN:

17 Charles Warren, 802 McDaniel Avenue. For the
18 record, I oppose this proposal, and I agree with all
19 the issues that were raised here today as it pertains
20 to this development, but I want to speak a little bit
21 more on the topic of the stormwater basin or pond as
22 it was described by the land planner when we had a
23 meeting with them on December 21st.

24 The first issue really just seems kind of
25 intuitive that we would take a magnolia tree, put it

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1 in a conservation easement, and then build a
2 stormwater retention pond or whatever you want to call
3 it around, basically, what looks like 180-degrees of
4 the tree. Not only as was said just now does it
5 jeopardize that tree, but there's a tree on my
6 property, probably the largest canopy oak tree, that
7 you would have to fit the system in between the roots
8 that definitely overlap between the two trees. So,
9 you know, just a factor that I think you've got to
10 look at, and I just think it -- it just seems
11 counterintuitive to me.

12 The second issue, it's just a visual thing. You
13 know, there's really nowhere in our neighborhood where
14 there's a landmark tree like this, much less one that
15 we're going to put a stormwater drain around. There's
16 no other example of a single-family home in our
17 neighborhood that I can think of that has a stormwater
18 retention pond or feature like that.

19 Finally, you know, I think one of the things that
20 we can all agree on in the neighborhood is that we've
21 got a bad mosquito problem. I think we all probably
22 spray for mosquitoes. My outdoor living area, we
23 spend a lot of time there, my family and I, and we're
24 from here to that outlet, 15 feet from where this
25 basin would be. So, you know, two acres of water

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1 draining through that area standing for any time is
2 definitely a safety concern to me and my family.

3 You know, with some level of respect that I've
4 got to give, to be really honest with you, what we've
5 seen throughout the past year with this project is
6 just a case of arrogance and greed quite honestly.
7 The stormwater plan is just another example of that.
8 This can't be tolerated. It really can't. There's no
9 other example of this that these guys can lean to to
10 say this is what it looks like and this is how it
11 works.

12 Getting a sizeable tax write-off for the
13 conservation easement while compromising the magnolia
14 tree and the surround lot with a stormwater pond is
15 unacceptable. No developer that truly cares about our
16 neighborhood or any of our downtown neighborhoods
17 would ever even entertain such an idea to be really
18 honest. I have to think that a maximum of four homes
19 would solve a lot of those problems from a runoff
20 standpoint and from just a rooftop standpoint. I
21 think four lots is something that would be a little
22 bit more palatable, but, you know, that's something
23 that would have to be proven by a stormwater plan.
24 That if we could eliminate that three or four houses,
25 then that just supports that even more.

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1 I appreciate everybody's efforts throughout this
2 process. I really do. And I'm confident that what
3 we'll come up with will be something very positive and
4 it will prove that 808 McDaniel Avenue will be a great
5 gateway to our awesome neighborhood. And I appreciate
6 y'all's time. Thank you. Everybody that agrees with
7 my statements, please raise your hand. [Silent
8 audience response.] Thank you.

9 CHAIRPERSON TANKERSLEY:

10 Name and address, please.

11 MR. EINSTEIN:

12 Daniel Einstein, E-i-n-s-t-e-i-n.

13 CHAIRPERSON TANKERSLEY:

14 If we're going to talk about traffic, we've heard
15 about traffic.

16 MR. EINSTEIN:

17 223 Camille Avenue.

18 CHAIRPERSON TANKERSLEY:

19 Okay.

20 MR. EINSTEIN:

21 I oppose the application for the subdivision as
22 proposed. The proximity of the subject property to
23 the Augusta Street intersection and the double-
24 stacking of the lanes near the intersection make it
25 dangerous for the addition of more curb cuts to

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1 At the busiest traffic period, parties wishing to
2 make a left turn from the subject property onto
3 McDaniel will be forced to cross two lanes of traffic
4 and then will be almost blinded to traffic coming at
5 them from Augusta. Drivers on McDaniel wishing to
6 turn left into the subject property will have to turn
7 across two lanes of traffic most of the time. As they
8 wait for a clear view to make the left turn, it's
9 likely that traffic on McDaniel will back up towards
10 the Augusta intersection. Both of these conditions
11 bring more dangerous conditions to all who travel
12 through the area, vehicles, bicycles and pedestrians.
13 When turning in from subject property, the stacking of
14 vehicles will obscure a clear view of pedestrians and
15 runners approaching on the sidewalks. Left turns
16 across multiple lanes of traffic are dangerous.

17 How will the proposed multiple residents of the
18 subdivision turn in and out of the subject property
19 without creating a more hazardous roadway for
20 everyone? And when the residents of the subject
21 property have guests at their home and their vehicles
22 are parked along McDaniel Avenue where you see double-
23 stacked lanes of vehicles in the photo, what will the
24 impact be?

25 I don't oppose development of the subject

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1 service the proposed subdivision. The traffic light
2 at McDaniel and Augusta is busy. Traffic on McDaniel
3 stacks up deep into the subject property. As you can
4 see from this photo, cars are stacked up all the way
5 to the farthest end of the subject property as noted
6 by the location of the magnolia tree.

7 CHAIRPERSON TANKERSLEY:

8 Thank you, Mr. Einstein. We've heard about
9 traffic. I believe everybody here is agreed that
10 we've heard about traffic.

11 MR. EINSTEIN:

12 Mr. Chairman, I've got -- I've got comments that
13 don't just pertain to traffic. It pertains to safety.

14 CHAIRPERSON TANKERSLEY:

15 Continue.

16 MR. EINSTEIN:

17 Sue, would you bring the photo back, please.
18 While the striping on McDaniel does not divide the
19 road into two lanes until near the very end of the
20 subject property closest to Augusta, cars are still
21 double-stacked about 10 deep. If vehicles approaching
22 this intersection from McDaniel did not divide into
23 two lanes before the road actually divides, traffic
24 would be backed up well beyond the subject property
25 most of the time, not just during peak traffic.

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1 property. But the property's proximity to an existing
2 busy and congested intersection brings in a unique
3 factor that any development plan not be additive to
4 the congestion and not create less safe environment
5 for all who live and pass through the neighborhood.

6 The City of Greenville and the Planning
7 Commission have a duty not to permit or promote
8 development that diminishes safety within our
9 neighborhood. I understand that no traffic study was
10 required for this proposed development and that the
11 City traffic engineer checked the box of approval
12 without comment. Please consider the safety of our
13 families and community and the unique location of the
14 subject property as you deliberate on this matter. If
15 you're inclined to support division of the property,
16 I ask you consider a maximum of two lots on the
17 McDaniel side and two lots on the Jones Avenue side
18 because of the close proximity to the intersections
19 with Augusta. May I see a show of hands of those who
20 agree with these comments? [Silent audience
21 response.] Thank you.

22 CHAIRPERSON TANKERSLEY:

23 Name and address, please.

24 MS. LIND:

25 My name is Susan Lind, and I live at 417 Jones

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1 Avenue. I've lived on Jones Avenue since 2005, and as
2 a homeowner who lives right next to the property in
3 question, I have three concerns that I would like to
4 express to you regarding the proposed 808 McDaniel
5 subdivision.

6 The first involves flow of stormwater onto our
7 property. There is presently a French drain alongside
8 the existing driveway which we believe will not
9 survive the site prep and construction. The
10 stormwater plan has no provision for replacing this.
11 The developer initially suggested putting a gravel
12 channel along the property line to direct water back
13 to the drainage field proposed around the magnolia.
14 It was removed to avoid damaging the roots of the very
15 large oaks and elms along the property line. As such
16 we risk stormwater flowing from the adjacent lot onto
17 our property. When we engaged Mr. Martin at the
18 neighborhood meeting on this, he stated that no water
19 would flow onto our property without providing any
20 rationale or justification. If this were the case,
21 why did he originally have provisions for the gravel
22 channel along the property line? We'd like to see the
23 developer place a berm on their side of the property
24 line and assurance that it would not be removed during
25 subsequent dwelling construction.

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1 Secondly, currently, there are no stormwater
2 drains on Jones Avenue between Augusta and Camille on
3 either side of the street. Water has to flow around
4 the corner at Camille and almost all the way to
5 McDaniel before there's a drain. Can't we impose on
6 the developer responsibility for putting a stormwater
7 drain on the first block of Jones since he is
8 proposing to increase the stormwater emanating from
9 this property?

10 And, lastly, as noted earlier, there are very
11 large elms and oaks along our property line which
12 we've invested care, feeding and preservation of.
13 We've confirmed with our arborist, Scott Carlson with
14 Schneider Tree Service, that these most certainly will
15 have their root systems disturbed given the
16 construction proximity which would follow approval of
17 this proposed subdivision. If those trees die and
18 have to be taken down, say, three years down the road,
19 it will cost thousands of dollars for each tree to be
20 removed. Why should we bear this burden? The
21 developer will have made his money and will be long
22 gone at that point. Can he be required to escrow
23 funds for a time, say, five years to cover this
24 expense in the event that the trees die? Please do
25 not approve the subdivision plan as presently outlined

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1 for the reasons I've stated. Thank you.

2 CHAIRPERSON TANKERSLEY:

3 Name and address, please.

4 MR. LIND:

5 My name is John Lind, and I reside at 417 Jones
6 Avenue. I oppose the 808 McDaniel subdivision
7 proposal in its present form. As neighbors, we would
8 like to respectfully encourage and remind the
9 Commissioners of their responsibility to review
10 proposals, not just by simply checking the boxes to
11 assure ordinance and zoning requirement compliance and
12 that the City staff have done their job. We believe
13 that you also have an added, perhaps unique,
14 responsibility to weigh the concerns of neighbors and
15 other considerations such as the proposal's
16 compatibility with and impact on the overall
17 neighborhood.

18 Let us remind you that we live here, and we'll
19 have to live with whatever you decide. The developer
20 is here to make a quick buck and move on. His
21 motivation is purely to realize a gain from his
22 investment. The neighbors on the other hand invested
23 in the community for its character, the fact that the
24 neighborhood was already established, that it had safe
25 and quiet streets with beautifully landscaped homes on

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1 spacious lots. The Hatch Roberts' property has been
2 here for over a hundred years. It's yard and tree
3 canopy are what people see when they enter Alta Vista.

4 Let's do the right thing and preserve at least
5 some of its character. Make no mistake, what we're
6 talking about with this proposal is wiping out this
7 property and all of its numerous old trees, many of
8 which, I believe, would meet the definition of a
9 heritage tree, including the ones on the property line
10 my wife was just talking about. Let's not simply let
11 the developer make a tidy profit. We can see
12 subdividing the property, but not into cookie-cutter
13 lots. We can see maybe two, three or even four, but
14 not six properties.

15 Please, we implore you to consider the long-term
16 well-being and preservation of our neighborhood. Our
17 older, in-town neighborhoods are a big part of what
18 makes Greenville great. Please recognize your broader
19 responsibility to consider neighborhood concerns and
20 the overall impact on our community. Please do not
21 approve this subdivision as presently proposed. If
22 you do not mind, would those of you in attendance who
23 concur with my comments, please raise your hands?
24 [Silent audience response.] Thank you very much.

25 CHAIRPERSON TANKERSLEY:

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Page 53 1 Thank you. 2 MS. McDOWELL: 3 Good afternoon. I'm Connie McDowell, M-C-D-O-W- 4 e-l-l. I live at 7 Camille. The bottom line, 5 Planning Commission, is the McDaniel Avenue identity 6 needs to be protected. McDaniel Avenue has its own 7 identity like the Battery in Charleston has an 8 identity, like the Grand Strand in Myrtle Beach has an 9 identity, like the West End has an identity. McDaniel 10 Avenue is an identity for the neighborhood and for 11 Greenville. The iconic streets' development dates 12 back to 1920 and has become known across the region 13 and the State for it's beautiful homes, large lots and 14 magnificent trees. McDaniel Avenue is a gateway to 15 the Alta Vista neighborhood running from Augusta 16 Street to Broad Street. Alta Vista meaning high view 17 was a name given to the neighborhood after a newspaper 18 contest decades ago. McDaniel Avenue is the main 19 artery through the Alta Vista neighborhood handling 20 over 14,000 cars a day on that one avenue. It has 21 been the called the beautiful location in the heart of 22 the city on the highest sloping knoll overlooking the 23 business district and with all the allurements of the 24 country. 25 Change is inevitable, and we all know and accept	Page 55 1 City of Greenville's website. You talk about Alta 2 Vista. You talk about the beautiful architecture. My 3 wife and I were fortunate enough to buy the new 4 Norwood home about seven years ago. There is not a 5 week that goes by where we don't have tourists come 6 through our neighborhood taking pictures of the 7 beautiful aspects of Alta Vista. Tourist buses once 8 a week comes by on a Saturday. 9 So when we were getting together at these 10 different meetings and talking about the historical 11 aspect of Alta Vista, when you ask this person, why 12 are people so interested in Alta Vista? Because the 13 Planning Commission has made the right decisions 14 throughout the years to make sure that this particular 15 neighborhood remains and stays a jewel of Greenville. 16 Extremely important. 17 Like the person before me, where does it stop? 18 There are many homes, and then quite frankly, the lot 19 sizes. If we were to look at the lot sizes throughout 20 Alta Vista, what they're proposing here, these are 21 minimal lot sizes. It completely changes the view of 22 McDaniel and Alta Vista. So I certainly hope the 23 Planning Commission takes that into account when 24 you're considering this proposal. Thank you. 25 CHAIRPERSON TANKERSLEY:
Page 54 1 that, but historic streets and historic neighborhoods 2 must be protected. Your duty as a Planning Commission 3 is to protect our neighborhoods. If the current 4 proposal is approved, precedence will be set. In two 5 years or ten years, any developer can buy a house on 6 a large lot on McDaniel Avenue and use this project as 7 justification to divide. Once these large lots on 8 this historic street are subdivided into multiple 9 lots, the grandeur of the street and the distinction 10 it brings to the City of Greenville and its 11 association to the splendor of the city are gone 12 forever. You do not have to approve this project just 13 because the boxes are checked. The right thing to do 14 is to protect the identity of McDaniel Avenue. Thank 15 you. 16 CHAIRPERSON TANKERSLEY: 17 Name and address, please. 18 MR. MILLS: 19 John Mills, 411 Belmont Avenue. Many of my 20 points have already been addressed this evening, so I 21 will make this short for the benefit of the 22 Commission. The harmony of the neighborhood, someone 23 did bring up that one point before. And the Alta 24 Vista neighborhood is a historic and very important 25 part of Greenville. All you have to do is look on the	Page 56 1 Thank you. Name and address, please. 2 MS. WARREN: 3 Kelly Warren, 802 McDaniel. I am opposed to this 4 proposal. I want to recognize that the unknowns of 5 ownership for the formation of an HOA provide great 6 concern for the maintenance and care of the stormwater 7 pond. No one can guarantee the HOA will prevent two 8 acres of runoff from spilling into my yard and home, 9 because until that HOA is formed, who is in charge of 10 the maintenance of this stormwater facility? It gets 11 clogged up. We have the rains that we've had in the 12 past month. And all of that water is in my yard and 13 then all down McDaniel and Jones. This along with the 14 other voiced concerns are very important to me and my 15 family. Thank you. 16 CHAIRPERSON TANKERSLEY: 17 Anyone else? [No response.] would the applicant 18 like his three minutes for rebuttal? 19 MR. MARTIN: 20 Would you please repeat that? I'm sorry. 21 CHAIRPERSON TANKERSLEY: 22 You have an opportunity for three minutes of 23 rebuttal if you'd like. 24 MR. MARTIN: 25 Okay. I guess the first one is as I stated

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Page 57 1 before, if you've got the wow, why in the world would 2 we try to do something to take it away? The second 3 thing, to work closely with the City, you're going to 4 accomplish the goals the people have discussed here 5 today. It's doable. It's the 21st century. And the 6 houses that will end up here will be comparable to the 7 houses that are already on the street. And there's 8 going to be every effort to make sure this is a 9 quality place. It's not going to be different from 10 what you see in the neighborhood today. My prediction 11 is, you're going to see the same thing that's happened 12 as the houses that have been added onto Augusta over 13 the last 25 years. There are houses that have been 14 built since then, and they were split off of lots. 15 They were just like them, just asked to be treated the 16 same way. And I think we'll end up with a project 17 that everybody's going to like. 18 And the Homeowners Association will maintain that 19 storm drain. In the beginning when that is put in, 20 whoever follows suit with the final plat in working 21 with the engineers here will have to abide by those 22 plans that are approved, and it will be his 23 responsibility to maintain until the Homeowners 24 Association takes over. It happens every day in 25 Greenville that there's an interim basis, but it can	Page 59 1 MR. MARTIN: 2 No to not going to have standing water there? 3 Your ordinance says there has to be standing water for 4 a certain amount of time to flow off and it's released 5 at the same rate. 6 COMMISSIONER ELDRIDGE: 7 So there will be -- I mean, I'm clarifying for 8 myself and for other people in the room. There will 9 be some standing water probably after a big rain 10 event? 11 MR. MARTIN: 12 In order to meet the ordinances for the City of 13 Greenville, yes, but it's up and it's down. It's not 14 hey, it's going to be there a long time -- 15 COMMISSIONER ELDRIDGE: 16 It's not going to sit there for like a long 17 while? 18 MR. MARTIN: 19 -- and we're going to have mosquitoes, no. 20 COMMISSIONER ELDRIDGE: 21 Somebody else asked the question about putting a 22 stormwater drain on Jones Avenue. Is that a 23 possibility? 24 MR. MARTIN: 25 Never even considered it, because we don't think
Page 58 1 be covered. Thank you. 2 COMMISSIONER ELDRIDGE: 3 I have a question for you. I have a couple of 4 questions for you, questions that other people brought 5 up when they were speaking, so I'd like to clarify 6 some of these things. 7 Two or three people referred to the stormwater 8 treatment as detention ponds. Yes or no? Are they 9 going to be ponds? 10 MR. MARTIN: 11 Don't tend to have any ponds, no. 12 COMMISSIONER ELDRIDGE: 13 No, there won't be ponds? 14 MR. MARTIN: 15 No. I think everybody is looking to see a hole 16 in the ground where you have to have fences around it 17 and everything. No, that's not the way we're going -- 18 COMMISSIONER ELDRIDGE: 19 I think they seem to be somewhat worried, 20 especially the people next door, about water being 21 held in place and there being a mosquito problem. 22 MR. MARTIN: 23 I don't see that. I don't see that at all. 24 COMMISSIONER ELDRIDGE: 25 But you can't just say no, there won't be any?	Page 60 1 we're going to increase the storm flow on Jones. And 2 that will be one of the goals as we go through an 3 engineering design is to make sure we stay pretty 4 doggone close to the release that is there now. 5 COMMISSIONER ELDRIDGE: 6 And then somebody mentioned the trees that are on 7 the line adjacent to this property that -- I'm not 8 sure whether they were on hers or yours, but they were 9 adjacent to this property anyway. She was concerned 10 about the health of those trees over time. 11 MR. MARTIN: 12 I don't know those particular trees personally, 13 but my opinion on how we would address that would be 14 on-site. She mentioned an arborist that I know and 15 respect, but there are ways to work around trees in 16 order to protect them, and I've worked on several 17 projects with him where we've done the same thing. It 18 could be boring. It could be horizontal boring to get 19 where you want to go. But it doesn't mean that you're 20 going to destroy a tree to do what we're talking about 21 doing. 22 COMMISSIONER ELDRIDGE: 23 So y'all would be willing to do some 24 extraordinary measures to protect the existing, large 25 shade trees that are on this property, especially

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Page 61 1 those that are close to adjoining neighbors? 2 MR. MARTIN: 3 I think we've got to be careful in that 4 situation. 5 COMMISSIONER ELDRIDGE: 6 Okay. I think you've answered my questions. 7 Thank you, Mr. Martin. 8 MR. MARTIN: 9 Thank you. 10 CHAIRPERSON TANKERSLEY: 11 Discussion. 12 COMMISSIONER SMITH: 13 Are we closing the public portion? 14 CHAIRPERSON TANKERSLEY: 15 Well, I was going to wait to see if anybody else 16 had any other questions or any -- 17 COMMISSIONER SMITH: 18 I guess I have -- may I ask -- 19 CHAIRPERSON TANKERSLEY: 20 Yeah, all right. Well, we're going to close the 21 public portion of the hearing. You've got a question 22 for staff? 23 COMMISSIONER SMITH: 24 I do, yes. 25 CHAIRPERSON TANKERSLEY:	Page 63 1 CHAIRPERSON TANKERSLEY: 2 Okay. 3 COMMISSIONER TERRY: 4 Is there an original plat plan of this particular 5 neighborhood? 6 MR. GRAHAM: 7 Staff has not researched that. When you say 8 original, are you saying 1920 or are you saying 1960? 9 COMMISSIONER TERRY: 10 Like I know there's one for the North Main Area 11 that indicates the original development, and I'm 12 curious if there's one that exists for this particular 13 neighborhood. 14 MR. GRAHAM: 15 I'm sure there is, but staff has not researched 16 that. 17 CHAIRPERSON TANKERSLEY: 18 Catherine? 19 COMMISSIONER SMITH: 20 One more question. We keep hearing this is a 21 historic neighborhood, and I appreciate that, because 22 I live in the North Main area. But is this actually 23 considered a historic neighborhood? Do we have -- we 24 have no zoning ordinance? 25 MR. GRAHAM:
Page 62 1 All right, go. 2 COMMISSIONER SMITH: 3 Thank you. Does the current tree protection 4 ordinance address adjacent properties when permits are 5 issued protecting trees from other properties? I know 6 we have to fence trees on properties that we're 7 developing. Do you understand my question? 8 MR. GRAHAM: 9 I fully understand and will say -- 10 COMMISSIONER SMITH: 11 Thank you. 12 MR. GRAHAM: 13 -- that I do not think it does address other people's 14 property. It addresses the property under 15 development, lot by lot, property by property. 16 CHAIRPERSON TANKERSLEY: 17 I was going to say in a commercial sense, we can 18 get stuff implied on us, but not in residential 19 applications. 20 COMMISSIONER SMITH: 21 Yeah, that was my concern. 22 CHAIRPERSON TANKERSLEY: 23 Anybody else have any thoughts? 24 COMMISSIONER TERRY: 25 I have a question for staff.	Page 64 1 This particular proposal is not within any 2 historic area that has been identified on our maps in 3 the city. 4 COMMISSIONER SMITH: 5 Okay. 6 COMMISSIONER PAIT: 7 I have a question regarding the ordinance and the 8 purpose of the ordinance, and this has come up in 9 years past. The statement of maintaining the 10 character of the neighborhood, that's the purpose of 11 the infill. Then the policies, the procedures and the 12 ordinance that fall underneath that, is that what 13 we're following in order to keep that purpose, or is 14 that purpose giving us latitude in making decisions? 15 MR. GRAHAM: 16 The infill ordinance does have some very specific 17 items that need to be followed. However, the infill 18 ordinance does not directly, for instance, indicate 19 that the pattern of the neighborhood per se is part of 20 it, and yet we follow that purpose. So, yes, it does 21 have purpose. And we consider not just, say, for 22 instance, the look of the homes or the size of the 23 homes, but we do take into account what has been 24 discussed in lot sizes, the frontages, for instance. 25 I think we had a drawing earlier that was up on the

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1 board when one of the members was talking, and this
2 would be a good example. Where you see the lots in
3 this area are proposed to be anywhere from 70-
4 something feet -- and, again, if you could flip back
5 to the last drawing we were just looking at. There.
6 The lot width is measured at this line right here
7 [indicating]. So this is 60, 60, 60, for instance,
8 even though it is 60 at the street here, this one has
9 17 at the street. But the ordinance requires that
10 this line be 60, because it anticipates oddities like
11 this, if that makes sense.
12 So now flipping to the other map -- there. So
13 this is the disclaimer over here [indicating] that
14 this is not an accurate survey. This is measuring off
15 of our information. So it could be off a foot or two
16 either way. But these are the actual lot widths of
17 existing lots in the same area. So here you have --
18 it ranges from 50 feet to 99 feet in this block of
19 homes. In this block of homes, it ranges from 83 to
20 90. Here you have two corner lots, because there's a
21 road here and a road here [indicating]. So here you
22 have 128, but then you have a 60-foot lot that is
23 commensurate with the lots that are being proposed
24 here and another corner lot with 137 feet.
25 So these are the actual lot widths plus or minus

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1 with that factor that exists, and this is the area
2 that we look at. We did not really consider these.
3 As you march off in this direction, these are almost
4 identical to what's being proposed plus or minus. So
5 that's the character that we address in terms of lot
6 width. I don't know if that helps answer the
7 question, but I'm kind of trying to hear your question
8 and ...
9 COMMISSIONER PAIT:
10 I guess you are -- I guess I'm explaining it for
11 me and for the people here as well.
12 MR. GRAHAM:
13 Oh, I see, yes.
14 COMMISSIONER PAIT:
15 That the purpose that's stated is defined by
16 what follows?
17 MR. GRAHAM:
18 It is in the ordinance.
19 COMMISSIONER PAIT:
20 So the way we fulfill the purpose is we follow
21 the ordinance?
22 MR. GRAHAM:
23 Correct. We -- that is correct. We always
24 follow the ordinance.
25 COMMISSIONER SMITH:

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1 with some latitude.
2 CHAIRPERSON TANKERSLEY:
3 Anybody else have any questions for staff or
4 thoughts?
5 COMMISSIONER ELDRIDGE:
6 The lot lengths is what I was going to bring up,
7 because I did a quick average before I saw this, and
8 these are a bit narrow, but they're not terribly far
9 off from the current rhythm of the neighborhood.
10 MR. GRAHAM:
11 Staff did hear the neighborhood, and so we wanted
12 to be prepared. And so we looked at all these that
13 you have here. And if you average all these together
14 in this area, again, how far do you keep going. So,
15 typically, not just in this neighborhood, but any
16 neighborhood, we try to look at the immediately
17 adjacent, not the entire if it went on for miles
18 adjacent. And I'm not trying to over-emphasize. If
19 it went on for blocks and blocks, we may not go that
20 far. So we try to look at what the impact is in the
21 immediate area. All of these average in at 77.7 feet.
22 Big, little, small, large, all that that you're
23 looking at comes down to 77.7.
24 The applicant actually, if you take just their
25 six lots, that's all they're advertised, between 70-

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1 something and 60 feet. However, they do have another
2 lot that is the preservation lot. And so when you
3 average that lot frontage of 133 feet that's not going
4 to be touched, their proposal comes in at 70.4 feet as
5 an average. That is smaller. [Indiscernible voices
6 from audience.] That comes in smaller for --
7 CHAIRPERSON TANKERSLEY:
8 Let's let the planner speak, please.
9 MR. GRAHAM:
10 That does come in smaller, because it's 70.4
11 feet, not 77.7 feet. So just for your information,
12 that's how that boiled down.
13 COMMISSIONER ELDRIDGE:
14 Thank you.
15 CHAIRPERSON TANKERSLEY:
16 Anything else?
17 COMMISSIONER SMITH:
18 I would like to make one comment to the crowd, if
19 you're okay with that.
20 CHAIRPERSON TANKERSLEY:
21 Sure.
22 COMMISSIONER SMITH:
23 I've got to say, we all sit up here and read all
24 of the comments, and we appreciate and listen to and
25 read through and thoroughly consider. So I really do

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1 resent the implication that all we're doing is looking
2 at boxes. It blows my mind, because I'm a citizen of
3 this city and I serve it as a volunteer here. So
4 please don't ever assume that all we're doing is
5 looking at a box and seeing if it's checked.
6 CHAIRPERSON TANKERSLEY:
7 Thank you, Catherine.
8 COMMISSIONER SMITH:
9 Sorry.
10 CHAIRPERSON TANKERSLEY:
11 No, I concur. Well, having heard and talked, do
12 we have a motion?
13 COMMISSIONER SMITH:
14 I'm stuck.
15 COMMISSIONER ELDRIDGE:
16 I'm, unfortunately, stuck, too.
17 CHAIRPERSON TANKERSLEY:
18 I can't make it, guys.
19 COMMISSIONER SMITH:
20 I know.
21 COMMISSIONER ELDRIDGE:
22 What if nobody made one?
23 CHAIRPERSON TANKERSLEY:
24 Can't do that, Diane; then everybody's going
25 to have to go to the bathroom.

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1 that not the way you read it? It's a big difference.
2 COMMISSIONER ELDRIDGE:
3 I'm not getting that. How did you get that,
4 Trey? I mean, there's like 75, 60 and 60.
5 COMMISSIONER SMITH:
6 Well, if you take the average of 802 to 700, it's
7 around 80-ish lot frontage, just the McDaniel.
8 COMMISSIONER ELDRIDGE:
9 Yeah, yeah, yeah. I see what you're saying.
10 COMMISSIONER SMITH:
11 Because the other one's an anomaly. The opposite
12 side of the road is an anomaly, because you're sitting
13 on two corner lots. So you've got to take that rhythm
14 happening, I think. I mean, you've got to consider it
15 on both sides, but, I mean, you're sitting at about 80
16 feet-ish or just a hair less. So we're looking at a
17 60-foot lot frontage. I mean, I don't think you can
18 -- I understand what Jay is saying with the easement
19 lot, but you can't really take that in the rhythm of
20 the neighborhood, I don't think, as far as -- I mean,
21 it's a green space. It's not a house rhythm.
22 COMMISSIONER ELDRIDGE:
23 Yes. So if you're going to do that, you have to
24 look at Jones, too?
25 COMMISSIONER SMITH:

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1 COMMISSIONER SMITH:
2 Jonathan, you're our resident --
3 CHAIRPERSON TANKERSLEY:
4 Because we all really need to go now anyway, I'm
5 sure.
6 COMMISSIONER SMITH:
7 I'm stuck. I'm just stuck.
8 COMMISSIONER ELDRIDGE:
9 I am, too. This is terrible, because on paper it
10 meets -- it checks off all the boxes, because the lots
11 are about the same size as the rest of the lots in the
12 general vicinity. Mr. Martin has assured us that he
13 will do everything that he can to maintain the trees,
14 which is another box to check off, and a personal
15 passion of mine. I know that if I lived in this
16 neighborhood it would have hurt me to think that this
17 was going to be changed in any way. So we're just --
18 we're all just between a rock and a hard place, and if
19 I could abstain from this vote I would.
20 COMMISSIONER GARDNER:
21 I guess my comment is, if you take Meg's numbers,
22 the one set immediately surrounding this parcel, they
23 average around 80 feet. So we're looking -- if we're
24 looking at 60 feet on McDaniel, we're, roughly, 30
25 percent less on the lot width fronting McDaniel. Is

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1 Right, which is -- it's not 60 either. I mean,
2 it's --
3 MR. GARDNER:
4 Except for the first one off of Augusta.
5 COMMISSIONER SMITH:
6 I mean, I do wish that there were two lots on
7 Jones.
8 COMMISSIONER ELDRIDGE:
9 I do, too,
10 COMMISSIONER SMITH:
11 I mean, that would totally squash most of this
12 argument. If it had come back --
13 COMMISSIONER ELDRIDGE:
14 -- with five lots.
15 COMMISSIONER SMITH:
16 If it had come back with five lots plus the
17 conservation easement, we probably wouldn't be having
18 this conversation.
19 COMMISSIONER ELDRIDGE:
20 Probably.
21 MR. GARDNER:
22 But I still don't think we solved the issue with
23 the lot width on McDaniel at that point.
24 COMMISSIONER SMITH:
25 But I think -- I think it falls out. I really do

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Page 73 1 think that if they came back at five, I would feel 2 compelled to concur. 3 COMMISSIONER ELDRIDGE: 4 would DOT have to approve the new curb cuts? 5 MR. COOPER: 6 Yes. 7 COMMISSIONER GARDNER: 8 Engineer, does the DOT have to approve three new 9 curb cuts? 10 MR. COOPER: 11 Yes. 12 COMMISSIONER GARDNER: 13 And so if they don't -- 14 MR. COOPER: 15 Correct. I mean -- 16 COMMISSIONER GARDNER: 17 -- then this is all dead meat, right? 18 MR. COOPER: 19 They had [indiscernible] and then approved a 20 encroachment permit. 21 COMMISSIONER SMITH: 22 Has anybody spoken to them? 23 COMMISSIONER GARDNER: 24 Do you see any problems, Dwayne? 25 MR. COOPER:	Page 75 1 Mr. Martin, don't get up. Would you be willing 2 to reduce to five, the number of lots here from six to 3 five, which would be two on Jones Avenue? 4 MR. MARTIN: 5 [Indiscernible] solutions. 6 COMMISSIONER ELDRIDGE: 7 I'm sorry? 8 MR. MARTIN: 9 We still have to go through engineering to make 10 sure that we [indiscernible]. 11 COMMISSIONER ELDRIDGE: 12 But that would be possible, going from six to 13 five and have two on Jones? 14 MR. MARTIN: 15 If you recall, the very first one that came in 16 had two lots. 17 COMMISSIONER SMITH: 18 That was the good part of the plan, just to keep 19 it lively. 20 MR. MARTIN: 21 We're down from [indiscernible]. 22 COMMISSIONER ELDRIDGE: 23 I understand. All right. 24 COMMISSIONER SMITH: 25 There's been a motion.
Page 74 1 I don't see any problems. Typically, they'll 2 give a curb cut for the driveways. They also have -- 3 COMMISSIONER ELDRIDGE: 4 I mean, there's only two. 5 MR. COOPER: 6 They also have to comply with stormwater 7 requirements at the DOT as far as water going to the 8 road right-of-way. 9 COMMISSIONER GARDNER: 10 Okay, thank you. 11 COMMISSIONER ELDRIDGE: 12 Mr. Chairman, there's only two on McDaniel. 13 CHAIRPERSON TANKERSLEY: 14 Two on McDaniel and one on Jones. 15 COMMISSIONER PAIT: 16 Can I make a motion that we bring to a vote 17 Docket No. SD 18-027 where staff is recommending 18 approval with comments and conditions with the motion 19 to approve with comments and conditions? 20 COMMISSIONER ELDRIDGE: 21 Before we do, can I ask Mr. Martin one more 22 question? 23 CHAIRPERSON TANKERSLEY: 24 Certainly. 25 COMMISSIONER ELDRIDGE:	Page 76 1 CHAIRPERSON TANKERSLEY: 2 There's been a motion from Jonathan to approve 3 with staff comments and conditions. Do I have a 4 second? 5 COMMISSIONER KELLER: 6 Second. 7 CHAIRPERSON TANKERSLEY: 8 We have a motion to second. Let's do it by roll 9 call. 10 MR. FRIKEN: 11 Meg Terry? 12 COMMISSIONER TERRY: 13 No. 14 MR. FRIKEN: 15 Trey Gardner? 16 COMMISSIONER GARDNER: 17 No. 18 MR. FRIKEN: 19 Catherine Smith? 20 COMMISSIONER SMITH: 21 No. 22 MR. FRIKEN: 23 David Keller? 24 COMMISSIONER KELLER: 25 No.

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1 MR. FRIXEN:
2 Jonathan Pait?
3 COMMISSIONER PAIT:
4 No.
5 MR. FRIXEN:
6 Diane Eldridge?
7 COMMISSIONER ELDRIDGE:
8 No.
9 MR. FRIXEN:
10 Jason Tankersley?
11 CHAIRPERSON TANKERSLEY:
12 No.
13 [APPLAUSE FROM AUDIENCE]
14 CHAIRPERSON TANKERSLEY:
15 Unless you want to be here for the rest of this
16 great stuff ...
17
18 END OF RECORDING.
19
20
21
22
23
24
25

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, Jane S. Wehunt, notary public in and for the State of South Carolina, acting as transcriptionist, do hereby certify that the portion of the audio recording provided of the January 17, 2019 meeting of the Greenville City Planning Commission was reduced to writing.

I further certify that I am neither counsel nor attorney to either of the parties in said litigation nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of March, 2019.

Jane S. Wehunt
Notary Public for South Carolina
My Commission Expires 05/24/2026

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Wehunt Court Reporting, LLC
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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
) C.A. NO. 2020-CP-23-05094

MCDANIEL JONES, LLC,)
)
 PLAINTIFF,)
)
 VS.)
)
CITY OF GREENVILLE PLANNING) DEPOSITION
COMMISSION,)
)
 DEFENDANT.) OF
) MARK ALBERT COTHAN

THE DEPOSITION OF MARK ALBERT COTHAN, TAKEN BEFORE
LISA P. KOPCHO, PROFESSIONAL VERBATIM REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
THE HOUR OF 10:09 A.M., TUESDAY, THE 7TH DAY OF MARCH, 2023,
AT THE LAW OFFICES OF BANNISTER, WYATT AND STALVEY, LLC, 24
CLEVELAND STREET, SUITE 100, GREENVILLE, SOUTH CAROLINA.

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1 already a big deal, in the eyes of some of these
2 neighbors.

3 A I understand.

4 Q Okay.

5 A I stand by my previous statements.

6 Q Oh, I understand. Oh, believe me, I'm not trying to
7 change your mind during this deposition.

8 A Including the Get Smart reference. Eight, you know,
9 then it was seven, then it was six, then it was five.
10 You know, they actually asked me in the middle of the
11 meeting at the planning commission if I would consider
12 five lots instead of six, and they might vote a
13 different way, which, you know, you're not supposed to
14 do. You're not supposed to negotiate the zoning in the
15 middle of the planning commission meeting.

16 Q I see. But they --

17 A In an effort to be helpful, I might add. I'm not
18 saying it was malicious. I'm just saying -- but it's
19 the whole thing. It was always whatever -- since I --
20 my takeaway, it was whatever I was willing to agree to,
21 they weren't going to have any of it. I call that
22 Groucho Marx technique of negotiating, you know. I
23 would never belong to a club that would have me as a
24 member.

25 Q Off the record for a minute.

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1 there.

2 A Right.

3 Q I couldn't tell by looking at the transcript.

4 A No, I was there.

5 Q Okay.

6 A Yeah, I didn't speak.

7 Q Okay. But your team spoke and were addressing the
8 comments made by council members --

9 A Right.

10 Q -- as you've been talking to us about.

11 A Right.

12 Q So I didn't see where your voice is actually recorded
13 in the hearing. It doesn't matter --

14 A Yeah.

15 Q -- because I did see in the hearing transcript -- I
16 can't remember who the commissioner was, but they threw
17 out this idea, and I wanted to talk to you about it
18 before I knew you were actually there to make sure I
19 was understanding it correctly.

20 A Uh-huh.

21 Q But one of the commissioners, after taking in all this
22 stuff, your presentation through Mr. Martin, the
23 neighborhood comments in opposition, and generally
24 saying, hey, give us two to three lots, here comes from
25 the table, so to speak, one of the commissioners says,

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1 in essence, what about five lots.

2 A Right.

3 Q And I believe it was Mr. Martin on your behalf, and I
4 can't -- you can't tell from the transcript, so I'll
5 just -- it appears that he just said, no, we've gone as
6 far as we can go.

7 A Right.

8 Q And that was your position there; correct?

9 A Right. It's just -- first of all, again, my position
10 is there's an ordinance, and that's the law. Some
11 people don't like the law, and that doesn't make it any
12 less the law. And the planning commission, they need
13 to make decisions based on the law, the ordinance, and
14 not based on who may or may not be on the Christmas
15 card list come next December. I mean, that's what
16 they're there for. Unfortunately, in my -- you know, I
17 believe they've gotten out of the purview of managing
18 the planning staff to make sure that it's not being
19 unduly swayed to becoming the unduly swayed.

20 Q You're talking about the commission itself?

21 A Yeah, the planning commission. So they're supposed to
22 be seeing that they're not unduly swayed, which I think
23 is what this -- our proposal, our submission was unduly
24 swayed. In other words, we took all the comments, we
25 worked with the planning staff, and we said, all right,

EXHIBIT 15

Deposition of PLANNING COMMISSION MEETING

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Page 73 1 think that if they came back at five, I would feel 2 compelled to concur. 3 COMMISSIONER ELDRIDGE: 4 would DOT have to approve the new curb cuts? 5 MR. COOPER: 6 Yes. 7 COMMISSIONER GARDNER: 8 Engineer, does the DOT have to approve three new 9 curb cuts? 10 MR. COOPER: 11 Yes. 12 COMMISSIONER GARDNER: 13 And so if they don't -- 14 MR. COOPER: 15 Correct. I mean -- 16 COMMISSIONER GARDNER: 17 -- then this is all dead meat, right? 18 MR. COOPER: 19 They had [indiscernible] and then approved a 20 encroachment permit. 21 COMMISSIONER SMITH: 22 Has anybody spoken to them? 23 COMMISSIONER GARDNER: 24 Do you see any problems, Dwayne? 25 MR. COOPER:	Page 75 1 Mr. Martin, don't get up. Would you be willing 2 to reduce to five, the number of lots here from six to 3 five, which would be two on Jones Avenue? 4 MR. MARTIN: 5 [Indiscernible] solutions. 6 COMMISSIONER ELDRIDGE: 7 I'm sorry? 8 MR. MARTIN: 9 We still have to go through engineering to make 10 sure that we [indiscernible]. 11 COMMISSIONER ELDRIDGE: 12 But that would be possible, going from six to 13 five and have two on Jones? 14 MR. MARTIN: 15 If you recall, the very first one that came in 16 had two lots. 17 COMMISSIONER SMITH: 18 That was the good part of the plan, just to keep 19 it lively. 20 MR. MARTIN: 21 We're down from [indiscernible]. 22 COMMISSIONER ELDRIDGE: 23 I understand. All right. 24 COMMISSIONER SMITH: 25 There's been a motion.
Page 74 1 I don't see any problems. Typically, they'll 2 give a curb cut for the driveways. They also have -- 3 COMMISSIONER ELDRIDGE: 4 I mean, there's only two. 5 MR. COOPER: 6 They also have to comply with stormwater 7 requirements at the DOT as far as water going to the 8 road right-of-way. 9 COMMISSIONER GARDNER: 10 Okay, thank you. 11 COMMISSIONER ELDRIDGE: 12 Mr. Chairman, there's only two on McDaniel. 13 CHAIRPERSON TANKERSLEY: 14 Two on McDaniel and one on Jones. 15 COMMISSIONER PAIT: 16 Can I make a motion that we bring to a vote 17 Docket No. SD 18-027 where staff is recommending 18 approval with comments and conditions with the motion 19 to approve with comments and conditions? 20 COMMISSIONER ELDRIDGE: 21 Before we do, can I ask Mr. Martin one more 22 question? 23 CHAIRPERSON TANKERSLEY: 24 Certainly. 25 COMMISSIONER ELDRIDGE:	Page 76 1 CHAIRPERSON TANKERSLEY: 2 There's been a motion from Jonathan to approve 3 with staff comments and conditions. Do I have a 4 second? 5 COMMISSIONER KELLER: 6 Second. 7 CHAIRPERSON TANKERSLEY: 8 We have a motion to second. Let's do it by roll 9 call. 10 MR. FRIKEN: 11 Meg Terry? 12 COMMISSIONER TERRY: 13 No. 14 MR. FRIKEN: 15 Trey Gardner? 16 COMMISSIONER GARDNER: 17 No. 18 MR. FRIKEN: 19 Catherine Smith? 20 COMMISSIONER SMITH: 21 No. 22 MR. FRIKEN: 23 David Keller? 24 COMMISSIONER KELLER: 25 No.

19 (Pages 73 to 76)

Wehunt Court Reporting, LLC
 (864) 420-1763

Circuit Court Appeal 0179

Page 77

1 MR. FRIXEN:
2 Jonathan Pait?
3 COMMISSIONER PAIT:
4 No.
5 MR. FRIXEN:
6 Diane Eldridge?
7 COMMISSIONER ELDRIDGE:
8 No.
9 MR. FRIXEN:
10 Jason Tankersley?
11 CHAIRPERSON TANKERSLEY:
12 No.
13 [APPLAUSE FROM AUDIENCE]
14 CHAIRPERSON TANKERSLEY:
15 Unless you want to be here for the rest of this
16 great stuff ...
17
18 END OF RECORDING.
19
20
21
22
23
24
25

Page 78

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, Jane S. Wehunt, notary public in and for the State of South Carolina, acting as transcriptionist, do hereby certify that the portion of the audio recording provided of the January 17, 2019 meeting of the Greenville City Planning Commission was reduced to writing.

I further certify that I am neither counsel nor attorney to either of the parties in said litigation nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of March, 2019.

Jane S. Wehunt
Notary Public for South Carolina
My Commission Expires 05/24/2026

20 (Pages 77 to 78)

Wehunt Court Reporting, LLC
(864) 420-1763

Circuit Court Appeal 0180



February 13, 2019

Jay Martin
c/o Arbor Engineering
10 Williams St
GREENVILLE SC 29601

Re: Preliminary Plat
Location: 808 MC
Tax Map #: 0217

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage
\$

Total Postage and Fees
\$

Sent To
Jay Martin, c/o Arbor Engineering
10 Williams Street
Greenville, SC 29601

PS Form 3800, April 2015 PSN 7530-02-000-9037 See Reverse for Instructions

EXHIBIT 16

Planning and Zoning

Dear Ladies and Gentlemen:

At its 1/17/2019 meeting, the City Planning Commission conducted a public hearing and took action on the above-referenced application. For the reasons that follow, the Commission denied your application.

Section 19-2.3.13(A) of the Greenville City Code (the "City Code") sets forth the applicable standards of the City Code. The proposed subdivision is located within an established single-family residential area and, therefore, the Infill Standards set forth in Section 19-6.9 of the City Code apply.

The Planning Commission determined that the size and configuration of the proposed lots were not compatible with the existing development patterns along McDaniel and Jones Avenues. Along McDaniel Avenue, the three proposed building lots had an average width of 65 feet, which is approximately 14 feet or 18% less than the average width of the existing lots between the subject property and Camille Avenue. As for Jones Avenue, the three proposed building lots had an average street frontage of 45 feet, nearly 24 feet or 34% less than the average frontages of the existing lots between the subject property and Camille Avenue. It was additionally noted that the discrepancy in size became more pronounced when comparing the proposed lots to those within the block across McDaniel and Jones. Taken together, these discrepancies informed the Commission's determination that the proposed subdivision was incompatible with the existing character and development pattern of the established surrounding neighborhood. The Commission's discussion further indicated that reducing the number of residential lots could potentially address their compatibility concerns and bring the development into closer compliance with the City's Infill Standards.

An application that is the same type for all or a part of the same site shall not be considered for a period of one year after the date of disapproval, pursuant to Section 19-2.2.15 unless that time limit is waived by the Planning Commission.

Please feel free to contact our office at (864) 467-4476 if you have any questions.

Sincerely,

Michael Frixen, AICP
Development Planner

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

McDaniel Jones, LLC,

Appellant,

v.

City of Greenville Planning Commission,

Respondent,

and

Jennifer T. Outten, Susan Lind, John Lind,
Kelly Warren, Charles Warren,

Intervenors.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-23-00749

ORDER DENYING APPEAL

This matter comes before the Court for hearing of the appeal of McDaniel Jones, LLC (“Landowner”) of a decision of the City of Greenville Planning Commission (“Planning Commission”). Present before the Court were Bruce W. Bannister and Luke A. Burke on behalf of Appellant and Michael S. Pitts and Leigh Paoletti on behalf of the City of Greenville Planning Commission. Also present was Samuel W. Outten on behalf of Intervenors.

This is an appeal of the Planning Commission’s decision at a public hearing on January 17, 2019. The Planning Commission denied the application for subdivision at the public hearing where the Landowner’s principal was present. Written notice of the Planning Commission’s decision was sent to Landowner on February 8, 2019. Landowner filed its Notice of Appeal, Petition, Request for Pre-Litigation Mediation on February 13, 2019. The Planning Commission filed Appellee’s Response to Appeal on March 18, 2019. Intervenors filed a Consent Motion to Intervene on April 9, 2019. Although no order has been issued on Intervenors’ motion, the parties have treated Intervenors as a party to this appeal since the motion was filed. The parties attempted

pre-litigation mediation pursuant to S.C. Code §§ 6-29-1150 and 6-29-1155 and reached an impasse. This hearing followed.

The Court reviewed and considered the pleadings, the Certified Copy of Proceedings filed by the City of Greenville on March 18, 2019, the briefs filed by Landowner and the Planning Commission, and the arguments of counsel.

Landowner argues that the Planning Commission failed to act when its members unanimously voted to deny a motion to approve Landowner's preliminary plat. The Planning Commission argues that it did act when it denied the motion to approve Landowner's preliminary plat.

Landowner further argues that, although the Planning Commission has discretion to approve a preliminary plat that does not fully comply with the applicable zoning and ordinances through granting a variance, the Planning Commission does not have discretion to deny a preliminary plat that complies with the applicable zoning and ordinances. Further, Landowner argues that its preliminary plat complies with the applicable zoning and ordinances and that the Planning Commission admitted the preliminary plat complies with the applicable zoning and ordinances at the January 17, 2019 meeting.

The Planning Commission argues that, as an appointed commission of the City of Greenville, it has discretion to deny approval of a preliminary plat that does not comply with the purpose and intent of the City's Land Management Ordinance, City of Greenville Code of Ordinances § 19-1.3, or City of Greenville Code of Ordinances § 19-6.9.1, the latter of which is found in the City's Infill Ordinance and states:

General purpose and intent. This section is intended to achieve neighborhood compatibility, maintain the harmony and character of established single-family residential areas, and guide residential infill development to occur in an orderly and desirable manner.

Specifically, the Planning Commission submits that these two City Code sections evidence an intent that newly-created subdivision lots within established neighborhoods be compatible in size and configuration to existing lots in the immediate vicinity. The Planning Commission further submits the Landowner was well aware of this requirement prior to the public hearing and in fact advocated that the proposed subdivision lots met the aforementioned requirement.

Intervenors support the Planning Commission's position and request that they be officially added as parties to this case. Both the Planning Commission and Landowner consented to Intervenors request to be added.

The Court finds that the Planning Commission admitted at the January 17, 2019 meeting that the preliminary plat complies with the language of the applicable zoning and ordinances except the purpose and intent sections above, City of Greenville Code of Ordinances §§ 19.1.3 and 19.6.9.1. The Court finds that these purpose and intent sections allow the Planning Commission to define neighborhood compatibility to require that newly-created subdivision lots be compatible in size and configuration to existing lots in the neighborhood and the Planning Commission defined neighborhood compatibility as such in this case. Therefore, the Planning Commission did not abuse its discretion when it acted to deny Landowner's preliminary plat. Further, the Court finds that the Planning Commission did affirmatively and timely act upon this discretion when it voted to deny the motion to approve Landowner's preliminary plat at the January 17, 2019 meeting.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Jennifer T. Outten, Susan Lind, John Lind, Kelly Warren, and Charles Warren are added as parties to this case as intervenors as reflected in the caption of this Order; and

2. Appellant's appeal is DENIED and the decision of the Planning Commission is AFFIRMED.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: McDaniel Jones Llc VS City Of Greenville Planning Commission

Case Number: 2019CP2300749

Type: Order/Other

So Ordered

s/ Edward W. Miller

Electronically signed on 2020-09-01 10:06:41 page 5 of 5

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ELECTRONICALLY FILED - 2020 Sep 01 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

Circuit Court Appeal 0250

2020080878
 DEED Book: DE 2605 Page: 1512 - 1513 2 Pgs
 October 2, 2020 09:20:24 AM Cons: \$1,400,000.00
 Rec: \$15.00 Cnty Tax: \$1,540.00 State Tax: \$3,640.00
 FILED IN GREENVILLE COUNTY, SC *Timothy J. Harvey*

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that

MCDANIEL JONES, LLC

in consideration of **One Million Four Hundred Thousand and No/100 (\$1,400,000.00) Dollars**, to the Grantor in hand paid at and before the sealing of these presents by the Grantees, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **MICHAEL H. MCBRIDE and LYNN W. MCBRIDE, as joint tenants with rights of survivorship and not as tenants in common**, their heirs and assigns, forever, the following described property:

All that certain piece, parcel or lot of land, together with any and all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as 1.86 acres (81,118 SF), as shown on plat entitled "Survey for McDaniel Jones, LLC" prepared by C.O. Riddle Surveying Co., Inc., dated July 19, 2018 and recorded in the ROD Office for Greenville County, SC in Plat Book 1311 at Page 58 on July 26, 2018, and having according to said plat, such metes and bounds as are shown thereon.

This being the same property conveyed unto McDaniel Jones, LLC by deed of TNB Financial Services, Successor Trustee U/W of C.E. Hatch dated July 26, 2018 and filed for record in the ROD Office for Greenville County, SC in Deed Book 2543 at Page 5317 on July 26, 2018,

Greenville County Tax Map # 0217.00-05-007.00

Grantee Address: 101 Falls Park Dr., Suite 601, Greenville, SC 29601

This conveyance is made subject to all restrictions, setback lines, zoning ordinances, easements and rights of way, if any, as may appear of record or on the subject property.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, as joint tenants with rights of survivorship and not as tenants in common, and the Grantee's heirs or successors and assigns, forever. And, the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and Grantee's heirs or successors against the Grantor and Grantor's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's hand and seal this 1 day of October, 2020.

Signed, sealed and delivered
In the presence of:

MCDANIEL JONES, LLC

Winton Blackman
Witness

BY: Mark A. Cothran (SEAL)
Mark A. Cothran, Manager

Wm A. Cothran
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 1 day of October, 2020 by Mark A. Cothran as Manager of McDaniel Jones, LLC
David S. McDaniel
Notary Public for South Carolina
My Commission Expires: 1-7-2023

GA



ELECTRONICALLY FILED - 2023 NOV 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE# 2020CP2305094

F. January 2019 – At the Planning Commission meeting, City staff recommend approval of Plaintiff's application which is in compliance with the ongoing negotiations between Plaintiff and the City. The Planning Commission denies the application.

8. Specify in detail each offer, whether formal or informal, final or initial, made for the purchase of the Property from the date Plaintiff purchased the Property to present. Please include in your response the identity of the offering party, and the date, amount, and any terms or conditions of each offer.

ANSWER:

A. Ron Rallis: Ron Rallis' offer in August 2018 of \$1,730,000. Plaintiff craves reference to the documents produced herewith as Plaintiff 000509 – 000512.

B. TerraNova: TerraNova Group, LLC letter of intent in July 2019 in amount of \$1,650,000. Plaintiff craves reference to the documents, including an email correspondence and the letter of intent, produced herewith as Plaintiff 000500 – 000507; 000896.

C. Stillwater: Stillwater offer in October 2019 in amount of \$1,850,000. Plaintiff craves reference to Stillwater's profitability sheet and information regarding offer produced herewith as Plaintiff 000508.

D. McBride: Plaintiff craves reference to Answer to Interrogatory # 6 and to the documents provided herewith as Plaintiff 000060 – 000062; 000341 – 000353; 000897 – 000956; and documents on file in public records.

9. Specify in detail the Plaintiff's attempts to sell the property after Plaintiff's appeal was denied on September 1, 2020.

ANSWER: Plaintiff continued listing the property on MLS. Plaintiff was contacted by Michael and Lynn McBride, who eventually purchased the property.

identified.

ANSWER: Allen D. McCravy, MAI; Stone & Associates, 1100A Rutherford Road, Greenville, SC 29609; Phone: 864-232-3051; Mr. McCravy is expected to testify about the valuation in the appraisal reports provided as Plaintiff 000001 - 000063; 000064 – 000137.

4. Set forth, with complete specificity, the financial loss claimed to have been sustained by the Plaintiff.

ANSWER: Plaintiff craves reference to its Complaint filed in this action and the documents provided herewith. Specifically, Plaintiff purchased the subject property at 800 McDaniel Avenue for \$1,430,000 and invested additional funds into the subject property for development costs, engineering, interest, and other costs. See *Pro Forma* provided herewith as Plaintiff 000354 – 000357 and Plaintiff 000358 - 000359. The value of Plaintiff's planned subdivision was approximately \$4,060,000 for 8 lots as set forth in the Appraisal Report provided herewith as Plaintiff 000001 - 000063, although the zoning of the subject property allowed for development of 9 lots. Through negotiations with the City, Plaintiff agreed to develop 6 lots. The value of Plaintiff's 6-lot subdivision was approximately \$2,510,000, as set forth in the Appraisal Report provided herewith as Plaintiff 000064 - 000137. The City agreed to accept a conservation easement encumbering the other 2 lots. Plaintiff is in the process of determining the value of said conservation easement and resulting damage. The City ultimately denied the Application (see Complaint). Plaintiff sold the subject property for \$1,400,000. Plaintiff reserves the right to supplement this response.

5. Explain in detail how the claimed loss identified in response to Interrogatory No. 4 was calculated, and further identify: (a) each and every document supporting the claimed loss; and (b) each and every person whom you contend has knowledge of the amount of the claimed loss.

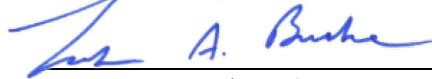
10. Specify in detail the what the Plaintiff believes is the proper definition of “neighborhood compatibility.”

ANSWER: “Neighborhood compatibility” is an ambiguous term drafted by the City that invites the Planning Commission to regulate property *ad hoc* as they did in this matter. The Planning Commission has used and continues to use “neighborhood compatibility” in widely varying ways to regulate property in the City depending on where the property is located.

11. Set forth the names and addresses of the incorporators, members, and officers of Plaintiff.

ANSWER: Mark Cothran; sole and managing member of McDaniel Jones, LLC and may be contacted through counsel.

BANNISTER, WYATT & STALVEY, LLC



Bruce W. Bannister (SC Bar # 15679)
Luke A. Burke (SC Bar # 100033)
24 Cleveland Street, Suite 100 (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084
Fax: (864) 331-0245

Attorneys for the Plaintiff

May 13, 2021

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
)
) C.A. NO. 2020-CP-23-05094

MCDANIEL JONES, LLC,)
)
 PLAINTIFF,)
)
 VS.)
)
CITY OF GREENVILLE PLANNING) DEPOSITION
COMMISSION,)
)
 DEFENDANT.)
)

THE DEPOSITION OF MARK ALBERT COTHAN, TAKEN BEFORE
LISA P. KOPCHO, PROFESSIONAL VERBATIM REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
THE HOUR OF 10:09 A.M., TUESDAY, THE 7TH DAY OF MARCH, 2023,
AT THE LAW OFFICES OF BANNISTER, WYATT AND STALVEY, LLC, 24
CLEVELAND STREET, SUITE 100, GREENVILLE, SOUTH CAROLINA.

Page 12

1 Q You went to the University of South Carolina.

2 A Right.

3 Q And graduated in, I think, 1976?

4 A Eighty.

5 Q In 1980, excuse me.

6 A High school was '76.

7 Q Did you serve in the military?

8 A I did not.

9 Q Okay. What is the name of your real estate business?

10 A Now, you opened a can of worms. So Cothran Properties
11 is a developer and a fee company. It gets fees for
12 real estate development, brokerage, so on and so forth.
13 It owns no assets, and it has not ever owned any
14 property.

15 Cothran Homes is exactly the same thing. So, all
16 the employees, commercially, are in Cothran Properties,
17 and all the employees, residentially, are in Cothran
18 Homes.

19 Q Okay.

20 A And it doesn't own anything either. So I probably have
21 28 or more LLCs.

22 Q And just summarize for me why you have that many.

23 A Well, it's a leftover from my commercial days. So, if
24 you finance a property, an industrial building, office
25 building, whatever, and you do it with, say, a life

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
)
) C.A. NO. 2020-CP-23-05094

MCDANIEL JONES, LLC,)
)
 PLAINTIFF,)
)
 VS.)
)
CITY OF GREENVILLE PLANNING)
COMMISSION,)
)
 DEFENDANT.)

DEPOSITION

OF

MARK ALBERT COTHAN

THE DEPOSITION OF MARK ALBERT COTHAN, TAKEN BEFORE
LISA P. KOPCHO, PROFESSIONAL VERBATIM REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
THE HOUR OF 10:09 A.M., TUESDAY, THE 7TH DAY OF MARCH, 2023,
AT THE LAW OFFICES OF BANNISTER, WYATT AND STALVEY, LLC, 24
CLEVELAND STREET, SUITE 100, GREENVILLE, SOUTH CAROLINA.

Page 43

1 what's the most that's allowed? Nine. What's the most
2 that physically fits there? Eight. You know, to meet
3 the criteria, that's kind of what you do. And then you
4 run down to the planning commission. You say, here's
5 what we're thinking. And then at that point in time,
6 you know, the tree came up, because I went out and
7 looked at the tree to see if it would be a heritage
8 tree, and I saw a bunch of trees that weren't any
9 bigger than my leg that looked like one giant tree.
10 But it was literally -- it looked like a mangrove swamp
11 in there. That's what it looked like under the canopy.
12 And so, you know, then you start adjusting your layout
13 to meet whatever other requirements the City or the,
14 you know, statues might have in terms of storm water.
15 You know, just different things that might further
16 alter either the shape or the number of lots that you
17 have. So, you just kind of -- it's almost like a, you
18 know, people say you carve up -- it's like you start
19 off with a rough sketch and then you refine, based on
20 inputs, and that's pretty much the process. And there
21 may be multiple meetings in there with different people
22 to come up with that.

23 Q Now, at that initial stage, I'm going to assume that
24 there was no input from the neighborhood residents?

25 A Oh, I think the neighborhoods pretty much started

Page 44

1 calling the minute I bought the property.

2 Q You think?

3 A Oh, I'm pretty dang sure.

4 Q And what leads you to that?

5 A I'm pretty sure, and I'm going straight off of memory
6 here. I'm pretty sure we were required to have a -- so
7 do you know -- well, do you know much about permeable
8 versus impermeable surfaces, storm water runoff?

9 Q Enough to know it when I see it.

10 A Right. So you have what's on site, and so you've got
11 the house, barns, driveways. Those are your
12 impermeable surfaces. So there's a ratio that's
13 established. So, if I put no more -- if I scraped it,
14 and I put no more impermeable surfaces, then I could
15 just -- that's what you could do. So, for example, you
16 could say in your restrictions that I've got six lots,
17 and, you know, whatever was approved, and you could've
18 said as long as you've got so many square feet of
19 impermeable surface you could have on your lot, and
20 after that, you need to have -- do something yourself.

21 Q Drainage-wise?

22 A Yeah, some kind of underground storage or some kind of
23 way to hold the storm water, whatever. Or you could do
24 a permeable driveway, you know, where you may have
25 pavers or something with gaps in them that lets the

Sec. 19-1.3. - Purpose and intent.

The purpose and intent of this chapter is to guide development in accordance with the existing and future needs of the city and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the property owners and residents of the city, and other members of the public. The purpose and intent of this chapter is more specifically to:

...19-1.3.9. Quality new development to blend with existing. Encourage quality development to blend with existing development.

19-1.3.11. Create harmonious community. Facilitate the creation of a convenient, attractive, and harmonious community.

Sec. 19-6.9. – Single-family residential infill standards.

19-6.9.1 General purpose and intent. This section is intended to achieve neighborhood compatibility, maintain the harmony and character of established single-family areas, and guide residential infill development to occur in an orderly and desirable manner. It is also intended:

...(D) To preserve and protect existing tree canopy to the extent practicable and to ensure future tree canopy consistent with established single-family residential areas.

EXHIBIT 26
Deposition of PLANNING COMMISSION MEETING

ELECTRONICALLY FILED - 2023 Nov 02 12:45 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305094
ELECTRONICALLY FILED - 2019 Mar 18 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2300749

Page 37 1 curb into my yard. And now you put six roofs and 2 driveways and sidewalks on that piece of property. We 3 don't need that. There is a reasonableness here. 4 There is a reasonableness, but it's not six new homes. 5 CHAIRPERSON TANKERSLEY: 6 Thank you very much, sir. 7 MR. SOWINSKI: 8 Thank you. 9 CHAIRPERSON TANKERSLEY: 10 Name and address, please. 11 MR. SNIDER: 12 Tom Snider, S-n-i-d-e-r, 7 Camille Avenue. And 13 I oppose the application of the subdivision. The 14 ordinances, as we've heard before, the infill 15 ordinance says that the site's meeting the engineering 16 requirements and lot width requirements, the basic 17 requirements, that we are -- the regulation process is 18 to achieve neighborhood compatibility and maintain the 19 harmony and character of the established, single- 20 family, residential areas. And this concept is 21 important to the residents of the neighborhood and 22 it's important to the Planning Commission. A lot of 23 the elements we're discussing today have qualitative 24 aspects, but I'd like to discuss an element that is 25 quantitative and pretty straight forward.	Page 39 1 congestion, and the harmony of the street is 2 maintained. Nowhere on McDaniel are there three 3 adjoining piano key lots like this. Now on Jones 4 Avenue, on that section between Augusta and Camille, 5 there are seven residential lots not counting the lot 6 being subdivided. They average 71 feet in width and 7 range from 70 to 72 feet so they're very consistent. 8 Jones is a very consistent character. 9 To divide the proposed 137 feet into any more 10 than two lots at 68.5 feet each would change the 11 character of the street. It should not be allowed. 12 The developer wants to put three lots in that space, 13 60 feet, 60 feet, and 17 feet. This would be 14 inconsistent, congested and destroy the harmony of the 15 block. So we ask you to uphold the infill ordinance 16 and maintain the character by limiting the subdivision 17 to no more than two lots on McDaniel and no more than 18 two lots on Jones. And I'd like to see a show of 19 hands of people who agree with that comment. [Silent 20 audience response.] 21 CHAIRPERSON TANKERSLEY: 22 Name and address, please. 23 MR. FITZGERALD: 24 Albert Fitzgerald, 516 Cleveland Street. The 25 January 9 meeting that we had with Jane Martin
Page 38 1 It's lot width. Of course, lot width defines a 2 character of a street. If you have narrower lots, you 3 have a different look than if you have wide lots. 4 McDaniel is well known as a wide lot, beautiful 5 street. If you subdivide one lot into several narrow 6 lots, you create an incompatibility that destroys the 7 harmony and character of the street. This application 8 does this. It creates narrower lots that are found 9 elsewhere. 10 McDaniel Avenue between Augusta and Camille 11 contains 15 residential lots, not counting the lot 12 being subdivided. Those 15 lots have an average width 13 of 95 feet. The proposed subdivision has a 195 feet 14 of McDaniel frontage left after removing the magnolia 15 space. To divide those 195 feet into any more than 16 two lots at 97.5 feet each would change the character 17 of the street. So it should not be allowed under the 18 infill. 19 The developer wants to put three lots in that 20 space, 60 feet wide, 60 feet wide, and 75 feet wide. 21 This would look like a set of piano keys against the 22 rest of McDaniel. If you look at the entire length of 23 McDaniel from Augusta Street to East McBee, there are 24 occasionally lots as small as 60 feet. But they are 25 always bordered by larger lots, so it isn't the visual	Page 40 1 representing the developer, there were 45 Alta Vista 2 residents in attendance, and we took a poll then to 3 ask how many would approve the proposed six-lot 4 subdivision, and there were none that voted in favor. 5 All voted in opposition. 6 The high number of proposed lots also dooms all 7 of the canopy trees that are located on the property. 8 We asked the developer at the 9 January meeting for a 9 tree survey, and I have not seen any evidence that 10 that survey has been produced. We also asked that 11 those canopy trees be provided some extra protection; 12 there's been no evidence any extra protection has been 13 provided to any of the canopy trees there. Each 14 canopy tree absorbs 48 pounds of carbon annually and 15 an untold amount of carbon monoxide. And with the 16 traffic patterns we have on Augusta Road that's not 17 very far from this property and on Jones and McDaniel 18 Avenue, we have a tremendous amount of emission coming 19 from the vehicles that travel on all of those streets. 20 I'm also concerned about the proposed protection 21 of the southern magnolia tree. My concern is that the 22 proposed water drainage that J.D. did such a great job 23 with describing is really going to cause a problem for 24 the root system of the surviving roots after all of 25 the construction takes place. And southern magnolia

10 (Pages 37 to 40)

Wehunt Court Reporting, LLC
(864) 420-1763

Circuit Court Appeal 0170

1	STATE OF SOUTH CAROLINA	)	IN THE COURT OF
		)	COMMON PLEAS
2		)	OF THE THIRTEENTH
	COUNTY OF GREENVILLE	)	JUDICIAL CIRCUIT
3		)	
		)	
4		)	
	McDANIEL JONES, LLC,	)	
5		)	
	Plaintiff,	)	TRANSCRIPT OF RECORD
6		)	2020-CP-23-05094
	vs.	)	
7		)	
	CITY OF GREENVILLE PLANNING	)	
8	COMMISSION,	)	
		)	
9		)	
	Defendant.	)	
10		)	

January 24, 2025
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., JUDGE

Julie A. Cendroski,
Circuit Court Reporter III
Seventh Judicial Circuit

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

2 BRUCE W. BANNISTER, ESQUIRE
3 For The Plaintiff

4 RYAN W. PASQUINI, ESQUIRE
5 For The Plaintiff

6 V. CLARK PRICE, ESQUIRE
7 For Defendant

8 Also Present: Tracy Laurens, Paralegal
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EXHIBITS

MARKED

ENTERED

Defendant's Exhibit Number 1,
Stipulation of Facts

6

6

1 McDANIEL JONES V. CITY OF GREENVILLE PLANNING COMMISSION

2 THE COURT: All right. Then for the record this
3 is 2020-5094, McDaniel Jones versus City of Greenville
4 Planning Commission. Let me start -- well a couple of
5 things first. Case is referred. And if I could have
6 the very fine lawyers identify yourselves and who you're
7 here on behalf of this morning.

8 MR. BANNISTER: Thank you, Your Honor, Bruce
9 Bannister on McDaniel Jones, LLC.

10 MR. PASQUINI: And Ryan Pasquini on McDaniel
11 Jones, LLC.

12 MR. PRICE: Your Honor, I'm Clark Price for the
13 City of Greenville. This is my paralegal, Tracy
14 Laurens.

15 THE COURT: And I want to make clear on the
16 record kind of where we are procedurally, because I
17 believe I'm correct, the last order in this case prior
18 to the Order of Reference was an order denying cross
19 motions for summary judgment. And that was filed back
20 in May of 2024.

21 MR. BANNISTER: That's correct, Your Honor.

22 THE COURT: And so having very fine lawyers such
23 as I have here and interesting issues, such as we also
24 have here, it is my understanding that the stipulations
25 that were dated November 25, 2024, that's what everybody

1 agrees -- for the most part the facts aren't in
2 controversy, but the stipulation, that sets the road map
3 moving ahead. Does everybody agree on that?

4 MR. BANNISTER: Yes, Your Honor.

5 MR. PRICE: I think that's correct. I think both
6 sides in their briefs and the exhibits that they refer
7 to, I expand a little bit, but in essence the
8 stipulation of facts are the facts that we agree on that
9 are material to a case.

10 THE COURT: So is that kind of a long winded yes?

11 MR. BANNISTER: Yes.

12 MR. PRICE: Yes.

13 THE COURT: Thank you. Have those exhibits been
14 filed with the Clerk of Court's office, have the
15 stipulated facts?

16 MR. PRICE: The exhibits have, yes. The
17 stipulated facts, I don't think that's been recorded.

18 MR. BANNISTER: No, Your Honor. I don't believe
19 the stipulated facts have, but the exhibits were pulled
20 from the cross-motion for summary judgments back when it
21 was heard previously, and I believe we dropped off to
22 your office some binders.

23 THE COURT: Oh, you all dropped a bunch of
24 binders off.

25 MR. BANNISTER: Okay.

1 THE COURT: But I just want to make clear for
2 appeal purposes that there's a full record and that
3 you've got to get remanded in the highly unlikely event
4 that our appellate courts would view something different
5 than I would for some procedural basis.

6 MR. PRICE: We agree that the Stipulation of
7 Facts should be made a part of the record today.

8 THE COURT: Then, do you all want it marked as an
9 exhibit with my court reporter?

10 MR. PRICE: Sure.

11 THE COURT: Or do you want to e-file it with the
12 clerk's office?

13 MR. PRICE: We can make it an exhibit today.

14 THE COURT: Okay.

15 MR. PRICE: I've got a copy.

16 THE COURT: If you'll hand it up to my court
17 reporter. And then that will be marked as Defendant's
18 Number 1.

19 MR. PRICE: I've got a copy of it.

20 THE COURT: I've got a clean copy of it as well.

21 MR. PRICE: I think we have one. Thank you.

22 (Defendant's Exhibit Number 1, Stipulation of
23 Facts, was marked for identification.)

24 (Defendant's Exhibit Number 1 was entered into
25 the record.)

1 THE COURT: All right. That's Defendant's 2
2 [sic]. All right. And then there are also two
3 notebooks entitled stipulated facts, book 1 of 2 and
4 also book 2 of 2. So I understand, based on what you've
5 told me this morning, all of those have already been
6 filed with the Clerk of Court's office?

7 MR. BANNISTER: Yes, Your Honor.

8 MR. PRICE: That's correct, Your Honor. I think
9 we both just went into the records and pulled copies of
10 the exhibits that we had submitted.

11 THE COURT: Okay. And for the record, since the
12 facts are not in controversy, it is my understanding
13 that both sides are asking the Court to make an ultimate
14 decision on the stipulated facts and exhibits, correct?

15 MR. BANNISTER: That's correct, Your Honor.

16 MR. PRICE: Yes, sir.

17 THE COURT: Okay. All right. I want to go
18 through briefly what I understand the facts to be to
19 make sure -- I'm doing a 64,000-foot view. July 2018
20 plaintiff purchases 808 McDaniel Avenue for
21 \$1.4 million. At that time there is a single home on
22 the property and the property is zoned R-9, which means
23 single family residential.

24 Plaintiff's plan was to tear down the single
25 structure, subdivide it into seven lots, which based

1 upon some early neighborhood opposition, he reduced to
2 six lots. Then there is a hearing in front of the
3 Planning Commission on January 17, 2019. At that time
4 11 neighbors appear and voiced opposition to the plan.
5 No one presented themselves and spoke in favor of the
6 plan. There was some intimation of, by the Commission,
7 perhaps if the plan was reduced to five lots there may
8 be a little bit different view. That was not done. But
9 at some point the Planning Commission unanimously denied
10 the request. Everybody, we all agree so far?

11 MR. BANNISTER: Judge, the only difference I see,
12 the start -- they started with eight lots, reduced it to
13 six, and the Planning Commission said maybe if you'd
14 come back to plan five.

15 THE COURT: Okay, thank you.

16 MR. PRICE: Well, I think the initial application
17 was for seven.

18 THE COURT: All right. I'm not real sure. That
19 may or may not be a distinction with or without a
20 difference. But, but the Planning Commission, based
21 upon six lots, denies it.

22 MR. PRICE: That's correct, Your Honor.

23 THE COURT: And there's no followup, no revisions
24 by Plaintiff, but rather Plaintiff then files an appeal
25 to the Circuit Court. Circuit Court, very fine Judge

1 Miller, denies the appeal. There's no appeal taken from
2 that order. Then on November 15th -- excuse me,
3 November 5, 2020, Plaintiff files the present lawsuit
4 alleging two causes of action. One, inverse
5 condemnation. Two, violation of equal protection under
6 the 14th Amendment.

7 MR. PRICE: Yes, sir. The initial -- it doesn't
8 matter. The initial complaint ---.

9 THE COURT: Then why are you standing up?

10 MR. PRICE: I shouldn't, but the initial
11 complaint was brought in ---

12 THE COURT: The amended complaint brought in ---

13 MR. PRICE: Correct.

14 THE COURT: Okay, thank you.

15 MR. PRICE: Sorry. I'm not gonna stop you.
16 Sorry.

17 THE COURT: You're just too much of a lawyer, and
18 I understand that. Before I move into the issues that
19 have been presented by the lawyers, here's a yes. And
20 let me start with Plaintiff. The Circuit Court reviewed
21 and upheld Zoning Commission's decision. And that was
22 set out in a September 1, 2020 order. Does that order
23 by the Circuit Court have any impact on this case? I'm
24 not trying to create an issue, but is there anything
25 lurking in there that, you know, the 2020 Circuit Court

1 order has some impact on the issues in this case?

2 MR. BANNISTER: Judge, if I may?

3 THE COURT: Yes.

4 MR. BANNISTER: Couple ways. Number one, I
5 believe it is necessary to appeal the Planning
6 Commission decision in order to maintain an action for
7 an inverse condemnation. You can't just stop without
8 having an order revoked. Let a Circuit Court judge
9 review that and issue an order. In this case, he didn't
10 like our appeal. He denied it.

11 There is a finding in that order that says that
12 the LLC, the developer, not the -- if it's okay I'm
13 gonna call him Mark Cothran, because he's the single
14 member of that LLC. Mr. Cothran had met all of the
15 zoning and then the City with all the regulations
16 necessary with the approval of the six-lot subdivision,
17 except it acknowledged that the Planning Commission
18 relied on the forward in the regulations that said the
19 purpose of this section is to make these things
20 compatible with the neighborhood.

21 THE COURT: Neighborhood compatibility, yes, sir.

22 MR. BANNISTER: Yes. And he found that that was
23 the singular reason that they had determined that this
24 plan would not be approved. And I think other than
25 that, I think that's the only relevant portion of that

1 order. I think those sets were the facts of what we
2 are.

3 THE COURT: All right. Mr. Price?

4 MR. PRICE: I don't think we have a dispute here.
5 I didn't want to have my brief if there was no appeal
6 from Judge Miller's order. And then Judge Miller did,
7 in fact, find that the Planning Commission had the
8 discretion to rely on the purpose and intent portion of
9 the orders in making it's decision.

10 THE COURT: Is that also what Mr. Banister
11 referred to as the neighborhood compatibility?

12 MR. PRICE: Yes.

13 THE COURT: Okay. Then, again, going to
14 plaintiff. What is Plaintiff's burden of proof in this
15 action? Is it preponderance or is it some other standard
16 required under either inverse condemnation or violation
17 of equal protection?

18 MR. BANNISTER: Judge, I believe it's
19 preponderance of the evidence, but I don't have a case
20 to cite.

21 THE COURT: Mr. Price?

22 MR. PRICE: I don't dispute that, but the crux of
23 the City's position is laid out in our brief and the
24 legal hooks on which those facts lie support the city's
25 position.

1 THE COURT: All right. Now, Let's move to the
2 inverse condemnation of -- and I start from the premise,
3 but I want to make sure we have this on the record,
4 typically requesting of whether there's a taking is a
5 question of law. Agree with that?

6 MR. BANNISTER: That is why we are here, Your
7 Honor, yes.

8 THE COURT: Mr. Price?

9 MR. PRICE: I do agree with Your Honor.

10 THE COURT: All right. From Plaintiff's
11 standpoint -- and also I want to add, Plaintiff, I
12 believe back in October of 2020 ended up selling the
13 property that he had bought in 2008. He paid 1.4 for
14 it, sold it for about the same price. But as far as,
15 from Mr. Chairman's standpoint, what's the taking? What
16 is the inverse condemnation?

17 MR. BANNISTER: So, Judge, on the day that Mr.
18 Cothran bought the property, the property was entitled
19 based on the zoning and the other regulations to be
20 developed at eight lots. Through the negotiation with
21 the planning staff, that ultimate plan ended up being
22 submitted at six lots, which did not require merits. It
23 met all of the city ordnances, it met all of the
24 requirements from tree canopy, traffic, the sewer, the
25 water, all the things that are required. So the day he

1 bought it he was entitled to develop that property at
2 that number of plats. The taking is when planning
3 decided that in their discretion he couldn't do what the
4 the city ordinance allowed him to do. And so that was a
5 taking, the difference between what -- I mean, basically
6 it was that he can't develop a property under what the
7 law is. The damage is -- so the take is the denial of
8 his right to develop it, as was allowed under the city
9 ordinances. And then the damages are, I think, a
10 question for the jury, but we would say it's a ---.

11 THE COURT: Yeah, and I understand the damages,
12 the lost property --

13 MR. BANNISTER: Yes, sir.

14 THE COURT: -- things of that nature.

15 MR. BANNISTER: Yes, sir.

16 THE COURT: All right. So, Mr. Price, how do you
17 respond to Mr. Bannister's characterization that at the
18 date of purchase his client had a legal right to sub
19 divide?

20 MR. PRICE: Well, that, that was -- there's no
21 question that he had a right to subdivide. The question
22 that the Planning Commission had to wrestle with is
23 whether a six-block subdivision was appropriate or was
24 it some lesser number of lots.

25 Referring back to the legal hooks I was telling

1 you about, what the Planning Commission basically said
2 was in their denial of a preliminary plan, they said no
3 to six lots. Without going through all of the cases
4 that we cited in our brief, I would summarize by saying
5 as a matter of law, the number of lots, even though it
6 may have been potentially reduced by the Planning
7 Commission, does not rise to a Constitutional taking of
8 property.

9 At worst, from the perspective of the City, it
10 resulted in a diminution in value, a sum amount. But
11 the diminution in value does not equal a taking. In
12 order for a taking to occur, and there's real
13 significance to that word, there has to be either a
14 direct taking of property or a regulational decision
15 that is so profound that it eliminates the value of the
16 property or leaves such a small amount remaining that it
17 would be confiscatory in the taking. So, so there was
18 no taking in a constitutional sense by the Planning
19 Commission saying no to six lots.

20 THE COURT: So do you agree with Mr. Bannister's
21 characterization that everything ultimately, all the
22 dots connected except for the Planning Commission saying
23 in light of everything, we're gonna narrowly determine
24 this on neighborhood compatibility?

25 MR. PRICE: And, more narrowly, and it may be a

1 poor choice of words on my part but, yeah, there was a
2 lot of information that was before the Planning
3 Commission. One of the exhibits before the court is the
4 actual transcript of that hearing.

5 But I will say that there were some in that
6 hearing from the Commission who felt like all of those
7 dots have been dotted. Those I's had been dotted. But
8 the issue, the major issue before the Commission was
9 whether the six lot subdivision was compatible with the
10 rest of the neighborhood.

11 THE COURT: And is it the city's position that
12 the commission has that, not only discretion, but also
13 that duty and obligation?

14 MR. PRICE: Yes. And that is established by
15 Judge Miller's order.

16 THE COURT: So let me shift a little bit. From
17 what I understand from review of the record and the
18 memos that have been submitted by both sides, does
19 everyone agree that the analysis is to be done under the
20 factors in the Penn Central, which is a U.S. Supreme
21 Court case?

22 MR. BANNISTER: Yes, Your Honor.

23 THE COURT: Is the city in agreement with that?

24 MR. PRICE: Yes.

25 THE COURT: All right. And Penn Central set out

1 three broad categories. So, Mr. Bannister, which of the
2 three categories does Plaintiff contend has been
3 violated here or applies here?

4 MR. BANNISTER: Judge, I think we would, we would
5 acknowledge of the three it's the third one, which I'm
6 gonna read.

7 THE COURT: And that would be which one?

8 MR. BANNISTER: We need one moment, Your Honor.
9 The regulatory -- is it regulatory takings? You're not
10 talking about the three factors under the *Penn* analysis,
11 you're talking about which of the three --

12 THE COURT: No. I'm talking about the three
13 factors under Penn Central, which one, or maybe there's
14 more, does plaintiff contend, come into play here?

15 MR. BANNISTER: All three of them. All three of
16 the factors that are considered under a regulatory
17 taking we believe are at play in this case.

18 THE COURT: All right. Expound a little bit on
19 that.

20 MR. BANNISTER: So, Judge, we're talking about
21 the same three factors. There's an economic impact. We
22 think Mr. Cothran had an investment distinct
23 expectations into consideration of profits and the
24 property would evolve and we think specifically the
25 character of the government action would weigh in favor

1 of this being an inverse compensation.

2 THE COURT: Can, Mr. Bannister, a diminution of
3 an expected economic return constitutes a taking under
4 Penn Central and other cases?

5 MR. BANNISTER: So, Judge, I would at this point,
6 I would point out, yes, it can. And I would like to
7 differentiate this speck case to the application of a
8 lot of the other cases that have been cited. And that
9 is a developer who comes in and buys a piece of property
10 and asks for a rezoning or asks for a regulatory change
11 or asks for a variance, those cases that deal with the
12 denial of those requests will where the government can
13 change it's position, those cases are different than
14 this case. In this case, when Mr. Cothran bought the
15 property, all of those things were in place. This
16 property was worth \$4 million to him as a developer
17 based on the things that he was entitled to do as the
18 owner of the property to that 1.8 acres.

19 So, when you talk about a developer who says
20 I want to read it off my golf course, for instance, and
21 you don't meet the redeveloper because you, you won't
22 change the zoning or you won't give me a variance, those
23 cases are different because you're asking the government
24 to take an action and you're suing saying because you
25 didn't take the action, you have denied the the right to

1 use private property.

2 In this case, no one argues that the case is
3 clear Mr. Cothran had a right under the city ordinances
4 to build six lots on that spot. When you take one of
5 those lots away, that's a \$500,000 zero. You have taken
6 that lot away from him, which is not a -- not only a
7 diminution of his expectations across the property, but
8 it is a taking of a hundred percent of a right that he
9 had to have that lot there.

10 So I think this is, in terms of damages, they're
11 gonna argue that he bought it for 1.4, he sold it for
12 1.4, some guy moved in and built a house and so it's
13 exactly the same. He should have had no expectation
14 that he could use it for anything other than what it was
15 being used for. I think that's a mischaracterization.
16 It is, he should not have an expectation that he could
17 use it for what it isn't already qualified to be used
18 for.

19 THE COURT: Well, Mr. Price, and I'll certainly
20 hear from him in a moment, seems to argue that your
21 client could have made still a lot of money, but not as
22 much money, perhaps, as he wanted to. And so as a
23 result the City's arguing there may have been some
24 reduction in the number of dollars you would have made,
25 but you still could have made a lot of dollars. And so

1 that under Penn Central and other cases cited, that
2 takes it out of a level of inverse condemnation, so how
3 do you respond to that?

4 MR. BANNISTER: So and I will again say this.
5 The cases where he cites that your value has been
6 diminished by the decision made by the governing body, I
7 would agree those are appropriate evaluations. But he
8 was entitled to the six lots. Those lots were something
9 that Mr. Cothran, when he purchased the property, it
10 preserved and the regulations allowed him at the time he
11 bought it to have six lots. If you take one of those
12 lots away, you have in essence taken 100 percent of the
13 value of that lot. Not that he expected you to change
14 the law and let him maximize those lots. But when you
15 say no, we're not gonna give you that lot. And you're
16 entitled to it, we just don't like it. And so, we're
17 just gonna take it from you and make you do something
18 different. That is, in essence, a 100 percent. They've
19 taken 100 percent of the value of the lot he was
20 entitled to have and said no, you can't have it.

21 THE COURT: Well then, if we look at it from a
22 purely technical, technically all the dots connected,
23 what's the Zoning Commission do with the language in the
24 ordinance neighborhood compatibility? Does that not
25 then take that out to say, well, technically, you hit

1 all the dots, so we're gonna take out neighborhood
2 compatibility. How do you parch that all together?

3 MR. BANNISTER: So, Judge, it's our belief that
4 this was the first time the Planning Commission had ever
5 exercised its discretion and said we're gonna use this
6 forward as a new reason to deny a claim. Neighborhood
7 compatibility was defined in the city ordinance by lot
8 sizes and setbacks and curve cuts and street frontage.

9 There's a litany of things you have to comply
10 with to meet neighborhood compatibility. This is the
11 first time that the Planning Commission has said, and
12 we're going to add on the requirement that we like your
13 claim. And that is exclusively in our opinion of what
14 you have where it doesn't matter if you comply with all
15 the things. It doesn't matter if you don't ask for a
16 variance. This is the first time that the Planning
17 Commission said we have the authority in our discretion
18 to change the regulations to the detriment of the
19 developer and take away lots that he's entitled to have
20 because we want to.

21 THE COURT: What ---

22 MR. BANNISTER: I mean, that's it.

23 THE COURT: What impact, if any, does the fact
24 that, and I think it's uncontroverted, there are 11
25 people who spoke against the plan, zero who spoke in

1 favor of the plan. Does the Commission have a right to
2 consider that, in fact, draw that into neighborhood
3 compatibility?

4 MR. BANNISTER: So, Judge, it was -- it is our
5 position that the mob should not rule and that the
6 Planning Commission, just because they get letters
7 saying we don't like what the people who were elected
8 and authorized to adopt regulations and make those
9 decisions.

10 We don't like the politicians' decisions that
11 people granted the legislative authority to make those
12 decisions. We have decided that we don't like that, and
13 so we're gonna add our own discretion and we're gonna
14 exercise our own governmental authority as if we were
15 elected officials and as if we had been given that
16 authority and we're just gonna apply our discretion
17 because the mob doesn't like it. And we're gonna deny
18 the plan you're entitled to have based on 11 letters
19 saying we don't like it.

20 So we -- they exercised their discretion. We
21 don't think -- we think if the City Administrator says
22 you can't do what the law allows you to do, that is a
23 taking.

24 THE COURT: All right. Mr. Price, let me get
25 back to you. My first question, can diminution of

1 expected return of dollars constitute a taking?

2 MR. PRICE: Yes.

3 THE COURT: How do you balance it out? How many
4 dollars does the Court need to see before it gets to the
5 point of saying, you know, this is an inverse
6 condemnation issue?

7 MR. PRICE: Using the cases that we found,
8 particularly Dunes West, because they talk about all of
9 them, it would take a loss greater than 92.5 percent of
10 the value of the expected value, because U.S. Supreme
11 Court is not that far. I've cited cases where the
12 diminution of value of 75 percent is not a taking. 82
13 percent is not a taking. 92.5 percent is not a taking.
14 Some of those cases are United States Supreme Court
15 cases, but several, if not all those cases, are
16 specifically cited by Dunes West.

17 So in this case we do not come close to that
18 level of diminution. We have, as now heard, of Mr.
19 Cothran's point of view, that he has suffered a taking
20 because one of the lots of his subdivision was taken
21 away. Page 8 of my brief, I address that in case law
22 that specifically says, the reduction in the number of
23 lots is not a taking.

24 The diminution, it all goes back to a fundamental
25 point and that is, whether we like it or accept it or

1 not, the decisions of the Appellate Courts in this state
2 and federally have basically said the courts must grant
3 a lot of deference to the Planning Commissions and the
4 city governments and county governments when it comes to
5 zoning matters.

6 They involve controversies between neighbors,
7 politically based arguments. And the courts have laid
8 it down, we are not going to get into those things
9 unless we have an absolute taking.

10 To use a, perhaps a court analogy, if the
11 Planning Commission had been overwhelmed by public
12 opposition to, to the proposal by the Plaintiff and
13 said, you know what we're gonna decide, we're gonna
14 decide that the only use of this property, 808 McDaniel,
15 going forward is gonna be a playground for the public.
16 That is a taking. But beyond that, significant
17 diminution in value, reduction of numbers of lots, and
18 the consequential impact on the potential financial
19 benefit to the landowner is not a constitutional avenue.

20 THE COURT: How about the argument of Mr.
21 Bannister that there's never been another case where the
22 Zoning Commission ventured into the world of
23 neighborhood compatibility? Does the Commission -- if
24 there's technical compliance, lot sizes, zoning
25 requirement, et al., how does neighborhood compatibility

1 play into it and why is that not tantamount to a taking
2 or abuse of discretion, whatever label you want to put
3 on it?

4 MR. PRICE: I have to address it in a couple of
5 ways. First, the ordinance itself states very clearly
6 that compatibility, tree canopy, things of that nature,
7 are goals of the land management ordinances. And the
8 Planning Commission took all that into account.

9 This is kind of a rhetorical question, but why
10 would the process involve neighborhood meetings and
11 public notice and invitation for commentary by the
12 neighborhood if it didn't count for anything? If that
13 were the case, the Planning Commission would have no
14 discretion. It is simply a calculation that is done and
15 that's the decision.

16 Judge Miller ruled that that is not what that
17 ordinance stopped and he ruled that the Planning
18 Commission had the discretion to use that evidence in
19 making its decision. And Mr. Cothran recognized,
20 recognized the issue of compatibility, tree canopy, and
21 the concerns with neighborhoods. He testified to that
22 in his deposition. He knew it from the beginning. He's
23 a sophisticated man.

24 THE COURT: And one of the initial issues, I
25 think, was a large tree and there was some

1 reconfiguration because of that as an effort to protect
2 the trees and also neighborhood compatibility. Is that
3 what you're arguing?

4 MR. PRICE: Well, that's right. That's part of
5 my argument, as Mr. Bannister said. You know initially
6 there was a seven-lot plan, but what happened was the
7 City staff came in and they saw this huge Magnolia tree
8 and they determined that that tree had to be protected
9 and that's where the six-lot subdivision proposal came
10 from.

11 So at the Planning Commission hearing, Mr.
12 Cothran, through his representative, Mr. Martin, clearly
13 were aware of the importance of compatibility, because
14 Mr. Martin argues at length that the configuration of
15 the lots in his proposal met that compatibility help.
16 Later in the transcript of the hearing, the Planning
17 Commission members themselves are talking about
18 different calculations that they have done to try figure
19 out whether implied or not.

20 Long story short of that is compatibility was
21 inherently a part of this process. Planning Commission
22 used compatibility to deny the application, while
23 opening the door to further discussions about a five lot
24 option, which was rejected. But I think Judge Miller's
25 order was ultimately right, that the ordinance itself

1 and how the Planning Commission used the, the purpose
2 and intent provision was an appropriate thing to do.

3 THE COURT: Well, to accept Plaintiff's argument,
4 any time there's neighborhood compatibility, if a zoning
5 commission, being Greenville, Beaufort, Richland,
6 whatever it is, would that then be opening the door to
7 the Commission then being sued and opened up to lawsuits
8 any time neighborhood compatibility is a factor?

9 MR. PRICE: I would say it would depend on the
10 stage of the process and what the theory was. What I
11 mean by that is, when we look at the appellate decisions
12 that talk about due process, stemming from zoning
13 appeals, Planning Commission decisions, what we find is
14 that the due process arguments that deal with ordinances
15 and their language, focus on procedural due process.

16 And the second thing I think is significant about
17 all these cases is that it's at the initial stage of the
18 process that the landowner says hold on, you didn't
19 treat me right. You denied my right of procedural due
20 process here. That's where the appeal takes place.

21 In this case we have a process that has gone
22 beyond that. We had gone all the way to the decision
23 making level of the Planning Commission. They found
24 that, that the configurations of the lots in the
25 proposal were not compatible in the neighborhood.

1 And the last thing I'll say about that is,
2 repeating myself in saying that this is a constitutional
3 injury case. I mean, the cases seem to say, and I defer
4 to the Court for, you know, the cases that we cited.
5 But the cases seem to say that the local Planning
6 Commissions and boards of zoning fields, they can make
7 mistakes sometimes, but a mere mistake does not amount
8 to a taking unless the taking takes away basically all
9 the value of the property.

10 The elements of Penn Central do apply here. The
11 South Carolina cases that I'm familiar with, and I can't
12 cite you the name of the case right now. But what they
13 actually say is, the primary elements of those three are
14 the economic impact on the landowner and the
15 reasonableness of the investment expectations.

16 So without arguing the whole case, we've laid out
17 in our brief why we believe the City has established
18 that as to those two elements, we don't have a
19 constitution depravation here. But I'll say that even
20 as the nature of government action, we have to take a
21 little broader view of what was happening with the
22 Planning Commission. It is a zone matter.

23 THE COURT: All right. So, Mr. Bannister, does
24 the commission, and again being in Greenville somewhat a
25 part of this wonderful state that we're residents of,

1 have discretion when it comes to the phrase neighborhood
2 compatibility?

3 MR. BANNISTER: And so, Judge, you kind of got to
4 the crux of our argument. Our position is, if they
5 exercise their judgment in contrary to what the
6 ordinance says is acceptable, that is a government
7 action that is taking away a right that has been given
8 to the landowner. So when they do that, and Judge
9 Miller said they can do it if they want to, but when
10 they do, it's our position that that is a taking from
11 the landowner. And if I can, just briefly?

12 THE COURT: Yes, sir.

13 MR. BANNISTER: This is not a zoning board. This
14 is -- this landowner did not ask for a variance, so the
15 analysis of a diminution of lots is not a taking is
16 misplaced. That case specifically says he's entitled to
17 this many lots. He asked for a variance to maximize his
18 profits. The variance was denied and, therefore, the
19 diminution in the number of lots he could have stuck in
20 there had he been dealing with variance is not a taking.

21 In this case he had a right to have a lot. Those
22 lots are granted to him by the City and the city
23 ordinances and he complied with those. That's
24 undisputed. So if you take away a lot, it's a 500,000
25 to \$600,000 advantage that is of zero value to him now.

1 Yes, he still has five lots, but the issue is he had a
2 sixth lot he's entitled to build on and the Planning
3 Commission said no. We're gonna take the sixth lot away
4 from you, what you're already entitled to, and you will
5 have a zero dollar value on that.

6 So the valuation is not what's the total project,
7 minus what the Planning Commission arbitrarily applies,
8 to the analysis is what are you entitled to under the
9 city law? And then what have they taken away from you
10 that you already ---

11 THE COURT: Well, how do you respond to Mr.
12 Price's arguments signing the case authority, both South
13 Carolina and U.S. Supreme Court that seems to set a
14 pretty high standard of percentage of value as you
15 relate to inverse condemnation?

16 MR. BANNISTER: So I would argue that it's 100
17 percent. They had taken away 100 percent of the lot
18 he's entitled to. It is not a lot --

19 THE COURT: 100 percent --

20 MR. BANNISTER: -- to have an expectation ---

21 THE COURT: -- of a lot one of six?

22 MR. BANNISTER: That's correct.

23 THE COURT: And so does the Court look at it
24 individual lots or does the Court look at the overall
25 project?

1 MR. BANNISTER: So it would be our argument that
2 if you were looking at a new subdivision where you're
3 asking to change zoning to maximize your lots, you would
4 never look at the lots independently. If you're asking
5 for a variance so that the Planning Commission would
6 change the rules to give a lot, then you would have to
7 look at the whole subdivision. Say, you know, did they
8 just, did they just zone you out of zero?

9 If you're looking at the zoning and a change in
10 zoning to an existing landowner where they change you
11 from R-9 to part owner, those would be the kind of
12 things where that analysis made sense. In this case,
13 just imagine he owned that sixth lot and they said you
14 can't have that lot. Because he, when he bought the
15 property, the property had entitlements based on zoning
16 in the city ordinances that allowed him those six lots.
17 So it's our argument, when you take that sixth lot away
18 from him, that is a 100 percent taking of his lot.

19 THE COURT: Is that the right analysis, Mr.
20 Price? Because do you look at the entire quote/unquote
21 development or do you look at the piecemeal lot by lot?

22 MR. PRICE: I'll say this. This is a quote from
23 the U.S. Supreme Court: Taking juris prudence does not
24 divide a single parcel into discrete segments and
25 attempt to determine whether rights in a particular

1 segment have been entitled to abrogate. In deciding
2 whether a particular governmental action is a method of
3 taking, this Court votes is rather both on the character
4 of the action and of the nature and the extent of the
5 interference with rights and the parcel as a whole.
6 That's our position.

7 THE COURT: All right. And, Mr. Bannister, let
8 me come back to my question on discretion. Does the
9 Commission have discretion to make a determination of
10 what is neighborhood compatibility?

11 MR. BANNISTER: Judge, I don't believe that they
12 do.

13 THE COURT: Didn't Judge Miller's order ---

14 MR. BANNISTER: I think Judge Miller answered
15 that order and said they -- that is what they relied on.
16 They, they did it and that's -- and he upheld their
17 decision based on neighborhood compatibility. So I
18 think the law in this case is, Judge Miller acknowledges
19 that is the authorized they exercise and he upheld that
20 exercise.

21 THE COURT: Could this Court then come in later
22 and say, well, that's really not the proper analysis for
23 neighborhood compatibility?

24 MR. BANNISTER: So, Judge, and I think that goes
25 to the nature of -- in the third, the third analysis

1 that Penn Central view, the nature of the government
2 action. The -- in most of the cases, you're dealing
3 with a landowner or a developer who wants the government
4 to change its position to make them more profitable or
5 to change the zoning so they can do something that
6 someone else has done similarly situated and the
7 government has refused that.

8 This is a unique case, I believe, where the
9 Planning Commission, not City Council. City Council
10 could have changed it and said, hey, that's not
11 compatible with the neighborhood. This is something
12 that City Council's gonna decide. They have that
13 legislative authority. They have the ability to make
14 those decisions. That is the balancing act. That is
15 the judicial restraint that is talked about. You
16 shouldn't overlook legislative action.

17 The Planning Commission on the other hand is an
18 administrative body. It is just an arm of the City.
19 And if it chooses not to let you do what the law allows,
20 then that is a taking. There's no legislative ballots.
21 There's no authority given to them to deny you what
22 you're entitled to in any statute or Planning Commission
23 authority.

24 And here's where, here's where the Planning
25 Commission has overstepped in my opinion. The Planning

1 Commission has the authority to grant a variance. And
2 there's a whole host of things they're supposed to
3 consider before they grant a variance. I want four
4 lots. I really have room for five if you'll grant me a,
5 you know, a setback variance.

6 The Planning Commission then looks at
7 neighborhood compatibility, look at the tree canopy,
8 Look at the facts of the neighborhood. They can take
9 public input. That's why we have all these public
10 meetings.

11 So if you ask them to do something different than
12 the law would allow, giving the landowner the ability to
13 do something he's not allowed to do, granting him a
14 variance, which there's tons of cases on that, that's
15 where the Planning Commission gets the discretion to
16 expand the rights of the landowner, balancing all these
17 things that is in their discretion. What they can't do
18 is insert their discretion to limit what the City has
19 already, through its ordinances, allowed you to do.

20 THE COURT: All right. Let's shift gears just
21 for a little bit. And I think we kind of intertwined
22 the issues. As far as with the equal protection, I
23 understand that the standard is it has to be a plain
24 violation of the constitutional right. What is the
25 plain violation of Plaintiff's constitutional rights of

1 this regard?

2 MR. BANNISTER: Well, Judge, I think this is
3 where Mr. Price and I get -- we argue both sides of
4 this, but we both take different positions.

5 THE COURT: Well, give me the right position.

6 MR. BANNISTER: So, it is our position that on
7 the day Mr. Cothran bought the property, the City,
8 through its zoning ordinances, were integral -- had
9 given him a right to develop this property into those
10 lots and that when you single him out and you apply a
11 provision to him that had never applied to anyone else
12 before or since.

13 And that is the singular reason that you deny his
14 plan, that you take away his ability to do what the law
15 has granted him the right to do. That that is a
16 violation of his, his constitutional protective right to
17 use his land for what it's lawfully allowed to use it
18 for.

19 THE COURT: How does the fairly debatable
20 standard apply here, if at all?

21 MR. BANNISTER: That standard applies to when a
22 body that is granted the authority by the people that
23 voted for it, the legislative authority, the City
24 Council. When you talk about zoning boards of appeals,
25 when you talk about zoning through City Council but

1 actually deciding what is in the greater good of the
2 community, that is exclusively in the City Council's
3 purview. They cannot delegate that to the Planning
4 Commission to then exercise City Council's legislative
5 authority.

6 So I would say, you cannot use that to say
7 whether or not the Planning Commission acted properly or
8 not, based on all of the public concerns in balancing
9 the burden. All of that is City Council's issue, not --
10 that is not in the purview of the Planning Commission.

11 THE COURT: All right. Mr. Price, let me ask
12 first, how do you respond to Mr. Bannister's argument
13 that there is established on the record a plain
14 violation of the constitutional rights of Plaintiff?

15 MR. PRICE: As I, as I read the law that applies
16 that establishes the elements, the burden of proof to
17 show a violation of due protection is just not there.
18 It's just not there. I refer the Court primarily to the
19 *Harbit* case, which I quoted at length in my, in my
20 brief.

21 And they start off with the governmental action.
22 It's purely debatable. It's presumptively valid. So
23 what has been done to show that this particular decision
24 was so bad, so wrong that it rises to constitutional
25 protections? That's what *Harbit* is. We don't have that

1 here. Again, you're right, we are -- kind of can play
2 with some things, but the ruling of Judge Miller
3 establishes that the Planning Commission had the right
4 to make this decision, in part, on compatibility.

5 THE COURT: Well, let me come back to that,
6 because that was one of the reasons I asked the question
7 at the outset of the argument. If that's already been
8 judicially established in the September 1st, 2020 order,
9 can this Court go behind that?

10 MR. PRICE: No. I mean, honestly, no. I think,
11 I think it's the law of the case. And in this case, as
12 it says in the first paragraph of the Complaint, is a
13 regulatory takings case. And we have to use a
14 chronology of events that has occurred prior to filing a
15 lawsuit to help us determine whether has occurred, and
16 that part of that factual background is the finding
17 Judge Miller that Planning Commission reasonably acted
18 and had a discretion to consider compatibility.

19 THE COURT: Right. And Mr. Bannister, as always,
20 makes a very fine argument. How do you respond to his
21 argument that a fairly debatable standard or application
22 does not apply to a Planning Commission?

23 MR. PRICE: Our view is the Planning Commission
24 does. So I respectfully disagree. As I said a few
25 minutes ago about judicial deference to legislative

1 acts, the Planning Commissions decisions are a part of
2 what you're talking about. And ---

3 THE COURT: So are you arguing or stating that it
4 is not the role of the Court to say this is the result I
5 would have reached, but instead it is the Court's role
6 to say what were the proper processes and procedures and
7 laws complied with and then the decision becomes a
8 decision as long as the safeguards are in place?

9 MR. PRICE: Actually, my position is slightly
10 different from that, because what, what the case law
11 that I cited in my brief seems to say is that even if
12 there is a legal error on the part of the
13 decisionmaker's at the city level, that in and of itself
14 does not establish any protection violation. You still
15 have to, to consider the other factors that are set out
16 in those cases.

17 The one thing that screams, as it relates to
18 equal protection about this whole thing, is the public
19 opposition. It -- in fact, as I quote Dunes West,
20 actually says: Public opposition standing alone is a
21 rational basis for the decision of the government.

22 I also cite in my brief and quote at length a
23 Fourth Circuit case that talks in detail about why
24 appellate courts defer to local governing bodies even
25 when they make a mistake. And they talk about the

1 political ins and outs and things like that.

2 But in essence, what our position is, is that
3 equal protection, in order to find a violation of that,
4 to get directly to your question about what a judge
5 should consider, it is more than was there evidence that
6 the Planning Commission made a mistake here. And Judge
7 Miller, we'll disagree with Judge Miller, we made a
8 mistake here. They didn't have a right to consider
9 these things.

10 If there's any evidence in the record that will
11 take what the Planning Commission did outside of equal
12 protection constitutional violation, then the given
13 court has to go beyond. And here the public opposition
14 standing alone -- if I read Dunes West and the other
15 cases that talk about opposition correct, we could stand
16 on that alone. We don't, but if you go into the detail
17 of what the neighborhood complaints were about, you go
18 into the unique nature of 808 McDaniel.

19 808 McDaniel is different from any other piece of
20 property in the city of Greenville that's in the record
21 here where it actually had frontage on two streets,
22 Jones and McDaniel. And some of the concerns of the
23 neighborhood, part of that opposition, dealt with the
24 traffic issues from having now multiple houses entering
25 both of those streets. Safety concerns. Aesthetics

1 like tree canopy.

2 The point is, our position is, from a reviewing
3 court's point of view, the courts are compelled to see
4 if there's a way to find that what division did, did not
5 violate equal protection.

6 THE COURT: How about it, Mr. Bannister? Is that
7 the starting point for the Court to say we're gonna
8 start with this presumption of validity, if you will?
9 Is that the right analysis for the Court?

10 MR. BANNISTER: I don't believe so, Your Honor.
11 Every case he cited -- and, if I may, he said Dunes
12 West. That was a developer's request for a variance.
13 Government -- take a governmental action to change the
14 law to my benefit. They argue that the failure to
15 change was in violation of their equal protection due
16 process. That is a different case. This is
17 distinguishable. We didn't ask for a variance. We
18 don't want to change anything.

19 The Hobbit case -- *Harbit*, sorry, was a rezoning
20 application to the city. That is a request by developer
21 to give me rights I don't have, and then a complaint
22 when the government didn't do that.

23 So when you talk about, well, the crowds showed
24 up and that the public opposition to the development
25 alone is justification for denying the preliminary plat,

1 you're convoluting the two bites.

2 This developer had an entitlement. He wasn't
3 seeking a change. His lots met the criteria that the
4 City said these are your rights to do on your property
5 in the city for and until, which we encourage. This is
6 not one where the Planning Commission was cloaked in the
7 legislative authority and was elected to make those
8 decisions and waive the public burdens and benefits.

9 That's not what this was. From an equal
10 protection standpoint, they just said you can't do what
11 every other developer in the City can do because we just
12 don't like it and there's a mob outside that's mad about
13 it.

14 THE COURT: All right. So what you classify as
15 mob rule, we're not gonna let you do it because
16 everybody -- Mr. Price says that fits within the
17 definition of neighborhood compatibility, so how do you
18 balance those two?

19 MR. BANNISTER: So if the City, through its
20 agent, decides they're not gonna let you do what you're
21 legally entitle to do, then that is a government action
22 they've taken. And we're talking about whether they
23 could or couldn't do that at this point. The Circuit
24 Court, Judge Miller, has determined they can do it. And
25 that's what they relied on and they can do it, so you're

1 stuck not getting your six lots.

2 The question is, what is the effect of that?
3 When they, when the Planning Commission takes that
4 action, what is the result of that action? And our
5 position, that's a taking. You've been taken away 100
6 percent of the value of lot number six by saying you
7 can't have it, even though the law provides that you
8 can.

9 We say that's -- our argument to Judge Miller was
10 that's an improper use of discretion. He said, no, the
11 City's entitled to take that action, deny your claim if
12 they want to. This is the necessary result of the City
13 taking an action to where they deprive Mr. Cothran of
14 something that he was entitled to.

15 THE COURT: All right.

16 MR. BANNISTER: Not that he wanted -- not that it
17 would maximize his profits, but that he already had a
18 right to do it and basically just not let you do it.

19 THE COURT: And so all of this ultimately, and I
20 think we stated this in the outset, boils down to the
21 use of the neighborhood compatibility standard. Is
22 that --

23 MR. BANNISTER: So if they use --

24 THE COURT: In substance, is that the argument
25 that you're making?

1 MR. BANNISTER: If they use it -- if the Planning
2 Commission uses that to deny you the right to use your
3 property as you have been given by City Council, that is
4 what we're arguing about. What is the result of that?
5 When they do that -- and, Judge, I, maybe to convince
6 you to reverse Judge Miller's order and say deny them
7 having that discretion, but that's not where we are.

8 THE COURT: Where are we now without that
9 authority?

10 MR. BANNISTER: Where we are now is what, what is
11 the result of the City taking the action that they did?
12 And we say, when you do that, you are not entitled to
13 deprive us of the sixth lot and that is a 100 percent
14 taking of something we were entitled to do when we
15 bought the property.

16 THE COURT: All right. We've dissected this
17 about every way we can, but very brief, maybe kind of
18 final points you want to have on the record? And I want
19 to put something on the record. I may have said a time
20 or two the Zoning Commission. If I did, it was a
21 misstatement on my part, because clearly this is a City
22 of Greenville Planning Commission. So I want to have
23 that clear on the record.

24 So I don't know that there are any unanswered
25 questions, but very brief comments just to have a full

1 record for appeal purposes, I certainly will be glad to
2 allow that. Mr. Bannister?

3 MR. BANNISTER: Judge, I would only reiterate
4 that it's our position that when Mr. Cothran bought the
5 lot, the 1.8 acres, it was worth \$4 million. He had the
6 entitlements to the property that allowed him to have at
7 least six lots. Really eight, but the tree got in the
8 way of two of them.

9 And when the Planning Commission said we're not
10 gonna let you have six lots, they bribed him and said
11 you can't have more than five. I think that's what the
12 record shows. That that deprives him of his already
13 entitled right to null the property with that lot and
14 that is a taking.

15 THE COURT: Mr. Price?

16 MR. PRICE: The, the -- some of the decisions
17 that the City cites in its brief, out of a concept of a
18 bundle of property rights and the impact of the
19 governmental action as it relates to a property owners
20 bundle of rights, and those cases say that even if that
21 bundle of rights is affected, if one of them sticks, so
22 to speak, if removed by governmental action, whether
23 it's valid or invalid, the action itself. The focus
24 should be on the remaining bundle of rights for the
25 property.

1 And so here, to wrap all this up, what the
2 Planning Commission decided did not prevent Mr. Cothran
3 from possessing, using, selling, mortgaging, subdividing
4 that property. So he, he maintained all of the bundle
5 of rights that he had before the Planning Commission
6 decision, except one lot in essence. And that is just
7 not a taking based on the law that I found. Thank you.

8 THE COURT: All right. I'm gonna go ahead and
9 issue my ruling. I mean, obviously I feel like I'm
10 studying this, as did the lawyers. In any event, it's
11 just a treat to have good lawyers.

12 I think that the law makes it clear that it's not
13 a decision of what would the Court do, but the Court is
14 required to give deference to the ordinances and
15 decision of the Commission. And also, I think it adds
16 another layer by having the September 1, 2020 order that
17 established the rights and the authority of the Planning
18 Commission. I mean, inverse condemnation and, you know,
19 violation of constitutional right cases, they're hard
20 cases because the case law makes clear it's somewhat of
21 an uphill battle.

22 I just, despite the very fine arguments of
23 Plaintiff, I just don't think you can get there. I
24 think that the law that I'm required to apply is
25 diminution with the total project, not the individual

1 lots. And when I look at the authority, both in South
2 Carolina and the U.S. Supreme Court and look at the
3 percentages, clearly there was some degree of
4 diminution, but I don't think it gets to the level
5 that's required.

6 So, Mr. Price, if you would start working on an
7 order. And, of course, you know, once you send it to
8 opposing counsel, once everybody's had a chance to look
9 at it, if you will e-mail it directly to my court
10 reporter, as opposed to e-filing it. It's just easier
11 for us to review it. And is 10, 14 days, is that
12 realistic, Mr. Price?

13 MR. PRICE: Yes, sir.

14 THE COURT: Okay. Anything else we need to have
15 on the record, other than the fact that Mr. Price agrees
16 with me and other counsel don't agree with me?

17 MR. BANNISTER: No.

18 THE COURT: And I certainly take that as part of
19 the job. All right, gentlemen, thank you very much.

20 MR. BANNISTER: Thank you, Your Honor.

21 MR. PRICE: Thank you, Judge.

22 (Hearing concluded at 9:57 a.m.)

23

24

25 --- THIS ENDS TRANSCRIPT OF RECORD ---

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Master In Equity for the Thirteenth
5 Judicial Circuit for the State of South Carolina, do
6 hereby certify that to the best of my ability the
7 foregoing is a true, accurate, and complete transcript
8 of record of all the proceedings and evidence introduced
9 in the hearing and/or trial of the captioned case,
10 relative to appeal, in the Court of Common Pleas for
11 Greenville County on the 24th day of January, 2025.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18

19 *s/o Julie A Cendroski*

20 _____
21 Julie A. Cendroski
22 Master In Equity Court Reporter
23 Thirteenth Judicial Circuit
24
25

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

McDaniel Jones, LLC,

Plaintiff,

v.

City of Greenville Planning Commission,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-05094

STIPULATED FACTS

The parties, through their counsel, stipulate and agree to the following facts:

1. On July 26, 2018, McDaniel Jones, LLC (“Plaintiff”) purchased approximately 1.86 acres of real property (“the Subject Property”) located at 800 McDaniel Avenue in Greenville, South Carolina, for \$1,430,000.00. (**Plaintiff Exhibit 1:** Deed to McDaniel Jones, LLC).
2. Plaintiff is a single-asset LLC created by Cothran Properties, LLC, to own the Subject Property. (**Plaintiff Exhibit 2:** Dep. Cothran p. 26, lines 1-15). Cothran Properties, LLC is in the business of purchasing real property and developing commercial and residential projects.
3. The Subject Property fronts McDaniel Avenue and borders Jones Avenue, which runs roughly parallel to McDaniel Avenue. At the time of the purchase, a single home was situated on the property and the property was zoned R-9, Single-Family Residential District.
4. Prior to submitting its first application to the Planning Commission, Plaintiff’s initial concept for development of the Subject Property included subdividing it into eight lots. (**Plaintiff Exhibit 3:** Proposed Subdivision – 8 Lots).

5. Plaintiff secured an appraisal dated January 2, 2019 which valued the property at \$4,060,000.00. (**Plaintiff Exhibit 4**—Appraisal Report.)
6. Plaintiff’s proposed subdivision for the Subject Property was similar but not identical to a subdivision plan previously submitted by Cothran Properties, LLC in early 2018. Specifically, in January 2018, Plaintiff submitted a proposed subdivision plan for property located at 733 Bennett Street (“Bennett Street Subdivision”) (Application #SD 18-010), which proposed subdividing a 2.16-acre property into eight lots, all of which fronted on Bennett Street. (**Plaintiff Exhibit 5**: Aug. 2018 PC Minutes 2).
7. On August 16, 2018, Defendant Planning Commission heard a motion to approve the Bennett Street plan with staff comments and conditions.
8. Defendant Planning Commission’s minutes state that public comment on the Bennett Street application included the following: “stormwater concerns; rainfall; number of lots to be created; worried about people to be displaced; driveway arrangement improved from initial proposal; concern over lot widths; memorialize green space; construction noise” *Id.* Furthermore, the minutes state that the board discussion included the following: “stormwater; city regulations and requirements; proposed setbacks”. *Id.*
9. Defendant Planning Commission approved Plaintiffs’ Bennett Street Subdivision application by a vote of 6-0.
10. Plaintiff asserts that the approval was based on whether the application conformed with city regulations, requirements, and proposed setbacks, and did not involve defining “neighborhood compatibility.” *Id.*
11. There is no recorded public comment that raised an issue about neighborhood harmony or compatibility. *Id.*

12. On September 14, 2018, Plaintiff's application to the Planning Commission with regard to the Subject Property was submitted and received which proposed subdividing the property into seven residential lots. (**Defendant Exhibit 3:** Proposed Subdivision – 7 Lots). The preliminary plat submitted in October 2018 showed five lots would front on McDaniel Avenue and two on Jones Avenue. *Id.*
13. Starting on or around October 9, 2018, written comments against the proposal were submitted by a number of neighborhood residents. (**Defendant Exhibit 5** - Public Comments to First Application)
14. On October 16, 2018, a large magnolia tree on the Subject Property was inspected by two certified arborists and City planning staff determined that the tree was a historical tree and would need to be protected pursuant to Municipal Code 19-6.3.2(c). (**Defendant Exhibit 4** - Letter Kinney to Graham)
15. On December 12, 2018, Application #SD 18-027 was filed by Plaintiff with the Planning Commission on December 12, 2018. (**Defendant Exhibit 6** - 12.12.18 Proposed Subdivision – 6 Lots) The Plaintiff's application proposed to leave the magnolia tree on the Subject Property in place protected by a conservation easement. The application proposed a subdivision consisting of six residential lots: three fronting McDaniel Avenue, three fronting Jones Avenue, and one designated as a conservation/stormwater area. *Id.*
16. As part of the application process, public notice of the proposed subdivision was published. (**Defendant Exhibit 7**—Public Notice Second Application.) The City received written statements from many opponents to the subdivision. A petition opposing the subdivision was submitted to the Planning Commission on January 2, 2019 which was signed by many

- residents from the community. (**Defendant Exhibit 8**—Public Comments to Second Application; **Defendant Exhibit 9**—January 2, 2019 Petition to Planning Commission)
17. The petition quoted City Code Section 19-6.9.1: “General purpose and intent. This section is intended to achieve neighborhood compatibility, maintain the harmony and character of established single-family areas, and guide residential infill development to occur in an orderly and desirable manner.” *Id.* The petition went on to state that “[t]he basic proposal is to change significantly the character of the neighborhood by turning a lot on which one house is located into six separate residences.” *Id.*
 18. The petition identified areas of concern to the petitioners including: neighborhood compatibility; construction issues; traffic; tree canopy; storm water; and effect on market value. Amongst others, the petition expressed concerns that ongoing construction from the project “would restrict the ability of some homeowners near this property to sell their homes because of a potential buyer’s unwillingness to purchase a home in a construction zone.” *Id.* At least 96 residents signed the petition.
 19. A neighborhood meeting was held at the Augusta Road Library by Plaintiff’s representatives on January 9, 2019. Some opponents attended and expressed their opinion. (**Defendant Exhibit 10**—January 9, 2019 Neighborhood Meeting Attendance Sheets.)
 20. The Planning Commission considered the application at a public hearing on January 17, 2019. (**Defendant Exhibit 13**—Planning Commission Hearing Transcript.) Some opponents attended the hearing. A representative for Plaintiff presented the application.
 21. Eleven neighborhood residents spoke against the application. For example, Mr. Outten stated: “At a meeting with some of the neighborhood, some of the neighbors on December 21, 2018, Mr. Corthran did not try to hide this. He said to us, we are real estate developers;

we buy property to make money; that is what we do. The neighbors understand and recognize that Mr. Cothran has the right to develop this property. However, the right to develop this property has limits and constraints.” (**Defendant Exhibit 12**—Sam Outten Statement to Planning Commission.) Mr. Outten went on to state that “Mr. Cothran has been asked many times to reduce the number of lots to three or four. Mr. Cothran has refused to balance his rights to develop the property with the concerns of the neighbors and the effect of the proposal on this neighborhood.” *Id.*

22. At the January 17, 2019 Planning Commission meeting where Plaintiff’s preliminary plat for developing 808 McDaniel Avenue was considered, during its consideration of the application, some members of the Planning Commission commented that the preliminary plat complied with the City’s infill ordinance. Specifically, Commissioner Eldridge stated:

"This is terrible, because on paper it meets – it checks off all the boxes, because the lots are about the same size as the rest of the lots in the general vicinity. Mr. Martin has assured us that he will do everything he can to mitigate the trees, which is another box to check off, and a personal passion of mine. I know that if I lived in this neighborhood it would have hurt me to think that this was to be change[d] in any way. So we’re just – we’re all just between a rock and a hard place, and if I could abstain for this vote I would."

(Transcript of Meeting, Page 70, lines 8-19).

23. After Commissioner Eldridge’s comment, further discussion occurred among Planning Commission members. (Transcript of Meeting, pp. 70-76.)

24. Commissioner Gardner discussed lot width calculations prepared by Commissioner Meg Terry. At the end of the public comments segment, Defendant Planning Commission

members discussed that they may be more willing to approve a five-lot subdivision. Plaintiff declined to change the proposal at the hearing. (**Defendant Exhibit 14** - Deposition of Mark Cothran, p. 75, lines 10 through 15; p. 84, line 21 through p. 85, line 9.)

25. Defendant Planning Commission voted unanimously to deny the application. (**Defendant Exhibit 15** - Planning Commission Hearing Transcript p. 74-77.)

26. Written notice of the denial dated February 13, 2019 was mailed to representatives of Plaintiff. The notice advised Plaintiff that “The Planning Commission determined that the size and configuration of the proposed lots were not compatible with the existing development pattern along McDaniel and Jones Avenues”, and that “reducing the number of residential lots could potentially address [the Planning Commission’s] compatibility concerns....” (**Defendant Exhibit 16** – Feb 13, 2019 letter to Jay Martin from Michael Frixen, Development Planner.)

27. Plaintiff appealed the Planning Commission’s decision to the Court of Common Pleas. The matter was heard and on September 1, 2020, Judge Edward W. Miller entered an order denying the appeal. (**Defendant Exhibit 17** - 9.1.20 Order of Judge Miller.)

28. Judge Miller held in his Order, that at its January 17, 2019 meeting, Defendant admitted that Plaintiff’s application complied with all applicable zoning and ordinance language except certain “purpose and intent” sections in City of Greenville Code of Ordinances §§ 19.1.3 and 19.6.9.1. (**Plaintiff Exhibit 7**: Order Denying Appeal, 2-3). The Order was not appealed.

29. Plaintiff contends that Defendant defined “neighborhood compatibility” during the January 17, 2019 meeting to require that newly-created subdivision lots be compatible in size and

- configuration with existing neighborhood lots. (**Plaintiff Exhibit 7:** Order, 3). Furthermore, Plaintiff contends that based on this newly defined interpretation, Defendant denied Plaintiff's application by a vote of 0-7. (**Plaintiff Exhibit 8:** Jan. 2019 PC Minutes 3).
30. Plaintiff's appraiser opined that the fair market value of a portion of Plaintiff's property, assuming the Planning Commission had approved the six-lot subdivision, would have been approximately \$2,510,000. (**Defendant Exhibit 21**—Plaintiff's Answer to Defendant's Interrogatory 4) Had the six-lot proposal been approved, Defendant agreed to accept a conservation easement encumbering the remaining 0.43 acres of land, which Plaintiff's appraiser neither considered nor included in the valuation, leaving the impact of the conservation easement and resulting damages unaccounted for. *Id.*
31. Plaintiff's appraiser opined that the fair market value of Plaintiff property, had the Planning Commission voted to approve the six-lot subdivision, would have been \$2,510,000. (**Defendant Exhibit 21**—Plaintiff's Answer to Defendant's Interrogatory 4.)
32. Plaintiff incurred expenses totaling \$1,509,399.95, including the purchase price of the property, in acquiring and preparing the property for development between July 1, 2018, and January 1, 2019. (**Plaintiff Exhibit 9:** Project Spreadsheet).
33. Plaintiff sold 808 McDaniel Avenue on October 2, 2020 for \$1,400,000. (**Defendant Exhibit 18** - Deed from McDaniel Jones to McBrides.)
34. Plaintiff bought the property for \$1,430,000; it sold the property for \$1,400,000 approximately one month after the Circuit Court denied Plaintiff's appeal of the Planning Commission's decision.

35. Prior to selling the property, Plaintiff had interested parties who may have been willing to purchase the property for \$1.65 million and \$1.85 million. (**Defendant Exhibit 20** - Plaintiff's Answer to Defendant's Interrogatory 8.)
36. Currently a new, single-family residence is being constructed on the property. (**Defendant Exhibit 19**—808 McDaniel Avenue Current Aerial View.)
37. Plaintiff asserts that at the time Plaintiff purchased the property, there was no regulation or ordinance in place that would provide notice of any restriction preventing Plaintiff's proposed development. Defendant asserts that municipal ordinance section 19-6.9.1 provides notice.
38. Plaintiff asserts Defendant had not previously denied any subdivision application based on "neighborhood compatibility." (**Plaintiff Exhibit 12**: Index and PC Minutes). Defendant asserts that its decisions implicitly consider neighborhood compatibility.
39. Plaintiff relied on Defendant's August 16, 2018 approval of the Bennett Street subdivision application when determining the purchase price for the property. (**Plaintiff Exhibit 2**: Dep. Cothran p. 40, lines 17-25).
40. Plaintiff asserts that Defendant did not consider or define "neighborhood compatibility" when approving the Bennett Street Development application and instead evaluated conformity with existing city regulations and requirements. Defendant acknowledges only that there is no recorded public comment that raised an issue about neighborhood harmony or compatibility. *Id.*

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC

s/Ryan W. Pasquini

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.

CASE NUMBER 2020-CP-23-05094

McDaniel Jones, LLC, ... Plaintiff / Appellant,

v.

City of Greenville Planning Commission Defendant / Respondent,

Notice Of Appeal

Appellant McDaniel Jones, LLC, appeals the Order entered by the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville, South Carolina on February 5, 2025 ("February Order") in the above-captioned case.

Appellant received written notice of the February Order on February 5, 2025, through its counsel and is timely filing this Notice of Appeal. A copy of the February Order is attached hereto as Exhibit A.

s/Ryan W. Pasquini

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.

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City of Greenville Planning Commission Defendant / Respondent,

PROOF OF SERVICE

I certify that I have served Appellants' **Notice of Appeal** by electronic mail (AIS Service)
and U.S. Mail on March 3, 2025, to Respondents' attorney of record as follows:

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March 3, 2025