

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ELEVENTH JUDICIAL CIRCUIT COURT

R. Knox McMahon, Judge

Trial Court Case No. 2012-CP-32-01294
Appellate Case No. 2013-000314

Scarlet Williams Appellant,

v.

Lexington County Board of Zoning Appeals Respondent.

RECORD ON APPEAL

Renae Alt-Summers
The Giese Law Firm
1315 Blanding Street
Columbia, South Carolina 29201
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**CIVIL CASE NO.:
2012-CP-32-01294**

**Scarlet Williams vs. Lexington
County Board of Zoning Appeals**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**Lexington County Board of Zoning Appeals
Findings of Facts and Conclusions of Law
Zoning Appeal Application #03-12**

Findings of Fact:

- Property Owners: James D. and Scarlet Williams
- Property Address: 120 Wigmore Lane, Lexington, SC 29072
- TMS# 005331-03-007
- Zoning Classifications: RD (Restrictive Development)
Street: RL5 (Residential Local Five)
- Zoning Category: Home Occupation
- Planning Area: Western – Zoned: November 14, 2001
- Applicant/Address: Scarlet Williams – 120 Wigmore Lane, Lexington, SC 29072
- Date of Appeal Application: January 13, 2012
- Appeal Request: Applicant appeals ARTICLE 2--APPLICATION OF REGULATIONS, Chapter 1. Schedule of Permitted Uses, 21.20 Accessory Activities, 21.22 Home Occupations
- Date of Appeal Hearing: February 21, 2012
- Council District 5 represented by Council member Bobby Keisler
- The Lexington County Zoning Office was first contacted about a possible dog grooming business being run from Ms. Williams' home about a year and a half ago.
- Ms. Williams explored the option of filing a Zoning Appeal at that time; however, she did not.
- In September 2011 and also in November 2011, the Zoning Office received two anonymous letters regarding the operation of a dog grooming business at 120 Wigmore Lane. One of the letters indicated that she had a website advertising her business and the prices for services offered.
- Zoning Administrator Walt McPherson contacted Ms. Williams regarding these complaints and Ms. Williams stated she was basically grooming some dogs for neighbors in the neighborhood, more or less, and not charging a fee.
- A general Zoning Permit for Kennels, Catteries and Stables could not be issued to her because of the zoning street classification being RL5 which does not allow this activity. Options were explored in attempt to get Ms. Williams in zoning compliance such as a Home Occupation Zoning Permit.
- Home Occupation Zoning Permit does not consider the zoning district classification or zoning street classification, however, it does have certain requirements and limitations. A Home Occupation in part states, "A home occupation shall not include the manufacture or repair of transportation related equipment or animal impoundment activities (kennel) and shall be subject to the performance standards contained in this Ordinance as applicable."
- The definition of Kennels, Catteries and Stables in part states, "include any person, establishment, partnership, corporation, or other legal entity that owns, keeps, harbors, or is custodian of domestic animals and/or domestic fowl kept or

- used for stud for which a fee is charged and/or for breeding purposes for which a fee is charged for the offspring, or for the purpose of commercial boarding, grooming, sale*, or training. Animal rescue and/or adoption facilities, whether operated for profit or as nonprofit organization, shall be included in this category.
- Home Occupation is considered an accessory activity of a nonresidential nature which is performed within a dwelling unit, or within an accessory structure to a residence.
- Considering the Zoning Ordinance guidelines, the only way for Ms. Williams to operate from her home under the Home Occupation guidelines is to have a mobile dog grooming business where she would actually go to the client's location and groom the pet rather than have them be groomed from her home.
- Ms. Williams disagreed with the interpretation of the Zoning Ordinance and thus filed an appeal to go before the Board of Zoning Appeals.

Conclusions of Law:

After hearing facts of the appeal request, as presented by Lexington County Zoning Administrator Walt McPherson, and Mr. McPherson answering questions from some of the BZA members, the Board of Zoning Appeals heard from the applicant's attorney, Renae Alt-Summers, and later from the applicant, Scarlet Williams.

Ms. Alt-Summers began stating that she and the applicant appeared before the Richmond Farms subdivision board meeting and presented their case regarding the private restrictions within the subdivision. After their meeting, they received a letter from the Richmond Farms HOA president that it was the subdivision board's opinion that the dog grooming business does not violate the community's private restrictions.

Ms. Alt-Summers presented a PowerPoint presentation that county staff was able to upload onto the computer for the public to see. There were numerous pictures displaying the improvements the Williamses have made to the garage area for the dog grooming business such as a grooming table, shower stall, and dryers for the dogs after they have been washed. Slides were also presented by Ms. Alt-Summers in attempts to debate that the dog grooming business should not be considered a Kennels, Catteries, and Stables activity. These included definitions, language in other ordinances, South Carolina case law, etc.

The BZA members understood some of her points; however, the members kept going back to the description of principal activities of Kennels, Catteries, and Stables and it mentions grooming in this description. The BZA members felt that as long as that verbiage of grooming is under this description of Kennels, Catteries and Stables (and kennel verbiage in the Home Occupation guidelines) there is really no way for them to rule otherwise and it is something they cannot ignore.

This Board concludes that the activity described at the subject property meets the County Ordinance definition for Kennels, Catteries and Stables as had been determined by the Zoning staff and, therefore, the activity is not an allowed activity at the subject property.



Walt McPherson
Zoning Administrator



Mark Bostic
Board of Zoning Appeals - Chairman

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CIVIL CASE NO.:
2012-CP-32-01294

**Scarlet Williams vs. Lexington
County Board of Zoning Appeals**

**MEMORANDUM SUMMARY PRESENTED
TO ZONING BOARD**



COUNTY OF LEXINGTON, SOUTH CAROLINA
Department of Community Development
County Administration Building (803) 785-8121
212 South Lake Drive Ste. 401 Lexington, South Carolina 29072

To: Lexington County Board of Zoning Appeals

From: Walt McPherson, Zoning Administrator

Re: Summary of Appeal

The Zoning Office became aware of this issue from a series of anonymous complaints (presumably someone who resides in the subdivision). Mrs. Williams and I have communicated via telephone, e-mail and in-person regarding this issue.

Mrs. Williams resides at 120 Wigmore Lane in Richmond Farms subdivision. Mrs. Williams would like to operate a dog grooming service from her home. Due to the zoning street classification of RL5 (Residential Local Five), the Zoning Office cannot issue a zoning permit for a Kennels, Catteries, and Stables activity. Also, private restrictions exist for the subdivision which would not allow this service. Even if the street classification and private restrictions would allow, the buffering restrictions (buffer, setback and screening) would be enough to warrant several buffering restriction consent forms in which the protected property owners may not agree to sign.

Home Occupation Zoning Permit is commonly issued to citizens operating an activity from their residence provided the guidelines of the Home Occupation are met. Home Occupations are considered an accessory activity of a nonresidential nature which is performed within a dwelling unit, or within an accessory structure to a residence.

I have included in your packet and as part of this presentation the definition of Kennels, Catteries, and Stables activity along with the pertinent guidelines for the Home Occupation Zoning Permit. The definition of Kennels, Catteries, and Stables includes grooming and the pertinent language for the Home Occupation guidelines reads, "A home occupation shall not include the manufacture or repair of transportation related equipment or animal impoundment activities (kennel) and shall be subject to the performance standards contained in this Ordinance as applicable."

It is my interpretation that since the definition of Kennels, Catteries, and Stables includes grooming and the guidelines of the Home Occupation includes animal impoundment activities (kennel), dog grooming service may not be permitted under the Home Occupation Zoning Permit.

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CIVIL CASE NO.:
2012-CP-32-01294

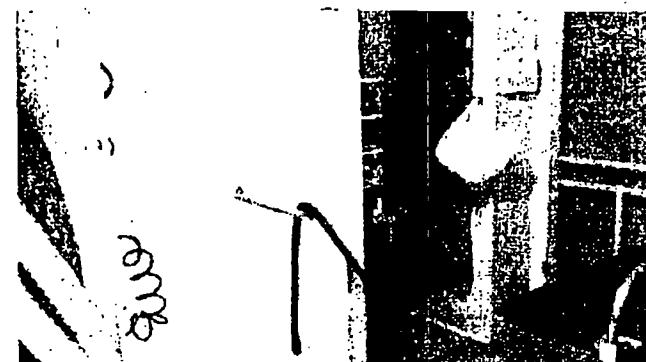
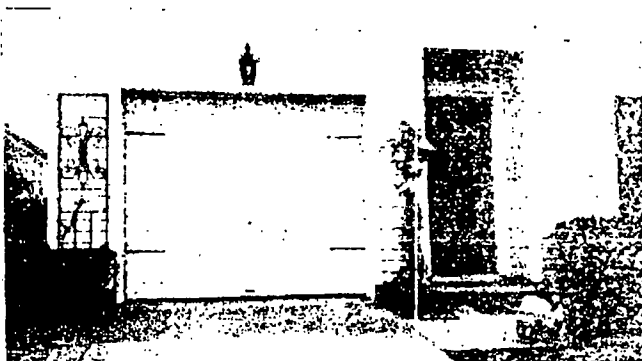
**Scarlet Williams vs. Lexington
County Board of Zoning Appeals**

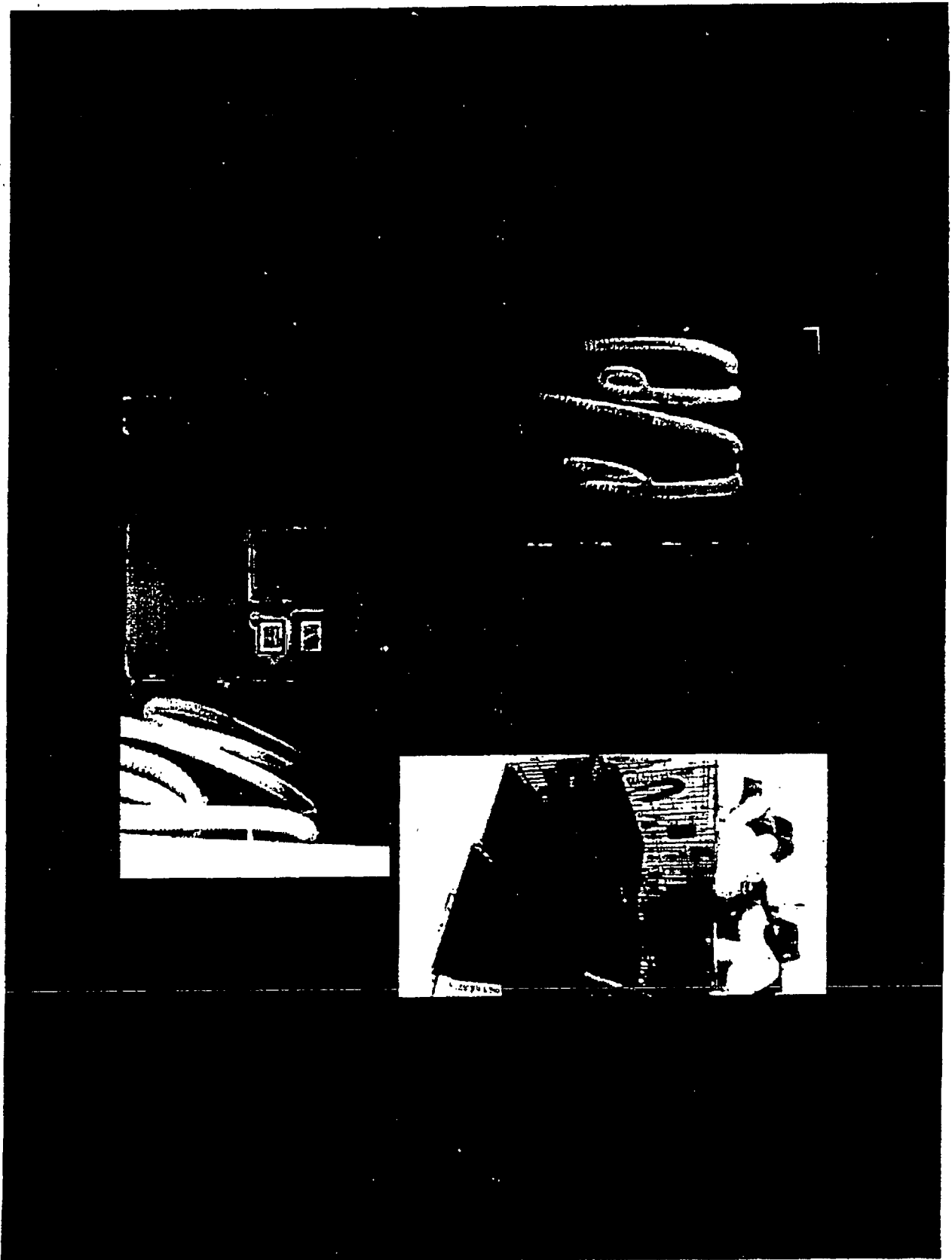
APPLICANT'S EVIDENCE BEFORE ZONING BOARD

Home based Occupation

DOG GROOMER

Home Based Dog Grooming Business





21.22 Home Occupations

- A home occupation shall not include...animal impoundment activities (kennel)...

Definitions

- ▣ Animal Impoundment activity not defined anywhere in the Ordinance
- ▣ (Kennel)-not defined in 12.10 Definitions
- ▣ Fancier's Kennel/Cattery-is defined under 12.10

Fancier's Kennel/Cattery

- Includes a private kennel or cattery maintained by a fancier to KEEP or TRAIN cats or dogs.
- Goes on to define Fancier
- Definition does not include "GROOMING"

Kennel

- Is **CLASSIFIED** under 21.10 but not defined.
- Purpose of classification 21.00- *"provides a basis for the regulation of these activities and their assignment to districts later in this chapter"*
- 21.10 Description of Principal Activities, not definitions.

Dictionary Definitions of KENNEL

- A shelter for a dog or cat; an establishment for the breeding or boarding of dogs or cats.

Websters

- A place where animals are bred and trained and where people pay to leave their dogs to be taken care of while they are away.**Cambridge**

- A shelter for a dog; an establishment where dogs are bred, trained, or boarded **American Heritage Dictionary, Houghton Mifflin.**

SC Case law -KENNEL

- Matsell v. Crowfield Plantation Comm Serv. (S.C.App. 2011)-dog kennel pens 6ft. in height, enclosing a dog kennel pen.
- Harris v. Anderson County Sheriff's Office (S.C. 2009)-declining to create a workman's compensation "kennel worker exception"
- 4 other cases mentioning KENNEL-all involving the boarding of dogs or a physical pen for dogs.

KENNEL in prior Lexington County Municipal Code

- KENNEL was previously defined in Section 10-31.-Definitions.
- *Kennel* means any person engaging in the business of breeding, buying, selling or the boarding of dogs.
- **Prior definition DID NOT include grooming.**

KENNEL in SC Statutes

- 47-3-75 Provides that an animal left at a ...*dog kennel*...may be transferred to the animal shelter 10 days after the owner fails to pick up the animal as agreed pursuant to written contract.

KENNEL in neighboring jurisdictions

City of Columbia-Sec.4-61.-Definitions:
Kennel means the premises of any person engaged in the business of breeding, buying, selling or boarding dogs or who keeps three or more dogs on the premises.

■ City of Columbia:

Sec. 4-63-Kennels-regulates the physical facilities of kennels as defined in previous section.

Irmo

- Irmo municipal code-
- Does not define Kennel, but includes the following under Accessory buildings and uses: "accessory buildings, including garages, carports, **domestic kennels**, storage sheds, satellite dishes, ham radio ground supported TV antennas, etc."

City of Lexington

- ❑ Also does not define kennel
- ❑ Kennel mentioned under Section 91.18-
Vicious Animals-referring to a physical
structure:
- ❑ *Enclosed kennel or pen*

Conclusion

- └ Home based Dog Grooming business, not an animal impoundment activity nor a kennel

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CIVIL CASE NO.:
2012-CP-32-01294

**Scarlet Williams vs. Lexington
County Board of Zoning Appeals**

**ZONING STAFF EVIDENCE
PRESENTED TO ZONING BOARD**

Zoning Appeal # 03-12

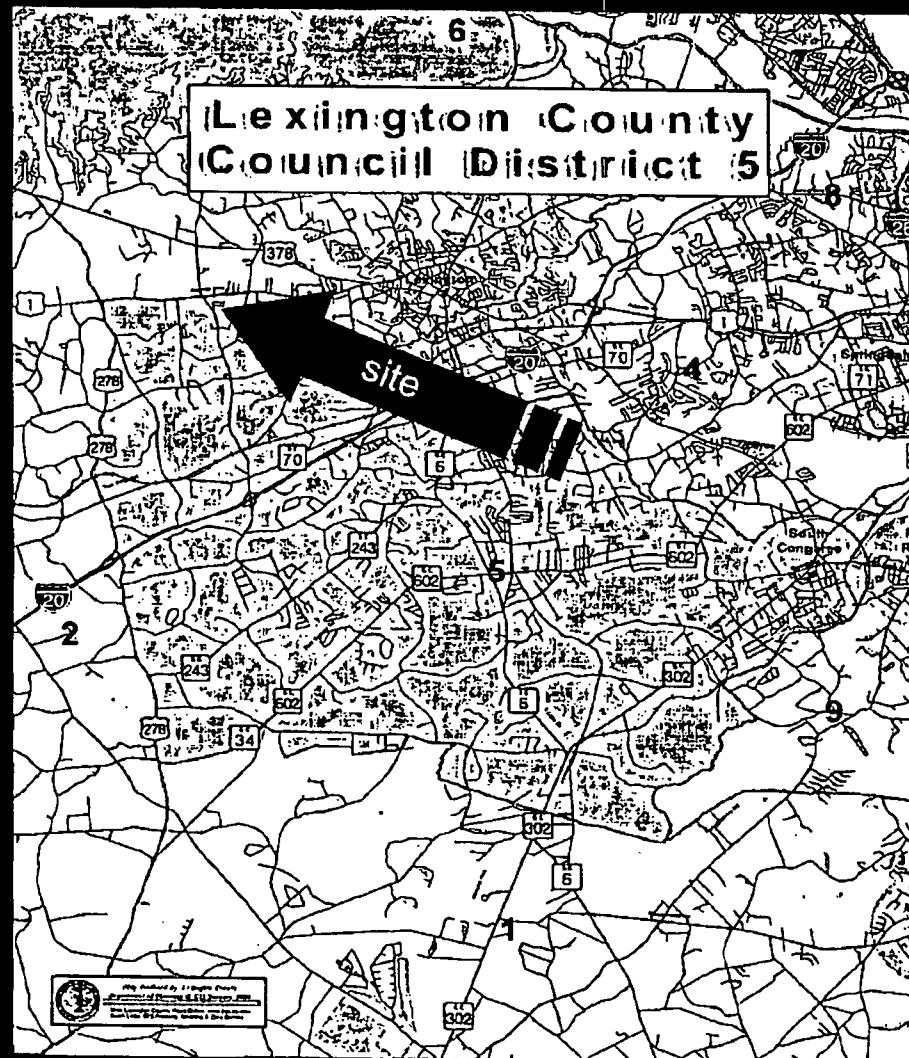
- Applicant: Scarlet Williams
- Property Owners: James D. & Scarlet Williams
- Location: 120 Wigmore Lane
TMS# 005331-03-007



Council District 5

Represented by:

Bobby Keisler



Council District

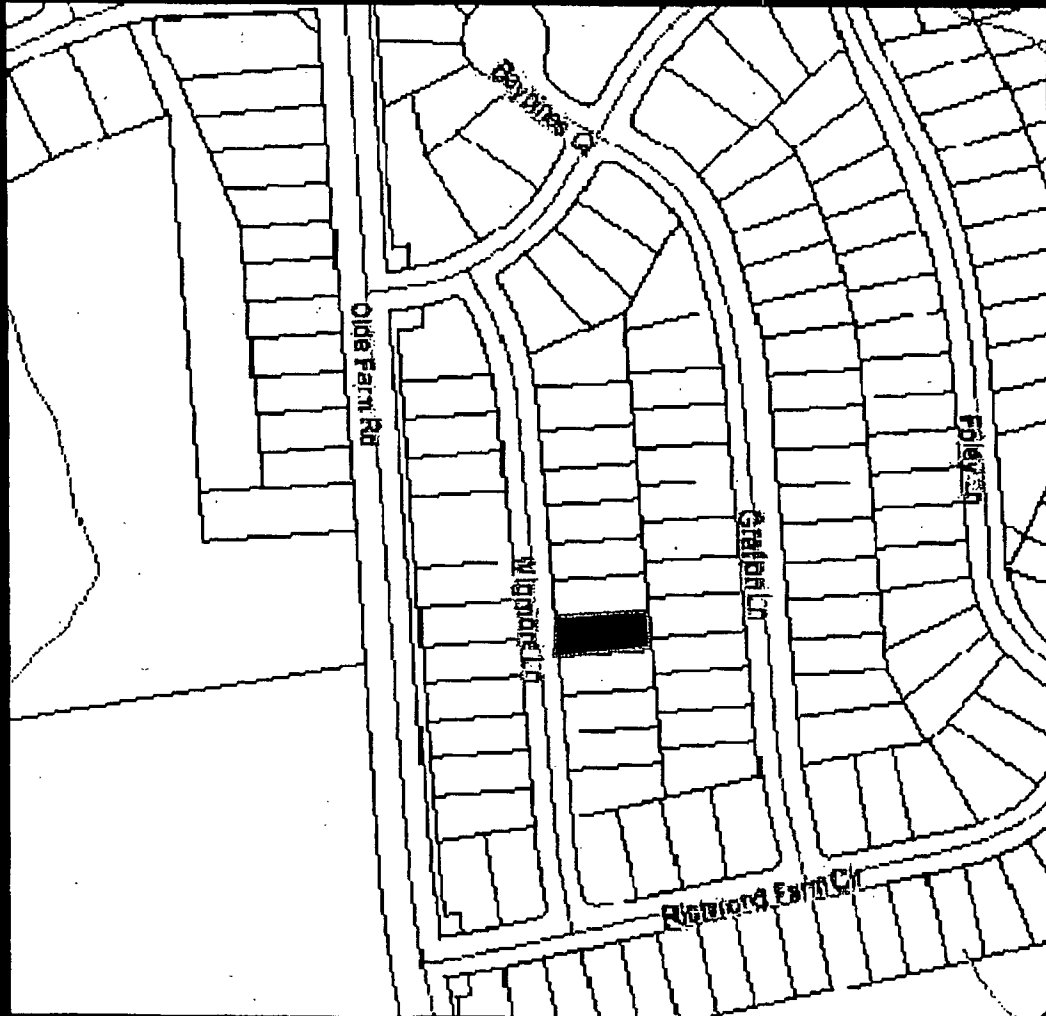


Community Development

Location
Description:
South Lake Drive

Planning Area:
Central

Zoned:
1986



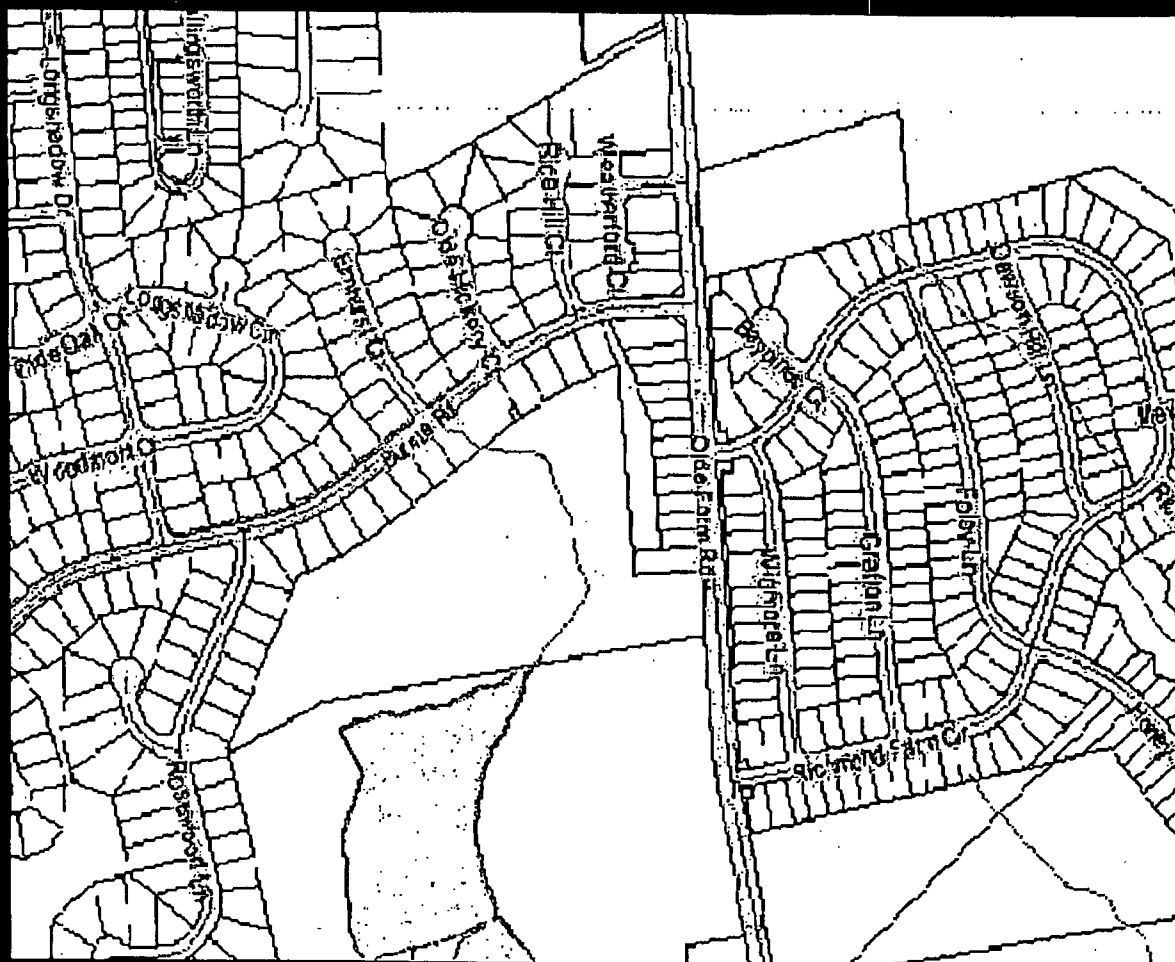
Site Location



Community Development

ZONING LEGEND

- | | |
|--|-------------------------------|
| | II-Interstate |
| | A-Arterial Road |
| | C-Collector Road |
| | L-Local Road |
| | LL-Limited Local Road |
| | RL4-Residential Local 4 |
| | RL5-Residential Local 5 |
| | RL6-Residential Local 6 |
| | LC-Limited Commercial |
| | C1-Neighborhood Commercial |
| | C2-General Commercial |
| | D-Development |
| | ID-Intensive Development |
| | PD-Planned development |
| | R1-Low Density Residential |
| | R2-Medium Density Residential |
| | R3-High Density Residential |
| | RA-Recreational/Agricultural |
| | RD-Restrictive Development |



Lexington County Zoning Ordinance



COUNTY OF LEXINGTON, SOUTH CAROLINA
Department of Community Development
County Administration Building (803) 785-8121
212 South Lake Drive Ste. 401 Lexington, South Carolina 29072

To: Lexington County Board of Zoning Appeals

From: Walt McPherson, Zoning Administrator

Re: Summary of Appeal

The Zoning Office became aware of this issue from a series of anonymous complaints (presumably someone who resides in the subdivision). Mrs. Williams and I have communicated via telephone, e-mail and in-person regarding this issue.

Mrs. Williams resides at 120 Wignmore Lane in Richmond Farms subdivision. Mrs. Williams would like to operate a dog grooming service from her home. Due to the zoning street classification of RL5 (Residential Local Five), the Zoning Office cannot issue a zoning permit for a Kennels, Catteries, and Stables activity. Also, private restrictions exist for the subdivision which would not allow this service. Even if the street classification and private restrictions would allow, the buffering restrictions (buffer, setback and screening) would be enough to warrant several buffering restriction consent forms in which the protected property owners may not agree to sign.

Applicable excerpts from the Zoning Ordinance



Community Development

Lexington County Zoning Ordinance

Home Occupation Zoning Permit is commonly issued to citizens operating an activity from their residence provided the guidelines of the Home Occupation are met. Home Occupations are considered an accessory activity of a nonresidential nature which is performed within a dwelling unit, or within an accessory structure to a residence.

I have included in your packet and as part of this presentation the definition of Kennels, Catteries, and Stables activity along with the pertinent guidelines for the Home Occupation Zoning Permit. The definition of Kennels, Catteries, and Stables includes grooming and the pertinent language for the Home Occupation guidelines reads, "A home occupation shall not include the manufacture or repair of transportation related equipment or animal impoundment activities (kennel) and shall be subject to the performance standards contained in this Ordinance as applicable."

It is my interpretation that since the definition of Kennels, Catteries, and Stables includes grooming and the guidelines of the Home Occupation includes animal impoundment activities (kennel), dog grooming service may not be permitted under the Home Occupation Zoning Permit.



Lexington County Zoning Ordinance

LEXINGTON COUNTY



ZONING ORDINANCE

June 15, 2011

ARTICLE 2. APPLICATION OF REGULATIONS

Chapter 1. Schedule of Permitted Uses

21.01. General Classification Rules

The purpose of this chapter is to classify all uses in a number of specially defined activities on the basis of common functional characteristics and similar compatibility with other uses. This classification system provides a basic regulatory framework for these activities and their so-called to determine their compatibility with other uses. The Zoning Administrator will determine the level of compatibility and the level of interference with other uses. The Zoning Administrator will also determine the level of interference with other uses. The Zoning Administrator will also determine the level of interference with other uses.

21.02. Description of Principal Activities

Kennels, catfish and similar include any person or entity that is engaged in the business of breeding, raising, selling, or otherwise disposing of animals, including but not limited to dogs, cats, birds, and other animals. This includes the breeding, raising, selling, or otherwise disposing of animals, including but not limited to dogs, cats, birds, and other animals. This includes the breeding, raising, selling, or otherwise disposing of animals, including but not limited to dogs, cats, birds, and other animals.

Applicable excerpts from the Zoning Ordinance



Community Development

Lexington County Zoning Ordinance

EXCERPTS TAKEN FROM

LEXINGTON COUNTY



ZONING ORDINANCE

June 15, 2011

ZONING - HOME OCCUPATION REQUIREMENTS

Page 92 - Application for Zoning - Home Occupation Permit

21-22 Home Occupations (Excerpt from the Lexington County Zoning Ordinance)

Except as otherwise provided below, in Article 1 through 11, a home occupation is an accessory activity of a non-residential nature which is performed within a dwelling unit or within an accessory structure to a residence. It shall not occupy more than 25% of the total floor area of a dwelling unit and it shall not occupy more than 700 square feet of floor area. A home occupation shall not include the manufacture or repair of transportation related equipment or animal husbandry activities (horses) and shall be subject to the performance standards contained in this Ordinance. As applicable, home occupations shall require a Zoning Permit in addition to those of the residential principal use.

Applicable excerpts from the Zoning Ordinance

Community Development

Lexington County Zoning Ordinance

ZONING – HOME OCCUPATION REQUIREMENTS

Page 2 – Application for a Zoning - Home Occupation Permit

21.22 Home Occupations *(Excerpt from the Lexington County Zoning Ordinance)*

Except as otherwise provided below (in items a. through h.), a home occupation is an accessory activity of a non-residential nature which is performed within a dwelling unit, or within an accessory structure to a residence. It shall not occupy more than 25% of the total floor area of such dwelling unit and in no event occupy more than 750 square feet of floor area. A home occupation shall not include the manufacture or repair of transportation related equipment or animal impoundment activities (kennel) and shall be subject to the performance standards contained in this Ordinance as applicable. Home occupations shall require Zoning Permits in addition to those of their residential principal activities.

The following shall not be permitted as part of a home occupation unless an appropriate variance is granted by the Board of Zoning Appeals:

- a. Exterior displays, display of goods or chattels visible from the outside, or exhibit on the premises by any method which would indicate from the exterior that the dwelling unit, or accessory structure, is being utilized in whole or in part as a home occupation;
- b. Use, in connection with the home occupation, of any mechanical, chemical, or electrical device which would pose a potential hazard to the residential setting, and which may be considered to be an unusual piece of equipment in the residential environment;
- c. Storage of materials, goods, chattels, etc. outside of a principal or accessory building or other structure;
- d. External structural alterations not customary in residential buildings;
- e. Traffic generation substantially in excess of that which would normally be expected in a residential setting;
- f. Teaching of more than six pupils simultaneously; or
- g. Employment at the residence housing the home occupation of a person other than a resident of the dwelling unit.



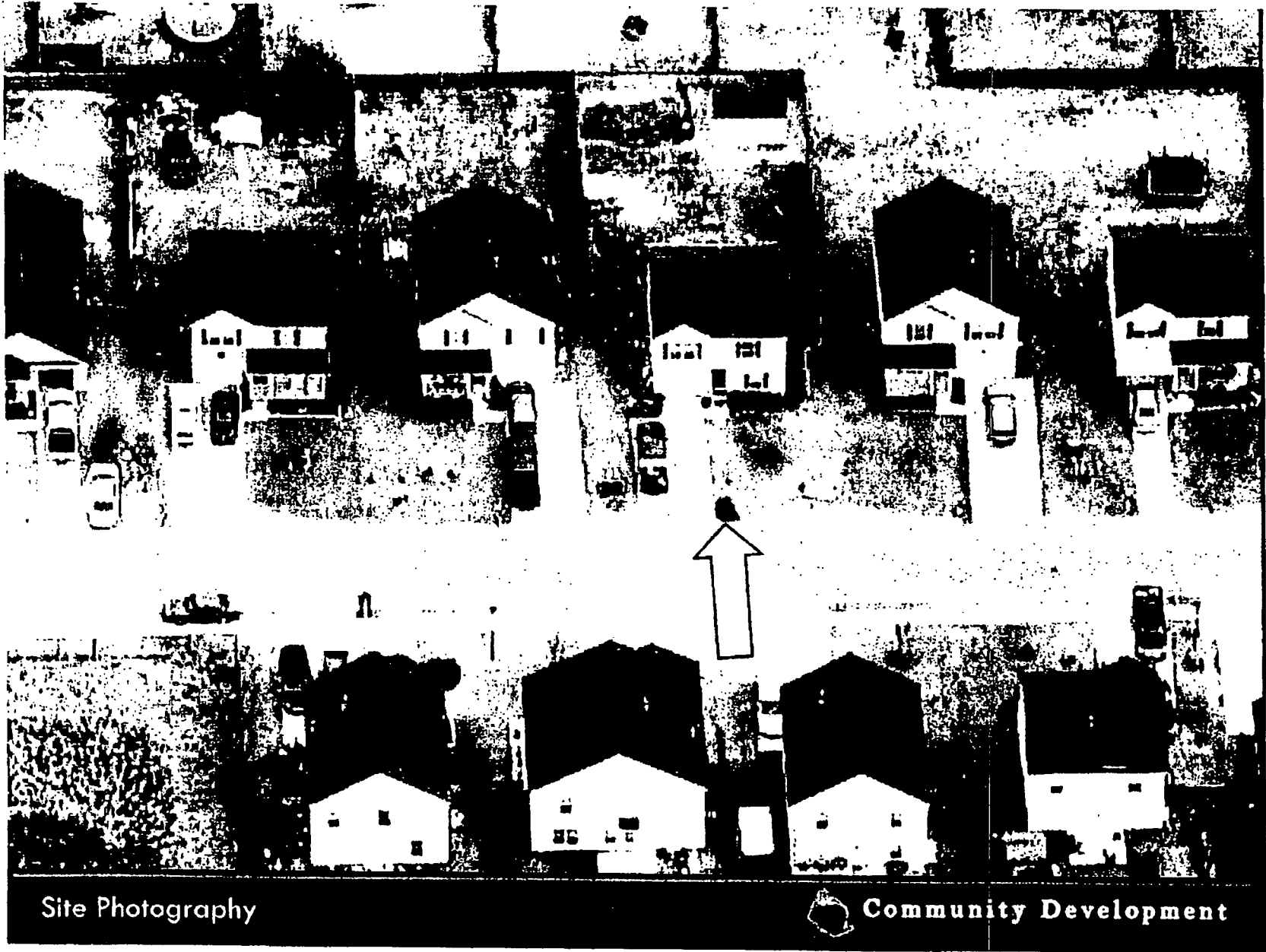
Lexington County Zoning Ordinance

h. Regular care, supervision, or guidance of more than 6 individuals (pre-teenage children, senior citizens, or adults with disabilities), counting those who live at the site of the home occupation. No special exception may be granted for home occupation day care of more than 12 such individuals; nor may any special exception for a home occupation day care extend beyond the operator or site originally granted the special exception. No special exception may be granted for home occupation day care of both children and adults at the same location under this Ordinance.

However, home occupation day care is not subject to the 25% of total floor area restriction, or the 750 square feet of floor area restriction imposed on other home occupations. Also, home occupation day care may be conducted outside on the premises using yard furnishings customary to the residential setting. Additional traffic generation from one delivery and one pick up of each individual each day shall be considered within the limitations of item "e" above. The Board of Zoning Appeal's deliberations shall include, but not be limited to, the following items:

1. the size of the residence and the outside recreation area;
2. parking and vehicular access to the residence and its ability to accommodate the drop-off and pick-up of the additional individuals;
3. the stated opinions of the surrounding property owners; and
4. if requested, the acceptability of having an employee ("caregiver" as defined by the South Carolina Department of Social Services) who is not a resident of the dwelling unit.

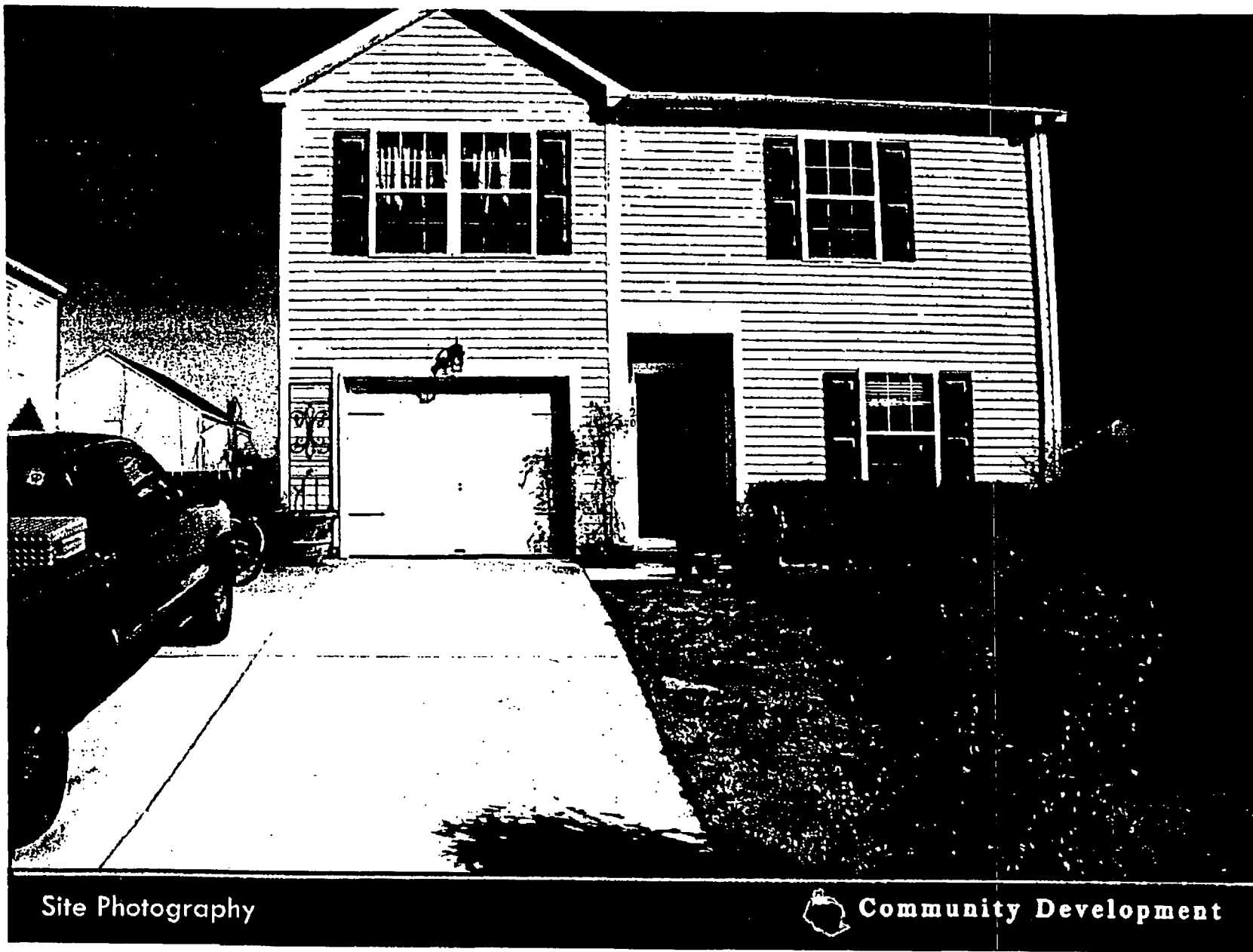




Site Photography



Community Development



Site Photography



Community Development



Site Photography



Community Development



Site Photography



Community Development
PLANNING • DESIGN • CONSTRUCTION



Site Photography

 Community Development



Site Photography



Community Development
BY THE PEOPLE FOR THE PEOPLE



County of Lexington

Board of Zoning Appeals

PUBLIC HEARING

COPY

**CIVIL CASE NO.:
2012-CP-32-01294**

**Scarlet Williams vs. Lexington
County Board of Zoning Appeals**

TRANSCRIPT OF HEARING BEFORE BOARD

LEXINGTON COUNTY BOARD OF ZONING APPEALS

February 21, 2012

Zoning Appeal #03-12 Verbatim

MEMBERS PRESENT

Mark Bostic, Chairman
James Spangler, Vice Chairman
Jane Cook
Ted Mitchell
Morris Phillips
Sarah Wise

STAFF PRESENT

Ron Scott, Director, Community Development
Chris Folsom, Development Administrator
Walt McPherson, Zoning Administrator
Susan Neil, Zoning Assistant
DJ Yandle, Zoning Assistant

MEMBERS ABSENT

J. R. Caughman
Ed Yates

VISITORS

Scarlet Williams
Rena Alt-Summers

Walt McPherson: Members of the Board, I'm Walt McPherson, Zoning Administrator, Lexington County Community Development, presenting a Zoning Appeal Application #03-12. Most of the time you see special exceptions, variances, that type of thing, but every now and then we do have an appeal like we have tonight. *[PowerPoint presentation]* This one is Zoning Appeal #03-12. The applicant is Scarlet Williams; the property owner is James D. and Scarlet Williams, and both Mrs. Williams and her husband are here this evening; and the location is 120 Wigmore Lane, and that's identified by Tax Map Number 005331-03-007. The Council District is represented by Council member Bobby Keisler in Council District 5. The location description—excuse me, that should be Olde Farm Road, my apologies on that. The Planning Area is Central, 1986; and this is highlighted by the parcel here off Wigmore Lane. The general Zoning Map—this is RD (Restrictive Development) property; Olde Farm Road is a Local classification; then the roads interior subdivision here is what we call an RL5 (Residential Local Five), it's five units per gross acre.

Just to give you a brief history on this issue. Our office was notified about a year and a half ago. We have an anonymous letter stated, we assumed it was a property owner within the subdivision, stating that this lady at 120 Wigmore was running a dog grooming business. At that time I contacted Mrs. Williams and back then she thought about processing, or excuse me, pursuing an appeal application. At that time she did not, so we went the better part of a year, maybe about fifteen months, didn't hear any more complaints until about September this past year—another anonymous

letter stating that a dog grooming business is being run from this location. In November we received another letter. And, of course, I had been contacting or been in contact with Mrs. Williams who said that she was basically grooming some dogs for neighbors in the neighborhood, more or less not charging a fee, that type of thing. Also, though, during the letter—anonymously letter received by our office indicated she had a website, which she did, displaying the type of cuts for the dogs, grooming, that type of thing. She had actually, I think, disbanded her website. So we kind of picked up where we left off from in the summer of 2010. And in looking at this request, or actually trying to get her into compliance with the Zoning Ordinance, we looked at issuing a zoning permit, maybe a home occupation zoning permit, suggested an alternative location, that type of thing. Under the zoning permit Kennels, Catteries, and Stables, I could not issue her a regular zoning permit because of the street classification is RLS and being small lots in the subdivision. Even if it would be allowed there, you'd probably have several buffering restriction consent forms. Also, as part of the state law that changed in 2007, a local governing and planning body cannot issue a permit that would conflict with private restrictions. I took a look at those and if you'll allow me, I'd like to read those—a section of that into record for Richmond Farms:

SECTION 1. RESIDENTIAL USE OF PROPERTY. All lots shall be used for single-family, residential purposes only, and no business or business activity shall be carried on or upon any Lot at any time, except with the written approval of the Architectural Control Committee; provided, however, that nothing herein shall prevent Declarant or any builder of homes in Richmond Farms approved by Declarant from using any lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of property in Richmond Farms; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling.

So when I read those private restrictions, I concluded that possibly I could issue her a home occupation zoning permit for an admin office. She could park her vehicle there, she could keep her dog grooming supplies, that type of thing; but she physically could not groom the dogs at her residence. In other words, like a mobile grooming parlor. If she wanted to go to a couple of neighbors in this subdivision she could go to their house and groom it, or if she wanted to go across town she could do that; but, basically, I couldn't permit her, or allow her, to groom dogs at the residence. So after taking this into consideration it was my interpretation—and we'll go to this slide here and I'll read into record with

you as well:

To: Lexington County Board of Zoning Appeals
From: Walt McPherson, Zoning Administrator
Re: Summary of Appeal

The Zoning Office became aware of this issue from a series of anonymous complaints (presumably someone who resides in the subdivision). Mrs. Williams and I have communicated via telephone, email, and in person regarding this issue.

Mrs. Williams resides at 120 Wigmore Lane in Richmond Farms subdivision. Mrs. Williams would like to operate a dog grooming service from her home. Due to the zoning street classification of RL5 (Residential Local Five), the Zoning Office cannot issue a zoning permit for a Kennels, Catteries, and Stables activity. Also, private restrictions exist for the subdivision which would not allow this service. Even if the street classification and private restrictions would allow, the buffering restrictions (buffer, setback, and screening) would be enough to warrant several buffering restriction consent forms in which the protected property owners may not agree to sign.

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It is my interpretation that since the definition of Kennels, Catteries, and Stables includes grooming and the guidelines of the Home Occupation includes animal impoundment activities (kennel), dog grooming service may not be permitted under the

Home Occupation Zoning Permit.

The relative zoning facts for this case, or this appeal—

APPLICATION OF REGULATIONS
Chapter 1. Schedule of Permitted Uses
21.10 Description of Principal Activities

in part reads:

Kennels, Catteries, and Stables include any person, establishment, partnership, corporation, or other legal entity that owns, keeps, harbors, or is custodian of domestic animals and/or domestic fowl kept or used for stud for which a fee is charged and/or for breeding purposes for which a fee is charged for the offspring, or for the purpose of commercial boarding, grooming, sale*, or training. Animal rescue and/or adoption facilities, whether operated for profit or as nonprofit organization, shall be included in this category. Activities under this category shall not include livestock and other farm animals used in customary and normal agricultural husbandry practices or fancier's kennel or cattery or an Animal Hospital maintained by a licensed veterinarian.

21.22 Home Occupations

Except as otherwise provided below (in items a. through h.), a home occupation is an accessory activity of a nonresidential nature which is performed within a dwelling unit, or within an accessory structure to a residence. It shall not occupy more than 25 percent of the total floor area of such dwelling unit and in no event occupy more than 750 square feet of floor area. A home occupation shall not include the manufacture or repair of transportation related equipment or animal impoundment activities (kennel) and shall be subject to the performance standards contained in this Ordinance as applicable. Home occupations shall require zoning permits in addition to those of their residential principal activities.

I went ahead, also, and included the entire verbiage regarding a home occupation requirements. It talks about that first paragraph I just read to you, but—

The following shall not be permitted as part of a home occupation unless an appropriate variance is granted by the Board of Zoning Appeals:

Just more or less an FYI—

- a. Exterior displays, display of goods or chattels visible from the outside, or exhibit on the premises by any method which would indicate from the exterior that the dwelling unit, or accessory structure, is being utilized in whole or in part as a home occupation;
- b. Use, in connection with the home occupation, of any mechanical, chemical, or electrical device which would pose a potential hazard to the residential setting, and which may be considered to be an unusual piece of equipment in the residential environment;
- c. Storage of materials, good, chattels, etc., outside of a principal or accessory building or other structure;
- d. External structural alterations not customary in residential buildings;
- e. Traffic generation substantially in excess of that which would normally be expected in a residential setting;
- f. Teaching or more than six pupils simultaneously; or
- g. Employment at the residence housing the home occupation of a person other than a resident of the dwelling unit.

So, regarding those guidelines, she could probably meet those since she is by herself. Traffic generation could be an issue depending on how many clients she would have. She could have three or four clients a day, she could fifteen or twenty. You know, she may schedule appointments every half hour or every hour, I'm not sure. But in taking into consideration how the verbiage of the definition of kennel speaks about grooming and also the verbiage of the home occupation and what—which would not be allowed would be kennel—and even though it mentions animal impoundment, it referenced kennel—I interpret that this type of activity could not be permitted as a home occupation. However, based on the restrictive covenants, if she would base the activity from her home, so to speak, and perform the grooming off-site elsewhere—I'll come to you,

you don't come to me, that type of thing—then I feel like I could issue a home occupation under that as far as an admin office, that type of thing.

Got a couple of aerial photography of the subdivision here. Here's one, we went out about two weeks ago and just some ground photography of the home. And this is actually looking back towards the entrance to the subdivision towards Highway 1 off Wigmore. And this is looking back away from Highway 1. There's another entrance you can go in and out here.

And that concludes the presentation and I'll be glad to answer any questions you may have.

Mark Bostic: Any questions?

James Spangler: What size lots would you say those are, Walt, a quarter acre, roughly?

Walt McPherson: About a quarter acre.

Ted Mitchell: And the covenants and restrictions of the neighborhood do not allow for this activity?

Walt McPherson: Yeah, the covenants and restrictions—

... in Richmond Farms; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling.

So, I'm not an attorney or a title searcher, but just by reading those leads you to believe that someone could have like a home office there and it would meet the guidelines of the subdivision covenants.

Ted Mitchell: Which would then allow zoning to issue a home occupation?

Walt McPherson: Issue a home occupation. See, I interpret the Ordinance as that I could issue her a home occupation for an admin type office to base it from there. If she wants to receive her calls there, she wants to have her mailing address, she wants to get stuff shipped there for dog grooming supplies, UPS, that's fine, but the actual physical grooming of the dogs needed to take place somewhere else. And she would like to groom the dogs there. She's indicated that they have a daughter and she likes to stay home, and I can certainly understand that, but in looking and trying to get her in compliance to get her permitted like she wants to, I really see no way I can do it based on what the Ordinance states. And she does have the option

for the appeal and that's why she's before you this evening.

Mark Bostic: Is there any kind of change to where if you have a big enough piece of land like a farm?

Walt McPherson: Well, ideally if she was on a couple of acres—unless there was private restrictions or the street classification was like an RL4 and RL5 and RL6, I could issue probably her a zoning permit for a Kennel, Cattery, and Stable and she would have plenty of room to do that activity.

Mark Bostic: So, what's getting her is the buffering restrictions.

Walt McPherson: What's going to get her is the buffer restriction but because of the street classification, I can't issue her a regular zoning permit for a Kennel, Cattery, and Stable because it's not allowed.

Mark Bostic: Gotcha.

Walt McPherson: Remember last month we—there was discussion about the issue about the driveway for the bait shop not allowed on the RL4 road. Well, the RL5 would not allow this activity—the zoning would, but then again she's got private restrictions too. And if these restrictions, you know, if you do—would happen to rule in her favor allowing her to do that, she's going to, my interpretation, she would have to prove to me that she could do that activity there and have these restrictions amended. Now we've talked about that on several occasions before—I believe they're indicating that they have, but anyways that's my interpretation of the issue at hand.

Jane Cook: For discussion purpose only, it's not making up my mind or anything like that, but just say if it were to be granted, there is no way to limit the number on her, so . . .

Walt McPherson: No. If you were to rule in that capacity stating that she's correct, then I really wouldn't have any jurisdiction to limit her to three dogs or thirty dogs. Now we may have an issue at a later date regarding the traffic, but substantial—yeah.

Ted Mitchell: As far as—I know we're not listening to, you know, the proponents and opponents of this, but as far as the only interaction you have from neighbors has been two anonymous complaints.

Walt McPherson: Two anonymous complaints, yeah, maybe more like three because we had the one but it could be from the same person—they have not identified themselves. In fact, I would say that if we didn't receive a complaint, we probably wouldn't have known that she had the activity there, which flip

side doesn't make it right though.

Mark Bostic: Thank you.

Walt McPherson: Thank you. One thing I would like to add is that with the appeal, you know, you take out the people to speak—proponents or opponents. It's just based on what's written versus, you know, their argument that they're not, so I just wanted to put that in the record. Thank you.

Mark Bostic: While he's hooking up your thumb drive, could you give us your name, street address, city, state, zip code.

Renae Alt-Summers: Sure. My name is Renae Alt-Summers. I'm actually a Lexington County resident but I'm here in the capacity of attorney for Scarlet Williams. But my home address is 105 Millhouse Lane, Lexington. I work at the Giese Law Firm in Columbia.

Mark Bostic: Thank you.

Renae Alt-Summers: And I do apologize for getting this to him so late.

Walt McPherson: She's got a flash drive here, we're going to try to install. Just give us a few moments.

Mark Bostic: Okay.

Renae Alt-Summers: And I guess while they're working on that if I could I do have a letter from the Richmond Farms Homeowners' Association. Mrs. Williams and I appeared before their board meeting, their executive board meeting, a couple of weeks ago and presented our case. They then met in closed session and voted on it. Y'all can take a look at this letter but it basically says that it is their opinion that her home-based dog grooming business does not violate the covenants and the restrictions of Richmond Farms. And it also addresses some of the other issues with traffic and signage and whatnot which we've also talked about. So I bring this, Mr. Chairman?

Mark Bostic: Okay, thank you. Would it help if she read this into the record or is okay for us just to read it?

Renae Alt-Summers: I can read it.

Walt McPherson: She can go ahead and read it into the record. That'll be fine.

Mark Bostic: How about that? Read it to us, that way everybody will get it at once.

Rena Alt-Summers: This is on Richmond Farms Homeowners' Association—is the letterhead:

Scarlett Ange Williams of 120 Wigmore Lane, Lexington, South Carolina, a Richmond Farms resident, appeared before the Richmond Farms ACC/HOA Board requesting written documentation from this Board that her home based dog grooming business was not in violation of the covenants and restrictions of this community. This Board has granted verbal agreement of such for the last three years; however, Mrs. Williams stated that in order to be in compliance with Lexington County Zoning Commission rulings, she needed written confirmation.

In support of this confirmation, Mrs. Williams presented this Board with a letter stating that she had not and would not violate the covenants and restrictions of this community and as such she:

- Does not and will not advertise with any signage in or about her property at 120 Wigmore Lane or in the neighborhood;
- Does not and will not leave any tools or equipment in or about her property or in the neighborhood;
- Has not and will not increase the volume of her business such that it would change the current residential nature of the community and that any increase in her business would not add significant traffic going in and out of the neighborhood;
- Does not and will not have more than four (4) dogs present in her home for grooming at any one time;
- Will continue to keep her garage door down when at all possible;
- Will maintain and/or obtain proper insurance for her business to protect herself and others.

After a closed executive board meeting, this Board finds that Mrs. Williams' home based dog grooming business does not violate the covenants or restrictions of this community. This Board has no objection to the grant of a home-based business zoning permit for Mrs. Williams' dog grooming business.

Ronny Appleton
Richmond Farms HOA President

And it bears his signature.

Mark Bostic: Thank you.

Rena Alt-Summers: Do y'all want this back?

Mark Bostic: Yeah, we'll keep it. Thank you.

Rena Alt-Summers: And I apologize—I'm a trial attorney and I am originally from North Carolina where you get to move around and I'm used to writing on boards and whatnot; PowerPoint is something my kids do—so, this might be a little rough.

First of all, I want to thank y'all for hearing this appeal. I want to tell you a little bit about Mrs. Williams. Walt did an excellent job of talking about, you know, how this kind of came about. I think it's important that you know that it was anonymous letters. You're going to see some pictures here in just a minute of the actual operation and it's basically Mrs. Williams' garage has been converted into—it's a single car garage that has been converted into a bath stall and then she's got her grooming table and her drying cages, okay. And what she said to me before we even started was that they're going to want to know why I did this, you know, converted my garage before. And what happened was is that her husband, who is also here, his handicapped mother resided with them for a period of about a year so they had originally converted the garage to make it easier for her to get in and out with the bath and what not, and then she required more care than they could give. Mrs. Williams has been a long time dog groomer and has groomed at other salons—we'll call them salons, in this area, including PetSmart. And so it just seemed a natural transition that she could then convert that into doing dogs in her garage.

[PowerPoint presentation] What I would like to show your first is that this is a home-based occupation as a dog groomer. The picture on the top left is the picture you have already seen—it's of her garage door closed. The picture directly across from it on the right is the garage door open which shows the setback with the single doors. Obviously when the garage door is closed, nobody can even tell it's even been remodeled. The next photographs on the bottom is the door that goes from the inside to her house where she is in and out of her house, and that's the grooming table there on the right. The next picture is a picture of the shower stall, which you know is obviously a converted people shower stall, where she, you know, gives the dogs a bath. And these pictures—the one at the bottom is looking at it—that's the door that you would see when the garage door is up, the other side of it obviously. And all those hoses and contraptions, that's the dryers—the dogs, for a lack of a better term those are blow

dryers. And instead of holding them by hand, her husband has rigged them so that the hoses can come down and blow air into the cages while the dogs are there. As you saw from the letter, she has agreed and has consistently gotten the approval of her homeowners' association for several years. She does this on a part-time basis. She takes dogs in in the morning, no more than four at a time, usually after her child goes to school—8:00 or so, and she's finished by about noon. And it's four days a week—

Scarlet Williams: It's five days.

Renae Alt-Summers: It's five days a week including Saturday—Tuesday through Saturday. I should know this; I take my dogs to her.

Okay. This was the quoted "A home occupation shall not include . . . animal impoundment activities (kennel) . . ." and this is where I'm going to have a bit of quibbling with Walt. He talked about definitions and the Ordinance is very clear, very clear in two of those things. Animal impoundment activity is not defined anywhere in the Ordinance. Kennel is not defined in 12.10 which is labeled definitions. And I think that this is important because right above that is 12.00 which is Rules for Construction of Language. Y'all, I'm sure, know this by heart—you deal with it all the time, but it's how you're supposed to interpret the words in this Ordinance. And it says a very important thing, and it says that if—it says, "The particular shall control the general." And then Definitions goes on and says, ". . . when definitions are specifically included in the text, words in the text of this Ordinance shall be interpreted in accordance with the provisions set forth in this section. When they [sic] have not been defined, the standard dictionary definition shall prevail." To me, that's the specific and it's under a section that is 12.10 Definitions. And it's not that other things aren't defined—Fancier's Kennel/Cattery is defined specifically under 12.10 [sic], kennel itself is not. And that's just the definition of Fancier's Kennel/Cattery—obviously different than what we're talking about here. But it is important, I think, to note that that definition says, ". . . to keep or train cats or dogs. . ." Does not have anything about it—about grooming. What kennel is is it's not defined but it is classified, and this where Walt said it was defined. And I do beg to differ—it's under the Description of Principal Activities and Classifications, under the section of General Classification Rules. And the purpose of classification in 21.00, ". . . provides a basis for the regulation of these activities and their assignment to districts later in this chapter. . ." Doesn't say defines—it doesn't say defines activities, it doesn't say defines the specific things in those—it says classifies, and it gives a description—again, not a definition.

At that point, I went to the dictionary, and this is just my silliness because I honestly wanted to know if grooming was considered part of a kennel. *Webster's* says, "a shelter for a dog or cat; an establishment for the breeding or boarding of dogs or cats"; *Cambridge Dictionary*, "place where animals are bred and trained and where people pay to leave their dogs to be taken care of while they're away"; and *American-Heritage Dictionary*, "shelter for a dog; an establishment where dogs are bred, trained, or boarded." None of those three dictionary definitions mentioned grooming.

I went to South Carolina case law. Now, I don't know if any of y'all are lawyers, I'm sure you've all dealt with some, but South Carolina case law is notorious for not having a good definition when you need one. It really, really is, and like I said, I moved here from North Carolina, practiced law there, and you cannot get South Carolina to define a whole lot of things in case law. They have some great case law but they're really bad about defining things. So I wasn't able to find a definition in South Carolina case law. I was able to find a series of cases just pulling up that talked about a kennel. And those are listed there. One from 2011 from the South Carolina Court of Appeals, and it talks about dog kennel being a pen and it was a homeowners' association versus somebody who wanted to put outdoor kennel runs. The other one is a Workers' Compensation where they talked about kennel worker exception, and again they were talking about a physical enclosure that the worker worked in and called that a kennel. The other four cases mentioning kennel all involved the boarding of dogs or a physical pen for dogs, none of them involved any type of grooming.

In the prior municipal code—and again, this was my silliness because I do mostly criminal law so I don't deal in municipal codes very much, but on the South Carolina Bar website we have this handy thing called case maker and it popped up all these municipal codes and I said, "Wow this is great, this is amazing!" Well, the Lexington County one was not current, absolutely not current. Now it said it was current through, I think, December 23 of 2010 which was pretty close. But in the prior municipal code, kennel was defined under 10.31 Definitions and when they defined it before, it said kennel means "any person engaging in the business of breeding, buying, selling, or the boarding of dogs." The prior definition didn't include grooming.

I also looked in the South Carolina statutes to see if they could give me any guidance whatsoever as to a definition. And truthfully, the only place in the entire South Carolina statutes that a dog kennel is mentioned was talking about the impoundment of an animal who is dropped off, left at various places including a veterinary service or a dog kennel for boarding,

can be impounded (taken to the pound, the animal shelter) ten days after the owner fails to pick it up after a written contract. So again, talking about a physical facility and the boarding of dogs.

I looked, since I had all those municipal codes, I thought I would check some surrounding areas to see if any of them had—and I did go to the City of Columbia—I did not go there first though, I didn't. I see a lot of their stuff in *The State* newspaper, so I didn't have high hopes for the City of Columbia's Municipal Code. But it did define kennel as "a person engaged in the business of breeding, buying, selling, or boarding dogs, or who keeps three or more dogs on the premises." It did not mention grooming. That also was another one, kennels. Irmo did not define kennel but talked about accessory buildings including satellite dishes and domestic kennels, which I again assumed was some sort of physical closure for a dog. City of Lexington also does not define kennel, and the only place it's mentioned is under their vicious animals' statute or ordinance and it's again talking about an enclosed kennel or pen. The conclusion that I came to was that a home based grooming business is not an animal impoundment activity nor a kennel. And, again, when you go back to that construction of specific versus the general and the specific says the definition as defined in here, the only thing that is defined in here is not kennel or animal impoundment activity, then you go to the dictionary, and then I think ultimately it goes to y'all to decide whether it meets the definition. Mrs. Williams is not boarding dogs. She is not impounding dogs. She is not running a pet shop or any type of doggy daycare. I know you've all heard of that, she's not doing that. It's a very limited activity that is in compliance with her homeowners' association statutes, her restrictive covenants of her neighborhood, and that's about it; although, I'll have to say thank goodness we don't have a sign.

Mark Bostic: I've got one question:

Renae Alt-Summers: Sure.

Mark Bostic: The only thing that we really get to use in our stuff, because we don't get to look at case law, we don't get to look at all that other cool stuff, all we get to do is look at the zoning restrictions. Have you got a copy of the 21.10 Description of Principal Activities?

Renae Alt-Summers: I do.

Mark Bostic: On your copy—one, two, three, four, five—fifth line down, do you have a word that says grooming?

Renae Alt-Summers: Under the kennels?

Mark Bostic: Yeah, under 21.10 Description of Principal Activities.

Renae Alt-Summers: Yeah, I have the whole, the whole shebang so.

Mark Bostic: I just want to make sure yours is the same is mine.

Renae Alt-Summers: Well, if I may?

Mark Bostic: Here, come look. I underlined the word grooming. Is grooming in yours too?

Renae Alt-Summers: Right, right. But that's in the, in the Description of Principal Activities under General Classification.

Mark Bostic: So—if they put it in the zoning, how do I get around that it is in my piece of paper that it says grooming is included?

Renae Alt-Summers: Well, the way I look at it is that you have to look at the definition. We're not talking about a zoning permit for an animal activity. We're talking about a zoning exception for a home based [*stated as a question*] . . .

Walt McPherson: Actually it would be a home occupation.

Renae Alt-Summers: A home occupation—

Walt McPherson: And if—if you don't mind, I just want to have a point of clarification. I know you mentioned before about Fancier's Cattery/Kennels [*sic*] or Fancier's Cattle/Catteries [*sic*]*—I was going to say cattle—*under 12.10 Definition, I think you were referring to this section, 21.10 Description of Principal Activities. I have yet to locate Fancier's Cattery [*sic*] or—as a definition under the definition section. Everything that we have, and it must be about seventy-five activities that's classified as one category or another. This appeal could be one of where she was doing a Transport and Warehousing and I called her a Scrap Operation, she could come and appeal for that. So you can appeal anything in the Ordinance regarding—and a lot of it's based on interpretation, that's what my job is too, and also to be fair in this case to Mrs. Williams in trying to get her in compliance. But when I looked at the verbiage for a home occupation—regardless of case law, that type of thing, and with also, you know, with the home occupation guidelines and the definition of Kennels, Catteries, and Stables, is that grooming in one and kennel with the other. And I feel as the Zoning Administrator, I couldn't conscientiously say okay that's not what the intent of this Ordinance is and, therefore, she has the option to appeal. But I also wanted to say that keep in mind whatever ruling you

make goes on from here on out. So, if someone comes to our office next month and wants to do the same thing Mrs. Williams does in another subdivision, you've pretty much set the example.

Mark Bostic: Well, I think it's a pretty cool setup—she's got her shower and she's got her blowers, and it's awesome, but I'm trying to figure out how are we supposed to ignore the word grooming in the statute. We haven't approved any other ones like this have we?

Walt McPherson: No, none that I know of, no. Now—

Sarah Wise: Have any others come?

Walt McPherson: This is the first appeal we've had of the—of someone wanting to do a home occupation on a dog grooming.

Jane Cook: And with the garage door open or shut, there's still a business. . .
[inaudible]

Walt McPherson: Now, she could actually, once again, she could go—she could be permitted as an office and if she had a van or a pickup truck and wanted to load the dryers and everything else and go down the street to neighbors in the subdivision, I could write her—of course the private restrictions appeared to be uplifted, but I could write her a home occupation for an admin office right now; we wouldn't be before you. But, you know, another thing you need to consider also is that the amount of traffic possibly coming in and out—the number of customers. If she does four dogs and is done by 12:00 or if it's real busy and she does great, which I am sure she's great with what she does having the experience she has and in talking with her, she probably comes highly recommended. But the thing is, you would be allowing this to take place within a subdivision. Now it's up to you. I just—based on the interpretation that I currently and see what the intent of that Ordinance is. And if we allow a dog grooming business to be in there, you know, if someone else comes in and has a same or similar situation, I'm going to have to write them a permit, unless there is a text change in the Ordinance.

Mark Bostic: So, really what we're not doing is we're not granting a variance or changing the Ordinance?

Walt McPherson: No, actually you're appealing—if my interpretation based on what I have presented to you is correct, do you agree with me as Zoning Administrator or are you agreeing with Mrs. Williams' challenge on that appeal that she feels she's not part of a Kennels, Catteries, and Stables activity and the—basically on her defense, I think, is that she's not a kennel based on the

verbiage of our definition and based on what the intent of the home occupation. But again, I caution you, is if you—and you can rule however you want to rule, that's your choice, but if you go ahead and approve a kennel in a subdivision where there won't be—I have no way of limiting Mrs. Williams if she says, "Walt, can I do five dogs or I can do ten dogs," I can say, "You can do twenty dogs."

Renae Alt-Summers: If I may, I think this is where you get into the semantics of what makes it a kennel. You know, is it somebody who is boarding dogs even if it's just for the day as some sort of day care situation, or is it a service that is being rendered that happens to be on an animal? I liken it more to a hair dresser as opposed to a kennel. And as Walt says, her business is not a kennel.

James Spangler: And I think we all agree that it's not a kennel; however, without being diversionary it's very clear that it says ". . . or for the purposes of commercial boarding, grooming, sale, or training." And I understand the definition of a kennel and I think we're going to the nth degree letter of the law as opposed to what the intention of the zoning regulation is; and it seems to me like grooming falls under that where it says Description of Principal Activities. Is that fair?

Renae Alt-Summers: Well, I would respectfully disagree in that the construction—

James Spangler: I would imagine you would.

Renae Alt-Summers: Requires that the particular shall control the general, and the particular says if it's defined, then you go by that definition. If it's not defined, then you go by what the dictionary is.

Morris Phillips: Or use common sense.

Renae Alt-Summers: Or you use common sense—well, one would hope. *[laughing]*

Sarah Wise: But we do know the definition of grooming—I mean.

James Spangler: And, and, and again—

Renae Alt-Summers: But it's not here as a definition—it's here as for classification.

Sarah Wise: It's here in the Ordinance.

Renae Alt-Summers: But for classification purposes—not for definition purposes. And, specifically, for the home business, they didn't put grooming—they put kennels.

- James Spangler: Well, I think that the problem is that most of us here are not attorneys and what we read is that in the Description of Principal Activities under Kennels, Catteries, and Stables, grooming is included in that—whether it's a definition or a principal activity, that's semantics to me. I mean I think it's fairly clear in here that it's not acceptable.
- Mark Bostic: This is the only case law we got is this one piece of paper, and it says grooming on it. That's where I am running into a problem.
- Morris Phillips: Mr. Chairman . . .
- Mark Bostic: Yes, sir.
- Morris Phillips: I have a question I would like to ask.
- Mark Bostic: Sure.
- Morris Phillips: If somebody didn't come pick up their dog, what would happen to it?
- Renae Alt-Summers: If someone didn't come pick up their dog?
- Morris Phillips: Somebody drops the dog off and they don't come back to pick it up, what happens to it?
- Renae Alt-Summers: Well, it's actually interesting you ask that because I did put the South Carolina statute that talks about what happens. A dog kennel is specifically noted in that statute along with a veterinary association, but the trick to that statute is you can only do that—you can take them to the pound—
- Morris Phillips: Could you just answer the question? I mean, does she keep the dog or does she send it to a pound? I mean I—I don't—
- Renae Alt-Summers: She has no legal right to keep that dog, and she has no legal right to wait ten days and take it to the pound.
- Morris Phillips: Well, does she have a legal obligation to keep that dog until the disposition of the—until the situation is resolved?
- Renae Alt-Summers: Are you asking for a legal point of view or from a dog owner?
- Morris Phillips: Common sense, I like common sense.
- Renae Alt-Summers: Well, common sense she's going to keep the dog because nobody's going to turn a dog out, you know

Morris Phillips: Amen.

Renae Alt-Summers: But legally 'cause I, you know, I've had a beagle for a year, I've got to say she's got no right keep the dog because she's not boarding it. She is not a kennel; she doesn't have a written contract.

Morris Phillips: If I have a dog come up my steps, I feel like I have an obligation to take him up and take care of him, or find his owner, or help find his owner.

Renae Alt-Summers: I adopted a pound puppy this weekend. I took my thirteen year old to Pets, Inc., to volunteer and we came home with a puppy—

Morris Phillips: Thank you.

Renae Alt-Summers: So I have not had hardly any sleep because of that dog.

Jane Cook: May I ask, I think the same question in my own different verbiage, has there ever been an occasion that a dog has stayed overnight?

Scarlet Williams: No, ma'am. And I've been working from my home for three years. And I have everybody's address—

Walt McPherson: Mr. Chairman, probably need to get it for the minutes—

Mark Bostic: Oh, okay.

Walt McPherson: If Mrs. Williams would come up and state. Thank you.

Mark Bostic: Name, street address, city . . .

Scarlet Williams: Yes, sir. I'm Scarlet Williams, 120 Wigmore Lane, Lexington, SC 29072. I've been working there from my home for three years, and I've never had anybody leave their dog. I get everybody's phone number, their address, and I personally would take the dog there if they didn't show up, and then if not, I'd bring the dog back and we'd have another dog—because dogs tend to have a tendency to just stay with me if they wander up. *[laughing]*

Mark Bostic: Any other questions?

Ted Mitchell: With all of your definitions, did you look in those definitions for boarding?

Renae Alt-Summers: I did not look into a definition for boarding. I tend to go with Mr. Phillips with the common sense thing on that one. And again, because it, you know, the whole doggy day care thing is kind of a recent phenomenon; it's

kind of the in-vogue thing. You know when I was younger, we, you know, you boarded an animal overnight, you boarded an animal when you went away for vacation—you didn't board an animal for the day so it could socialize with other doggies and cats. So, I didn't. And I didn't answer that all that directly, but I didn't.

Ted Mitchell: But the animals get dropped off in the morning, do they tend to all get dropped off at the same time?

Renae Alt-Summers: I think I can answer that because again I've already revealed that I do take my dogs to her—but she staggers them.

Ted Mitchell: So never in possession of more than one dog at a time, a couple at a time?

Renae Alt-Summers: No, she never has more than four at one time, but there is never more than one person dropping off a dog at one time.

Ted Mitchell: Okay. How are the dogs—where are the dogs when there's four of them?

Renae Alt-Summers: If there's four of them?

Ted Mitchell: If there's four of them, or just two of them?

Renae Alt-Summers: Well like, for instance, my—for instance there is my two and they go in the drying cage together and she's working on one, the one stays in the drying cage. But that's, you know, she also has—what do you call it, the little lanyards?

Scarlet Williams: Call it the noose. People like that word.

Renae Alt-Summers: Noose. *[laughing]* So, if she has to . . .

Scarlet Williams: It's pretty much a tie-out, a tie-out.

Renea Alt-Summers: Yeah.

Mark Bostic: Any other questions? Discussion?

I'm—I think it is a cool job, that's a cool business; and she obviously knows exactly how to do it, and do it right. I'm just having a problem with the Zoning Ordinance saying you can't do grooming. And as much as I like people doing a home business and all that kind of stuff, if you're living next door to somebody and their house is only 10 feet away, or 15, or, you know, whatever—it is pretty close, and the neighbors are having a problem with it and they could show that it's in the Ordinance that you

can't do it, I mean we got to—just as we protect her from the rest of the world, we have to protect the rest of the world from dog groomers.
[laughing]

James Spangler: I'm glad you read that into the record.

Morris Phillips: I think we can assume that either a neighbor or a cat turned them in.
[laughing]

James Spangler: Cats aren't very good at writing letters in my experience. I agree with you—I mean I think it's pretty clear and again, I'm a business guy and I understand home businesses and I hate to say it too but I seemed to be on a roll tonight at being less than desirable for businesses, but I mean I think it is fairly evident and pretty clear in here under the principal activities.

Mark Bostic: I appreciate all the case law and all the stuff, but I haven't been able to figure out how to remove grooming from the printed word in the paragraph.

Scarlet Williams: Call it a stylist. [laughing]

Mark Bostic: I can't figure out how to get grooming out of the paragraph. That's my only problem with the whole thing.

James Spangler: I agree.

Ted Mitchell: Can we make a motion?

Mark Bostic: How about—would anybody like to make a motion?

Morris Phillips: I move that we leave it like it is—Zoning Appeal Application #03-12—that we do not approve it, that we not change it but leave it like it is.

Mark Bostic: So, move for . . .

James Spangler: I think we might want to clarify that—the wording of that motion, perhaps.

Mark Bostic: Okay, help yourself.

James Spangler: I think Walt might be . . . because I want to make sure it is clear in there—

Chris Folsom: Mr. Chairman, if I may, I believe the motion you're making is to deny the appeal.

- Morris Phillips: Correct.
- Mark Bostic: Do I hear a second?
- Walt McPherson: Deny the appeal and uphold the Zoning Administrator's interpretation—
something along those lines.
- Mark Bostic: So the motion is that we're denying the appeal.
- Chris Folsom: Yes.
- Mark Bostic: Do I hear a second?
- Jane Cook: I second.
- Mark Bostic: Alright, all in favor of the motion raise your hand [*Bostic, Cook, Mitchell, Phillips, Spangler, and Wise*]. It's unanimous.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2012-CP-32-01294

Scarlet Williams,

Appellant,

v.

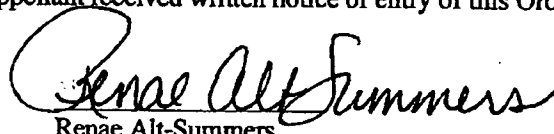
Lexington County Board of
Zoning Appeals,

Respondent.

NOTICE OF APPEAL

Scarlet Williams appeals the Order of the Honorable R. Knox McMahon dated January 11, 2013 and filed January 14, 2013. Appellant received written notice of entry of this Order on January 18, 2012.

February 12, 2013



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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
2013 JAN 14 P 12:32)
IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Civil Case No: 2012-CP-32-01294

Scarlet Williams,

BERNARD CARRIGG
CLERK OF COURT
LEXINGTON, SC
Appellant,

vs.

Lexington County Board of Zoning Appeals,

Respondent.

**ORDER AFFIRMING LEXINGTON
COUNTY BOARD OF ZONING APPEAL**

FACTS

This matter is before the Court on an appeal from a decision of Lexington County Board of Zoning Appeals. The issue on this appeal is the interpretation of the Lexington County Zoning Ordinance in regards to whether the grooming of dogs is allowed at this Appellant's property under the Lexington County Zoning Ordinance. The Lexington County Zoning Administrator determined that such grooming activity was not allowed by the Lexington County Zoning Ordinance and the Appellant appealed the decision to the Lexington County Board of Zoning Appeals. The Lexington County Board of Zoning Appeals upheld the decision of the Lexington County Zoning Administrator. The Appellant has now appealed the Zoning Board's decision to this Court.

The County Zoning Office received anonymous complaints in regard to this activity at the subject property and investigated the matter and determined that dog grooming services were being performed at the subject property. The record reflects that the road classification for the subject property is RL5. Under this road classification, Kennels, Catteries, and Stables are not allowed activities. The activities under this classification include "grooming." In an effort to see if there was another category that would allow the activity, the Zoning Office reviewed the



County Ordinance to determine whether the dog grooming activity could be considered a Home Occupation under the County Ordinance where Home Occupation is an allowed accessory activity to the residential activity. The Zoning Administration interpreted Sections 21.22 and 21.10 of the Lexington County Zoning Ordinance as prohibiting the grooming activity from meeting the requirements of a Home Occupation and, therefore, this did not provide a resolution for the activity at the subject property. There is no dispute that the Appellant performs dog grooming services at the subject property. The only dispute is whether such activity is prohibited because of the road classification as RL5 or whether the activity can be considered a Home Occupation allowed accessory activity to the residential use of the property.

SCOPE OF REVIEW

In the context of zoning, a decision of the reviewing body will not be disturbed if there is evidence in the record to support its decision. A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. Restaurant Row Associates v. Horry County, 335 S.C. 209, 516 S.E. 2d 442 (1999).

A decision of the municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board abused its discretion. Restaurant Row, supra.

Pursuant to S. C. Code Section 6-29-840, this court must treat the findings of the Zoning Board of Appeals in the same manner as the finding of fact by a jury. This Court must only determine whether the decision of the Board is correct as a matter of law.

Even on appeal of interpretation of ordinances, Courts are bound to afford substantial deference to the decision of those charged with interpreting and applying local zoning ordinances. Clear Channel Outdoor v. The City of Myrtle Beach, 360 S.C. 459, 602 SE. 2d 76 (Ct. of App. 2004); Purdy v. Moise, 223 S.C. 298, 75 SE. 2d 605 (1953). To this end, a Court

will uphold the decision of a reviewing body if there is any evidence on the record to support its decision. Clear Channel, supra.

DISCUSSION

The Court was presented with a Lexington County Zoning chart that shows the allowed activities for the RL5 road classifications. The chart shows that Kennels, Catteries, and Stables are not allowed activity for roads that are classified as RL5. The issue before this Court is whether "grooming" is considered a part of a Kennel, Cattery, and Stable activity under the Lexington County Zoning Ordinance. The record reflects that Section 21.10 of the Lexington County Zoning Ordinance clearly states that "grooming" is included within the activities of Kennels, Catteries, and Stables activity. Therefore, such activity is not allowed in on an RL5 road classification.

The record reflects that Section 21.22 of the Lexington County Zoning Ordinance describes a Home Occupation which may be considered part of an accessory use to a residential activity. The activity of Home Occupation clearly prohibits animal impoundment activities (kennel) as a Home Occupation. Reading Sections 21.10 and 21.22 together, it is clear that "grooming" is considered an activity of Kennels, Catteries, and Stables and, therefore, grooming is not an allowed Home Occupation accessory activity.

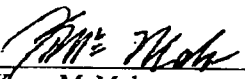
After reviewing the matter very thoroughly, the Zoning Board voted unanimously to uphold the Zoning Administrator's decision that the dog grooming activity was not allowed at the subject property, and the Board made detailed findings of fact and conclusions of law as required by S.C. Code Section 6-29-800(f).

Based on the findings of fact and conclusions of law, transcript of the hearing before the Zoning Board, and the documents presented at the Board hearing and filed with this court, this

Court finds there is evidence in the record to support the Zoning Board's decision and the decision of the Zoning Board was reasonable and was not arbitrary, capricious, or an abuse of discretion, has a reasonable relation to a lawful purpose, and is correct as a matter of law.

IT IS THEREFORE ORDERED that the decision of the Lexington County Board of Zoning Appeals is affirmed.

IT IS SO ORDERED.


R. Knox McMahon
Judge, Eleventh Judicial Circuit

Lexington, South Carolina

IAN
December 11th 2012.

FILED
2013 JAN 14 P 12:32
BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ELEVENTH JUDICIAL CIRCUIT COURT

R. Knox McMahon, Judge

Trial Court Case No. 2012-CP-32-01294
Appellate Case No. 2013-000314

Scarlet Williams Appellant,

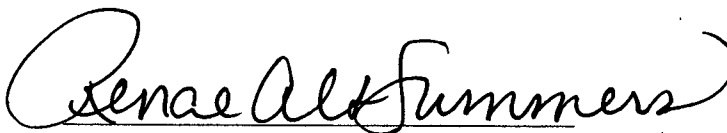
v.

Lexington County Board of Zoning Appeals Respondent.

CERTIFICATE OF COUNSEL

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

October 29, 2013



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SC Court of Appeals

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ELEVENTH JUDICIAL CIRCUIT COURT

R. Knox McMahon, Judge

Trial Court Case No. 2012-CP-32-01294
Appellate Case No. 2013-000314

Scarlet Williams Appellant,

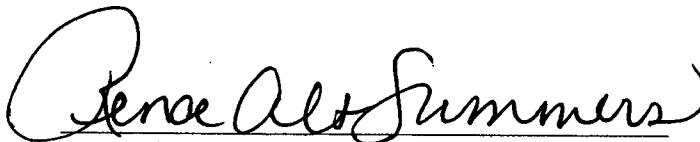
v.

Lexington County Board of Zoning Appeals Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the **Record on Appeal** on the above named Respondent by mailing a copy of it to the Respondent's counsel at the following address:

Jeff M. Anderson
W. Joseph Maye
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Renae Alt-Summers

October 29, 2013.

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SC Court of Appeals **SC Court of Appeals**