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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Court Case No. 2025-000624

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

v.

City of Beaufort, Beaufort Historic District Review Board,
and 303 Associates, LLC, ... Respondents.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0700039

West Street Farms Llc et al
PLAINTIFF(S)

City Of Beaufort et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter comes before the Court on August 1, 2023 by way of a Motion for Appeal from the Zoning Board. The hearing was held via Webex. Following extensive arguments from both parties, this Court Denies the Appeal.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/29/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Beaufort Common Pleas

Case Caption:	West Street Farms Llc , plaintiff, et al VS City Of Beaufort , defendant, et al
Case Number:	2022CP0700039
Type:	Order/Electronic Form 4

So Ordered

s/ Edward W. Miller

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-07-00039
West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC, Respondents.	)	**ORDER GRANTING MOTION TO RECONSIDER AND DENYING PETITION OF APPEAL**

This matter came before the Court on August 1, 2023, as an appeal (the "Appeal") by Petitioners West Street Farms, LLC and Mix Farms, LLC (the "Petitioners") of the decision of the City of Beaufort Historic District Review Board (the "HRB") dated December 8, 2021. Respondents City of Beaufort (the "City") and the HRB (collectively, the "City Respondents") and Respondent 303 Associates, LLC ("303 Associates") (all three together, the "Respondents") filed responses denying the allegations of the Appeal.

All parties filed memoranda in support of or in opposition to the Appeal, and a transcript of the proceedings before the HRB is in the record. On August 29, 2023, after consideration of the record on appeal and the parties' respective arguments, this Court denied the Appeal in a Form 4 Order. On September 8, 2023, Petitioners filed a Motion to Reconsider, in which they additionally asked for an order ruling on the merits of the Appeal with specificity. For the reasons set forth herein, the Motion to Reconsider is GRANTED for the limited purpose of entering this Order setting forth the grounds on which the Appeal is DENIED.

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BACKGROUND AND PROCEDURAL HISTORY

This matter is one of a series of attacks on three pending development projects by 303 Associates in the City's downtown Historic District (the "Historic District"): a hotel with rooftop bar, a parking garage, and a three-story apartment and commercial building (the "Apartment Project"). Specifically, this is an appeal of an HRB decision preliminarily approving the Apartment Project and is the sixth lawsuit filed by either the Petitioners, entities owned by competing developer Graham Trask, or the Historic Beaufort Foundation (the "HBF"), all third parties in disagreement with decisions made by citizen review boards of the City relating to these projects. The common theme of each lawsuit is that the height, mass, and scale of the projects are inappropriate for the Historic District. In response, Respondents contend Petitioners and the HBF have not timely raised their challenges and waived their right to appeal. Alternatively, Respondents assert all projects comply with the requirements of the applicable City development code, here the Beaufort Code, so Petitioners have not met their burden of proving the board's decision was arbitrary and capricious.

The Beaufort Code provides for an HRB, which is a specialized architectural review board that considers and acts on projects located within the Historic District, including new construction. Beaufort Code § 10.7.1. When reviewing design applications, the HRB follows a stepped procedure of Conceptual Approval, Preliminary Approval, and Final Approval. Developers may go through all three steps or skip to the Preliminary Approval or Final Approval stages. The process can take years to complete, especially on large projects.

The Beaufort Code requires any appeal of an HRB decision to be filed in circuit court within thirty days of that decision. Beaufort Code, § 9.10.2.I ("Any party aggrieved by the

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decisions of the HRB may appeal to the circuit court within 30 days of the decision."); *see also* S.C. Code Ann. § 6-29-900(1) ("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.").

Here, 303 Associates began with Conceptual Approval, and the HRB conceptually approved the mass, height, and scale of the Apartment Project during a meeting held February 10, 2021 and issued that approval in writing on February 16, 2021. At that point, Petitioners had thirty days to appeal the Conceptual Approval and failed to do.

The HRB then granted Preliminary Approval of the project on December 8, 2021, which as discussed herein, is the only HRB decision relating to the Apartment Project timely appealed by Petitioners. The HRB did not consider the height, mass, and scale of the project at that meeting.

The HRB later granted Final Approval on July 22, 2022. When granting Final Approval, the HRB ratified the decisions made at the conceptual and preliminary approval levels. Petitioners failed to appeal this decision as well.

ARGUMENTS ON APPEAL

Petitioners attack the Apartment Project by generally disagreeing with its overall mass, scale, and height. However, during the Conceptual Approval stage on February 10, 2021, the HRB unanimously approved the mass, scale, and height of the Apartment Project and issued its approval in writing on February 16, 2021, and there was no appeal of this Conceptual Approval by any party. The HRB then granted Preliminary Approval of the Apartment Project at its December 8, 2021 meeting, at which time the height, mass, and scale of the Apartment Project were not considered because they had already been approved at the Conceptual Approval stage. The Apartment Project received Final Approval by the HRB at its July 22, 2022 meeting. The Final

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Approval was a ratification of both the Conceptual Approval and the Preliminary Approval. There was no appeal of this Final Approval by any party.

Despite seeking HRB approval at all available stages, the Petitioners appealed only the HRB decision granting Preliminary Approval of the Apartment Project. For the reasons set forth herein, that appeal was untimely and is not supported by the record, so it is denied.

STANDARD OF REVIEW

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

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Solutions, Inc.*, 414 S.C. at 9 (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 147-48). "However, a decision of a [HRB] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id.* (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 148). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *Cnty. of Richland v. Simpkins*, 348 S.C. 664,

668, 560 S.E.2d 902, 904 (Ct. App. 2002), holding modified by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010)).

CONCLUSIONS OF LAW

Upon review of the Record on Appeal, the Court finds there is sufficient evidence to support the reasoning and decision of the HRB and, therefore, the appeal is denied.

A. The Appeal of Preliminary Approval of the Apartment Project is Untimely and Moot.

It is too late to appeal the mass, height, and scale of the Apartment Project. "Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision." *See* Beaufort Code § 9.10.I and S.C. Code § 6-29-900(A) ("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.").

The HRB approved the height, mass, and scale of the Apartment Project when it granted Conditional Approval at its February 10, 2021 meeting. This Conditional Approval, like all other conceptual, preliminary, and final approvals by the HRB, was indisputably a "decision" under the Beaufort Code requiring appeal within thirty days. Petitioners cannot use subsequent phases of the stepped approval process as an opportunity to appeal prior decisions for which the thirty-day deadline for appeal has already passed. Such a "claw back" ability would create uncertainty for the City and property owners by impeding their ability to make further land use decisions based on matters that have already been conceptually, preliminarily, and finally approved.

The Beaufort Code deadline is of critical importance to this Appeal, as it is well-settled that the failure to appeal within the ordinance timeline deprives a circuit court of subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning*

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Appeals, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000) ("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at any time by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't*, 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and Rule 74, SCRCP.

Thus, the Beaufort Code requires the aggrieved party to appeal a decision of the HRB within thirty days of that decision or the court has no subject matter jurisdiction to hear the appeal. Petitioners' failure to appeal the mass, height, and scale of the Apartment Project decision, part of the Conceptual Approval occurring at the HRB meeting held February 10, 2021, forecloses the Petitioners from bringing it up again. As the Petitioners attack the existence of the Apartment Project itself, rather than a specific issue reviewed for Preliminary Approval by the HRB on December 8, 2021, the present Appeal is untimely and denied.[1]

Finally, the HRB's Final Approval of the Apartment Project was not appealed, so the Petitioners' appeal of the prior Preliminary Approval is moot. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667(Ct. App. 2009) (citing *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001)). The present Appeal, regardless of its outcome, cannot have a practical effect on Petitioner's challenge of the height, mass, and scale of the Apartment Project because the Conditional Approval of the project's size and additional matters

[1] The question of whether the Beaufort Code required the Petitioners to appeal the initial Conceptual Approval of height, mass, and scale was decided against the Petitioners in a prior state court lawsuit and affirmed by the South Carolina Court of Appeals following this Court's entry of a Form 4 Order denying Petitioner's present appeal. *See Historic Beaufort Foundation v. City of Beaufort, et al,* Unpublished Opinion No. 2024-CP-372, filed October 30, 2024. Thus, as an additional sustaining ground, the Petitioners are collaterally estopped from relitigating that issue now. *See Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164, 166 (1986).

later approved via Preliminary Approval were ratified by the Final Approval occurring July 22, 2022. That decision was not appealed and is now final, making Petitioners' appeal of the HRB's Preliminary Approval moot. For this reason, too, this Appeal is denied.

B. There is Evidence to Support the HRB's Decision.

The Petitioners challenge only the height, mass, and scale of the Apartment Project, which was not a listed discussion item at the HRB meeting on December 8, 2021 because those matters had already been approved at the Conceptual Approval stage. Regardless, there is clear evidence in the record to support the HRB's decision.

A court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014) (quoting *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565 (2007)). "The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary." *Pressley v. Lancaster Cnty.*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001).

1. The Petitioners' Liner Building Claim Is Wrong.

Petitioners contend that Section 4.5.9 of the Beaufort Code requires a Liner Building between a large footprint building, or a building with a frontage of over 100-feet that is held to the same standards as a large footprint building, and primary street frontage. However, Section 4.5.10.B.2 provides an exception, and liners are not required when a large footprint building provides an entry on the primary street frontage and a minimum of 40% clear and unobstructed

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glazing along that street. Petitioners also claim there was not 40% clear and unobstructed glazing along Port Republic or Charles Street. However, the HRB specifically granted approval of the glazing.

The decisions of the HRB on these issues are clearly within the discretionary authority of the HRB. What is or is not sufficient glazing is a discretionary call for the HRB that this Court cannot second guess. Petitioners fail to meet their burden. They do not argue that the HRB's decision was arbitrary; rather, they generally disagree with prior HRB decisions that were not challenged. Thus, the HRB decision is affirmed.

2. The Petitioners Misstate the Parking Requirements.

With respect to the standards applicable to large footprint buildings, Beaufort Code Section 4.5.10.B.7.a provides that in T5 districts "[a] minimum of 75% of all parking shall be located behind the primary building or a Liner Building." The HRB agreed this means 75% of parking proposed on the development site must be behind a primary or liner building that is also on the development site. In 303 Associates' application, there were no parking spaces proposed to be located on the Apartment Project site. Accordingly, this standard does not apply, and Petitioners' argument to the contrary lacks merit.

Again, this is a discretionary decision of the HRB as to how the Beaufort Code applies. The Court of Appeals has stated: "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious*, 317 S.C. at 487. "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018),

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quoting *Purdy v. Moise*, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

> It is a well-settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. Nonetheless, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999), quoting *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952).

Thus, the HRB decision is affirmed on this basis as well.

3. The Petitioners' Complaint About the HRB's Failure to Comply with the Beaufort Preservation Manual or Beaufort Civic Master Plan are Discretionary Decisions for the HRB.

The Petitioners generally complain that the HRB's Preliminary Approval of the Apartment Project does not comply with requirements of the Beaufort Preservation Manual. The Petitioners then go on to compare the size and scale of the Apartment Project to other structures in the Historic District and at times cite provisions of the City's Master Plan.

However, in all cases with respect to these guidelines, the HRB's interpretations of these *suggestive* rules are a part of the HRB's subjective and discretionary role in enforcing generalized standards. The record shows the Apartment Project was compliant with all size, mass, and scale requirements. As there are no express statutory lines that the HRB must follow when interpreting the Preservation Manual and the Master Plan. Instead, the HRB is charged with making a decision that reflects the intent behind these guidelines, and it did just that. This Court cannot substitute its judgment for that of the HRB, and there is nothing arbitrary or capricious about the HRB decision on appeal that would require the Court to reverse the decision on the basis it did not comply with

the City's Preservation Manual and Master Plan. For this reason, too, the HRB's decision is affirmed and Petitioner's Appeal is denied.

C. Petitioners' Claim Regarding ZBOA Approval is Legally Unsound.

Petitioners claim the HRB should not have acted on the Apartment Project because it first required a Special Exception from the City's Zoning Board of Appeals (the "ZBOA") for "Large Footprint Buildings" as defined in the Beaufort Code. Beaufort Code § 4.510 (B)(5). The Court rejects this argument for several reasons. First and foremost, the ZBOA did grant a Special Exception. It simply did not do so prior to the HRB decision on appeal, which as addressed *infra*, is inconsequential.

Second, there is no provision in the Beaufort Code requiring ZBOA approval of any project *prior* to HRB approval. Beaufort Code Section 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioner's position that one must come before the other.

Third, the HRB and ZBOA have completely different functions, so there is no overlap or logical sequential process for one before the other. The ZBOA, per Section 10.3.1.C.1 of the Beaufort Code, "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official" as defined in Beaufort Code Section 13.1. The HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to Petitioners' arguments that the HRB was without jurisdiction over these projects or otherwise should have abstained from making a decision. There

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is no requirement that the Apartment Project receive a Special Exception from the ZBOA before being proposed to the HRB.[2]

CONCLUSION

Based on the foregoing, the Court hereby affirms the December 8, 2021 decision of the City of Beaufort Historic Review Board with respect to the application of the Apartment Project by 303 Associates. The height, mass, and scale of the Apartment Project were addressed and decided by the City of Beaufort's Historic Review Board well before the Preliminary Approval currently on appeal. The prior HRB decision was by unanimous vote, and there was no challenge or appeal by anyone to that decision. Further, the HRB granted Final Approval of the Apartment Project after this Appeal was lodged, thus mooting it. Finally, Petitioners failed to show any error on the merits of the HRB's decision. For these reasons, Petitioners' Appeal is denied, and the underlying decision of the HRB is affirmed.

IT IS SO ORDERED.

Honorable Edward W. Miller
Court of Common Pleas, 14th Judicial Circuit

[2] As an additional sustaining ground, the Petitioners litigated and lost the same issue in the prior case referenced in footnote 1, *supra*, so they are collaterally estopped from re-litigating that issue in their present appeal.

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Beaufort Common Pleas

Case Caption:	West Street Farms Llc , plaintiff, et al VS City Of Beaufort , defendant, et al
Case Number:	2022CP0700039
Type:	Order/Other

So Ordered

s/ Edward W. Miller

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 2021-CP-__-
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Petitioners,	)	
v.	)	**PETITION**
	)	
City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC,	)	(Appeal of Award of Preliminary Approval by Historic District Review Board)
	)	
	)	*Non-Jury*
Respondents.	)	

TO: THE ABOVE-NAMED RESPONDENTS

The above-named Petitioners file this petition, pursuant to S.C. Code Ann. § 6-29-900 (LexisNexis, Lexis Advance through 2021 Regular Session Act No. 91 with the exception of Act No. 76) and The Beaufort Code Section 9.10, appealing the decision of the Historic District Review Board (HRB) issued on December 8, 2021, as contrary to law, as follows:

1. Petitioner West Street Farms, LLC ("**West Street**") is a South Carolina limited liability company and a property owner and taxpayer in the City of Beaufort, South Carolina. West Street is the owner of 205, 207, 209, and 221 West Street. Petitioner Mix Farms, LLC (**Mix Farms**) is a South Carolina limited liability company and a property owner and taxpayer in the City of Beaufort, South Carolina, and the owner of 211 Scott Street (West Street and Mix Farms are collectively, "**Petitioners**"). All of these properties ("**Adjacent Properties**") are within between 0.5 – 2 blocks of this project with 221 West Street being within one half block and having direct line of site to the project that is the subject of this petition.

2. The City of Beaufort, South Carolina (the "**City**" or "**Beaufort**") is a municipal

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corporation and body politic created by and subject to the laws of the State of South Carolina.

3. The City of Beaufort Historic District Review Board ("**HRB**") is a board of architectural review established by the City of Beaufort in The Beaufort Code Section 10.7 under the authority granted by S.C. Code Ann. § 6-29-870 (LexisNexis, Lexis Advance through 2021 Regular Session Act No. 91 with the exception of Act No. 76).

4. 303 Associates, LLC is a Georgia limited liability company in good standing and registered to do business as a foreign corporation by the State of South Carolina ("**Developer**"). Coast Architects, Inc. ("**Applicant**") was the applicant for the approvals before the HRB appealed herein, presumably on behalf of Developer. Developer owns and seeks to develop 211 Charles Street as a 3-story apartment/ commercial building ("**Project**") that is the subject of this action.

5. Petitioners are parties aggrieved by the decision of the HRB on December 8, 2021, acting on Agenda Item No. III(E) "211 Charles Street PIN R120 004 000 0909 0000, Construction. Applicant, on behalf of Developer, sought final approval of a 3-story apartment/ commercial building."

6. The HRB granted preliminary approval of the Project, and the Petitioners hereby appeal this decision as being contrary to law.

7. This Honorable Court has both subject matter and personal jurisdiction over the parties to this action.

8. Venue is proper in Beaufort County pursuant to the provisions of S.C. Code Ann. § 6-29-900 and The Beaufort Code Section 9.10.

9. The Petitioners' grounds for appeal are set forth herein.

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

10. The Project could not proceed at all before the HRB without having first received a

special exception from the City of Beaufort Zoning Board of Appeals ("**ZBOA**").

11. The project is a Large Footprint Building under the Beaufort Code and is required to receive a Special Exception by Beaufort Code Sec. 4.5.10 (B)(5) from the ZBOA.

12. Though the ZBOA did issue a Special Exception for 211 Charles Street, that Special Exception was erroneously granted, and the Petitioners have timely appealed that decision pending at Case No. 2021-CP-07-01639, *West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, et. al.* (filed September 9, 2021).

13. The Applicant/Developer, not having received a final Special Exception from the City of Beaufort Zoning Board of Appeals for the Project, could not proceed to obtain preliminary approval for this application from the HRB, and the HRB had no jurisdiction to consider this application.

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

A. Liner Buildings, Section 4.5.9

14. The Beaufort Code, Section 4.5.9, requires that Large Footprint Buildings in the T4 and T5 transect districts place Liner Buildings between the Large Footprint Building and the Primary Street frontage, except when a Large Footprint building provides an entry on the primary street frontage, and a minimum of 40% clear and unobstructed glazing along that street.

15. The Project does not have Liner Buildings between the Large Footprint Building and the Primary Street frontage as required, nor is there a minimum of 40% clear and unobstructed glazing along Port Republic or Charles Street.

16. The HRB erred as a matter of law in issuing the preliminary approval when the Project did not comply with Beaufort Code Section 4.5.9.

B. Onsite Parking, Sec. 4.5.10

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17. Under the Beaufort Code, in T4 and T5 transect districts, a minimum of 75% of all parking shall be located behind the primary building or a Liner Building.

18. The Project as planned and submitted to the HRB on December 8, 2021, has no onsite parking. The Applicant / Developer and the City of Beaufort staff erroneously asserted that the Applicant/ Developer may instead elect to have proximate, offsite parking.

19. The Beaufort Code at 4.5.10 does not make any such provision or exception, and to the contrary, requires that 75% of the required parking shall be located behind the Large Footprint Building (primary building) or a Liner Building.

20. This provision would require approximately 27 parking spaces to be located on the Project site behind the proposed building. The Project plan submitted to the HRB on December 8 had no onsite parking.

21. The HRB erred as a matter of law in issuing preliminary approval when the Project did not comply with Beaufort Code Section 4.5.10.

C. Failure to Comply with the Beaufort Preservation Manual or Beaufort Civic Master Plan

22. Remarkably, the City Staff and the City architectural review board charged with protecting the integrity of the City's historic district completely failed to acknowledge or comply with either the Beaufort Code, the Beaufort Civic Master Plan, or the Beaufort Preservation Manual in issuing this preliminary approval.

23. The Beaufort Preservation Manual, page 41, 46, Chapter 3. New Construction, states: "…new construction in Beaufort must go beyond the aspect of "form follows function" and "blend harmoniously with the historic fabric of the town." "No building is so insulated from its surroundings as to avoid an impact on the townscape."

24. The Beaufort Code, Section 4.3.2.C., Contextual Design Guidelines. Massing and

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Articulation states "New construction should complement the massing of neighboring buildings by utilizing roof forms, architectural trim, differentiation of façade planes and a relationship to facades (siding and walls) to voids (window and door openings) that are consistent with the patterns established in neighboring buildings. When large-scale construction is proposed that is not consistent with the predominant building height and lot width of the surrounding area, special attention shall be paid to specific building design elements in order to articulate a building form that is appropriate to the neighborhood context."

25. The proposed project at 211 Charles Street is directly across from two significant historic properties following the architectural form of the Beaufort Style – The Elliott House at Bay and Charles Streets, and the Lucius Cuthbert House at Port Republic and Charles Streets.

26. The proposed building is 2.5 times longer and a story taller than the surrounding 2 story buildings and therefore violates the criteria for contextual "harmony and compatibility." The proposed building will be the dominant feature on this block and in the entire core historic district given the length of its front façade and its height.

27. This proximity requires a sensitive infill that "blends harmoniously" with the adjacent historic fabric. A building of this height and size is expressly prohibited by the Beaufort Code and The Beaufort Preservation Manual.

28. Further, The Beaufort Code, 4.3.2.B., Rhythm and Development on the Street, provides that monolithic massing that disrupts the predominant building pattern of the neighborhood and corridor is strongly discouraged.

29. At a height of 40 feet, the proposed building will tower above the adjacent structures fronting Port Republic and Charles Streets and will be prominently visible from Bay, Charles, and Port Republic Streets.

30. The Beaufort Code, Section 4.3.2.A., Conformity with Civic Master Plan, provides that

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"the Civic Master Plan provides site specific guidance for many parcels within the city. In instances where the Civic Master Plan provides guidance for building and site design standards on a particular parcel, development applications on the parcel should meet the general intent of such guidance to the extent practicable".

31. The City of Beaufort Civic Master Plan, page 51, Section 3.3 Port Republic Street. "proposes infill commercial development along Port Republic Street to extend the shopfront environment of Bay Street through downtown." The conceptual illustration as shown in section 3.3 of the Civic Master Plan envisions "intimate scale" development with 2 story buildings, rather than 3 story Large Footprint buildings, that would "slow traffic speeds and better serve the retail character of the area."

32. At Section 3.2, Civic Master Plan, pg. 51, the plan provides "Any historic fabric can be preserved and restored alongside sensitive infill and redevelop outmoded, non-contributing structures with buildings that are modern in their programming, but that fit the areas' architectural context."

33. The proposed building does not reflect the intent of the Civic Master Plan for redevelopment of Port Republic Street, and it does not fit the "area's architectural context" as required in the Beaufort Preservation Manual.

34. The HRB erred as a matter of law in issuing preliminary approval when the Project completely failed to comply with or even acknowledge the Beaufort Code, the Beaufort Civic Master Plan, or the Beaufort Preservation Manual in the instances detailed above.

SUMMARY

35. To summarize, the Project lacks the requisite final special exception from the City of Beaufort ZBOA for the HRB to proceed to consider this application. Furthermore, the Projects fails

to meet the requirements for Liner Buildings or Onsite Parking and even the minimal threshold of requirements of projects as clearly defined and articulated in of The Beaufort Code, the Beaufort Civic Master Plan, and the Beaufort Preservation Manual. The HRB failed as a matter of law to fulfill its responsibility under The Beaufort Code in issuing preliminary approval of this application, and, as a result, that approval must be reversed by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for this Honorable Court to reverse the action of the HRB and remand this matter to the HRB for further action and grant such other, further, or different relief as may be deemed just and proper.

Respectfully Submitted,

AUSTEN & GOWDER, LLC

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ATTORNEYS FOR PETITIONERS

January 7, 2022
Charleston, South Carolina

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ELECTRONICALLY FILED - 2022 Feb 03 2:00 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-07-00039
West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC, Respondents.	)))))))))))	**RESPONSE OF CITY OF BEAUFORT AND CITY OF BEAUFORT HISTORIC DISTRICT REVIEW BOARD**

Respondents City of Beaufort and City of Beaufort Historic District Review Board (hereinafter referred to collectively as "Respondents") submits their Response in Opposition to the appeal of the Historic District Review Board (the "HRB") decision of December 8, 2021, by the Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively the "Petitioners") as follows:

FOR A FIRST DEFENSE

1. Respondents are without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Petition, and therefore deny same.

2. Respondents admit the allegations of paragraph 2 of the Petition.

3. Respondents admit the allegations of paragraph 3 of the Petition.

4. Respondents admit the allegations of paragraph 4 of the Petition.

5. Respondents deny the allegations of paragraph 5 that allege the legal conclusion that Petitioners are aggrieved. Respondents admit the rest of the allegations of said

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paragraph.

6. Respondents admit that allegations of paragraph 6 that the HRB granted preliminary approval, and deny the remaining allegations of said paragraph.

7. Respondents deny the allegations of paragraph 7 of the Petition as a legal conclusion.

8. Respondents admit paragraph 8 of the Petition that venue is proper in Beaufort County.

9. No response is necessary to the allegations of paragraph 9 of the Petition.

10. Respondents deny the allegation of paragraph 10 of the Petition.

11. Respondents admit the allegations of paragraph 11 of the Petition.

12. Respondents admit the allegations of paragraph 12 of the Petition to the extent they allege that the ZBOA issued a Special Exception for 211 Charles Street, but deny the remaining allegation of that paragraph.

13. Respondents deny the allegations of paragraph 13 of the Petition.

14. Answering paragraph 14 of the Petition, Respondents crave reference to the full City Ordinances, and would deny any allegation or inference inconsistent therewith.

15. Respondents deny the allegations of paragraph 15 of the Petition.

16. Respondents deny the allegations of paragraph 16 of the Petition.

17. Answering paragraph 17 of the Petition, Respondents crave reference to the full City Ordinances, and would deny any allegation or inference inconsistent therewith. Respondents would also crave reference to the consideration and decision of the HRB in applying said ordinances.

18. Respondents admit the allegations of the first sentence of paragraph 18 of the

Petition, and deny all other allegations of this paragraph.

19. Answering paragraph 19 of the Petition, Respondents crave reference to the full City Ordinances, and would deny any allegation or inference inconsistent therewith. Respondents would also crave reference to the consideration and decision of the HRB in applying said ordinances.

20. Respondents deny the allegations of paragraph 20 of the Petition.

21. Respondents deny the allegations of paragraph 21 of the Petition.

22. Respondents deny the allegations of paragraph 22 of the Petition.

23. Answering paragraph 23 of the Petition, Respondents crave reference to the full City Ordinances, The Beaufort Preservation Manual, and the other architectural guidelines, and would deny any allegation or inference inconsistent therewith. Respondents would also crave reference to the consideration and decision of the HRB in applying said ordinances and guidelines.

24. Answering paragraph 24 of the Petition, Respondents crave reference to the full City Ordinances, and would deny any allegation or inference inconsistent therewith. Respondents would also crave reference to the consideration and decision of the HRB in applying said ordinances.

25. Answering paragraph 25, Respondents admit that the referenced properties are in the vicinity of the project at issue.

26. Answering paragraph 26 of the Petition, Respondents crave reference to the consideration and decision of the HRB of the application and presentation before them, and their decision in applying the ordinances and guidelines, and would deny any allegation inconsistent therewith.

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27. Answering paragraph 27 of the Petition, Respondents crave reference to the consideration and decision of the HRB of the application and presentation before them, and their decision in applying the ordinances and guidelines, and would deny any allegation inconsistent therewith.

28. Answering paragraph 28 of the Petition, Respondents crave reference to the consideration and decision of the HRB of the application and presentation before them, and their decision in applying the ordinances and guidelines, and would deny any allegation inconsistent therewith.

29. Answering paragraph 29 of the Petition, Respondents crave reference to the consideration and decision of the HRB on the application and presentation before them, and their decision in applying the ordinances and guidelines, and would deny any allegation inconsistent therewith.

30. Answering paragraph 30 of the Petition, Respondents crave reference to the full City Ordinances, and would deny any allegation or inference inconsistent therewith. Respondents would also crave reference to the consideration and decision of the HRB in applying said ordinances.

31. Answering paragraph 31 of the Petition, Respondents crave reference to the full City Ordinances, The Civic Master Plan, The Beaufort Preservation Manual, and the other architectural guidelines, and would deny any allegation or inference inconsistent therewith. Respondents would also crave reference to the consideration and decision of the HRB in applying said ordinances and guidelines.

32. Answering paragraph 32 of the Petition, Respondents crave reference to the full City Ordinances, The Civic Master Plan, The Beaufort Preservation Manual, and the other

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architectural guidelines, and would deny any allegation or inference inconsistent therewith. Respondents would also crave reference to the consideration and decision of the HRB in applying said ordinances and guidelines.

33. Respondents deny the allegation of paragraph 33 of the Petition, and would show that the HRB, by its approval of the application, decided otherwise.

34. Respondents deny the allegations of paragraph 34 of the Petition.

35. Respondents deny the allegation of paragraph 35 of the Petition.

36. Except as it hereinabove specifically admitted, each and every allegation of the Petition is expressly denied.

FOR A SECOND DEFENSE

37. The Petitioners are collaterally estopped from claiming that the HRB lacked authority to consider the application before it as Petitions lost that same legal issue in Civil Action No. 2021-CPP-07-1231.

FOR A THIRD DEFENSE

38. The Petitioners' claims are barred as this Court does not have subject matter jurisdiction over them as Petitioners failed to timely appeal the approval of the HRB of conceptual approval within the time limits provided by the Beaufort Code and SC Statutes, and the matters complained of by Petitions with respect to the HRB's preliminary approval in this matter are the same ones addressed by the HRB in its prior conceptual approval.

39. All matters appealed from herein by Petitions were considered by the HRB at its public meeting on February 10, 2021, when the HRB granted Conceptual Approval of the mass, scale and size of the project at issue. A true and correct copy of the HRB's February 16, 2021 Decision Letter confirming the grant of Conceptual Approval is contained at

pages 0235-0237 of the Transcript filed with this Court in this appeal.

FOR A FOURTH DEFENSE

40. The Petitioners' claims herein are barred as Petitioners did not timely appeal Conceptual Approval by the HRB, and therefore are barred by the doctrines of laches and waiver from appealing the same issues that arose at the Conceptual Approval state in this appeal of the HRB's grant of Preliminary Approval.

FOR A FIFTH DEFENSE

41. The Respondents would show that on December 8, 2021 the HRB received and considered a complete and thorough application concerning this project, and in a 3 ½ hour meeting received presentations and comments by the applicant and its professionals, HRB staff, and numerous citizens, including representatives (the owner) of the Petitioners and the Historic Beaufort Foundation. After much discussion and consideration, the HRB voted to grant Preliminary Approval of the project and the application before it with the conditions as stated in its Decision Letter, which decision should be upheld.

WHEREFORE, having fully responded to the Petition, Respondents pray that the Court deny this appeal, uphold the decision of the HRB, award Respondents their attorneys' fees and costs in defending against the claims in the Petition, and for such other and further relief as this Court may deem just and proper.

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February 3, 2022
Beaufort, South Carolina

ELECTRONICALLY FILED - 2023 Jul 18 11:00 AM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2022-CP-07-00039
West Street Farms, LLC, and Mix Farms, LLC,	)	
Petitioners,	)	**AMENDED RESPONSE OF 303 ASSOCIATES, LLC**
v.	)	
City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC,	)	
Respondents.	)	

The Respondent 303 Associates, LLC (referred to herein as "Respondent") submits its Amended Response in Opposition to the appeal of the Historic District Review Board ("HRB") decision of December 8, 2021 by the Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively "Petitioners") as follows:

GENERAL STATEMENT OF DENIAL

Respondent denies all headings and subparts of the Petition that are not specifically numbered.

FOR A FIRST DEFENSE
(General Denial)

1. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of Paragraph 1 of the Petition, and so denies the same.

2. Respondent admits the allegations of Paragraph 2 of the Petition to the extent they are not legal conclusions.

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3. Respondent admits the allegations of Paragraph 3 of the Petition to the extent they are not legal conclusions.

4. Respondent admits the allegations of that part Paragraph 4 of the Petition.

5. Respondent denies the allegations of Paragraph 5 that allege the legal conclusion that Petitioners are aggrieved; Respondent admits the rest of the allegations of said paragraph.

6. Respondent admits the allegations of Paragraph 6 of the Petition that the HRB granted preliminary approval and deny the remaining allegations.

7. Respondent denies the allegations of Paragraph 7 of the Petition as legal conclusions.

8. Respondent denies the allegations of Paragraph 8 of the Petition as legal conclusions.

9. No response is necessary to the allegations of Paragraph 9 of the Petition.

10. Respondent denies the allegations of Paragraph 10 of the Petition.

11. Respondent admits the allegations of Paragraph 11 of the Petition.

12. Respondent admits the allegations of Paragraph 12 of the Petition to the extent they allege that the ZBOA issued a Special Exception for 211 Charles Street, but deny the remaining allegations of that paragraph.

13. Respondent denies the allegations of Paragraph 13 of the Petition.

14. In response to the allegations of Paragraph 14 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

15. Respondent denies the allegations of Paragraph 15 of the Petition.

16. Respondent denies the allegations of Paragraph 16 of the Petition.

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17. In response to the allegations of Paragraph 17 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

18. Respondent admits the allegations of the first sentence of Paragraph 18 of the Petition and denies all other allegations in this Paragraph.

19. In response to the allegations of Paragraph 19 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

20. Respondent denies the allegations of Paragraph 20 of the Petition.

21. Respondent denies the allegations of Paragraph 21 of the Petition.

22. Respondent denies the allegations of Paragraph 22 of the Petition

23. Respondent denies the allegations of Paragraph 23 of the Petition as stated and craves reference to the document cited therein for the actual language.

24. In response to the allegations of Paragraph 24 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

25. Respondent admits the allegations of Paragraph 25 of the Petition, except the word "directly" as used therein.

26. With respect to the allegations of Paragraph 26 of the Petition, Respondent alleges that the referenced documents and the record before the HRB speak for themselves, and denies any allegation inconsistent with the same.

27. Respondent denies the allegations of Paragraph 27 of the Petition.

28. In response to the allegations of Paragraph 28 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

29. Respondent denies the allegations of Paragraph 29 of the Petition.

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30. In response to the allegations of Paragraph 30 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

31. In response to the allegations of Paragraph 31 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

32. In response to the allegations of Paragraph 32 of the Petition, Respondent craves reference to the quoted ordinance, which speaks for itself.

33. Respondent denies the allegations of Paragraph 33 of the Petition.

34. Respondent denies the allegations of Paragraph 34 of the Petition.

35. Respondent denies the allegations of Paragraph 35 of the Petition.

FOR A SECOND DEFENSE
(Collateral Estoppel)

36. The Petitioners are collaterally estopped from claiming that the HRB lacked authority to consider the Respondent's application (¶¶ 10-13 of Petition) as Petitioners lost that same legal issue in Civil Action No. 2021-CP-07-01231 and 2021-CP-07-00663.

FOR A THIRD DEFENSE
(Lack of Subject Matter Jurisdiction)

37. The Petitioners' claims are barred as this Court does not have subject matter jurisdiction over them as Petitioners failed to timely appeal the approvals of the HRB of Conceptual Approval and Final Approval within the time limits provided by the Beaufort Code, and the matters complained of by Petitioners with respect to the HRB's Preliminary Approval in this matter are the same ones addressed by the HRB in its prior conceptual approval.

38. All matters appealed from by Petitioners were considered by the HRB at its public meeting on February 10, 2021, when the HRB granted Conceptual Approval of the mass, scale, and size of the project at issue. A true and correct copy of the HRB's February 16, 2021 Decision

Letter confirming the grant of Conceptual Approval is at pages 0235-0237 of the Transcript filed with the Court on February 1, 2022.

39. Further, the HRB granted Final Approval of the project at issue on July 19, 2022. (See true and correct copy of the HRB's Certificate of Appropriateness attached at Exhibit A.) The Final Approval necessarily assumed all prior approvals were valid. The Petitioners failed to appeal the Final Approval of July 19, 2022.

FOR A FOURTH DEFENSE
(Laches, Waiver)

40. The Petitioners' claims are barred as they did not timely appeal Conceptual Approval and Final Approval by the HRB, and therefore are barred by laches and waiver from appealing the same issues that arose at the Conceptual Approval stage and the Final Approval stage in this appeal of the HRB's grant of Preliminary Approval.

FOR A FIFTH DEFENSE
(Mootness)

41. Because the Petitioners failed to appeal the Final Approval of the project by the HRB, this appeal of a Preliminary Approval of the Project is moot.

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WHEREFORE, HAVING FULLY RESPONDED to the allegations of Petitioners' Petition, Respondent prays the Court for the following relief:

A. Dismissing all claims asserted against Respondent in Petitioners' Petition;

B. Awarding Respondent its attorneys' fees and costs in defending against the claims in the Petition; and

C. For such other and further relief as the Court deems just and proper.

This 18th day of July, 2023.

s/ Benjamin E. Nicholson, V
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ELECTRONICALLY FILED - 2023 Jul 28 4:41 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-07-00039
West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC, Respondents.	)))))))))))	**RESPONDENTS' JOINT MEMORANDUM IN OPPOSITION TO PETITION OF APPEAL**

Respondents City of Beaufort ("City"), City of Beaufort Historic District Review Board ("HRB") (collectively, "City Defendants") and 303 Associates, LLC ("303") hereby submit their joint Memorandum in Opposition to the appeal by the Petition of West Street Farms, LLC and Mix Farms, LLC (collectively "Petitioners") of the HRB decision of December 8, 2021 as follows:

I. INTRODUCTION & BACKGROUND

This matter arises from a series of attacks on three of 303's pending development projects in the Historic District of downtown Beaufort: a hotel project ("Hotel Project") and associated parking garage project ("Parking Garage Project") and an apartment project called the Cannon Building ("Apartment Project.")

These appeals of the HRB decisions are but one part of a recent fight by the Petitioners, two entities owned or controlled by Graham Trask, and the Historic Beaufort Foundation, Inc. ("HBF"), which for years sat on the sidelines as these projects were developed without complaint.

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Prior to 2021, there had been only one challenge to a City of Beaufort HRB decision in thirty years. Since then, the Petitioners and HBF have filed the following cases:

- "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates, LLC*," in the Beaufort County Court of Common Pleas, Civil Action No. 2021-CP-07-00663. ("First Lawsuit.") (Petitioners lost by Order of Judge Sprouse.)

- "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC*," Civil Action No. 2021-CP-07-01231. ("Second Lawsuit.") (Petitioners lost by Order of Judge Price.)

- "*Historic Beaufort Foundation v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC*," Civil Action No. 2021-CP-07-01241 ("Third Lawsuit.") (Petitioner lost by Order of Judge Price.)

- "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Board of Zoning Appeals, and 303 Associates, LLC*," Civil Action No. 2021-CP-07-01639 pending in Circuit Court in Beaufort County ("Fourth Lawsuit.")

- "*Historic Beaufort Foundation v. City of Beaufort, City of Beaufort Board of Zoning Appeals, and 303 Associates, LLC*," Civil Action No. 2021-CP-07-01644. (Fifth Lawsuit.)

- **"*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Historic Review Board, and 303 Associates, LLC*," No. 2022-CP-07-00-0039 ("Sixth Lawsuit.")**

The present case is the last on this list, the Sixth Lawsuit. Judge Bentley Price ruled for Respondents in the Second and Third Lawsuits and Judge Scott Sprouse ruled for Respondents in the First Lawsuit. Some of Judge Price's Order is relevant to this appeal as this appeal includes the same legal issues Judge Price decided against Petitioners in the Second Lawsuit.[1]

These are not appeals by a property owner or a City unhappy with the decision of a City review board; these are all appeals by third parties who did not like that the City review boards

[1] Fed up with these lawsuits which it considers improper, 303 recently filed an abuse of process lawsuit against the Petitioners and their owners at "*303 Associates, LLC and Beaufort Inn, LLC v Graham B. Trask, et al*," Civil Action No. 2023-CP-07-01405. The City is not associated with that lawsuit.

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agreed that another property owner had properly submitted development applications. As such, these lawsuits are unique in recent Beaufort County history.

The common theme of all of these appeals and lawsuits is that the Petitioners do not think that the mass, scale and height of each of these projects is appropriate for the Historic District. However, the Petitioners in every case sat on the sidelines for years, often endorsing, but not challenging, the projects while all three projects went through various stages of approval. That only changed recently, long after the projects all had their mass, scale and height approved.

For the Apartment Project, Conceptual Approval of the mass, scale and height was approved by the HRB at its **February 10, 2021** meeting. Petitioners failed to appeal that ruling as required by the Beaufort Code. Further, after the appeal from **December 8, 2021** Preliminary Approval by the HRB[2], the subject of this appeal, the HRB granted Final Approval of the Apartment Project at its **July 22, 2022** meeting. Petitioners failed to appeal that ruling as well. Thus, not only does Petitioners' claim fail on the merits, Petitioners' current appeal is both untimely and moot.

II. STANDARD OF REVIEW

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

[2] 303 actually sought Final Approval at this meeting, seeking to skip Preliminary Approval, but the HRB had a few other items that it wanted 303 to address.

must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.").

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Solutions, Inc.*, 414 S.C. at 9 (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 147–48). "However, a decision of a [HRB] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id.* (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 148). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010)).

III. BACKGROUND

A. The Zoning Code and the Historic Review Board

The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code Ann. § 6-29-710 *et seq*. The Code provides for a Historic District Review Board ("HRB") which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*.

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. Code § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort Historic District and "will seek to preserve and

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protect the historic character and architectural integrity of Beaufort's National Landmark Historic District." Code § 10.7.1.B. Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. Code § 10.7.2.B.1. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. Code § 9.10.A.1. On large projects that can take years to develop, the HRB under both the Unified Development Code ("UDO")[3] and the Code follows a stepped procedure of Conceptual Approval, Preliminary Approval, and Final Approval.[4]

The Code requires any appeal of the HRB to be within thirty (30) days of the decision. See Code, ¶ 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.") See S.C. Code Ann. § 6-29-900(1)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")

B. The Apartment Project

The Petitioners in their appeal attack the Apartment Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Petitioners claim are relevant. However, in the Conceptual Approval stage on **February 10, 2021**, the HRB unanimously approved the mass, scale and height of the Apartment Project and issued such approval in writing on February 16, 2021. Of note, the Historic Beaufort Foundation's designated representative on the HRB voted in favor of the Apartment Project. (R. 0006; 0235-0237; 0281-0282.) There was no appeal of this Conceptual Approval by any party.

[3] The Unified Development Code was the predecessor to the Beaufort Code.

[4] See Code Section 9.10.2 at diagram stating "HRB Review and Decision (Approved, Approved with Conditions, Denied) 2-3 Phases (Conceptual, Preliminary, and Final are Typical)."

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Further, the Apartment Project received Final Approval by the HRB at its July 22, 2022 Meeting. *See* Affidavit of Courtney Worrell, ¶¶ 4-8, Exhibit A. The Final Approval was a ratification of both the Conceptual Approval and the Preliminary Approval. Id. at ¶8. There was no appeal of this Final Approval by any party.

In their appeal, Petitioners attempt to reargue matters decided at the prior February 10, 2021 hearing which were not at issue or heard by the HRB at the December 8, 2021 HRB meeting and which were ratified subsequently at the July 22, 2022 HRB and which were not challenged or appealed at either time. Thus, the Petitions are (1) time barred; and (2) present issues far beyond this Court's scope of review.

C. The Decision of Judge Price in the Second Lawsuit.

Judge Bentley Price heard an HRB appeal by these same Petitioners of the HRB's Final Approval of the Parking Garage Project and Final Approval of a Change after Certification of the Hotel Project. The Judge issued an Order on January 10, 2022, in the Second Lawsuit, which recognized the legal framework for denial of the Petitioners' claims here.[5] Further, Petitioners even if not barred by their failures to timely appeal lose on the merits as they are unable to overcome the judicial deference that is given to HRB board decisions.

[5] A copy of this Order is attached hereto as Exhibit A. The Petitioners have appealed this Order to the South Carolina Court of Appeals.

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IV. ARGUMENTS

A. The Appeal of Preliminary Approval of the Apartment Project Should be denied because it is Untimely.

It is too late to appeal the mass, height and scale of the Apartment Project. The Petitioners' arguments boil down to a complaint about height, mass and scale. However, height, mass and scale for the Apartment Project were approved by the HRB at its meeting on February 10, 2021, which gave Conceptual Approval to the Apartment Project.[6] (R. 0172.)

Judge Price disposed of this same issue in the Second Lawsuit, which also was an HRB appeal by Petitioners, this one involving the Parking Garage Project and the Hotel Project (which concerned both the current Beaufort Code and its predecessor code, the UDO):

> The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")*
>
> "Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). These UDO and Beaufort Code deadlines are of critical importance to the Appeal, as it is well settled that the failure to appeal within the ordinance timelines renders a circuit court with no subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't*, 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and SCRCP 74.

[6] There was some discussion by some HRB members about the mass and scale of the Project, but nothing about making it larger. (R. 0098-0099.)

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> **Each conceptual, preliminary, and final approval by the HRB for both projects was indisputably a "decision" under the UDO and the Beaufort Code. Thus, if any party was aggrieved by the subject matter of any of those decisions, the time to appeal was with within thirty days of that decision per both the UDO and the Beaufort Code.** The Petitioners have attacked both process (for example, contesting that extensions were not properly granted) and substance (whether or not the HRB decisions complied with the substantive requirements for the projects) with respect to approvals for these projects.
>
> However, to the extent the matters they attack were decided at an HRB meeting prior to the June 9, 2021 meeting, the time for appealing those decisions has expired and those decisions cannot be challenged now. Nor can Petitioners use the final approval stage to reach back to prior approvals that were not appealed. Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.
>
> * Footnote 3: Both time periods are as authorized by South Carolina law. See S.C. Code § 6-29-900(A)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")

Price, J., Order of January 10, 2022, pp. 9-10 in C/A # 2021-CP-07-01231 (Emphasis added.)

Thus, Judge Price has ruled that as to these same parties, the Beaufort Code requires that the aggrieved party must appeal a decision of the HRB within thirty days of that decision, or the court has no subject matter jurisdiction to hear the appeal. In particular, Petitioners' failure to appeal the mass, height and scale of the Apartment Project decision that was part of the Conceptual Approval by the HRB on February 10, 2021 forecloses the Petitioners from bringing it up again.

This makes sense, as noted by Judge Price:

> Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.

Price, J., Order of January 10, 2022, p. 10.

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It is well settled that the failure to appeal within the ordinance timelines renders the court with no jurisdiction to determine such appeal. *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 63, 504 S.E.2d 117, n. 6 (1998); *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 186, 621 S.E.2d 361 (Ct. App. 2005). This Court should follow Judge Price's Order and hold that the failure of the Petitioners to timely appeal the mass, scale and height decision of the HRB at the Conceptual Approval stage bars them from now raising it.

Thus, the failure of any party to appeal the prior approval by the HRB of the mass, scope and scale of the Apartment Project means that the Court is without jurisdiction to hear an appeal of any matter decided by one of the prior HRB meetings. As the Petitioners attack the existence of the Apartment Project itself, and nothing specifically with respect to those issues reviewed for Preliminary Approval by the HRB at its December 8, 2021 meeting, the appeal is untimely and must be denied.[7]

Finally, because the HRB's Final Approval of the Apartment Project was also not appealed, the Petitioners' appeal of the prior Preliminary Approval is moot, since the Final Approval ratified the Preliminary Approval. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667(Ct. App. 2009) (citing *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001)). Because the Petitioners failed to appeal the HRB's Final Approval of the Apartment Project, which ratified the Preliminary Approval, the Petitioners' appeal is now moot, as it cannot

[7]As the issue of whether or not Petitioners were required under the Beaufort Code to appeal Conceptual Approval of height, mass and scale was decided against the Petitioners in the Second Lawsuit by Judge Price, the Petitioners are collaterally estopped to relitigate that now. *See Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164, 166 (1986).

affect the ratification by the HRB at Final Approval which occurred after this appeal was filed.

B. To the Extent the Petitioners Challenge Matters within the Scope of the HRB Meeting, there is Evidence to Support the HRB's Decision.

As noted, the Petitioners have only challenged the height, mass and scale of the Apartment Project, which was not a listed discussion item at the December 8, 2021 HRB meeting since those had already been approved at Conceptual Approval. There were comments from the public objecting to the height, mass and scale at the meeting. However, there was clearly evidence in the record to support the HRB's decision

1. The Petitioners' Liner Building Claim Is Wrong.

HRB staff did not agree with Petitioners' contention (now in paragraphs 14 & 15 of their Petition) that Section 4.5.9 of the Code required a Liner Building between a Large Footprint Building and Primary Street Frontage. (R. 026-030.) Petitioners ignore the exception to this at Section 4.5.10.B.2. The HRB staff quoted this Section at the meeting, "[w]hen a large footprint building provides an entry on the primary street frontage, which this building does, and a minimum of 40 percent clear and unobstructed glazing along that street, liners are not required." (R. 0086-0087.) B.C. § 4.5.10.B.2.

Petitioners also now claim that there was not 40% clear and unobstructed glazing along Port Republic or Charles Street. However, there is nothing in the Record supporting that contention, and the HRB specifically granted approval of the glazing.[8] This is not surprising since this determination would have been made at the Conceptual Approval stage. "The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary."

[8] While there were discussions about transparency in the HRB meeting, those did not concern the requirements of Section 4.5.10.B.2 but rather involved a different set of requirements of Section 4.6.3.C.1. (R. 0032; 0087-0090.)

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Pressley v. Lancaster Cnty., 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001). Petitioners have not met their burden.

The decisions of the HRB on these issues are clearly within the discretionary authority of the HRB. What is or is not sufficient glazing is a discretionary call for the HRB that a court cannot second guess. A court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014) (quoting *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565 (2007)).

Petitioners have failed to meet this burden. They do not argue that the HRB's decision was arbitrary; rather, they in general disagree with prior HRB decisions that were not challenged. Thus, the HRB decision must stand.

2. The Petitioners Misstate the Parking Requirements.

With respect to Large Footprint Buildings, the Code provides in Section 4.5.10.B.7.a that for the location of Parking in T5 districts "[a] minimum of 75% of all parking shall be located behind the primary building or a Liner Building." 303 contended and the HRB agreed that this means 75% of required parking that is proposed to be located on a site must be located behind the primary or liner building. It does <u>not</u> mean the 75% of all required parking for a site must be located on that site (Petitioner's contention) – just that which is proposed to be located on the site. In 303's application there are no parking spaces proposed to be located on the Apartment Project

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site. Accordingly, this standard does not apply. The HRB agreed. (R. 0077-0079; 0087-0090.)[9]

Again, this is a discretionary decision of the HRB on how the Beaufort Code applies. The Court of Appeals has stated: "[w]e give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious*, 317 S.C. at 487. "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), *quoting Purdy v. Moise*, 223 S.C. 298, 304–05, 75 S.E.2d 605, 608 (1953)

> It is a well-settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. Nonetheless, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999), *quoting Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952).

Thus, there is no basis to reverse the HRB on this basis as well.

[9] As additional sustaining grounds, concerning parking requirements overall, Section 5.7.4 of the Code describes Parking Space Requirements. The minimum number of parking spaces is set forth in the Section 5.7.4.A. table. That table provides for Residential uses located in Transact-Based Districts that "Dwelling Units located within mixed-use buildings – no spaces required." Thus, residential uses in the proposed building require no parking spaces.

Concerning the commercial uses located in the proposed building, Section 5.7.4.D provides that Required Parking may be provided offsite if certain enumerated standards are met. Since Beaufort Inn, LLC – an affiliate of 303 – owns property located across Port Republic Street, required parking may be provided at a parking lot owned by Beaufort Inn, LLC which is within 400' and accessed by pedestrian sidewalks. (R. 0012.) Thus, the commercial uses in the proposed building are satisfied with the use of off-site parking as authorized by the Code.

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3. The Petitioners' Complaint About the HRB's Failure to Comply with the Beaufort Preservation Manual or Beaufort Civic Master Plan are Questions for the HRB.

The Petitioners generally complain that the HRB's Preliminary Approval of the Apartment Project does not comply with requirements of the Beaufort Preservation Manual, including such matters as new construction should "blend harmoniously with the historic fabric of the town." (See Petition, p. 22.) The Petitioners then go on to compare the size and scale of the Apartment Project to other structures in the Historic District, and at times cite provisions of the City's Master Plan. (See Petition, pp. 24-34.)

However, in all cases with respect to these guidelines, these HRB interpretations of these *suggestive* rules are a part of the HRB's subjective role in enforcing generalized standards. The Record shows that the Apartment Project was compliant with size, mass and scale requirements anyway. (R. 0274.) As there are no express statutory lines that the HRB must follow when interpreting the Preservation Manual and the Master Plan, the HRB did exactly what it was supposed to do—enter a decision reflecting the intent behind these guidelines as the HRB is charged to do. There is simply nothing arbitrary or capricious in the HRB's decision to reverse on this basis.

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C. Petitioners' Claim Regarding ZBOA Approval is Legally Unsound and has Been Repeatedly Rejected by Circuit Court Judges.

1. The Petitioners lost this same argument before this Court and are so barred from litigating it again.

Petitioners claim that the HRB should not have acted on Apartment Project because they argue that the Apartment Project required a Special Exception issued by the City's Zoning Board of Appeals ("ZBOA") for a Large Footprint Building pursuant to the Beaufort Code. Petitioners are incorrect for several reasons, first and foremost that the Special Exception *has been granted* to the Apartment Project by the ZBOA. (Of course, Petitioners have appealed that decision as well.)

The HRB discussed delaying its vote given the pending appeals of the ZBOA grant of a Special Exception to the Apartment Project, and rejected such a delay. (R. 0108-109; 0141-0144).

Petitioners have tried and lost this same argument before with respect to the Hotel Project and Parking Garage Project in the Second Lawsuit and the First Lawsuit. In his Order in the Second Lawsuit, Judge Price ruled:

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

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> and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal, supra*.
>
> Second, there is no provision in Beaufort Code requiring ZBOA approval of any project prior to HRB approval. Indeed, B.C. § 9.2.5 allows an applicant to apply for approvals concurrently at its own risk. Further, B.C. § 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioner's position that one must come before the other.
>
> Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official" as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.
>
> Therefore, there is no validity to the arguments by Petitioner that the HRB was without jurisdiction over these projects or otherwise should have abstained from deciding anything because of its allegation that they needed Special Exceptions from the ZBOA.

Price, J., Order of January 10, 2022, pp. 18-19 in C/A # 2021-CP-07-01231 (Footnote 9 omitted.)

Using the same legal analysis used by Judge Price regarding timeliness of the appeal, Petitioners are bound by Judge Price's ruling that there is no requirement that the Apartment Project receive a Special Exception from the ZBOA before being proposed to the HRB.

As the issue of whether or not a property owner is required to obtain a Special Exception before asking for HRB approval has been decided against the Petitioners with a resounding "no," the Petitioners are collaterally estopped to relitigate that now. *See Richburg*, 351 S.E.2d at 166.

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2. Judge Sprouse separately refused to disturb Judge Price's opinion.

Also, as noted *supra*, Judge Sprouse in the declaratory judgment lawsuit brought by the Petitioners refused to contradict Judge Price's rulings, citing the rule in *Charleston Cnty. Dep't of Soc. Servs. v. Father, Stepmother, & Mother*, 317 S.C. 283, 454 S.E.2d 307, 310 (1995), that one Circuit Judge cannot overrule another one. *See* Order of June 9, 2023, pp. 2-5, in C/A #2021-CP-07-0063. (A true and correct copy of Judge Sprouse' s Order is attached at Exhibit B.) The subject matter litigated in the First and Second Lawsuits was the Hotel Project and the Parking Garage Project, not the Apartment Project, and thus the Court here would not be overruling Judge Price directly if the Court here held otherwise. However, the Court should also apply Judge Price's reasoning in this matter, or there could be inconsistent holdings on the same legal interpretations of the Beaufort Code.

3. Judge Price's holding makes sense.

The logic of Judge Price's order applies here even if the Court does not expressly follow his opinion. Alternatively, the Court should hold that there is nothing in the Beaufort Code supporting Petitioners' claim that there must first be ZBOA approval of a project before that project seeks HRB approval.

V. CONCLUSION

As shown, the size, scale, height and mass issues of the Apartment Project was addressed and decided by the City's Historic Review Board well before the December 8, 2021 meeting under appeal. The prior HRB decision was by unanimous vote, and there was no challenge or appeal by anyone to that decision. Further, the HRB granted Final Approval of the Apartment Project

after this appeal was lodged, thus mooting this appeal. Finally, Petitioners have failed to show any error on the merits of the HRB's decision, and thus the appeal must fail.

Respectfully submitted, this 28th day of July, 2023.

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EXHIBIT A

ELECTRONICALLY FILED - 2022 Jan 28 2:47 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701231

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

This matter came before me on January 6, 2022 as an appeal ("Appeal") from the City of Beaufort Historic District Review Board decision of June 9, 2021 by the Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively "Petitioners.")

Respondents City of Beaufort ("City") and City of Beaufort Historic District Review Board ("HRB") (collectively, "City Defendants") and Respondent Beaufort Inn, LLC ("Beaufort Inn") filed responses denying the allegations of the Appeal.

All parties filed memoranda in support or in opposition to the Appeal, and a transcript of the proceedings before the HRB was in the record. After consideration of the party's respective arguments, I DENY the Appeal on the grounds stated herein.[1]

I. INTRODUCTION

[1] With the consent of all parties, this matter was heard simultaneously with a virtually identical appeal of the same HRB decision filed by the Historic Beaufort Foundation in Civil Action No. 2021-CP-07-0141. A separate but substantively identical order will be filed in that case.

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A. General Background

The following background information is in the Record on Appeal. This matter arises from two long-pending development projects in the Historic District of downtown Beaufort: a hotel project ("Hotel Project") and associated parking garage project ("Parking Garage Project") being developed by Respondent Beaufort Inn, and the latest decisions of the City's Historic District Review Board (HRB) (an architectural review board) approving certain aspects of those projects. Notwithstanding years of approvals by these projects at various stages by the HRB starting in 2016, Petitioners waited until after the Parking Garage Project approval was nearly complete, and two years after the Hotel Project received final approval, to file an appeal of the last and latest HRB decisions of June 9, 2021 regarding these projects.

The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code § 6-29-710 *et seq*. Prior to the enactment of the Beaufort Code, the City's development code was known as the Unified Development Ordinance ("UDO") which had been adopted on January 28, 2003 (last revised September 14, 2012.) The Beaufort Code superseded the UDO when enacted. The UDO provided for a Historic District Review Board ("HRB") at Section 2.7 which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*. The Beaufort Code, when enacted, similarly provided for the HRB at Section 10.7.

The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. B.C. § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort Historic District and "will seek to preserve and protect the historic character and architectural integrity of Beaufort's National Landmark Historic

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District." B.C. § 10.7.1.B. Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. B.C. § 10.7.2.B.1. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. B.C. § 9.10.A.1.

On large projects that can take years to develop, the HRB under both the UDO and the Code follows a stepped procedure of conceptual approval, preliminary approval, and final approval.[2] Each of these steps requires a public notice and a public hearing by the HRB, with time for citizen comment at these hearings. Even though a COA may be issued by the HRB, the City must still issue building permits for the work to be performed.

Both the UDO and the Beaufort Code are relevant to matters in this Appeal as both the Parking Garage Project and the Hotel Project received their first approvals in 2016 pursuant to the UDO, prior to the enactment of the Beaufort Code, so the two projects have traversed both the former and current codes over the years. Petitioners specifically challenge the application of the UDO and the Beaufort Code to these projects as part of the Appeal.

B. The Parking Garage Project

As mentioned, both the Parking Garage Project and the Hotel Project have been in process for years. The record reflects that the Parking Garage Project was first presented by Beaufort Inn to the HRB at its August 17, 2016 meeting. This was prior to the enactment of the Beaufort Code. After a lengthy meeting with much discussion, the HRB gave unanimous conceptual approval of the Parking Garage, calling it a "496 space, 186,000 square foot parking garage." As noted in the

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

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HRB meeting minutes, the mass, scale and height of the proposed Parking Garage were discussed and approved.[3] The HRB (including the HBF's designee on the HRB) then unanimously gave conceptual approval of the mass, height and scale.

No party appealed the decision of the HRB granting conceptual approval of the mass, height and scale of the Parking Garage Project, including the HBF, which had its Executive Director present.

The HRB then at its November 9, 2016 meeting advised Beaufort Inn that a condition of further development of the Parking Garage was the demolition of a structure owned by Beaufort Inn at 310 West Street. The HRB voted unanimously to allow this demolition, and issued a COA dated November 14, 2016 granting Beaufort Inn permission for the demolishing of 310 West Street. By follow up hearing on February 8, 2017, and letter dated February 15, 2017, the HRB issued a COA to Beaufort Inn, LLC to relocate the building at 918 Craven Street, again as part of the Parking Garage Project. The City then issued permits for both this demolition and building relocation, which were completed by Beaufort Inn. There was no appeal of either of these decisions of the HRB.

On September 20, 2017, the HRB met and unanimously voted to grant preliminary approval to the Parking Garage Project as subsequently memorized by the City's October 9, 2017 letter. The preliminary approval did not change the height, mass and scale issues, which had previously received conceptual approval. Many members of the public, and representatives of HBF, were present and participated in this September 20, 2017 HRB meeting. There was similarly

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[3] Of note for this Appeal and the appeal of the HBF, the Executive Director of the Historic Beaufort Foundation at the time, Maxine Lutz, was present at the meeting and expressly stated "this seems like a wonderful way to develop this parcel," but then qualified that statement that the HBF was "primarily interested in the height, mass, and scale of a parking garage." Further, under the UDO, the HBF was able to designate a seat on the HRB, so the HBF's designee was sitting on the HRB at this time.

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no appeal of this preliminary approval of the Parking Garage Project.

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

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

Thus, for all practical purposes, the hearing on final approval of Garage Parking Project had a very limited agenda and list of items to be considered.

After a 4 ½ hour hearing, involving many members of the public, the HRB voted 3-1 to give final approval to the Parking Garage Project. The HRB issued a letter dated June 15, 2021 confirming final approval.

C. The Hotel Project

The Hotel Project matter currently being appealed is a request for final approval of a change after certification. That is, the Hotel Project itself had already had final approval and a COA was issued in 2019. Beaufort Inn by its current application simply requested several changes to the original HRB COA approval to construct the Hotel Project. To that end, Beaufort Inn applied for a "Change after Certification" for the Hotel Project on December 25, 2020. Beaufort Inn obtained preliminary approval of the Change after Certification at the HRB's February 10, 2021 Meeting. Thus, the Hotel Project only came up at the June 9, 2021 HRB meeting for final approval of this Change after Certification.

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The items Beaufort Inn requested to be changed from the original approved COA were: (1) slight changes in exterior design for storefronts; (2) revised cornice design, (3) revised porte-cochere design, (4) change in type of doors, and (5) a proposed new roof deck. The rooftop change was to add a rooftop amenity space. However, in their Appeal, Petitioners attempt to reargue matters decided years ago by the HRB, and in doing so seek to vastly expand the scope of what was actually heard at the June 9, 2021 HRB meeting. The issues complained of now by the Petitioners involve elements of the Hotel Project which were approved in 2019, and which were not challenged or appealed at that time, and an element of the Hotel roof design that already received an unchallenged preliminary approval in February 2021.

The Hotel Project was first presented to the HRB, and it received unanimous HRB conceptual approval, on September 14, 2016. Therefore, like the Parking Garage Project, the Hotel Project began under the UDO. (Indeed, at the HRB meeting of June 9, 2021, the chair of the HRB recognized that the Hotel Project was vested in the UDO.) There was no appeal of the HRB's conceptual approval.

The Hotel Project's preliminary approval was issued unanimously by the HRB on July 25, 2017. There was no appeal of the preliminary approval of this COA approving the Hotel Project design.[4] The Hotel Project was granted a final approval and Certificate of Appropriateness at the HRB's October 9, 2019 meeting. The HRB issued its Certificate of Appropriateness by letter dated October 9, 2019. There was no appeal of this COA.

As noted, the Hotel Project's Change after Certification received preliminary approval at

[4] The HRB also required that Beaufort Inn demolish the building at 812 Port Republic Street in order to build the Hotel Project, per the HRB meeting minutes for the November 13, 2019 meeting. The HRB granted Beaufort Inn a COA demolish this building on November 13, 2019. There was no appeal or other challenge from this decision. Beaufort Inn obtained a demolition permit from the City per this COA on December 17, 2020, and completed this demolition.

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the HRB's February 10, 2021 meeting. This included preliminary approval of the change in the mass and type of roof design. There was no appeal of this preliminary approval.

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

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

This is consistent with the view the HRB took of prior approvals of the Parking Garage Project as well. The Change after Certification for the Hotel Project was then approved by a 3-1 vote of the HRB.

II. STANDARD OF REVIEW

The HRB is a board of architectural review as permitted by S.C. Code § 6-29-870 (Supp. 2020) and established by the Beaufort Code. B.C. § 10.7. "The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance." S.C. Code § 6-29-880. The Beaufort Code provides such authority at § 10.7.2.B.

"On appeal, the findings of fact by the [HRB] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enters., LLC v. City of North Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)); see S.C. Code§ 6-29-930(A)(Supp. 2020) ("The findings of fact by the board of architectural review must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.") "A reviewing court in a zoning case may rely on

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uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Sols., Inc.*, 414 S.C. at 9, 776 S.E.2d at 757 (alteration in original) (quoting *Wyndham Enters*., 401 S.C. at 147-48, 735 S.E.2d at 661). "However, a decision of a [HRB] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id*. (quoting *Wyndham Enters*., 401 S.C. at 148, 735 S.E.2d at 661). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

III. PETITIONERS' ARGUMENTS

The relief sought by the Petitioners is that the approvals given the projects by the HRB be reversed and remanded by this Court to the HRB for further proceedings. Petitioners interpret further proceedings to mean that all approvals for the two projects must be vacated and Beaufort Inn must start the entire HRB approval process for each project anew. For the reasons stated below, Petitioners' Appeal is rejected.[5]

Before addressing any of the Petitioners' arguments, the Court must discuss the overriding legal principle that moots nearly all of the grounds for these appeals, that is, the timeliness of the

[5] Each basis outlined in this Order for the rejection of the Appeal is an independent and alternative basis for denial of the Appeal, and each basis thus stands on its own.

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Appeal with respect to the relief sought by Petitioners and the Court's subject matter jurisdiction to grant the relief requested.

A. Subject Matter Jurisdiction-Timeliness of Appeal

The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")[6]

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

[6] Both time periods are as authorized by South Carolina law. *See* S.C. Code ¶ 6-29-900(A)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")

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

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

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

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HRB could revisit matters already decided favorably to Beaufort Inn in prior HRB meetings. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).

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

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

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

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City Defendants could face legal challenges by property owners of interference with the property owner's vested rights.[7]

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

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

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[7] "Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986). However, Petitioners argue that Beaufort Inn may not claim a vested right, even though the City Defendants concede it has vested rights in the application of the UDO to the project, because Beaufort Inn has failed to comply with the Vested Rights Act, S.C. Code § 6-29-1510, *et. seq*. ("VRA"), and therefore it obtained no vested rights. This is incorrect for several reasons. First, the VRA nowhere states that it is the exclusive method of establishing vested rights by a property owner in South Carolina. It is well settled in South Carolina that a statutory scheme creating a remedy of some type is not deemed to create an exclusive remedy unless the statute expressly so provides. *See e.g*., *Tilley v. Pacesetter Corp*., 333 S.C. 33, 40–41, 508 S.E.2d 16, 20 (1998)(creation of specific remedy by statute did not mean it was the sole one at law); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986)(Collection of Rent by Distraint Statute not exclusive remedy); and *Wimberly v. Barr*, 359 S.C. 414, 419, 597 S.E.2d 853, 856 (Ct. App. 2004)(timber cutting statute not the exclusive remedy). Conversely, where the legislature intends a statute to create an exclusive remedy, it has expressly said so. *See e.g*., *Dickert v. Metro. Life Ins. Co.,* 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993)(workers compensation is exclusive remedy); *Wimberly v. Barr*, 597 S.E.2d at 857 (S. C. Tort Claims Act is exclusive remedy.) North Carolina, with its similar vested rights act, has recognized that its vested rights act is not meant to be the sole method of establishing vested rights, and that the traditional framework of substantial reliance on municipal actions is still an avenue of relief for property owners. *Simpson v. City of Charlotte*, 115 N.C. App. 51, 56, 443 S.E.2d 772, 776 (1994). The same reasoning applies here; the South Carolina Supreme Court has recognized "the purpose of the Act was to protect, preserve, and create vested rights in development permits." *Grays Hill Baptist Church v. Beaufort Cty*., 431 S.C. 630, 640, 850 S.E.2d 29, 34 (2020). Limiting the ability of a property owner to acquire vested rights to those under a statutory scheme is anathema to the purpose for the VRA. The VRA merely provides another vehicle by which a property owner and developer can achieve some certainly in the development process—but it is not the only method.

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

Likewise, the Petitioners are precluded from appealing any matter that was the subject of the conceptual and preliminary approvals of the Parking Garage Project, and Petitioners can only appeal those matters decided for the first time at the HRB's June 9, 2021 meeting. That in this case would be just those matters that the HRB had to review in order to provide final approval to the Parking Garage Project.

B. The HRB's Final Approval Regarding the Change after Certification of the Hotel Project is supported by Evidence in the Record.

Petitioners at the June 9, 2021 HRB meeting did not directly challenge any of these changes to the Hotel Project except the rooftop change. Mr. Graham Trask, the owners of Petitioners, complained at the meeting about mass and scale of the entire Hotel Project, not just the matters at issue with respect to the changes proposed at the meeting. Trask also claimed that the new "rooftop bar increases the size and scale of this hotel by 25 percent because it's a 4th floor." The HRB chair acknowledged that the HRB would consider that issue, but not the original mass and scale of the Hotel Project.

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However, this claim by Trask was refuted by the Hotel Project design architect, Ken Ramsey, who pointed to the plans and said that a 4th floor was not being added and the size of the building was not being increased by 25%. The HRB obviously accepted Mr. Ramsey's testimony over the opinion of Mr. Trask, as it approved Beaufort Inn's application. Assessing development plans, and differing interpretations of those plans, is part of the normal function of the HRB. In this case, after making such assessment, the HRB decided in favor of the applicant. There was clearly evidence in the record to support the HRB's decision. A court may not reverse the finding of the HRB unless the [HRB's] findings of fact have no evidentiary support or the [HRB] commits an error of law. *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995.)

C. The HRB Properly Granted the Parking Garage Project Final Approval.

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

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

Petitioners argue that the prior approvals granted to Beaufort Inn for the Parking Garage Project expired before the June 9, 2021 HRB meeting, and thus the application for final approval was not properly before the HRB. Petitioners argue that the UDO did not allow for an extension totaling more than 18 months, and there was more than an 18 month gap between the preliminary approval of the HRB on September 20, 2019 and the June 9, 2021 HRB meeting. Petitioners claim that the approvals granted previously on the Parking Garage Project had thus expired, and so

Beaufort Inn was required to start the Parking Garage Project approval process again.

However, the City granted two extensions to Beaufort Inn, one by letter of June 21, 2019 and one by letter of July 1, 2020, pursuant to § 9.1.4 of the Beaufort Code, which allows up to five one-year extensions. There are no time limitations on extensions for conceptual, preliminary, or final approvals for COAs other than those stated in § 9.1.4. See B.C. § 9.1.9.C. Thus, the City was within its discretion to provide such extensions, and such extensions were accepted by the HRB in its discretion. See *Gurganious v. City of Beaufort*, 454 S.E.2d at 916

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

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

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harder to develop simply because of a crossover of codes. That would not be the "good faith" required of the City.

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

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

(Emphasis added.) In statutory construction, the use of the word "may" means the action is permissive. *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980)("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary."); *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 276, 834 S.E.2d 209, 212 (Ct. App. 2019).

B.C. § 1.4.4.A clearly gives the HRB the *discretion* to apply the UDO or the Code with respect to timelines it applied to the Parking Garage Project. Thus, the HRB staff was free to apply the Beaufort Code timelines per this section of the Code, and was not required to follow the UDO.[8] There was no error in the HRB allowing the extensions to stand and the Parking Project

[8] To the extent that B.C. § 1.4.4.A may be interpreted to conflict with § 1.4.2 (B), the interpretation of the HRB giving precedence to § 1.4.4.A must be given great weight. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), *quoting Purdy v.*

to move to final approval.

2. There was evidence in the record supporting the HRB's final approval.

Second, Petitioners complain about the same matters that were approved at the conceptual and preliminary stages of the HRB approval process, the scale, size, height and mass of the Parking Garage Project. Petitioners claim there was no evidence before the HRB supporting the scale, size, height and mass of the Parking Garage Project. Petitioners by this position demonstrate the fallacy of their arguments. There were not thousands of pages of plans, specifications, and reports before the HRB because that back up documentation was presented to the HRB many years before at the prior approval stage. Nonetheless, from a review of the record before the Court, it is clear that there is sufficient evidence to support the HRB's final approval of the Parking Garage Project, so that its decision could in no way be characterized as arbitrary or capricious or contrary to law.

D. <u>There is No Requirement that the HRB Defer Decisions with Respect to Matters under the Jurisdiction of the City's Zoning Board of Appeals</u>.

Petitioners, citing no authority, claim that the HRB was precluded from hearing the Hotel Project matter and the Parking Garage Project matter because they allege that neither project should be permitted under the Beaufort Code because both buildings are allegedly "Large Footprint Buildings" as defined at B.C. § 4.510 (B)(5). Large Footprint Buildings under this section of the Beaufort Code are required to have a Special Exception from the City of Beaufort's Zoning Board of Appeals ("ZBOA") to go forward. Thus, Petitioners reason, the two projects do not qualify under applicable zoning and so should not be considered by the HRB. The Court rejects this argument.

First, as noted, the Parking Project and the Hotel Project were initiated under the UDO, not

Moise, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

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the Beaufort Code. As held by the HRB, and admitted by City Defendants, these two projects were to be assessed under the UDO, not the Beaufort Code. The Beaufort Code also provides that these projects are grandfathered under the UDO as they were initiated when the UDO was in effect. B.C. § 1.4.2.A. Critically, the UDO did not have a section like the Large Footprint Building in the Beaufort Code. Consequently, no Special Exception by the ZBOA was required for either the Hotel Project or the Parking Garage Project. Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, *supra*.[9]

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

Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official"

[9] This Appeal is but one part of a recent fight against the Hotel Project and the Parking Garage Project by Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively, the "Trask Petitioners"), two entities owned or controlled by Graham Trask, a real estate developer with property near the site of the Hotel Project and the Parking Project. Prior to this Appeal, Petitioners filed a declaratory judgment action against Beaufort Inn and the City on April 5, 2021 captioned "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates*," Civil Action No. 2021-CP-07-00663, which makes the same specious claim at they do here: that the Beaufort Code requires the Hotel Project and the Parking Garage Project to have Special Exceptions as Large Footprint Buildings.

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as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

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

IV. CONCLUSION

For the reasons aforestated, the Court DENIES the Appeal.

_____
The Honorable Bentley Price

January ___, 2022
_____, South Carolina

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Beaufort Common Pleas

Case Caption:	West Street Farms Llc , plaintiff, et al VS Beaufort City , defendant, et al
Case Number:	2021CP0701231
Type:	Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

EXHIBIT B

ELECTRONICALLY FILED - 2023 Jul 28 4:41 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

ELECTRONICALLY FILED - 2023 Jun 09 3:52 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700663
ELECTRONICALLY FILED - 2023 Jul 28 4:41 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

WEST STREET FARMS, LLC, and,
MIX FARMS, LLC,
Plaintiffs,

v.

CITY OF BEAUFORT, BEAUFORT INN, LLC,
and, 303 ASSOCIATES, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-07- 00663

ORDER

PRESIDING JUDGE:	R. SCOTT SPROUSE
DATE OF HEARING:	MAY 11, 2023
COURT REPORTER:	SHARON HARDOON
PLAINTIFFS' ATTORNEY:	W. ANDREW GOWER, JR.
DEFENDANT BEAUFORT INN, LLC AND 303 ASSOCIATES, LLC'S ATTORNEY:	BENJAMIN E. NICHOLSON V
DEFENDANT CITY OF BEAUFORT ATTORNEY:	WILLIAM B. HARVEY III

This matter was before the Court for a bench trial in an action filed by the Plaintiffs on April 5, 2021 in which declaratory judgment, a permanent injunction and mandamus were sought. The parties stipulated a large number of exhibits which were placed in the record. The Court heard testimony and arguments of counsel.

This dispute surrounds a plan to construct a hotel and apartments in downtown Beaufort. Accompanying the hotel plans are plans for the construction of a parking garage. The planning and submission process of these projects took many years, with final approval ultimately being obtained by the Historic District Review Board ("the Board"). The Board evaluated numerous documents, including applications requesting the demolition/relocation of existing structures to make way for the new hotel and the parking garage. Several sets of minutes of the board from various stages of the process were entered into evidence. Subsequent to the filing of this lawsuit, the Plaintiffs' appealed the decision of the Board to the Circuit Court. A hearing on the appeal took

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place before the Honorable Bentley Price on January 6, 2022. An order was issued on January 20, 2022 in which the Court denied the appeal. Said order was appealed to the South Carolina Court of Appeals, where it is still pending.

This State has a long-standing rule that one judge of the same court cannot overrule another. *Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995). The question that this Court must answer is twofold:

1. Are the issues in this case identical to those issues previously heard by the Court?
2. Is the Plaintiff precluded by law from seeking the relief sought in this parallel case?

The analysis begins with an evaluation of the issues. The issue before Judge Price was an appeal from the Board. The Board is an architectural review board created by the City of Beaufort pursuant to South Carolina Code 6-29-710 et seq., which governs zoning ordinances, zoning board of appeals and architectural review boards. The City of Beaufort created the Board as part of the enactment of Unified Developmental Ordinance ("UDO") in 2003. The statutory language shows the clear intent of the General Assembly for zoning boards to be a major part of "the administrative mechanism designed to enforce the zoning ordinance." S.C. Code 6-19-870, which allows the creation of architectural review boards when the zoning ordinance

> "…makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within areas."

Pursuant to South Carolina Code 6-29-870, the UDO and the subsequent Beaufort Code ("the Code") both give the Board the power to approve or disapprove submitted projects in accordance with the various zoning requirements.

The Plaintiffs alleged to the Board that neither the hotel project nor the parking garage were in compliance with the zoning requirements, due to them being "Large Footprint Buildings." The Plaintiffs specifically outline the following declaratory relief in their Amended Complaint:

> "a. The Hotel Project, the Parking Garage Project, and the Apartment Project as currently designed and submitted to the City, exceed 100 feet width frontage and,

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under the Beaufort Code, shall comply with the Large Footprint Building standards of Beaufort Code Sec. 4.5.10.

b. Under Sec. 4.5.10, as the Hotel Project, the Parking Garage Project, and the Apartment Project are located in the Historic District Overlay, both are permitted only by the granting of a Special Exception by the ZBOA.

c. Neither the Hotel Project, the Parking Garage Project, nor the Apartment ELECTRONICALLY FILED - 2021 Apr 06 2:11 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700663 8 of 9 Project have received a Special Exception from the ZBOA.

d. Neither the Hotel Project, the Parking Garage Project, nor the Apartment Project may proceed with any construction, alteration or improvement on those project sites without first receiving a Special Exception for each project from the ZBOA.

e. All prior approvals by the City that were issued without the prerequisite Special Exception permitting by the ZBOA are null, void and of no effect."

The Plaintiffs further alleged at the hearing that improper extensions were granted to the project regardless of which ordinance applied. The UDO provides for one six (6) month extension while the Code provides for a twenty-four (24) month extension. Plaintiffs' counsel referred to the timelines set forth in Court's Exhibit J.

All of the above-outlined issues were before the Court in the Plaintiffs' appeal. The question is whether the Plaintiffs may maintain an independent action under the Declaratory Judgment Act, particularly South Carolina Code §15-53-30, where "any person interested …whose rights, status, or legal relations are affected by a statute, municipal ordinance, contract or franchise…" may petition a court of record for "a declaration of rights, status, or other legal relations thereunder." The General Assembly further outlines the purpose of this law in South Carolina Code §15-53-130 where it states that "this chapter is declared to be remedial. Its purpose is to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered."

We must now turn to the statute governing these types of disputes. South Carolina Code §6-29-930 (B) specifically sets forth the procedure for an appeal from an architectural review board:

"(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil

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> cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking."

The Court notes that there are no damages sought in this case nor is there a jury trial requested.

Generally, specific laws will prevail over general laws, and the most recent legislation will take precedence over earlier enactments. *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000); *Lloyd v. Lloyd*, 295 S.C. 55, 57-58, 367 S.E.2d 153, 155 (1988); *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 88, 326 S.E.2d 395, 399 (1985). Declaratory relief will ordinarily be refused where another remedy will be more effective or appropriate under the circumstances. *Bank of Augusta v. Satcher Motor Co., Inc.*, 249 S.C. 53, 152 S.E.2d 676 (1967).

The long-standing law in South Carolina is that a party aggrieved by the application of an ordinance must invoke and exhaust the administrative remedies provided thereby before he may resort to the courts for relief. *DePass v. City of Spartanburg et.al.*, 234 S.C. 198, 107 S.E.2d 350 (1959). The core of the Plaintiffs' arguments surrounds whether the current Beaufort Code or the previous zoning code, the United Development Ordinance (UDO) is the applicable law governing the project and whether approval of the projects in question violates the applicable law. The South Carolina General Assembly has outlined a specific procedure acted upon by the City of Beaufort to create a board to hear these disputes. The Plaintiffs availed themselves of this procedure and contested the approval of the projects. Unsuccessful in their efforts, the Plaintiffs appealed the decision to the Court, where their appeal was denied. The Court finds that the Plaintiffs' administrative remedies have not been exhausted since their appeal to the South Carolina Court of Appeals is still pending.

Furthermore, the Court finds that the issues in that case are identical. While the Declaratory Judgment Act is a general law that could be utilized in this case if an administrative procedure were not available, the Court finds that it is not applicable in light of the parallel case. The Court notes that Judge Price's order does not present the arguments exactly in the same order in which they were presented at this trial. However, the core issue is identical----whether approval of these projects violates the applicable municipal ordinance. This Court making findings of fact and adjudicating this issue would be improper since another Circuit Court judge has issued an order on the same facts, which is under appeal. Granting the relief requested would violate the above-stated

rule in this State that one judge of the same court cannot overrule another. It hypothetically could result in competing orders from the same court, which is exactly the problem that the above-referenced statutes seek to prevent. This principle of South Carolina law also makes the request for a permanent injunction/mandamus and attorney fees improper.

WHEREFORE, IT IS ORDERED,

1. That the Plaintiffs' request for Declaratory Judgment is DENIED; and
2. That the Plaintiffs' request for a Permanent Injunction/Mandamus is DENIED; and
3. That the Plaintiffs' request for attorney fees and costs is DENIED.

AND IT IS SO ORDERED!

June 8, 2023

/s/ R. Scott Sprouse

Circuit Court Judge

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Beaufort Common Pleas

Case Caption: West Street Farms Llc , plaintiff, et al VS Beaufort City , defendant, et al

Case Number: 2021CP0700663

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

ELECTRONICALLY FILED - 2023 Sep 08 3:46 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 2022-CP-07-00039
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Petitioners,	)	
v.	)	
	)	
City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC,	)	
	)	
Respondents.	)	

PETITIONERS' NOTICE OF MOTION AND MOTION TO RECONSIDER (Rule 59(e), SCRCP)

PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon as the parties may be heard, Petitioners West Street Farms, LLC, and Mix Farms, LLC, ("Petitioners"), by and through undersigned counsel, will move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure before the Honorable Edward W. Miller for reconsideration of the August 29, 2023 Order of this Court denying Petitioners' Appeal of the decision of the Historic District Review Board ("HRB") issued on December 8, 2021. The HRB decision granted Respondent 303 Associates, LLC preliminary approval of a 3-story apartment.

The grounds for this motion are that the August 29 Order fails to specifically address and rule on the merits of Petitioners' grounds for the Appeal. This Court's ruling on these issues raised by the Petitioners is necessary to preserve those issues for appellate review. In particular, the Order does not address the following arguments presented by the Petitioner in their Petition, memoranda and exhibits submitted to the Court and in oral argument:

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1. Approval by the HRB required compliance with the zoning ordinance, which at the time of the preliminary HRB approval did not exist, since the Special Exception had not yet been finally issued. Though the BZA had issued the Special Exception, which we will address after this motion, that decision was timely appealed and so the proper zoning was not yet in place for proceeding with the preliminary HRB approval.

2. There is no evidence in the record (the written acknowledgement, the minutes, and the transcript), that the HRB relied on either the Beaufort Code, the Beaufort Civic Master Plan, or the Beaufort Preservation Manual in issuing this preliminary approval. In fact, the evidence is to the contrary, so the preliminary approval was contrary to law. The ways in which the application is contrary to the Beaufort Code, the Beaufort Civic Master Plan, or the Beaufort Preservation Manual are outlined in the Petition and were argued in detail at the hearing. As a result, the HRB's action in issuing this preliminary approval had no legal basis and this Court should reverse it and send it back to the HRB for further consideration in conformance with the law.

For these reasons, HBF respectfully requests this Court reverse the August 29 Order denying the Appeal and enter an order granting the relief sought by Appeal. This motion is further supported by all pleadings, any evidence, and any memorandum of law to be filed as well as all applicable law and further proof and testimony as may hereafter be offered at a hearing on this motion.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

/s/ W. Andrew Gowder, Jr.
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ATTORNEYS FOR PETITIONERS

September 8, 2023

Charleston, South Carolina

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ELECTRONICALLY FILED - 2023 Sep 12 2:45 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-07-00039
West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC, Respondents.	)))))))))))	**RESPONDENTS' JOINT MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER**

Respondents City of Beaufort, City of Beaufort Historic Review Board, and 303 Associates, LLC hereby submit their joint Memorandum in Opposition to Petitioner's September 8, 2023 Motion to Reconsider asking the Court to reverse its August 29, 2023 Order Denying Appeal in this matter.

Petitioner asks that the Court reconsider its Order of August 29, 2023 denying the Appeal. Respondents do not believe that the Motion to Reconsider to reverse the Court's prior decision should be granted, but the Respondents do not object to the Court issuing an order specifying the grounds for the denial of the Appeal or the ground for denying the motion to reconsider and will submit such a proposed order should the Court so desire.

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment[,] is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E. 2d 56 (Ct. App. 1999.) Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v.

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Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief.)[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)).

In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

Finally, the Court is not required to hold a hearing on this type of motion per SCRCP Rule 59(f) ("The motion may in the discretion of the court be determined on briefs filed by the parties without oral argument.") See Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534, 536 (Ct. App. 1994).

---

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

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As there is nothing additional of substance for the Court to consider by Petitioner's Motion, Respondents submit that no hearing is needed and that the Court may request Respondents to submit a proposed order (1) amending the prior order denying the appeal or (2) a proposed order denying the Motion.

Respectfully submitted,

Respectfully submitted, this 12th day of September, 2023.

s/ Benjamin E. Nicholson, V
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Edward W. Miller,
Circuit Court Judge

Civil Case No. 2022-CP-07-00039

West Street Farms, LLC and
Mix Farms, LLC,

Appellants,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC

Respondents.

NOTICE OF APPEAL

West Street Farms, LLC and Mix Farms, LLC appeal the order of the Honorable Edward W. Miller dated March 5, 2025. Appellants received written notice of entry of the Order Granting Motion to Reconsider and Denying Petition of Appeal on March 5, 2025.

April 1, 2025

/s/ W. Andrew Gowder, Jr.
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Counsel for Respondent City of Beaufort and
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Edward W. Miller,
Circuit Court Judge

Case No. 2022-CP-07-00039

West Street Farms, LLC and Mix Farms, LLC

Appellants,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Notice of Appeal in the above referenced case has been served upon the following by emailing a digital copy this 1st day of April, 2025 to:

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/s/ Bailey L. Pope
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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Appellants,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC

Respondents.

NOTICE OF APPEAL

West Street Farms, LLC and Mix Farms, LLC appeal the order of the Honorable Edward W. Miller dated August 29, 2023 and March 5, 2025. Appellants received written notice of entry of the Order Denying Motion for Appeal from the Zoning Board on August 29, 2023 and the Order Granting Motion to Reconsider and Denying Petition of Appeal on March 5, 2025.

April 4, 2025

/s/ W. Andrew Gowder, Jr.
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RECEIVED
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In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Edward W. Miller,
Circuit Court Judge

Case No. 2022-CP-07-00039

West Street Farms, LLC and Mix Farms, LLC

Appellants,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Amended Notice of Appeal in the above referenced case has been served upon the following by emailing a digital copy this 4th day of April, 2025 to:

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STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIRT COURT 14

COUNTY OF BEAUFORT) COURT C.A NO. 2021-CP-07-01639

West Street Farms)

Plaintiff,)

Versus)

City of Beaufort)

Defendant.)

H E A R I N G

DATE: August 1, 2023

LOCATION: South Carolina Circuit Court 14

JUDGE: Edward W. Miller

TRANSCRIBED BY: ERIN REILLY

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EXHIBITS

[None Marked]

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

THE COURT: Okay. The next case on the docket is West Street Farms versus the City of Beaufort, 2022CP070039. Okay. What do y'all want to tell me. Mr. Gowder you are muted.

MR. GOWDER: I see that Your Honor. Thank you very much. You probably have to say that a number of times a day, I apologize. Your Honor, we are here on two appeals of administrative decisions of a multi-family project in the City of Beaufort. One is an appeal of an Historic Review Board matter which is the first item on your docket. And then there -- the next two are both appeals by my clients and by the Historic Beaufort Foundation of a decision of the Board of Zoning Appeals. I think Mr. Massalon, who represents the Historic Beaufort Foundation is probably in the waiting room and I would ask, Your Honor, he could be admitted. Here he is. That would be great. I -- with the Court's permission, I'd suggest, Your Honor, that we argue the Historic Review Board decision first, Mr. Nicholson and I, and then when we get to the Board of Zoning Appeals matter which is related obviously, Mr. Massalon and I would like to split the argument on the appeal in the interest of time so that we don't repeat each other.

THE COURT: All right.

MR. GOWDER: Thank you, Your Honor. Your Honor, the

first matter is an appeal of a decision of the Historic Review Board of the issuance of a preliminary approval on December the 8th, 2021. Your Honor, this project we have submitted we -- all the parties have submitted memoranda which you have before you. There are also the petitions on appeal, there's also the record on appeal that you have at your disposal. And Your Honor, we in this argument rely on all the ground stated in our petition but for the purposes of this argument we would really like to highlight just two points.

First, Your Honor, approval by the Historic Review Board of this multifamily project in the historic district of the City of Beaufort, required compliance with the zoning ordinance. Which at the time of the preliminary Historic Review Board approval did not exist since the special exception which the applicant was required to get from the Board of Zoning Appeals, which you'll hear here in a minute had not been finally issued.

Though the BZA had issued the special exception back in August before this hearing, the decision was timely appealed to the Circuit Court and the proper zoning therefore was not yet in place for proceeding with the preliminary HRB approval. We contend that the HRB needed to wait for the zoning to be processed, to be completed before it could proceed. Failing to do so, Your Honor, deprived them of jurisdiction and was an error of law. Second, Your Honor, there is no evidence in the

record that the Historic Review Board relied on either the Beaufort code, the Beaufort Civic Master Plan or the Beaufort Preservation Manual, which they're required to do by law in issuing this preliminary approval. In fact, Your Honor, the evidence to the contrary. So, the preliminary approval was, was erroneous as a matter of law.

The written acknowledgement that the HRB issued after the hearing and the minutes which are in the record do not reveal any such consideration by the HRB, nor does the transcript, all of which you have in the record on appeal. To review it briefly, Your Honor, the Beaufort preservation manual states that new construction must blend harmoniously with the historic fabric of the town. The Beaufort code section 4.3 0.2 all of this Your Honor, we've cited in our memorandum. Requires that new construction should complement the massing of neighboring buildings, and that special attention shall be paid to specific building design elements in order to articulate a building form that is appropriate to the neighborhood context. The proposed multifamily project here Your Honor, at 211 Charles Street, again in the historic district in Beaufort is directly across from two significant historic properties, the Elliot House at Bay and Charles Street, and the Lucius Cuthbert House at Port Republic in Charles Street. This proposed multi-family structure, Your Honor, is two and a half times longer and a story taller than the surrounding two-story historic

buildings, and therefore violates the criteria for contextual harmony and compatibility.

In addition, Your Honor, the proximity requires a sensitive infill instead that blends harmoniously with the adjacent historic properties as required by the Beaufort code. The Beaufort code also, Your Honor, requires conformity with the master plan for this area, the Civic Master Plan. And Civic Master Plan, Your Honor, among other requirements envisions an intimate scale development in this area with two story buildings rather than three story large footprint buildings. And we'll discuss that term of art in the next -- in the next hearing regarding the Board of Zoning Appeal.

In addition, Your Honor, the Civic Master Plan requires that the building that is being proposed fit the areas architectural context. This proposed building, Your Honor, does not reflect the intent of the Civic Master Plan for redevelopment of Port Republic Street. And as a result, the HRB aired as a matter of law in issuing this preliminary approval when the project completely failed to comply with or even acknowledge in its decision, the Beaufort Code, the Beaufort Civic Master Plan or the Preservation Manual.

Now, Your Honor, clearly the Court, this Court, as a circuit court sitting as an appellate court of the HRB decision, may not second guess Boards of Architectural Review. When they make value judgements based on the law and the facts

before them. Here, however, there is no evidence in the record that the board considered any of the applicable law or standards that it is bound to enforce. And in fact, Your Honor, the record reveals that the proposed project directly violates those governing laws and regulations. So, as a result, Your Honor, the HRB'S action in issuing this preliminary approval had no legal basis and that this court -- and this court should reverse it and send it back to the HRB for further consideration and conformance with the law. So, Your Honor, that's my argument on the HRB appeal and with the Court's permission I'll pause and allow the Respondents to proceed.

THE COURT: Let me ask one quick question. You said that these were approved prior to the implementation of a new zoning law. Is that correct? Is that what I heard?

MR. GOWDER: No, sir, Your Honor. These were actually approved after the current zoning code was put into place by about three years. So, what I was talking about, Your Honor, is that the -- this project, the size of this project makes it what is defined in the Beaufort code as a large footprint building. It's a kind of a -- it's a size and scale of a building that's specifically defined in the Beaufort code. A large footprint building in order to be located in certain zoning districts in the historic downtown including this one, a T5 district, have to get special exception approval by the

Board of Zoning Appeals. They did that, they went to the Board of Zoning Appeals and the Board of Zoning Appeals over our objection issued that special exception but that had been appealed at the time that the HRB decided to go forward with this architectural review approval. And we contend that that was error, they needed to wait for the zoning to be finalized before they could proceed.

THE COURT: Okay. All right. Thank you. Who's up?

MS. BOZEMAN: Excuse me, I've now unmuted myself. Good morning. My name is Virginia Bozeman and I represent the City of Beaufort and the Historic Review Board. I'd like to introduce my client as well, who is here observing this morning. Scott Marshall, who is the city manager for the City of Beaufort is also in attendance. And I'll be brief because Mr. Nicholson has lived through a long series of appeals by West Street Farms and Mix Street Farms related to a series of development that developments his client has undertaken within the Historic District in Beaufort and he's much more familiar with the ins and outs of all of those appeals. And his client, obviously has been a party to each one and has presented more than sufficient evidence at each stage of the Citizen Board Appeals. As far as the HRB appeal before you goes -- there are three steps.

The HRB first, when considering any sort of architectural plans, goes through a conceptual approval

process. It then goes to a preliminary approval; it finally has got a final approval. All three steps have occurred in this matter. The first step occurred on February the 10th of 2021 and there was unanimous decision approving that plan, that order was not appealed and has since become final. And the second stage, the preliminary approval stage went forward on August the 9th or excuse me, went forward on December the 8th of 2021. And that was following the BCA hearing where the special exception was granted that Mr. Gowder referenced. At that time, there was a preliminary approval of the architectural plans and that's the appeal that's in front of you right now.

After that, however, on July the 22nd of '22, there was the final approval meeting. At that time, the design plans were finally approved without any appeal. Because of that, this court currently does not have jurisdiction to consider this. The original approval occurred January the 10th, 2021. That order has since become final and it cannot be considered by this court. The final approval has also become final. That occurred 30 days after July, the 22nd of 2022. And for that reason, the issue was moot. Sending this back to the Architectural Review Board for a second hearing of the preliminary approval would do nothing to further the interest of Mr. Gowder's clients, and would like to appeal the final approval that occurred on July the 22nd of 2022 without that

order ever having been approved.

As to the individual -- as to the merits of the review board's decision, I will defer to Mr. Gowder on that, I do want to point out that this is a very unique situation. Typically, when the Circuit Court hears appeals of this nature, you've got the city on one side and the developer on the other. And an unhappy party to the original proceeding has appealed, either because the developer believes the board abused its discretion and didn't follow the law or because the city believes that the board's decision was an error. Here, the parties to the underlying matter are happy, nobody appealed the decision. The apartment plan submitted by 303 associates to the Architectural Review Board was approved. Once it became final, there was no question that from an architectural perspective, that development was allowed to proceed.

The appeal before you is unusual in that it is a third party appeal. It is unusual to see this within the state. It is particularly unusual in this situation where it's -- Mr. Nicholson will explain to you, there's been a long series of appeals that have gone on for years in an effort by disgruntled third parties for whatever reason, to interfere with the developments that 303 associates has started in the Beaufort area. They're essentially asking the Court to reconsider all of the evidence presented at the administrative level. As Mr. Gowder pointed out, the preliminary approval, if

it's even properly before this court can't be litigated at this stage. It can only be overturned if the decision was arbitrary, capricious, or an abusive discretion. There has to be some sort of evidence in the record that the board was wrong. Well, not some sort of evidence the board was wrong, some sort of evidence to support the Board's findings.

The Court can't come back at this point as Mr. Gowder is essentially asking and reconsider all of underlying facts, substitute its judgment for that of the board. Instead, great discretion is given to municipal boards when interpreting their own ordinances which is what occurred here. And when addressing the individual merits of the exception. I think when Your Honor goes back after this hearing and looks at the record, you'll find the Board did consider, there is evidence in the record to the extent there can be on the second consideration of architectural review plans that exception for allowing large footprint buildings within the historic downtown Beaufort area applied, and that there is an entry from a primary street and there's at least a minimum of 40% clear and unobstructed glazing along the street. And with that, hopefully I have not but Mr. Nicholson is prepared to do the heavy lifting here and we appreciate you taking the time this morning to hear the series of appeals.

MR. NICHOLSON: May I please the Court?

THE COURT: Yes, sir.

MR. NICHOLSON: Your Honor Ned Nicholson here for the Property Owner 303 Associates. And, you know, it's funny how visiting judges always get dumped all the controversial stuff. That happened to me when I worked clerk for Judge Houston 35 years ago, that happened to us in Beaufort too. So, it's, you know, a longstanding tradition in Beaufort to do that. But this lawsuit is the last of six different lawsuits filed by the Petitioners and Historic Beaufort Foundation attacking in general three developments my clients are putting up in the City of Beaufort, all of which have received more than a dozen public hearings and public approvals by city boards. The reason I'm mentioning all the other two projects, one project is a hotel project, one project is a parking garage project. This is the third project, an apartment complex with some retail.

And the reason I'm mentioning the other ones is because some of what happened in those other lawsuits directly impacts this one. The -- you've heard about the HRB, the Historic Review Board, which is essentially an architectural review board, which looks at the aesthetics of a proposed development or building in the historic district in the City of Beaufort and decides whether or not it fits generally within the various suggestive guidelines that are in place. The zoning board of appeals, which you'll hear about in the next two appeals is a little different in that they actually hear

things like appeal zone, you know, zoning, is it properly zoned? They grant special exceptions or variances like zones, the zoning appeals in every municipality or county in the state. But there is some overlap in the two and so I'm going to kind of explain all of it a little bit as fast as I can.

The Petitioners in this case are actually a competing developer and which does make a little bit unusual amount of time. The West Street Farms and Mix Farms are owned by Graham Trask, who's originally from Beaufort and has family there. But lives in New York or Switzerland, I believe currently. The common complaint in all of these is that the height, mass, and scale, those are the three big words of the projects are too large for the historic district and, you know, these projects all started in 2016. This particular project started later. But as I said, they all received public approvals, these HRB meetings at the preliminary approval, conceptual approval, final approval. Those are public board meetings. And the statute -- the ordinance says you have to appeal -- an agreed party has to appeal a decision within 30 days. That gets pretty important on this particular one, as I'll explain in a minute.

The Appellants here don't like the subjective determinations of the Historic Review Board nor are the ones that are made by the Zoning Board of Appeals later. But I think it's key for the Court to got to remember the context of

these kinds of boards. Historic Review Boards are architectural review boards and zoning boards of appeal are citizen boards. The citizens are put on the boards by the city or county council whichever the governing authority is, and they hear that these people live in the community, they understand the fabric of the community, they know what fits and what doesn't fit. And so, they are charged with making these subjective determinations of what fits and what doesn't fit and that is precisely what they've done. And in every case, my client's projects have been approved saying they do fit notwithstanding what a few people may say otherwise.

Now, we have two legal defenses and the city has mentioned one of them. The appeal by ordinance of the conceptual approval of the mass -- height, mass and scale of this project had to have been done 30 days after the original approval of it. Which was months and months and months, February 10th, 2021 before the current hearing that's being appealed. And the reason for that is that after a conceptual approval where you approve height, mass, and scale, the developer or property owners maybe invests money into flushing things out to go before preliminary approval and then you have final approval. So, it is a long process but at every stage a person that's aggrieved by it is supposed to appeal if they have any problem with it. Otherwise, the rights to become set, rights become vested.

And this is the first time we've had this issue, Your Honor. I mentioned the other lawsuits because in the second and third lawsuits the same Petitioners and then the Historic Beaufort Foundation challenged a final approval of the HRB of this hotel project on a change in the hotel project and a parking garage project. And Judge Bentley Price in Charleston heard those appeals. And part of those -- the same problem in those appeals was the same problem we have here. Petitioners waited until after all the conceptual approvals of height, mass, and scale had been done and everyone had kind of moved along in the process before they would -- before they actually complained about this. So, Judge Price ruled in an order of January 10th, 2022 in what we call the second lawsuit, that the Petitioners were required under the Beaufort code to appeal conceptual approval of height, mass and scale within 30 days of the HRB issuing that decision.

So, on the very same legal issue Judge Price has already decided that they were required to appeal. They didn't, the Court -- the circuit court by under state law does not have jurisdiction, does not have subject matter jurisdiction to hear the matters that were not appealed from previously but they should have been appealed from. So, we -- that order of Judge Price is attached as Attachment A -- Exhibit A to our brief. Not only that they also sued the same Petitioners on the declaratory judgment against my client in

another action. And Judge Sprouse had ruled in that action and said he defers to Judge Price's opinion. So, we have these long litany of cases and these are -- of which these are the last three, I think.

THE COURT: Excuse me, are either of those appealed?

MR. NICHOLSON: They have -- I'm sorry, what's that again, sir?

THE COURT: Are either of the two orders you just referred to by Price and Sprouse, have they been appealed?

MR. NICHOLSON: Yes, sir.

THE COURT: And what was the result of that?

MR. NICHOLSON: They're still on appeal. Judge Price ruled for us and Judge Sprouse ruled for us as well. And they have appealed their client is going to make -- saying he's going to appeal everything. So --

THE COURT: Okay.

MR. NICHOLSON: But -- and we do have a collateral estoppel argument, obviously. So, Your Honor and the code itself that says that you have to appeal they didn't, we have Judge Price's decision, that's all stated in there. So, that is one level of the defense which was mentioned earlier. They didn't appeal this issue at the earlier stage when they were required to. As also mentioned, the preliminary approval process that we have here is the middle one. This conceptual first, preliminary second, final third. Final approval was

done -- was heard and issued on July 22nd 2022. And -- but no appeal was taken from that. And the fact that no appeal and that was a -- that appeal of -- excuse me, that hearing was a ratification of the prior decisions of boards. So, Your Honor, the failure to appeal that renders this appeal moot because this appeal can't change the fact that final approval was granted and there was no appeal from that. So, Your Honor, so those are the two legal defenses that we have and one based on a ruling that Judge Price has already made about how to interpret the ordinance. And his reasoning is outlined in our memo and why it follows that she happened that way. And the other, of course, is that anything that this court was to do with regard to preliminary approval is moot because final approval has been issued and not appealed.

Finally, Your Honor, I want to move to briefly to the merits of this matter. And, you know, there's some complaint about the Petitioners, about there not being a record on height, mass and scale. Well, Your Honor, there's not a complete record on height, mass and scale, because it was granted -- a conceptual approval was granted at a prior hearing, and the record is full in that proceeding but you don't have a complete record in this proceeding, because that wasn't the issue in this proceeding. They're trying to reach back for stuff that occurred and approvals occurred months and months before this hearing. For the issues that were raised in

this hearing, they're gone. They're basically three, we heard one of them generally. The Beaufort Preservation Manual and Civic Master Plan, Mr. Gowder talked about.

Well, as in many municipalities, particularly the historical ones there are hundreds of pages of guidelines that are suggestions. And I think when you hear words like these don't work, the harmonious nature of the district or the historical context or the architectural detail and beauty of the district, those are buzzwords that are generalities that were -- that result in a Historic Review Board or a Board of Zoning Appeals, having to make subjective determinations by the citizens that live in that area and understand what those ideals are, not just what's printed on a piece of paper.

Every attorney that appeals an HRB or Board of Zoning Appeal decision tries to say it's a matter of law because they lose, if it's a matter of fact, because this court can't reverse an HRB or ZBOA decision, if there's any evidence in the record. It's essentially like reversing, it's like it taking out of the hands of a jury after a jury renders a verdict. There's any evidence supporting the board that fact can't be changed by the Court. So, they all try to say it's an issue of law, when really they're just issue of facts. And frankly -- and also the law says that if they're -- if the ordinances are a little bit confusing or they're competing ordinances or competing things then the Court has to give deference to the

zoning body and that's what we have here. The Beaufort Preservation Manual and the Civic Master Plan, they have certain parts that are cherry picked out and they're subjective, they're not part of the ordinance.

The Court and the HRB clearly heard that with respect to the two kind of meet claims that they make, they have a linear building claim that the building is too is, you know, is too long. And they failed to mention that the -- during the hearing -- during the HRB hearing, the staff noted that there's an exception to the ordinance that says, this is fine as long as it's 40 percent glazing and the architect on the windows, you know, that's -- so you can see you actually see the building as I see along the corridor. And the architectural plans show that so the record does support the BZOA's [phonetic] opinion.

The other thing claimed that they made at the hearing and that they're making this appeal is, is that there wasn't sufficient onsite parking and the ordinance required it. Well, the ordinance says the parking has to be behind the building, it doesn't say on site. So, -- and the ZBOA agreed. So, with respect to the two ordinance issues that are raised, the law supports this and with respect to their claims about there not being evidenced. One, there's plenty of evidence in the form of a conceptual approval much before. And two, the BZOA -- excuse me, the HRB did consider these issues. They heard

people complain about it. These were -- this was a contested hearing. People -- Mr. Trask, I believe Mr. Trask, the owner of the Petition showed up and talked and the Historic Beaufort Foundation had people talking. So, there was a lot of public input and back and forth and the HRB did what it's supposed to do. It made a decision and that decision can't be disturbed on appeal. So, with that, Your Honor, we just want to say that, again, legally they can't appeal.

The one other point that that they brought up was that there had to be a special exception granted by the Zoning Board of Appeals, excuse me, before the HRB heard anything. Well, that's kind of a moot point too because the Board of Zoning Appeals as you will hear in the next appeal, granted a special exception. And furthermore, Judge Price, again, heard this very issue. Judge Price -- they claimed that you couldn't and HRB didn't have jurisdiction to hear anything until the Board of Zoning Appeals had ruled. And Judge Price analyzed the ordinance and said that's not true. The ordinance says you can do anything at the same time. There's no prior requirement anywhere in the ordinance and he held that in his order which we cite in our brief. So, you know, the Beaufort code 9.25 specifically says, an applicant can seek approvals concurrent.

So, I don't know where their argument comes from. They don't cite any statute or any part of the ordinance that requires that and also Judge Price has ruled on it. So, Your

Honor, it was our belief that from an initial standpoint, the Court doesn't have jurisdiction to consider this because of the lack of a prior appeal. Second, that they didn't appeal the final approval so the matter is moot. Thirdly, the HRB had plenty of evidence to support decisions. And finally, Your Honor, we just believe that Judge Price's order speaks volumes with respect to this whole issue of the HRB did not make being able to make decisions until the BGOA [phonetic] meeting because that's just not the ordinance. Thank you, Your Honor.

THE COURT: All right. Thank you very much. Now what's the next appeal?

MR. GOWDER: Your Honor --

THE COURT: Do you want -- Mr. Gowder briefly, Yeah, briefly.

MR. GOWDER: Your Honor, if I could, could I reply on a couple of these arguments?

THE COURT: Yes, briefly. Go ahead.

MR. GOWDER: Thank you, Your Honor. I do I think have to correct a couple of mischaracterizations about the proceedings of my client. You know, Your Honor, they're -- Mr. Nicholson talked about the fact that there's six appeals. There's six appeals because the applicant has sought three massive separate projects in the downtown historic district that are out of scale with anything that's there. So, it should be expected that those projects would receive a great

deal of scrutiny which they have done. Also, my client, who's a property owner and within the same office, this proposed department is not a competing developer from out of town. He's a local commercial property owner that rents property and whose family's been in Beaufort for generations. That's a mischaracterization.

They're interested in preserving the historic character of Beaufort, that's why they're an appellant just like the Historic Beaufort Foundation. I'll also point out the applicant Mr. Nicholson's client has in the last two weeks, sued my clients in a separate action for $120 million to try to sign and bully them into stopping their advocacy for appropriate development in Beaufort. So, none of that, though, Your Honor, has anything to do with this particular appeal, you know, because -- but I felt like it was necessary for me to clear up those mischaracterizations. This particular appeal, Your Honor, and the one after it, haven't been litigated before and so all of the discussion about Judge Price's rulings and Judge Sprouse's rulings are irrelevant because they had to do with a separate hotel project and a separate parking garage project that were on different timelines, needed different approvals, and had nothing to do with this particular project.

There were, in fact, according to the applicants under different laws. They contend that the prior projects were under the Unified Development Ordinance, which was the

older zoning code. And this project, everyone agrees, is under the Beaufort code. Also, Your Honor, it -- you know, no one is opposed standing in this case by either my clients or the -- in the Zoning Board of Appeals matter, the Historic Beaufort Foundation. It's not at all unusual, you know, to disagree with what was earlier said about third party advocates appealing matters when a municipality unlawfully or improperly issues approvals.

And finally, Your Honor on the mootness, you know, they -- the applicant, you know, chose to proceed to seek final approval and the HRB agreed to hear a final approval after this matter was already on appeal. They can't simply moot an appeal by acting as if it didn't exist and proceed to final decision. So, for that reason, Your Honor, and for all of these reasons we'd ask that you reverse the decision of the Historic Review Board and send it back to the HRB for further decision. Thank you. Your Honor, the next matter is the Board of Zoning Appeals matter and Mr. Massalon, who represents the Historic Beaufort Foundation will start off.

MR. MASSALON: Thank you, Your Honor. As you've heard, I'm John Massalon. I'm representing Historic Beaufort and I have also got some clients that are in the waiting room. I don't know that they need to be admitted but Cynthia Jenkins and Lise Sundrla and Wayne Vance and Rob Montgomery are all here from the foundation to show their interest in these

proceedings. The -- as you know, the disadvantage of going forth is that a lot of these folks have touched on things in my outline and I will try to give you a coherent presentation without repeating myself or others. Very quickly there's some shorthand that you hear in this that I'll just mention. The ZBOA is the board that decides zoning issues in the City of Beaufort and the decision that we're here about today is a ZBOA decision to grant a special exception.

You've heard a lot of talk about the HRB, the Historic Review Board, which is a different board and it primarily has jurisdiction over architectural matters in the City of Beaufort. And then my client not to be confused with the Historic Review Board, is the HBF, the Historic Beaufort Foundation. And so, I will try not to confuse myself mostly but not to confuse anybody else. Very quickly HBF is a nonprofit that has been around since about 18 -- I mean, 1965. As you've heard it owns and operates the Verdier House, which is a significant federal style property in downtown historic district that's operated as a house museum near this project. Also, the George Parsons Elliot House, which you've heard a little bit about. My client has an easement preservation and protection easement on that property.

Under the ordinance, the ZBOA has got the power and duty to permit uses by special exception and of course, that's what we're here about today. You've heard the standard of

review and I don't have anything new for you there. This review is to see if there's any evidence or if the board abused its discretion or violated the law. I believe that failing to exercise discretion is an error of law and I believe that's what we have here mostly. A couple of quick things, Judge, about what this appeal isn't about again, following up on some of the comments that you've heard to try to get us focused on the core issue.

First, in my client's view, this is not about who is proposing this. As you've heard, Mr. Nicholson's clients have got a lot of projects going on in a very small, very sensitive area. The Beaufort Historic District is small, it has been on the National Register of Historic places since 1969 and designated as a historic landmark since 1973. My understanding from my clients is that's only one of four historic districts in our state. The area contains hundreds of 18th and 19th century buildings that have been restored and my client's mission is really to help protect and preserve those properties. As you've heard already there are a number of projects that are going on all at one time. We don't have any control over the timing of those projects.

So, you know, Mr. Nicholson and his clients decide what they want to try to build and when. The City of Beaufort controls mostly the scheduling of those approvals. And our position is that we have to address and deal with those issues

as they arise. And so, we have not only three or four really big projects going on in a small area but they're happening simultaneously. So, the pressure here is tremendous on this historic district. According to information I've gotten from my clients, just to put it in a little context there's about 270,000 square feet of building space that's going on all at one time. And I understand that's about the size of two super Walmart's. So, a lot going on and so that accounts for the timing, not of our making, but it's just what has happened to the town and again, we don't have any control over that.

THE COURT: Can I interrupt and ask you the -- are these projects inside the National Historic District?

MR. MASSALON: That's my understanding, Judge. They're all within about two or three blocks of one another.

THE COURT: Are there not requirements from the federal government with respect to disturbing things inside the National Historic Districts?

MR. MASSALON: Your Honor my -- and again, this is -- my understanding is that there is a process under I think it's section 106 and I'm a little bit out of my depth here but I believe there is a review process that's done separate from this process. But, again, I am out of my depth I'd have to ask for more information about that.

THE COURT: You have no idea out of my depth I am but you -- it is my understanding -- has there been a process

conducted with the National Historic Preservation Society with respect to these projects? Does somebody -- anybody know about that?

MR. MASSALON: Well, my client tells me that there's something called a conditions and integrity study that is currently underway. But if you were to ask me more detail about what that means I would, again, have to ask my client what that means. Somebody else may know.

THE COURT: I understood and again, I'm showing how ignorant I am that a house that's been designated as a national historic -- under the National Historic Preservation Guidelines can't even put in air conditioning without approval from the society. And so, I mean, perhaps I'm wrong about that but I'm just curious has there been a review of these projects by the federal government?

MR. MASSALON: The National Park Service, I understand, is the group that is conducting the review but I see Mr. Nicholson shaking me off so he might have better information than I do. So, I'll stop for a second.

THE COURT: You're muted. Start over, I got you.

MR. NICHOLSON: Okay. I can talk about that but part of that's part of my presentation, I don't want to interrupt Mr. Massalon and Mr. Gowder, if the Court will wait for me to --

THE COURT: Okay. You don't want to give him an

opportunity to --

MR. NICHOLSON: Well, I can tell you. This building at issue -- first of all, there is a building being torn down but it is an old A&P supermarket built in 1947, allegedly and the City of Beaufort specifically rejected it as a contributing structure with the National Park Service. So, in other words, the City of Beaufort has declared it not to be a historic building, not to be a contributing building. So, the fact is that the building we're talking about here this has nothing to do with National Park Service or anything else.

THE COURT: Okay.

MR. NICHOLSON: So, you know, I -- so I'm -- you know, and you're right you can't put air conditioning in a historic building without like being -- you know, what -- they use ice buckets sometimes but this isn't that. So, I just wanted to kind of --

THE COURT: Okay.

MR. NICHOLSON: Thank you, Your Honor.

MR. MASSALON: Yeah. And Your Honor, this is new construction as Mr. Nicholson said and what I was really talking about was the history that it's in more than this particular building. But I would say that Ms. Sundrla who is in the waiting room knows about this and if Your Honor would like to admit her. And again, I'm not -- I'm just offering that up but she can't speak where she is now and I don't want

to not answer your question if you would like an answer.

THE COURT: I think I've gotten the answer so go ahead and proceed with your argument.

MR. MASSALON: Thank you very much. Again, I know you've had a long -- a lot of long hearings so I'll try to speed this up. As Mr. Gowder said this appeal is not about the hotel and the parking garage. Except in the context of everything else that's going on in this historic area. This is not some novel legal theory about third parties inserting themselves into a process. Actually 629, 820, and also Section 9.132H of the Beaufort code allow for appeals by interested third parties. And just a quick look at the case law, there's a case called Bevivino versus Town of Mount Pleasant, in which some neighboring property owners were allowed to challenge a zoning decision to allow a cell phone tower. Again, not the person who wanted to put it in, not the town but some neighbors.

There's also a case, Citizens for Quality Rural Living versus the Greenville County Planning Board, which again allowed a public interest group to intervene in a planning commission decision. So, again, no real novel legal theory here. My clients were just taking the opportunity to address these issues that are important to them as allowed by the South Carolina Planning Act and the Beaufort code. Also, you heard a lot about decisions that were not appealed and so I'd like to

mention that issue briefly. There were three that were mentioned, a February 21, conceptual approval by the HRB, a preliminary approval that was issued in December of '21 after we filed this appeal. And one that was issued, I think in April of ;21. I think Ms. Bozeman said it was July of ;21. And so I may have my date wrong but sometime in July of '22, excuse me. I think she mentioned -- I think it was in April of 22 but sometime, again, after we filed this appeal.

Looking at the Planning Act itself, the section I decided A20, it says that anyone with a substantial interest can challenge any decision of the board. Likewise, the grant of the right to appeal under the code is very broad. And really what I think the Respondents are suggesting, if you take what they say at face value is in this case my client would've had to file, I guess, four appeals to challenge the one decision that we think is significant and important to our work which is the decision to grant the special exception. And if we had filed for appeals, my guess is that my esteemed colleagues would be complaining about why we filed so many appeals when really what we're concerned about is the special exception.

And so, Your Honor, I don't think that either Section 820 or the Beaufort code requires us to appeal every one of those decisions to challenge the one decision by the Board of Zoning Appeals to grant this special exception, which we think

is most germane. So, onto the argument itself. And Your Honor, do you allow screen sharing during these arguments? I wanted to refer to something that's in the record on appeal and I was going to put it up on my screen, if you will allow me to do it, if not I'll just tell you where it is.

THE COURT: Go ahead and put it up.

MR. MASSALON: Okay. And hopefully everybody can see what I've got up. And just for context purposes, Your Honor, this is a memorandum that my client submitted at the hearing on August 9th with some attachments and it's part of the record on appeal. My PDF shows us at page 210 or somewhere around that. Okay. And so, the first point, Your Honor, is that this project should never have been considered at the August 9th ZBOA meeting for this reason. Nick Saban often quoted as saying that good process produces good results. I don't know what you feel about Alabama football but the results are hard to argue with. And here I think we have the opposite of good process. Because if you look at this drawing, my understanding is this is the design that was submitted to the ZBOA in August.

The one below it is the design that was submitted to the Historic Review Board in February for conceptual approval. And not being an architect and having no design skill of my own, it's pretty easy to see that these are not the same buildings. They're generally -- they're in the same place but there's some significant differences between them. And my

further understanding is that the design that was submitted after the ZBOA hearing in August of '21 for preliminary and final approval wasn't the same design as this building that was submitted to the ZBOA. So, the problem with that from a legal standpoint, Your Honor, is again, in considering the special exception you know, the design of buildings like this is important because it affects the height, mass and scale. And again, we've got a ZBOA that granted a special exception for a building that was not as I understand it conceptually approved in February and it was not the same design that was subsequently given preliminary and final approval.

And so, for that reason, Your Honor, process is important and, in this context, particularly important. And so, in our view, the ZBOA decision should be vacated. And basically, we should have a do-over here, mull again, where they go back through the process and ask for a special exception based on whatever building it is that they want to build and not on some changing design. Now, the second point I have, Your Honor, is a lot more technical but again, the process here is important. And as you've heard, the ZBOA is charged with granting special exceptions. And this is a large footprint building defined by the code and my understanding of the reason that it is, is because the frontage is more than 100 feet, the street frontage. And this one clocks in at my understanding at about 133 feet.

There's some argument by the Respondents that it barely qualifies as a large footprint building but if my math is right, it's over 25 percent larger than the threshold. So, to me that's not barely squeaking in as a large footprint building that is significantly over the threshold. And it's their burden at the ZBOA to prove that they have a reason to qualify. Because basically as Your Honor probably knows, a special exception is generally a use that is consistent with the uses allowed in an area but there's something about it that requires some special scrutiny or some special study. And in this case, because this is a big building it requires that. And I'll stop screen sharing after this and not just refer Your Honor to the record but you can see what the -- this is the building and my understanding is that it's going to replace a one-story former grocery store.

And from a contact standpoint, Your Honor, this is generally the area that we are looking at in downtown Beaufort, if you're not familiar with it. But a -- you know, a very nice but small scale, low rise, historic area. And this is the -- you know, a few more for comparison this and this. And so, I'll stop sharing my screen now but all that's in the record at about page 210 to page 215. Thank you. So, under the requirements for studying a special exception and everybody will be glad to hear that I won't detail every one of them here but they are all outlined in detail in our memo. They're

really -- the key is the board should evaluate whether there are adverse impacts on the surrounding area before they decide to grant a special exception.

And the criteria I'll give you the reference that's in section 9.130.2 of the code. And it's got six criteria that should be considered when evaluating whether there is, you know, some negative impact, some adverse impact on the surrounding community. Our brief, Your Honor focuses on three of those. Which are compatibility, harmony, and consistency. So, those are really, to me, the three big issues that we have with this and we detailed it in the memo, but if you take time to look at the discussion on August the 9th the lack of discussion by the board and what happened there. You know, it doesn't appear that the board considered any of these criteria in deciding whether to grant this special exception and it's not supposed to be a rubber stamp.

I mean, this is a significant zoning event and requires some scrutiny and some reasons why it meets the standard. And that's what we're lacking here, Your Honor. And again, just to touch on a few points in the memo, but the style of this building as you saw from the screen share it doesn't fit consistently with the context of the surrounding area. It's near a couple of significant historic buildings that I mentioned before. It's totally out scale with what surrounds it. The tower that you see doesn't have precedence for the

architectural fabric in this area. You heard Mr. Gowder say that it's significantly longer and taller than the other buildings in the area and you can see that from the photographs. It is not correctly integrated into the streetscape.

The forms and the materials and all of those things just are not consistent with what we have in the area. And as far as the plans, Your Honor, the failure to exercise discretion I think is an error of law and you heard Mr. Nicholson say that people like me argue errors of law and I'm arguing an error of law here. I think that the board didn't do what they were charged to do under the ordinance and not doing that is a legal error and I think that's the big failure here. Again, I will refer to my memorandum because I know I'm running short on time and patience and -- but the number of failures here is substantial and should require that the ZBOA decision be vacated and that they'd be required to evaluate these issues.

A couple other quick points and then I'll yield to Mr. Gowder because I know he's got a couple things he wants to cover. First, as we mentioned in the memo, this building requires the demolition of a grocery store. And Mr. Nicholson and I argue about whether that's significant but my clients believe that it is and it's a contributing building. The city has not listed it as significant; I'll be candid about that

even though my clients ask them to. But we still think that it's inconsistent with the city code and the preservation manual to knock it down. The preservation manual requires the consideration of some alternate sites. And again, here we have none of that and it should have been required and because it wasn't, this needs to be vacated and remanded. And so, Your Honor subject, if I may have one or two reply points but I'll yield to Mr. Gowder and I thank you for your time and your attention.

MR. GOWDER: Thank you, Your Honor.

THE COURT: Thank you. I'm just curious who listed that this motion would take 15 minutes?

MR. GOWDER: We did not, Your Honor.

THE COURT: Yeah. Okay.

MR. GOWDER: We did not. Your Honor, I will try to be very brief. We incorporate everything that Historic Beaufort Foundation has argued in their written materials and in Mr. Massalon's presentation. In addition to everything he said, we think that there are three fatal errors with the ZBOA approval. One liner buildings, which is in the Beaufort code under the section about building types, says that for a large footprint building, which this is without controversy, they must have a large footprint buildings must have a liner building in front of them between the building and the street except where a large footprint building provides an entry on the primary

street frontage and a minimum of 40% clear amount obstructive glazing along the street. Your Honor, the project that was approved and that we appealed before the ZBOA did not have liner buildings between the large footprint building and the primary street frontage nor was there a minimum of 40% clear unobstructed glazing simply didn't comply.

And I think the -- by not complying with the code on that provision, that's an error of law that requires reversal. Second, onsite parking under Section 4.5.10, under the Beaufort code in T4 and T5, there's got to be a minimum of 75% of all parking located behind the primary building or a liner building. This plan doesn't provide for any. The explanation for that from the Respondents is that -- well, it's going to be offsite, it's going to be on another property that we own but the Beaufort code covers offsite parking, and it's section 5.7.4, and it requires a number of provisions to be met and approved by the city including the distance away within 400 feet of the site. It may not be located along a major thoroughfare. There needs to be pedestrian access between the use or the site and the off-premises parking by a sidewalk or walkway and that the owner shall provide a written parking agreement reflecting the arrangement with the other site. There isn't any evidence of that in the record, Your Honor, it doesn't exist and so both for the liner building provision in the parking provision, the ZBOA decision was erroneous.

Finally, Your Honor, there were no written findings here. The Respondents will argue and do argue in their memo that, well, even though it's not clear what the grounds are for what the ZBOA did, the staff provided recommendations and there's stuff in the record. So, it's all in there and there's an element of fact that supports the decision somewhere. But the South Carolina Comprehensive Enabling Act, Your Honor, does not provide for that kind of guesswork. It requires that the BZA issue findings of fact and conclusions of law, and in fact says at 629, 800, all final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board, which must be delivered to parties of interest by certified mail. BZA simply didn't do this in this case. They issued a letter that said, you get your approval and for that reason alone, Your Honor, if for no other reason its decision must be reversed and sent back to the BZA for a hearing and a decision in accordance with South Carolina law. I'll be happy to answer any questions the Court has.

THE COURT: Okay. Thank you very much. Anything else, Mr. Nicholson? Unmute yourself.

MS. BOZEMAN: Your Honor, again, this is Virginia Bozeman for the City of Beaufort and the BZA. And if I could very briefly address some of these issues before giving the

floor to Mr. Nicholson, I would appreciate it. And going back to address some of the issues that Mr. Massalon raised, when going back through the timeline of events, I think that it's important to note that at the Architectural Review Board level, during that preliminary hearing, there was unanimous approval of the site plan submitted. And on that board, a member of the Historic Review Board sits. The historic -- or a member of the Historic Beaufort Foundation, excuse me, there are too many acronyms. There is a member of the Historic Beaufort Foundation on the Architectural Review Board. And that individual voted in support of the original site plan submitted and that's the order that we've previously argued has already become final.

Then moving forward to the argument that, well, the Historic Review Board approved one plan but the BZA considered a different plan. This is thoroughly addressed in the memo submitted by the Respondents, but the BZA was aware of this at the time that it heard this matter and granted the special exception. By considering this and then granting the special exception anyway, it becomes a factual matter that was considered and rejected at that level. And then ultimately, the final site plan that was approved was actually for a building that's smaller than the building design considered at the time the BZA granted the special exception.

And finally, I'll defer to Mr. Nicholson on the merits but we've again heard a long list of perceived

deficiencies in the evidence submitted at the board level. The Petitioners, again, are essentially attempting to place the burden on the Respondents. That burden existed at the lower level. At this point, the Court is tasked with considering whether there's any evidence to support the decision to grant the special exception in this case. Your Honor, each factor that's to be considered when granting a special exception, all six are outlined within the Respondent's memo. Each factor is supported by evidence. There's a reference to the record below each of multiple recommendations by the staff and additional information submitted at the board level that was reviewed and considered by the Board when making its final decision. And finally, there was a reference to a failure of the Board to issue a written order at the conclusion of the hearing. Your Honor, Vulcan Materials versus Greenville County Board of Zoning Appeals and that reference is 342SC480 states that a transcript of the boards -- of the hearing before the board is sufficient to constitute a written -- the written findings of the board itself. There was no need for a final written order to be issued and there is down case law that supports that position and with that I will give the floor to Mr. Nicholson.

MR. NICHOLSON: Your Honor, if I may, I'll keep it brief. Your Honor, a couple things quickly. First of all, our brief does go through every -- they complain about four criteria for special exception not being met. We go through

our brief and show where they're all discussed by -- in front of the board and the board heard it and they had discussions, and the staff made specific recommendations. And again, this is all touchy feely stuff they don't like. They don't like the way the board sees downtown Beaufort. But if they have a problem with that, they address that in a ballot box and get new city council members will get new board members that's just the way the process works. So, Your Honor again, I ask the Court to see our brief. I could tell the Court's patience with us is limited but the board's decision is supported in all respects by the record and we ask the Court to review our brief. And there's one final thing that I could do very quickly. There's a lot of hysterical if I could share my screen very quickly, one quick share.

THE COURT: Yes.

MR. NICHOLSON: Your Honor. Okay. So, this is what John showed you earlier but if you want to see an example. I mean, this is a 19-apartment, a complex with some retail. This is not a giant 300-unit apartment or something. This is 19 units and if you look at what the code considers a large footprint building to be, there it is. A large footprint in building this photo. I mean, it's almost three stories it's bigger. So, you know, I don't know why they're complaining about this thing being so out of sync. What they're doing is they're cherry-picking different parts of the Beaufort code and

ignoring all the other parts which in the record, the ZBOA staff relied on and said there are other buildings, there are three storey buildings like the Elliot House nearby. This isn't going to be the only three-storey building in that area, but what you're getting is just a bunch of cherry picking of stuff that is all part of the factual determination by the ZBOA. And so, Your Honor, with that we appreciate your time on this and we'll -- and you know, if you have any questions, we'll be glad to answer them.

THE COURT: Well, no questions and I'll review the record and --

MR. MASSALON: Your Honor, I'm sorry, I didn't realize I was on mute. May I have 30 seconds to address two quick points.

THE COURT: Okay.

MR. MASSALON: Ms. Bozeman's point about the HPF member supposedly on the historic review board. We addressed that in our brief and I'd refer you to that. Mr. Nicholson, in the picture as it shows the building as I understand it in Fort Royal and not downtown. Thank you, Judge.

THE COURT: Okay. I'll look through things and I will have a decision before the end of the week. Thank you very much.

MR. MASSALON: Thank you.

MR. GOWDER: Thank you, Your Honor.

MS. BOZEMAN: Thank you, Your Honor.

[END OF HEARING]

CERTIFICATE OF TRANSCRIBER

I, ERIN REILY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 14, South Carolina, on the 1st day of August 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 9th, 2025

ERIN REILLY

TRANSCRIBER

ELECTRONICALLY FILED - 2023 Jul 17 4:22 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-07-00039
West Street Farms, LLC, and Mix Farms, LLC, Petitioners, v. City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC, Respondents.	))))))))))))	**AFFIDAVIT OF COURTNEY WORRELL**

The undersigned, being duly sworn and deposed, sayth:

1. I am over the age of eighteen and competent to make this affidavit.

2. I have personal knowledge of the matters stated herein.

3. I am Co-CEO of 303 Associates, Inc. ("303") and I am authorized to make the statements herein on its behalf.

4. Attached at Exhibit A hereto is a true and correct copy of a Certificate of Appropriateness ("COA") issued by the City of Beaufort's Historic Review Board ("HRB") on July 22, 2022 for 303's Cannon Building Project ("Project.") The attached COA granted Final Approval by the HRB of this Project.

5. "Final Approval" for a COA is part of the necessary steps under the Beaufort Code for a development project to be constructed in the Historic District of the City of Beaufort.

6. The Project is the same project as the one subject to the appeal in this matter.

7. The Final Approval granted by the HRB to the Project is the final of three approvals

provided by the HRB for this Project. The first approval, the Conceptual Approval, was not appealed by any party. The second approval, the Preliminary Approval, was appealed in this lawsuit. However, no party appealed the Final Approval within thirty days of the HRB's public hearing where the Final Approval was given by the HRB on July 22, 2022.

8. The Final Approval was a ratification of all prior approvals by the HRB, including the Preliminary Approval.

FURTHER AFFIANT SAYETH NOT!

Courtney Worrell

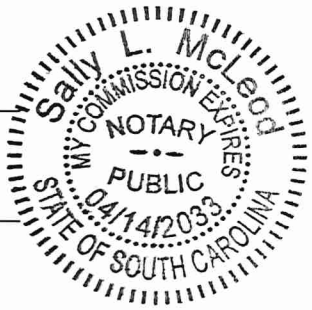
Courtney Worrell

Sworn to and subscribed before me
this 12th day of July, 2023

Sally L. McLeod

Notary for South Carolina

My Commission Expires: 4/14/2033



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CITY OF BEAUFORT
HISTORIC REVIEW BOARD
1911 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902
(843) 525-7011 FAX: (843) 986-5606

CERTIFICATE OF APPROPRIATENESS

July 19, 2022

Arnie McClure, Coast Architects
671 Saint Andrews Blvd.
Charleston, SC 29407

RE: 21-02 HRB.5 211 Charles Street – New Construction

Dear Mr. McClure:

On July 19, 2022, Staff reviewed and approved your application for construction of a new 3 story apartment/commercial building at 211 Charles Street. The Board voted to grant conditional final approval of the proposed project. After review of your revised design, it has been determined that all conditions have been satisfied (see attached documents approved by Staff on July 18, 2022). Therefore, we are issuing your Certificate of Appropriateness.

This Certificate of Appropriateness applies only to the requirements of the Beaufort Historic District and does not supersede other city ordinances. Compliance with all other provisions of the City of Beaufort Code of Ordinances is required. Please contact the City Building Codes Office located at 1911 Boundary Street, (843) 525-7049, to apply for the necessary permits. A copy of this letter must be submitted with your application for a permit.

Be advised that this Certificate of Appropriateness will expire two years from the date of this letter as per Section 9.1.4 of the *Beaufort Code*, unless a complete building permit application is on file with the City Building Codes Office.

If you have any questions, feel free to call the Department of Community & Economic Development at (843) 525-7011.

Sincerely,

Jeremy Tate, AIA
Meadors, Inc.
Staff Architect of Beaufort

attachment
via email: arnie@coastarchitects.net
cc: file copy

HARVEY & BATTEY
ATTORNEYS AT LAW

W. BRANTLEY HARVEY, SR. (1893-1981)
W. BRANTLEY HARVEY, JR. (1930-2018)
COLDEN R. BATTEY, JR. (Of Counsel)
WILLIAM B. HARVEY, III (SC Circuit Court Mediator)
THOMAS C. DAVIS (SC Circuit Court Mediator)
THOMAS A. HOLLOWAY
EUGENE PARRS
J. SAMUEL SCOVILLE
KEVIN E. DUKES
DAVID L. TEDDER (Of Counsel)
AUSTIN M. BLAKE

ELECTRONICALLY FILED - 2022 Feb 01 4:16 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

February 1, 2022

Ms. Jerri Roseneau
Beaufort County Clerk of Court
102 Ribaut Road, Suite 208
Beaufort, South Carolina 29902

Re: West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC
Case No.: 2022-CP-07-00039

Dear Madam Clerk:

Enclosed please find the Transcript of Testimony of the December 8, 2021 meeting of the City Historic District Review Board, along with Exhibits 1 and 2 which were documents that were a part of the meeting record. I am filing as counsel for and on behalf of the City of Beaufort and the Beaufort Historic District Review Board, pursuant to SC Code Ann. 6-29-920, with regard to the above referenced appeal.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact our office.

With warm personal regards, I remain

Yours very truly,
HARVEY & BATTEY, PA

/s/William B. Harvey, III

William B. Harvey, III

WBH/sm

Enclosures as stated

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

WEST STREET FARMS, LLC and MIX FARMS, LLC,

Petitioners,

vs. **CIVIL ACTION NUMBER 2021-CP- ____ -**

CITY OF BEAUFORT, CITY OF BEAUFORT HISTORIC DISTRICT REVIEW BOARD and 303 ASSOCIATES, LLC,

Respondents.

----------/

The following HISTORIC DISTRICT REVIEW BOARD (HDBRB) PETITION MEETING Transcript, dated December 8, 2021, was transcribed from an electronic audio/video file provided to Coastal Court Reporting & Video Inc., on the date of January 25, 2021, by the Law Offices of Harvey & Battey, P.A., and completed on January 31, 2021.

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HRB ATTENDANCE LIST

HRB MEMBERS ATTENDANCE:

Jeremiah Smith (Chairman)
Mike Sutton (Vice-Chair)
Stacy Applegate
Maxine Lutz
Michelle Prentice

STAFF IN ATTENDANCE:

Meredith Jacobs
(Meadors Architecture)

Jeremy Tate
(Meadors Architecture)

Emmilyn Potts
(City of Beaufort Planner of Community and Economic Development)

David Prichard
(City of Beaufort Director of Community and Economic Development)

APPLICANT:

Arnie McClure
(Coast Architects, Inc.)

Dick Stewart
(Property owner/applicant)

Walter Nester, Esquire
(Attorney for applicant)

PUBLIC SPEAKERS:

Cynthia Jenkins
Steve Harrison
Graham Trask
Lise Sundrla
Douglas Stores
Nan Sutton
Peggy Simmer
Brenda Litchfield

\- - -

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I N D E X

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CERTIFICATE ------------------------------ 207

(NO EXHIBITS)

ELECTRONICALLY FILED - 2022 Feb 01 4:16 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700039

(Agenda Item E: 211 Charles Street, PIN R120 004 000 0909 0000. New construction applicant: Arnie McClure, Coast Architects, Inc., 21-02 HRB.2.)

(Meeting called to order at 3:55 p.m.)

MR. SMITH: All right. So we're back in session. Our last item on the agenda is 211 Charles Street.

And again, thank you all for coming out and caring about your city. We'll have the staff introduction, please.

MR. TATE: Okay. This is 211 Charles Street. The applicant is requesting final approval of a three story apartment/commercial building.

Background. In February of 2021, demolition of the existing structure on this property was granted final approval by the Historic Review Board with the condition that the demolition permit will not be issued until after a permit -- building permit is issued for

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the replacement building.

In February of 2021, a previous submission for this project was granted conceptual approval by the Historic Review Board with noted staff conditions.

In August of 2021, the Zoning Board of Appeals granted a special exception for Section 4.5.10.B.5 to allow a building with frontage in excess of 100 feet on T5-DC zoned property. The applicants provided a video walkthrough of this project, which may be accessed through the following link, and we will have it here as well.

Here's the location of 211 Charles, Charles and Port Republic. Here are the photos of the existing building and some context photos of neighboring structure to the east, across the street. Decision letter from conceptual approval February of 2021, continuation of that approval.

And with that, we can turn it over

to the applicant for their presentation.

Your file is still up there.

MR. SMITH: Welcome.

MR. MCCLURE: Thank you. I'm Arnie McClure with Coast Architects, and glad to be back, it has been some time.

As Jeremy mentioned, we received HRB conceptual approval on February 10th of this year with unanimous vote. Over the past two months, we've worked cooperatively with adjacent property owners and city staff. We've addressed all 13 conditions that were part of the approved conceptual design. We've met multiple times with city staff. They have been very thorough and helpful in ensuring the project before you today complies with all applicable requirements of the Beaufort Code.

Tweak the details of the approved conceptual design to address staff, board, and many public comments. Since it's been some time, and many of you

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were not present on this board at that time, I would like to briefly highlight some of those comments to share with you just because we're trying to catch back up here now.

Some of the public comments included a request for a model or additional context to computer model, which we have done through computer modeling. And if you've had the opportunity to see the video and some of the other renderings, you can see we've added additional context to address those concerns.

Both public comment and staff requested a study of the porches along Port Republic Street, maybe a reduction in the number of porches and looking at the rooflines along Port Republic Street to simplify them, and we have addressed that.

Staff and an adjacent neighbor's request was to look at the design of the mixed-use building, and this building, I'll go over, kind of, the

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design concept in a second, but it's essentially divided into two areas, and the brick portion of the building, there was, you know, recommendation that we studied the balcony design a little bit more to do something that reflects more of the local vernacular.

The staff also asked us to look at column spacings, eliminating some double columns and other things, and window openings along the Port Republic Street facade.

And then, the public comment concerning the building mass, there was concern about the building being too large, and we have made every effort to reduce the overall mass of the building. We've reduced it by approximately 10 percent. We've lowered the parapet height three -- a little over 3 feet, 3 feet 4 inches from 40 feet down to 36 foot eight. And we pulled the Charles Street facade back an additional 5 feet. And I just want to note that the Beaufort Code

actually allows up to four stories on this site, but we feel the three story height is more appropriate.

So our presentation today will demonstrate the incorporation of the principles for new construction found in the Beaufort Preservation Manual and compliance with the Beaufort Code. And with that, I'm going to just start with the image you see in front of you.

Just to explain our overall overriding design concept, which is that, as Jeremy mentioned, is essentially two building types in one building. We have a more commercial building on the west end of the site, which faces Charles Street, and more connected to the Bay Street, Charles Street intersection in a lot of ways.

And so we have a three story masonry structure with storefront openings addressing the street. As we worked through, over the past several months, the design options, we've -- we addressed some staff concerns about

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entry into the building, and actually shifted the entry to the corner, which I think actually strengthens the design of this portion of the building.

The other portion of the building, moving down Port Republic Street, which would be to the left on this rendering, addresses the more mixed/commercial residential areas along Port Republic Street. Directly across from us is the Cuthbert House on Port Republic Street, which the Zimmers reside there now, and they are concerned about, you know, the building having too much of a commercial feel. So they -- they actually liked the idea of breaking this facade down with porches and small garden areas, and we'll show you some of that as we proceed.

And you can see, as you proceed down the street, you have a mix of both more residential nature and commercial nature buildings. You've got Old Bay Marketplace adjacent to this. And then as you're going down the street, some

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of the buildings associated with the Beaufort Inn are more residential in scale and nature. So we think Port Republic Street is a transitional street and we're trying to help reinforce that transition.

And I'm going to just jump back here and kind of try to walk you through the drawings without going through every little detail, so just a second to maneuver back.

I just want to cover a couple of points Sheet G001. I'm going to key you in on probably the smallest thing on this sheet, and I can zoom up a little bit, I think, here. I'm not as good as Jeremy.

But I did want to confirm that we've addressed parking for this. The -- the ordinance or the Code does not require parking for the retail space, tenant space on the first floor in the T5-DC District, but it does require 1.75 spaces per two bedroom residence, and so we have accommodated

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that.

It also allows off-site parking, but it has to be within 400 feet of the building, and so you can see, here is our site, and down Charles Street, the owner, 303 Associates, owns this parking lot. And we'll have designated parking spaces, 34 spaces there to accommodate that.

So let me see if I can zoom out here and jump down to -- so I briefly just wanted to show you the existing building. Covers -- I believe it's about 96.5 percent of the site. It's a one story building. It's had some additions to it, but you can see, compared to our building, which this shows a roof plan, but the actual building is -- is kind of in this area, which covers approximately 76.9 percent of the site because we have courtyards and gardens and porches along there.

The overall mass of the building, it's a three story building, but the overall footprint is -- it's quite a

bit smaller than the existing building. And the pervious surface has increased from essentially zero percent -- the entire site was covered in either sidewalk or building -- to 16.54 percent now.

And since we, in the previous HRB submittal, you'll see that we went -- I'm sorry, this is the previous design here. We went up to the property line, and now if you look at it, it's a little difficult to see on this plan, but this red line here was where the building facade used to be and we've pulled it back an additional 5 feet, which gives us more width for sidewalk along Charles and reduces the overall mass of the building.

Next I'm going to go to the landscape plan and just briefly highlight. This is an urban context and trees are -- whoops, I've got to go back out. Trees are not required under the zoning ordinance, but we have -- we are utilizing creeping fig along this

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brick wall here that is adjacent to another property, and then around along Port Republic Street and on the -- the brick portions of the building to help soften that impact.

And then this area right in here is, you know, I would sort of call it as a little small garden, more residential in nature, and it's -- it's kind of across from the Zimmer's house there so we think that that would be more appropriate to put a little bit of landscaping in there. That has a couple of new palmettos. There are palmettos already on the street, they will remain, and then we'll add a couple of more palmettos, some African irises and knockout roses, I think, are used all in this area.

Next I'm going to jump -- I'm not going to go into a lot of detail here, but I'll go to the previous submittal, the first floor plan. So this was the previous submittal, and as I mentioned before, the -- one of the main changes

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was we pulled this facade back to give us a little more breathing room. And previously, this was a staff comment, it was a condition, actually, we had a separate accessible entrance ramp.

This -- this finished floor is somewhere between 18 inches on this end and 24 inches above the existing sidewalk level. So we actually -- and we had that, sort of, main entrance into this tenant space in the center of the building, and now you'll see, when I show you the next page, we've adjusted all of that and created one entrance that has accessibility on the corner of the building.

There were a few other comments about -- from the staff to align this stair to pull it back, recess it back at the same level as this stair. So the -- this stair here has been changed in the -- you'll see on the elevations, the materials, exterior materials have changed.

This is the new configuration, so

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this kind of light blue teal-ish space here is the tenant space. We don't have a tenant so we don't know who's going to occupy it. It's about 1,450 square feet. There's a ramp coming up from the Charles Street sidewalk. The corner of the building extends over that and this is a covered corner entrance into this space, and there's a small patio area there. Then the remainder of the building has two porches with this garden area in between the two stairs, as we mentioned, and then a small service yard right here.

This side has apartments. The -- the -- there are actually, I think, what, five apartments on this floor. There's a total of 19 apartments in the building. These apartments have courtyard, walled courtyard areas in the back.

The second floor, there has not been a tremendous change in the second floor other than things I've already

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mentioned. Other than we did restudy the balconies and we actually eliminated, on the 2nd and 3rd floors, this balcony and we modified the balconies. I'll show you an elevation of how that changed. And then, again, you can sort of see this red line here was where the building floor plate used to be and it's been pulled back. There, no major changes to the upper floors.

The roof plan, it's essentially this portion of the building that we talked about that was more commercial is a parapeted roof with a parapet cap. And then this portion of the building facing the street and facing the south of the site would be standing seam hips metal roofs. They come up to essentially a parapet here. And the mechanical equipment, the elevator, everything is -- is below the level of the top of those roofs.

And then street elevation wise, you can see, we've added additional

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context. Some of the other buildings -- these buildings are the backs of the buildings on Bay Street. There's a building, a small building next to Old Bay Marketplace. This is Old Bay Marketplace on Port Republic, and then this is our building here.

This is the Elliott House, which fronts on Bay Street, but is at the end -- you know, sort of diagonally across from Charles Street, from our project. And you can see the height of it and you can see the height of the existing -- or the former bank building is actually over here.

This is a section looking east on -- Port Republic Street is right here, this is the Zimmer's house, the Cuthbert House, and then this is our project. This is the existing one story bank building that's fronting on Bay Street with a parking lot next to it.

And then finally, this is the view from the south. This would essentially

be the view from Bay Street where you see the Elliott House, you see the existing bank building to the left, and then our project. And, sort of, behind the bank, you would see the south facade that has some porches looking out towards the Beaufort River.

And then just to briefly tell you, we did do some pretty serious transparency studies. The Code has a requirement for a certain amount of transparency, and these diagrams were added to show we comply with those. You can see the top is the original approved conceptual elevation and you can see the tweaks that we've made to it. We eliminated one of the three porches, modified these porches to be a little bit different, and we also simplified this roofline. So, I think, overall, it's a more pleasing facade.

And then the other changes in this block of the building, you'll see, we now have this corner entrance and we have -- the balconies have been

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modified. And this is the Charles Street facade, the original -- originally submitted, previously submitted and approved facade. And then the changes that we made were primarily in the corner, moving the entry to the corner and then detailing -- and it might be -- it's probably easier for you to see it in perspective, and I'll blow this up a little bit.

I think you can see the difference in the spacing of the windows. We did groupings of three, two bays of three and then the corner, which I think is much more interesting than the evenly spaced windows that we had before.

And we've also -- I think you can see better in this next one -- modified this area of the building, which is the apartment building entrance -- jump back one page -- that is actually right here. And we've been tweaking and modifying that a little bit to, I think, improve it overall, clean it up

a little bit. And then -- then we'll have this brick wall that runs along behind the bank and the barbershop there, provides privacy for these because it's essentially the back of the building there.

I have exterior materials here. I brought -- we have the materials sheet, but I also brought actual samples. Happy to bring them up to you if you want to see them.

(Unintelligible portions due to speaker stepping away from the microphone.)

MR. MCCLURE: This is the storefront framing some of the brick portion of the building, but it will be this color. The glass. These are the pink colors. Primarily the white siding, the cementitious lap siding will be just slightly off white. The shutters and the doors will be an amazing gray, it's this color. The porch ceilings will be blue and the railings will be on the side is either

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cementitious lap siding or board and batten siding.

(Speaker returned to microphone.)

MR. MCCLURE: But there was question last time about the column material. I asked them to send me a sample and this is the best they could do, but I'll hand this up because there was some concern about what that material was. And that's the actual gypsum reinforced -- gypsum reinforced concrete that will be used on the -- it's not painted, but that will be what the column materials will be.

And the shutter material, I was unable to get an actual sample, but it's a composite wood product that is a solid wood, it's not plastic or vinyl, which is permitted by the Code. And then I have an actual --

(Unintelligible due to speaker stepping away from the microphone.)

MR. MCCLURE: If anybody would like to see those, I'll bring those up after we finish the presentation.

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And then just briefly walk you through these perspectives. You can see, this is Port Republic Street. This is a Tabby Place, which is a meeting facility and the Zimmer residence is just past this between here and Charles Street.

That's the bank build -- old bank building in the distance there. This is Old Bay Marketplace, a tall two story building, and then you can see scale-wise, how our project relates to that. This was the previous submittal here, and we have modified, particularly this part of the building based on staff comments and recommendations.

From this corner, this is Charles Street facing Bay Street and looking down on Port Republic. You can see Old Bay Marketplace in the background. You can see, as I discussed before, the more residential scale and nature of this part of the street, and then as we transition to the corner, more

commercial scale here.

This is Charles Street looking -- that's sort of northeast from near the corner of Bay Street. This is the bank parking lot that exists already. This would be the wall that runs along there and this is the apartment building entrance here.

And then this is just an overview showing the Elliott House, which is across the street from us. The old Cuthbert House, now Zimmer residence here. And our building, how it fits in the context of overall downtown.

I'm not going to go over building sections. We have, I think, 80 pages of wall sections and window details. Happy to discuss any particular details there, but I'm not going to sit here and point out where every piece of flashing is right now, if that's okay.

What I think I will do before I conclude is share this. If you haven't had the opportunity to see the walk around video -- I'm going to see if I

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can get it to play here. This only takes about a minute.

And with that, I'll -- you know, for my conclusion here, I want to start first by thanking you as the board. I'd personally like to thank you for your service, you have a great responsibility to the residents of this community to uphold and preserve a lot of what makes Beaufort such a great place to live. This can be a time consuming, often -- often difficult personal commitment. All of us as residents of Beaufort, are better for your service. Thank you.

So I do want to acknowledge that we have received the staff review and we have reviewed the conditions for final approval and we are in agreement and will comply with all of them.

And in closing, I just want to say that the HRB process has made this a better project. Since we received conceptual approval, we've listened and responded, we've addressed staff

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comments, we've met specific requirements of the Beaufort Code.

I think we can all agree that this project will be such an improvement over what is there now. It will contribute to the beauty and viability of Beaufort's downtown core, provide additional residential capacity, and contribute to the City's tax base and economic well being. I hope that you agree and will consider giving this project approval today.

MR. SMITH: Thank you, Arnie.

We'll move forward with the staff report, please.

MR. TATE: Okay. We'll start with staff acknowledgements.

A, this building has been approved by the ZBOA as a large footprint building. Staff also continues to view the building as a single large footprint building that contains two building types per Section 4.4 of the Beaufort Code. The west mass along Charles Street is live/work mixed use,

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and the rest of the building is an apartment house.

Acknowledgement B, staff finds all conditions of conceptual approval will be satisfied with the following comments and clarifications.

B-A, Condition 3 of conceptual approval noted specific guidelines for the frontage types of the two building types included within this project.

The current submission is compliant with the -- compliant with the Code regarding frontage types with the following staff interpretations.

I, staff considers the frontage of the live/work mixed use portion of the building on the corner of Port Republic Street and Charles Street to be both shop front/awning and arcade as defined in Section 4.4 of the Beaufort Code.

Two, staff considers the primary frontage of the apartment house portion of the building to be the lobby entrance on Charles Street and views this to have a balcony frontage type

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that's compliant with Section 4.4.E of the Beaufort Code.

Staff acknowledgement B-B, Condition 4 of conceptual approval, recommend eliminating the previously proposed porches along Port Republic Street and ask the applicant to ensure compliance with Section 4.5.7 of the Beaufort Code.

Current submission complies with Section 4.5.7 regarding apartment houses with the following staff interpretations.

One, Section 4.5.7.B.1, frontage types, stoop forecourt balcony, porches are not preferred, but may be used in buildings containing 12 units or less if they provide direct access to the unit from the street or sidewalk.

The apartment house portion of the building has a balcony frontage type at its primary entrance on Charles Street and the Port Republic facade of the building contains porches. The term "may" used above is defined by Section

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4.2.1.C to be used in ideal guidelines, which would result in an outcome that is very compliant with the City's goals and objectives, however, they are not specifically required to be met.

While porches are not preferred, the Code does not state that they are not allowed. While staff was not in favor of the use of the porches in the previous submission, staff is in favor of the use of the porches in this area within the current submission now that one of the previous porches has been eliminated. Staff feels that the porches along Port Republic help break down the scale of the apartment house facade as currently designed.

Two, Section 4.5.7.B.2, building entries. In buildings with more than six residential units, all ground floor units facing a frontage line shall have individual entrances from that frontage line. Buildings with former -- formal entry courtyards or lobbies are exempt from this requirement, and the

apartment house portion of this project is exempt from this requirement because a lobby has been provided.

B-C, Condition 10 of conceptual approval required the applicant to ensure that residential egress requirements of the requirements by the IBC are met in the design. Staff has not reviewed the plans with the IBC and assumes that the proposed drawings comply. If any egress components are added in the future that affect the exterior of the building, these must be brought back to the HRB for review.

D, staff is in support of the changes made to the balconies in response to Condition 11 of conceptual approval.

Acknowledgement C, as designed, the ramp on Charles Street provides a usable pedestrian entry that is less than 50 feet from the entrance to the apartment house. The project is compliant with Section 2.5.1.D.4.

D, the parapet cap of this

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building has been lowered 3 feet 4 inches since conceptual approval and the applicant has shifted the building facade along Charles Street back from the street significantly. It appears, from Sheet A102, that this reduction in building length is slightly more than 5 feet.

E, the applicant has taken time to list Code compliance with applicable -- applicable sections of this project. Staff wants to acknowledge the following regarding this Code review document.

A, the applicant has misidentified the proposed frontage types for this building within the Code compliant sheet. As designed, the building frontage types comply with the Code per acknowledgement B-A above.

And then E-B, the applicant has noted that the Beaufort Code requires a 12-foot ceiling height for commercial structures, Section 2.6.D, and that the retail component along Charles Street

has an 11-foot ceiling height.

As noted by the applicant, Section 2.6.2.D.5 notes that in this district, the Historic Review Board may permit deviations from this minimum height requirement if doing so would allow a structure to be more compatible with the surrounding context.

Staff agrees with the applicant, that the proposed 11-foot ceiling height in this area is compatible with the surrounding context.

And then C, staff is in support of the proposed -- presented 33.8 percent transparency at the ground floor of the apartment house portion of the building along Port Republic Street as this meets the Beaufort Code requirements, Section 4.6.3.C.1, if approved by the Board.

Let me jump to that real quick. So you would be, as a board, making sure that you -- you're able to reduce this down to the 33.8 percent that they're proposing.

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Staff conditions, No. 1 -- let me jump to the appropriate page. On the Charles Street elevation, staff recommendation is that the Cannon Building entry is further differentiated from the strong, adjacent live/work mixed use brick mass along Charles Street as well as the south courtyard wall to the rear of the entry on the south elevation. Staff recommends a different color brick or stucco in this area.

Condition No. 2, regarding the proposed columns, 2A, on the south elevation, the central bay of balconies -- yeah, the central bay of balconies on the upper level currently has uneven column spacing, and staff recommendation is that the column spacing is equal in this -- sorry -- this area, equal size spacing in this area.

2B, the project proposes PermaCast columns. From the cut sheet provided, staff assumes that the proposed columns

will be the square plane column. Staff is in support of this perma base -- perma case -- PermaCast column base because when it is painted out, it will provide a more low maintenance option as opposed to a wood column. Applicant and Board to note that the use of this column must be approved by the Board per Section 4.6.3.8.8.

2C, in drawings A1 on Sheet A302, staff recommendation is the outside face of the proposed column base aligns with the outside face of the foundation wall below. Staff recommends the applicant revise design of porches to achieve this relationship.

Condition 3, staff is not in favor of the utilization of cannons within the ironwork at the entry gate on Charles Street as drawn on Sheet A2, drawing A1 because they begin to create a false sense of history on the project site.

Condition No. 4, on a Sheet A301, drawing A1, staff recommendation is

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that a skirt board is added at the termination of the lap siding where it meets the brick below, that would be here. I'll zoom in. Just adding a skirt board to make that transition to the brick.

Condition 5, regarding drawing A1 on Sheet A305, wall section through lobby, applicant to clarify if any drainage elements associated with the second floor terrace will be visible. And if so, applicant to provide a detail.

Condition 6, applicant to clarify material of awning, framing, roofs, et cetera along Charles Street and provide a detail of a typical awning.

Condition 7, applicant to provide a detail of the mounting and framing of the proposed signage on the corner of Charles Street and Port Republic.

Condition No. 8, applicant to provide cut sheets of the following: The proposed cementitious service gate panels proposed on Port Republic

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Street, here. And 8B, proposed gutters and downspouts.

Staff recommendation -- recommendation is final approval with staff conditions noted.

MR. SMITH: Thank you.

It's now time for public comment. If you have a public comment, if you'll please state your name and address and your relation to the project, if any.

MS. JENKINS: Chairman, my name is Cynthia Jenkins and I'm executive director of Historic Beaufort Foundation.

Well, where to start? It's kind of confusing. There's so many procedural and factual omissions that we've seen in this application packet today. It's a package of 49 pages. It includes a decision letter sent from this Board on February the 10th -- or February 16th, written on February 10th, that included 22 recommendations from the staff.

In the letter saying that

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conceptual approval was granted, not one time was the review board referred to. It was recommendations by staff, suggestions by staff, staff this, staff that. The letter was signed by digital signature by John Dickerson, the former chairman, that included his personal private short term rental business.

Procedural questions of appropriateness are pretty important in the way the City operates, and I think that has certainly required a deeper dive into the recommendations. And I'm sure the letter is in the packet so y'all can see it there.

Omissions. I find it odd that the City of Beaufort chose, the staff chose not to inform you. In the staff recommendations where it says that the Review Board gave its conceptual approval in February of 2021.

One, back up, they also said that the demolition request was granted in February. And, in fact, that was at the March meeting of 2021. It

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revise -- included much discussion and thought. And more importantly, they've neglected to tell you that there are two pending appeals to Circuit Court involving the decision of the Zoning Board of Adjustment of this City, and there's not been a court date set. So moving forward, for your review, especially at the level of final.

And I also questioned why we didn't go to preliminary of a project of this height, mass, scale, impact, and the City of Beaufort, while we skipped straight from conceptual, we've got pending cases in Circuit Court with no trial date and we don't even go to preliminary approval for you to look at major details. Forget all this petty little stuff, that comes later. First, there's other serious questions to be answered, both from a design perspective and from the zoning boards -- or the zoning -- City of Beaufort Zoning Code.

And when I talk about conflicts

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and contradictions -- contradictions within the Code, they're so numerous it's almost hard to break them down and pin them down. If you look at Section 2.63, it -- and this was all in Jeremy's report, but if you go back and look at actual Code and those references, you'll find that -- this is 2.63, specific to zones T4-N and T5-UC, which this is, two story buildings are required within 250 feet of any significant intersection.

See street hierarchy diagram in Appendix C, as measured from the center line of the intersection, any parcel that is partially within a 200 foot -- 250 foot radius will be required -- required to compel with the two story height.

And that -- I have a copy of that hierarchy chart somewhere. It clearly shows -- do you have it, Jeremy? -- that this intersection is within one of those significant concentric circles for the street.

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You have it? That's a pretty critical consideration, especially when we've not had any traffic transportation analysis. Nobody has answered how these apartment buildings are going to be serviced. There is no loading and unloading zone. You got 19 apartments, people moving in and out, where does the moving van -- how is it taken care of? How does this affect the surrounding property owners in downtown?

Way too many unanswered questions. Here it is, it's --

(Unintelligible due to speaker stepping away from the microphone.)

MS. JENKINS: How do you get to a three story tall building when a two is all that's allowed?

MR. TATE: Can I offer a point of clarification?

It says, where a two story minimum building height is required.

MS. JENKINS: Minimum.

MR. TATE: Two story minimum.

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MS. JENKINS: The other question with that is the decision for staff to decide, is this a mixed use live/work or is it an apartment house? That's up to y'all to decide, that's not a staff decision. At the -- both the Zoning Board and you need to determine what this is, and part of the reason I stress this is the parking requirements, because an apartment house has a different parking requirement than mixed use live/work, and 70 percent of the parking has to be on site, not a football field away.

Another major question is: How many people are willing to walk a full football field from their apartment? And how does that work in a city like Beaufort? I mean, y'all have been to football games, you know what it is from end zone to end zone, you're going to carry a baby, you're going to carry groceries? I mean, there's too many questions. The Zoning Board needs to answer those, y'all need to answer

those, these all affect design.

I found it a little disconcerting that in the entire staff report, the only reference used was the -- was the city Code. There was one reference to the preservation manual, which this Board is charged with carefully and -- analyzing.

So, the other thing is if it's a mixed use live/work, the zoning Code requires liner buildings, there's no liner building here. I'm not greatly in favor of them. I don't think they really work in cities like Beaufort, but the Code requires it. The Code requires it. There's not been an address of how that is answered, but I think the biggest issue here is that it can't be both. It can't be a minimum two stories, which is probably a better design for this location.

Port Republic is the smallest street -- one of the smallest streets in downtown. There's often congestion. Yesterday, the intersection of Port

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Republic and Charles was backed up for a good 20 minutes when I was trying to get to city council work session.

And, you know, I'm not -- I really think the point I want to make is that you cannot address final approval today. This is too important a project to the city, too many people care. There's too many details left unanswered. There's the whole fact of a court case that must be determined, and should have been determined before it ever came to this Board. Should have gone to the Zoning Board for a special exception, another mess up that should be rectified.

And I guess on designed, I mean, I hate to -- we so support and have always supported appropriate infill. I'm not seeing it here. Beaufort's a National Historic Landmark District and I was so reminded yesterday when I went to the -- I was driving down Boundary Street of James Kunstler's great book in 1993, the Geography of Nowhere.

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When I drove down Boundary Street, I saw the architecture of nowhere are the architecture of anywhere. We are simply taking a design that was used on a four lane US Highway -- excuse me -- traffic, and that is behind the old -- it's behind Food Lion. This is actually behind the Hilton Garden Inn, and then behind Food Lion.

These are not, they're fine, they're fine in that location, they are not fine in downtown Beaufort nor is any element that's found on these buildings appropriate for our National Landmark District.

But I think, seriously, the street hierarchy question, the height question, and I think you also have to go to your Milner design guidelines and read carefully line by line, everything that you are required to analyze, and that would be Section 4.71. This one's from the zoning ordinance, 4.72 states principles for compatible infill.

The district is a resource, not

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only its individual parts. Beaufort is comprised of a number of individually significant buildings. Additionally, Beaufort's historic areas are significant as a collective whole and shall be considered as such and protected in their entirety. New construction shall respond to and protect the integrity of the overall historic district in much the same way as an addition does to a historic building.

And I'm skipping around. Principles for compatible infill design. This is a combination of elements that create the feeling of a district or structure. These elements include building patterns, streetscapes, site elements, building size, mass, and scale, spatial relationships, and specific architectural elements and details.

Setting is the physical environment of a property and should be evaluated on its context as well as on

its historical role of the property, that includes topography, vegetation, et cetera.

Workmanship, this is the physical evidence of the crafts of a particular culture or time period. For infill projects, workmanship of surrounding structures should be considered and respected.

What I've seen of these materials doesn't much respect the materials in the Elliott House nor does it respect materials in the Cuthbert House.

Feeling, this is the property's expression of it's -- the aesthetic of historic sense of a particular period of time. This particularly applies for when talking about infill, the feeling of surrounding structures should be considered and respected.

And in most cases in America, when you consider surrounding buildings, you don't look at a bank building built in 1980 or whenever that building was, you look at the historic buildings.

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So that said, too, I wanted to address that long brick wall on the south elevation, which I think is also inappropriate. There is no long eight -- I don't even know how -- how tall it is. Arnie, 6, 8 feet tall? Yeah, one of those. There's no precedent for that anywhere in the National Landmark District, certainly not in the central business district. It provides a sense of enclosure. I believe what the Preservation Manual would suggest would be a living fence of some kind, something that's softer, more open, opaque, transparent.

Let's see. So I guess what I want to end with most is that y'all need to slow down. You need to -- if you want to consider this, you need to consider it for preliminary, not final, it's way, way too soon for that. Too many details. We've seen this happen before, there needs to be -- when you get to the details, when you get down to what should be final, there should

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be a wall built, a sample wall on site so that everybody can go and analyze the appropriateness or the inappropriateness of what's being proposed.

I'm going back through Jeremy's -- the large footprint building question is one that is really critical and the T4 and T5 zones and how they inquire -- are required that they be integrated into the streetscapes. This has been defined, that's why it had to go to the Zoning Board as a large footprint building. And in some parts of the Code, it says they're not appropriate in the historic district.

The elevation of the first floor height and the floor to floor height should be compatible with the expression of floors and the facades of buildings on the same block. Does that happen here?

You've got your work cut out for you and you need to go slow, you need to be diligent, and you need to go

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through both the letter sent from this Board by your previous chairman, especially since four of you weren't involved in that decision making process.

So you need to go item by item in that letter and see if you agree with it and if you have questions, and if those questions have been answered. And you can do that comparing it with today's staff report, and whether or not you have questions raised just as we did.

So if the ordinances -- and we've said all along, this ordinance has got a whole number of conflicts and contradictions, and you can sort of -- it's almost like a Chinese menu, you can pick what you want, what suits your purposes best, but it's your responsibility and you're charged with determining how those things come into agreement. Do they match up and are you comfortable with it? Is the public comfortable with it? As I said, this

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is not a single building, it should be considered as part of the whole.

Does anybody have any questions?

MR. SMITH: Thank you, Cynthia.

MS. JENKINS: Thank you.

MR. SMITH: Any other public comment?

MR. HARRISON: My name -- my name is Steve Harrison. We own the Red House Inn. We've been here for 36 years. We love Beaufort, it's home.

I happen to like this building that you -- that you've done and -- but it does not belong in Beaufort. It's in the wrong place. It belongs next to Moe's out on Boundary Street. It belongs -- it just doesn't be -- it doesn't fit in. It reminds me of the Region's Bank downtown that's closed, been closed. Probably one of the ugliest buildings that don't fit the codes, but yet it's there. And frankly, the only way to fix that is to tear it down.

That's what I'm afraid this is

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going to be. This is not Beaufort, it doesn't look like it, it doesn't feel like it, it doesn't smell like it. You know, just figure it out. Just look at it and say, is that what you want your town to look like, seriously?

We'll move somewhere else or live somewhere else, but not in Beaufort. And I talk from my heart and I know I get emotional about this and sometimes I get a little bit crazy because I care. I care -- I care what happens and I see, bit by bit, the cultural fabric of this town disappearing slowly.

But over 35 years, 36 years, it's been quite a bit, but still, we retain and we try to retain the authenticity of what we live here and why we came here and how we exist here. So, I'm talking from my heart when I say this is a lovely building.

I really think the architects and the owners have done a phenomenal job, and I'm not going to go over a lot of

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things that Cynthia said about the scale and the height and everything else, it just doesn't belong in our town. Thank you very much.

MR. SMITH: Thank you.

Any other public comment?

MS. SUNDRLA: Good afternoon, Lise Sundrla with Historic Beaufort Foundation.

Just going to focus a little bit more on the specific codes and guidelines that y'all are charged with reviewing in support of projects in the National Landmark and Historic District.

We believe that this project though, much improved from the previous designs, has not met the intent or spirit of the Preservation Guidelines, the Secretary of Interior's standards, the Civic Master Plan or the Beaufort Code. And I want to point out just a few of those -- those items where I think it's definitely more significant.

Within the Beaufort Preservation

Manual, page 41 to 46, Chapter 3, new construction. New construction in Beaufort must go beyond the aspect of form follows function and blend harmoniously with the fabric of the town.

Referencing the Beaufort Preservation Manual. Again, new construction, no building is so insulated from its surroundings as to avoid an impact on the town scape. The Beaufort Code brings it all to -- to the -- the message that I'm trying to present.

In the Beaufort Code, contextual design guidelines, massing and articulation, reference 4.3.2.C, new construction should complement the massing of neighboring buildings by utilizing roof forms, architectural trim, differentiation of facade planes, and relationship to facades, siding and walls to voids, windows and door openings that are consistent with the patterns established in the neighboring

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buildings.

When large scale construction is proposed that is not consistent with the predominant building height and lot width of the surrounding area, special attention shall be paid to specific building design elements in order to articulate a building form that is appropriate to the neighborhood context.

If we could pull up, Jeremy, the -- the street elevation of Port Republic Street, that would be really helpful, and Charles. Yeah, the rendering, yeah, that's in color.

MR. TATE: Oh, the rendering.

MS. SUNDRLA: That showed all the buildings around it.

MR. TATE: Oh, okay.

MS. SUNDRLA: That was it.

MR. TATE: Do I zoom in any one?

MS. SUNDRLA: No, I think just as everybody can see.

Just by totally taking a look at this design -- and I think -- oh,

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good -- you can see that the mass and scale of this structure is the dominant, the dominant structure that -- over all of the other buildings that you're looking at, even the structures that are beside it on Bay Street, the structures that are beside it on Port Republic Street, and also on Charles Street.

And specifically within the guidelines, and I think this is a very important point that it says, large scale structures along period commercial streetscape should strongly -- strongly be discouraged. If, however, the situation is unavoidable, the upper stories of the facade should be stepped back.

From a pedestrian's view of the street, the facade should thus appear consistent in height and proportions with neighboring buildings. The lower most two or three stories should follow the building line of the street and should not recreate -- create a set

gap -- or setback or gap in the continuity of the commercial structures. What the point of that is, and this comes from the Preservation Manual, page 16, to avoid becoming the dominant element of the vista or streetscape.

You look at that design, what is the dominant element? That building, 211 Charles Street, the new proposed design is the dominant element of that vista or streetscape. So I think it is critical, as we're looking at this, we recognize that the existing building today, the old A&P structure built in 1947, is of its time. Yes, absolutely.

That doesn't mean when you rebuild on that site, if you rebuild on that site, that you rebuild on it in the same footprint of what that time was back in 1947, that means you look at the scale of the neighboring buildings and what's around you, that's what appropriateness is, that's what's being sensitive to scale and height and mass

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is within that district.

And this building clearly is not in keeping with that tenant and is definitely the predominant structure along this vista. Thank you.

MR. SMITH: Thank you for your comment.

Anyone else?

MR. TRASK: Graham Trask -- oh, sorry, you go ahead.

Graham Trask, nice to be here in person. And I own a fair bit of property down -- downtown and it's approximately a block away from -- well, less than a block, actually, because this building is so long, from this building.

This whole HDRB process has been one of mission omission. Your predecessors, with the exception of one, got it wrong, frankly, in February. And I, unfortunately -- well, unfortunately or fortunately, hold the City staff accountable for that.

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For one reason or another, they have continued to omit things which -- I actually have a former colleague wrote a book on -- is tantamount to lying. If you omit things, it's tantamount to lying. Let me give you some -- and -- and that, therefore, makes the staff's report arbitrary and capricious.

Let me give you some examples. 2.4 of District Development Standards, this building, because of its front footage, has to follow the large footprint requirements. That wasn't brought up in February when your predecessors evaluated this, that was omitted. Why? Why would something like that be omitted? Is it on purpose or is it incompetence? I don't know. But it wasn't -- the HDRB was not informed of that.

Now, let's fast forward to today. You were not informed that the Zoning Board of Appeals decision is being appealed, fine. Are you aware of that?

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You probably are from the press, but why not from staff? Does it raise a question in your mind? Does mine, me.

So furthermore, when you look at the large footprint building requirements, there's one that says, specifically, specific to T4 and T5, a minimum of 75 percent of all parking should be located behind the primary building or a liner building.

Hold on a second, why hasn't staff mentioned that to you? Are you aware of that? What they've mentioned is that parking's down the street. That's not what city code says. It doesn't say, oh, unless you have parking down the street, you're exempt from this. And it doesn't say that. It says, and I'll read it again, specific to T4 and T5, a minimum of 75 percent of all parking should be located behind the primary building or a liner building. Does this design have that? No. Why doesn't city staff bring that up? It's mission omission.

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There are more. The old bank building, the old bank building, it was built in 1980. It's not old, it's new. Other omissions, this time on the -- on the applicant's part or the architect's part, they stopped the sketch up before they go down Bay Street. You want to know why? Because if they went down Bay Street, you'd see this huge building towering over the other buildings. Is that on purpose? Is it not? Mission omission.

Next, are you aware that this applicant had another building which was contingent on a building -- a demolition permit which was contingent on a building permit being issued before you can demo the building? Are you aware of that? The building is gone. There's no building permit, but they demoed the building. Are you aware of that? Did staff make you aware of that? No. Have there been any consequences? No. Mission omission.

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And our city staff will not stand up for our city code, and that's why we have found ourselves here. And I am puzzled by it and I'm trying, for the life of me, to figure out why, and I don't understand. For example, and anecdotally, I'm trying to do something in the county and they will -- that -- that they said was not in the intent of the County Code? Well, they bring out lawyers and the city manager, they bring out everyone to stand up for their County Code, and you know what? The project changed so that it conformed to the County Code.

Here in the city, who cares about the city code, It's the project, and that is really, really troubling, and why we are here today with this project, and others, and if this moves forward, it will be appealed. And so I would suggest that, given all the mission omissions and all of what Historic Beaufort has said, that you guys think long and hard about

approving this, and instead, sending it back to the drawing board, getting answers to all these questions, and then once that's been satisfied, come back up for preliminary and then ultimately, final. Thank you very much.

MR. SMITH: Thank you.

Anyone else?

MS. SUTTON: Hi, my name is Nan Sutton, 949 Ribaut Road. I came today because I make my living downtown and I am all for working on building the vibrancy and the energy of our downtown core, and I believe that this building is appropriate infill.

I'm actually amazed at the negativity around this. I feel like -- and I have many friends at HBF and I know everybody on there, but I really believe that if it were up to HBF, we wouldn't get many things built here in the city in our core district. And I think that rejecting this -- rejecting any change is not the right path for

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our downtown.

And I keep hearing the words about mass and scale. If you look across the street at the Wells Fargo, there's mass and scale there in that building. And I wonder if it is any much different than the mass and scale of this, if you actually did the square footage. If you go down to the foot of the bridge at Bay Street, that building there, that building has mass and scale.

We have mass and scale downtown already. We don't have a lot of infill area in our -- in the core district, and I think with what little infill left we have, we need to have good projects. And I think this particular project, I think the building looks great. I think anything is better than the building that's there. I grew up running around that building when I was ten-years old. It's -- it's now got weeds growing out of it and cracks all over it and it needs to come down.

I don't think -- I keep hearing

from preservation people that we're -- we have uncontrolled growth. I don't -- we don't have uncontrolled growth here. I think the City, over these past years, has done a very good job at trying to maintain a balance, and I think the balance is very important to keeping our downtown core vital.

And sometimes I feel like there is a glass dome being put over us and -- to become more museum like, to become like Williamsburg. I mean, it really worries me. You know, right now in the downtown core district, we have one of the best retail mixes I think we've had in years, and I've been downtown for 21 years now. But I think it could be made even better and I think that these infill projects that are being brought forward should be embraced and they should be looked at in a positive manner.

I appreciate all that you do. I know that this is a thankless job and

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it's very hard, very hard job. But I -- I totally support this building. I think it should be built and I think it would be a great addition to our downtown.

MR. SMITH: Thank you.

Any other comments?

MR. NESTER: Thank you, Mr. Chairman. My name is Walter Nester and I'm an attorney with the law firm of Burr & Forman and we represent the applicant in these proceedings. And I wanted to speak to a couple of matters.

One of the things, there's been some discussion about lots of other actions and appeals and lawsuits. That, of course, is not something for the HRB to consider. All those things are different. There are different procedures and they're taking place notwithstanding. And it's not really one of the review criteria for this Board to look at, what's happening outside.

There is a process, and I know and

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appreciate that you all understand that there's a process, and for a building like this, it's a fairly long process. And so an applicant does have the right to be able to rely on prior HRB decisions. The applicant has the right to listen to staff. The applicant has the right to review the ordinance and ensure that its application is compliant with the ordinance.

And as staff has presented to the HRB, that, indeed, is the case with this application, that it went to conceptual review, there were some -- a large number of comments, and those comments have been satisfied.

The applicant does have the right, the applicant does have property rights. The United States Constitution made applicable to the States by the 14th Amendment, and the applicator -- the -- and the HRB and the government does have the right to constrain those property rights through its police power, but the use of that police power

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has got to be objective.

Now, certainly, citizen boards, like the HRB, have the right to use their subjective application, but it's a subjective application of objective criteria. And the -- the only one who could be subject to arbitrary and capricious action is actually the applicant.

And -- and we ask that -- that -- as -- as stated earlier, we -- we agree with the staff and we're going to meet those -- the conditions in the report and we ask that you issue final approval on this application. Thank you.

MR. SMITH: Thank you.

Any other comment?

MR. TATE: And we do have one via Zoom, Peggy Simmer.

MR. SMITH: Hi, Peggy.

MS. SIMMER: Hi, Jeremiah and the Board, I thank you for all that you're doing. And it's been an interesting day, as it usually is.

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One, I just wanted to say thank you to 303 Associates for working with us and keeping us informed and addressing our concerns. We appreciate that they've made the building somewhat shorter.

I do have a question for the architect. With it now being 36 foot 8 inches, how does that compare to Old Bay Marketplace's height?

MR. MCCLURE: I probably can't properly answer that. I think if you look at this elevation, I just, unfortunately, don't have exact measurements to -- to be able to say that. We did have some architectural drawings of Old Bay Marketplace, so it is accurately depicted in the street elevation based on the elevations I was given.

I did not create those elevations, but I believe that, you know, we're in the neighborhood of maybe 4 feet higher, and I'm just looking at this elevation, it's a pure guess at this

point.

MR. SMITH: Thank you.

MS. SIMMER: Thank you. That might be something in the future that you all provide, I think that would help folks put it in perspective.

Also, I appreciate the staff and -- and the architect's willingness to work together to keep the porches on the Port Republic Street side because we do think that will make it have more of a residential feel, and since we're going to look at it every day, it'll be nice to have people on their porches.

And -- well, we are still concerned about -- especially the height of the building. We do support the infill and we think it would be nice to have neighbors and have a usable space across from us. So I hope that there becomes some resolution so that the project can move forward.

And as for the Cannons and the fence, appropriate or not, it might be nice to have a nod to the history

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related back to the Cannons. So that's all I have and I thank you for your time.

MR. SMITH: Thank you.

We also have Douglas. Okay. Hi, Douglas.

MR. STORES: Good afternoon, can you hear me?

MR. SMITH: Yes.

MR. STORES: My name is Douglas Stores, 411 New Street in Beaufort.

I think there -- a tremendous number of comments raised from an architectural standpoint that need to be resolved, but I think more importantly, what we need to do is simply step back and defer a decision and request the Board defer their decision until the Zoning Board of Appeals appeal is resolved by the court within the next month or two.

As you know, making decisions on buildings like this, they're -- they're multi-decade issues, and I see no reason why we can't pause for a month

or two to get this resolved from a large footprint standpoint of the Zoning Board of Appeals and then move forward, because if, in fact, which I believe, in court -- (unintelligible) -- the appeal is going to dramatically alter the design of the building.

So again, I'm asking you to defer a decision until after the court has made their decision. Thank you.

MR. SMITH: Thank you, Douglas.

Any other comments?

MS. LITCHFIELD: Hi, Brenda Litchfield, 808 Hamilton Street.

You know, there have been a lot of things talked about today, but the thing that really sticks out in my mind is the parking and the traffic. I mean, as somebody mentioned, do you want to carry your baby that far or you want to carry groceries when it's raining and it's hot, and that seems to be a really critical part, is the parking.

In addition to that, what about

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the infrastructure? What about the sewage? Where is all that going to go? I mean, I know that the systems around here are old as it is, but what's going to happen when you add all these extra bathrooms and all these extra things there? I mean, the pipe system here is not very good. So I think, basically, what this is going to do is just strain the infrastructure in these areas.

And like the gentleman that has the Red House, I mean, I think it's a great building and it's really pretty, but it needs to be somewhere else. I just don't think the downtown should be able to handle the strain on the infrastructure that this is going to cause.

MR. SMITH: Thank you.

Any other comments? Last call for public comment.

All right. Public comment is closed. We'll now open up for Board discussion.

Anybody care to start?

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MR. SUTTON: I'll start with it, Mr. Chair.

MR. SMITH: Okay.

MR. SUTTON: In the staff report, it was highlighted, there are several areas of -- that the Board needs to take action on if this was to be approved, they would have to be handled. I think, first, and I think for clarity, I'd like to make separate motions to make those -- see how the Board feels about those, if you agree to allow that?

MR. SMITH: Okay. All right. I don't know if anybody else agrees, I don't know why we couldn't handle them all --

MR. SUTTON: Well, they're very specific Code requirements, I think it'd be clearer if they were handled separately. And then -- and besides picking them out of the bigger picture, let me try one, see if you disagree.

Okay. The motion I'd like to make is to allow deviation in the building

height from the 12-foot requirement, first floor commercial to 11 foot.

MR. SMITH: Which item is that?

MR. SUTTON: It's Item 1, it was brought up in the staff on B, I think it was Item B -- it was Item B on the -- under staff recommendations. Staff acknowledgment --

MS. APPLEGATE: EB, EB.

MR. SUTTON: EB, it talks about current Code requires 12 foot -- 12 foot ceiling height. This applicant has asked to lower that down by 1 foot.

I think that's appropriate and I have a motion on the floor.

MR. SMITH: I'll second it and open for any other discussion.

I'll just say, the floor height is a little bit higher than the sidewalk so it will feel a little bit higher, between 18 and 24 inches higher.

The Board understand what that is so we can move on?

MS. APPLEGATE: I'm good with it.

MR. SMITH: Any issues, Maxine?

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MS. LUTZ: No, but I'm just wondering why we're getting into the weeds.

MR. SUTTON: We'll get there, one tree at a time.

MS. LUTZ: I was wondering why we're getting into the weeds before we look at the forest.

MR. SUTTON: Well, if you have a better approach, please present it.

MS. LUTZ: All right.

MR. SUTTON: All right.

MS. LUTZ: I will.

MR. SUTTON: Because I'm getting ready to make another motion.

MS. LUTZ: And the weeds.

MS. APPLEGATE: So what are we doing with this motion?

MR. SUTTON: Well, we need to -- I'm calling the question first.

So, Mr. Chair, I call the question on the motion on the table.

MR. SMITH: Okay. The motion is to allow the 11-foot ceiling instead of 12, which is required by Code.

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MS. LUTZ: Aye.
MS. APPLEGATE: Aye.
MR. SMITH: Aye.
MR. SUTTON: Aye.
MS. PRENTICE: Aye.
MR. SMITH: Okay. All right. Now, Maxine?
MS. LUTZ: All right.
MR. SUTTON: The motion is to allow deviation in the current code building height requirement, first floor commercial from 12 foot down to 11 foot.
MS. APPLEGATE: I did.
MR. SMITH: Maxine?
MS. LUTZ: Yeah, I guess I wanted to address the overall issue of going to final today.
MS. APPLEGATE: I'm not in support of final today.
MS. LUTZ: All right. Well, I don't need -- I'm not either. I think, certainly, the two appeals of the ZBOA decision, I think we should hear the results of before we go to final.

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MR. SUTTON: I disagree with you because that's not part of the Board's purview.

MS. LUTZ: And I also appreciate the suggestion, and I don't know who made this, that -- that we -- we are, except for Stacey, a new board here and that we should at least review the stipulations that the former board made for moving forward.

You know, we may agree with them, we may not, but I understand that we shouldn't -- there's some feeling that we shouldn't undo a previous board's action, but I think it would be important for us to at least to consider their comments and the letter that was signed by John Dickerson.

I agree with Ms. Litchfield that parking is a huge issue. And I think the Code says it must be within 400 feet of the building, and how many feet is it from the building?

MR. SMITH: 364 or something.

MR. TATE: Yeah, so under 5.7.4 --

try to get that right -- 5.7.4.D, off-site parking, required parking may be provided off site if the following standards are met, required parking may be provided in off-street parking facilities on another property within 400 feet of the site proposed for development as measured along the street rights of way.

Parking further than 400 feet may be approved by the administrator if it is in conjunction with a plan to provide access to the lot, for example, shuttle service.

MS. LUTZ: And this is -- Jeremiah, says 354 feet?

MR. TATE: I'll defer to the applicant for the exact distance.

MR. MCCLURE: It's on the cover.

MR. TATE: On the cover.

MS. PRENTICE: And do they provide two parking spaces per apartment in that lot?

MR. TATE: 365.

MS. LUTZ: To the parking garage

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or the flat -- flat surface, whatever is there? 365. And -- and it requires 1.7 parking spaces for a two bedroom apartment?

MR. SMITH: 1.75 per two bedroom unit.

MS. LUTZ: Okay. What would 70 -- what -- what would 0.75 be in the size of a car? Never mind.

MS. PRENTICE: Is there any type -- has any consideration for an unloading zone been considered, because, realistically, 300 -- I mean, it's still too far to actually transport. Having lived in a pedestrian city most of my life, it's too far.

MR. SMITH: There is on-street parking.

MS. PRENTICE: Which everybody who lives in that building will be parking in those on-street parking, and we all know that. Those -- those parking spots will no longer become available for people wanting to shop downtown.

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That was my question is what -- tell me about it. Tell me how the dwellers access that loading spot, loading, unloading of their goods and -- I mean, I've been -- I've tried to get down to Port Republic when there have been functions on that street and you just cannot go down that street at those times.

MR. SMITH: Arnie, do you want to say anything?

MR. MCCLURE: I believe there is a commercial loading zone at the Old Bay Marketplace, and I would think that the City would allow, since those are both the same owners, to use that for unloading vehicles as well.

MS. LUTZ: But it's constantly in use.

MS. PRENTICE: Nobody is going to go there, they're all going to go --

(Cross talk.)

MS. LUTZ: -- loading zone.

MS. PRENTICE: I know from my personal experience, they're not going

to go there.

MS. LUTZ: Loading zone is constantly in use. I know because I try to use it.

MR. STEWART: Hello, I'm Dick Stewart, 303 Associates, we're familiar with this project, working on it for years.

A couple of points as it relates to infrastructure, including parking. We're required to do a number of things as it relates to gas and water and sewer, we'll be installing upgraded sewer lines and other things to meet their requirements that didn't come to your --

MS. LUTZ: Point of order.

Have we moved back into public -- or applicant discussion or is this now Board discussion.

MR. SMITH: Dick is the applicant and I'm allowing him to speak.

MR. STEWART: I'll speak specifically to the parking issue. The reason for 1.75 being common in urban

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cores is because some people don't have two cars and some people have less and that provides a sufficient number. To deal with the issue of on-street parking, what we've been doing with years -- for years here is being concerned about people who might be wait staff or other people occupying the parking spaces, the prime areas.

And so the City has adopted a process where you can only stay for a certain period of time for a certain fee, that causes turnover for shoppers that are coming and going. We have a fair number of people who parked permanently or would like to park permanently in the lot that we purchased. It's the flat lot there, and so we are anticipating this will be much more convenient for them.

As it relates to carrying groceries and whatnot, people do that. It's not the same as it used to be and there's a lot of those that come along wheels. Anybody that's gone through an

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airport's seen a lot of people pulling things, so that's what happens with the groceries. And the folks who move into these environments typically approve of pedestrian traffic, so they choose things for those reasons.

As it relates to the loading zones, we don't determine the loading zones, but the City owns the street, they do. There are some loading zones in -- (unintelligible) -- we would like for them to be somewhere else. There are other folks that don't want the loading zones in front of them.

So the nature of the city is you're going to have to have a place for people to load and unload. But it's important to understand as it is for traffic, if we really opened this building as full retail, which it was at one time, traffic count on that's been previously provided. But the traffic count for this building here is 55 percent fewer car trips per day than that retail building, if reopened,

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would generate.

That's significant. It's also significant from shipping and retail inventory in/out as opposed to folks who live there and come and go.

Happy to answer any other questions you might have. Thank you.

MR. SMITH: Thank you.

MS. LUTZ: Does the City own the street or is it state owned?

MR. SUTTON: That's owned by the state. No, Port Republic Street had a streetscape project done on it years ago and had to take the street over in order to make it happen, that's one of the few streets the city actually owns.

MR. SMITH: And Charles is DOT.

MR. SUTTON: Charles is DOT.

MS. LUTZ: Well, I'll finish what I was saying. I'm not comfortable going for -- for final because of the appeals that still exist. I'd like to review one by one, the position of the old board. This is a controversial project. It's a big box. There are

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numerous contradictions that have been brought forward about -- with the Code, and I'd just like to see it go for preliminary rather than final.

And also, I'd like to see -- Arnie says that he agrees with all the conditions, but I think I might like to see those conditions met before we voted on final.

MR. SMITH: So I'll just -- all the previous board's comments and issues, I think Jeremy -- Jeremy went over a lot of them. I spent several hours going over those myself. I don't know about the other board members. I didn't have issue with any of them specifically.

MR. TATE: Mr. Chairman, can I respond to two items?

MR. SMITH: Please.

MR. TATE: Maxine just related -- or referenced two contradictions or some contradictions. I have two to kind of clarify.

It was brought up that this needs

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to be reviewed under T5-UC and a 250 foot radius with a minimum two story height. Well, this is T5-DC, not UC. So T5-DC, it does not have to comply with this minimum two story height within 250 foot radius.

MR. SUTTON: So the presentation was incorrect, is that what you're saying?

MR. TATE: That was an incorrect statement to the -- to the district of the zoning --

MR. SUTTON: By HBF representative, right?

MR. TATE: Yes. By Ms. Jenkins.

MR. SUTTON: Okay. So made a wrong comment, interpreted the Code incorrectly; correct?

MR. TATE: Just saying the wrong classification for the zoning district that we're looking at here.

Under 4.5.10.B.2.A, there was a reference to the need to have a liner building, but there is an exception. Number -- so 4.5.10.B.2.A is the

exception. When a large footprint building provides an entry on the primary street frontage, which this building does, and a minimum of 40 percent clear and unobstructed glazing along that street, liners are not required.

So there were some things that were mentioned as -- as being contradicting to staff. I'm just bringing up two to clarify that.

MR. SMITH: Thank you.

Any questions?

MR. TATE: Yeah, so the parking for the large footprint building -- let me get back to that, 5. -- We just went -- we just went over this with Maxine. 5.7.4.D, off-street parking. Required parking may be provided off street if the following standards are met. Number one, required parking may be provided in off-street parking facilities on another property within 400 feet of the site proposed for development as measured along the

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street rights of way.

So this is telling you if you're going to put parking location on a site, it reads, specific to T4 and T5, a minimum of 75 percent of all parking spaces shall be located behind the primary building or a liner building. We don't need a liner building, so that -- that doesn't apply here, that part of it. And it goes on to all of the districts.

Looking at that, if you're going to put parking on your site, then a minimum of 75 percent shall be located behind the primary building. You go to 5.7 -- sorry, let me get to it real quick.

5.7.4.D, the required parking may be provided off street if the following conditions are met. This is how we're looking at that, that is how the applicant's been looking at it to get the parking off site and not on site.

MR. SUTTON: My interpretation is not to the side or in the front, but to

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the back, if you're going to do it.
Any other questions on that?
MS. PRENTICE: Actually, yeah. Could -- I would like to know that further explained. So in other words, had they chosen to have parking on site, they would have needed to have done 75 percent, but because they've chosen to have parking off site, that requirement does not have to be met, is that how...
MR. SMITH: My thought is not in the front or to the side, but to the back, if you're -- if it was on site.
Everybody good on that? Questions?
MR. SUTTON: I'd like to make another motion.
Mr. Chairman, I'd like to make a motion that the Board approve transparency ratio of 33.8 percent. That would be on staff recommendation or staff acknowledgement on EC.
MS. LUTZ: What is it?
MR. SUTTON: E and then C.

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MR. SMITH: I'll second that.
Any discussion on that?
MR. SUTTON: Maxine, you have any concerns over transparency?
MS. LUTZ: No, Mike.
MR. SUTTON: Thank you.
MR. SMITH: How about you, Michelle? You have a chance to finish reading that?
MR. SUTTON: Terms over transparency.
I'll call the question, then, Chairman.
MR. SMITH: Okay.
Maxine?
MS. LUTZ: Aye.
MS. APPLEGATE: Aye.
MR. SMITH: Aye.
MR. SUTTON: Aye.
MS. PRENTICE: Aye.
MR. SUTTON: Mr. Chair, I'd like to make a motion to approve PermaCast columns per Code 46348.
MR. SMITH: Second.
Any questions on that material or

opposition?

MS. PRENTICE: We talked -- what number are we on?

MR. SUTTON: That was on --

MR. SMITH: 2B, staff condition 2B.

MR. SUTTON: 2B on staff condition.

These were things that the staff called out specifically that the Board had a purview of and needed to solve for this particular application.

MR. SMITH: Everybody okay with that material that we saw?

Take a vote.

Maxine?

MS. LUTZ: No.

MR. SMITH: Stacy?

MR. SUTTON: Is that a yay or nay?

MS. LUTZ: I'm thinking no.

MR. SUTTON: No, I was asking you.

MS. APPLEGATE: Oh, I haven't said anything yet.

Yes.

MR. SMITH: Aye.

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MR. SUTTON: Aye.

Maxine, I have a question for you. I know you voted your conscience on that, but you don't like fiberglass columns? Just asking. Or do you -- are you just voting because you don't want to do anything related to this project.

MS. LUTZ: I'm still confounded why we're in these details.

MR. SUTTON: Look, the Board has -- the staff has given this Board a tremendous amount of information. Okay? We've heard all from the audience about different things that we've already seen in the public comment. It's not a secret, it's a small town. Okay? There's a lot of forces out there that are -- a few forces, not a lot, that simply does not want this process to unfold and they're hiding behind legalese to make it stop.

It has nothing to do with any of that stuff. Our our job is architecturally related. I see --

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MS. LUTZ: I fully --

MR. SUTTON: Look, I see a great presentation here that gives all the facts we have, all we gotta do is read them and ask the questions. All the other stuff is minutia that doesn't apply to me.

MS. LUTZ: And we are asked -- being asked to give final approval.

MR. SUTTON: And it may be appropriate. Any other applicant came in with a project with this much detail, you'd give it to them. Why is this particular applicant getting -- getting pushed down the road where it's not going to happen? You guys, I think you -- you chose to be on this board, you need to take it seriously and you need to follow what's going on.

MS. PRENTICE: Mike, I think there's concern, though, that things have gotten passed before that aren't appropriate and it -- the Wells Fargo building is not an appropriate mass for this --

(Cross talk.)
MR. SUTTON: -- understand, but you've had this.
MS. PRENTICE: It was a bad building that got put up, and that's what I think everybody's being concerned --
MR. SUTTON: Wells Fargo?
MS. PRENTICE: Yes. It's -- it's -- I think that's exactly what we're trying not -- we're trying to be careful. I think it's unfair for you to bully us to say like we shouldn't be --
MR. SUTTON: I'm not bullying --
(Cross talk.)
MR. SUTTON: And I apologize my Board, I'm not trying to build -- bully you, but it's -- we're pulling teeth here and --
MS. LUTZ: You know --
MR. SUTTON: -- it's your ultimate decision.
MS. LUTZ: -- It's not up to you to address me --

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MR. SUTTON: I understand.
MS. LUTZ: -- we have a Chairman here.
MR. SUTTON: I understand, and I apologize to you, Maxine, we've been friends a long time and hope to continue that, but -- and so in public, I apologize to you if I made you feel badly.
MS. LUTZ: And I agree -- No, you didn't make me feel bad. I agree with Michelle, that we are being asked to compare this to two projects that are totally inappropriate in the historic district, and that's the Wells Fargo building and 701 Bay -- 700 Bay. So, you know, we want to be careful about this, we don't want another mistake like those two buildings.
MS. APPLEGATE: So, Mike, I understand what you're doing. I mean, I understand what you're doing and I think it's a good exercise. I mean, my thinking is that we're getting there, but we're not there. I don't know.

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And -- and maybe doing this exercise is going to help us get us there.

MR. SUTTON: And I just challenged the Board to ask the questions and get the answers.

MS. APPLEGATE: Yeah. I mean, I don't think you're going -- you're going through a bad exercise --

MS. PRENTICE: But maybe a better thing for us to do is like let's just -- instead of making motions all -- like let's just say what of these items do we agree with and which items do we not agree with, and then maybe we could group them and make one motion.

MS. APPLEGATE: Which would be easier for me.

MR. SMITH: Well, what are some of the concerns we have that we want to address, the bigger items?

MS. APPLEGATE: So, I mean, in my opinion, and again, I'm looking at this, not as an architect, not as a contractor, I tend to agree, it's a

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beautiful building, but on Boundary Street. I like the char -- I believe that the Charles Street side is a good blend, but we need to -- I would like to see some tweaks on the Port Republic side and with the wall and some other things.

I mean, I'm in -- I'm, in general, support of this project. The three stories, I have no problem with, but I do feel like the architecture needs some help.

MR. SUTTON: Okay. Well, that's what we're here for.

MS. APPLEGATE: Right. Well, that's why I said you're -- going through this is not a -- it's not a bad exercise.

MR. SUTTON: Well, that's why you break the -- you know, staff even asked us to do this before, break it down into smaller slices so you understand exactly what the pieces are and work your way there. I mean, the mass and scale could be a question of a specific

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motion, and then you would be able to narrow down on the details, defenestration of pieces.

I haven't heard one person up here speak to something they liked or didn't like in the -- in the architecture of this building, not one piece. You don't like the windows, don't like the brick, don't like the -- what -- what part do we not like?

MS. LUTZ: I thought we weren't supposed to talk about what we like and don't like, I thought we were supposed to pay attention to the Code and the Secretary of Interior Standards for infill.

MR. SUTTON: It's easy to say that, but show me what -- what you're talking about.

MS. LUTZ: Mass and scale.

MR. SUTTON: Okay.

MS. LUTZ: Too big.

MR. SUTTON: Based on what?

MS. LUTZ: Its comparison to the other buildings around it.

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MR. SUTTON: So -- so you would turn it down on mass -- on scale, because the mass is about like -- about --

MS. LUTZ: You know, I don't know why we're in this position of you asking me questions. I mean --

MR. SUTTON: We're a Board, we're supposed to be able to talk amongst ourselves. Well, you mean I can't ask you a question?

MS. LUTZ: I mean, you can't bully me.

MR. SUTTON: I'm not trying to bully you, Maxine.

(Unintelligible audience speaker.)

MR. SUTTON: You think I am, folks?

(Unintelligible audience speaker.)

MR. SUTTON: I'm a what? Who said that? I'm acting like an asshole.

MR. SMITH: That's enough. All right. I'll take charge a little bit more, Mike. And let's keep order, please.

So you want to talk about some of the challenges you see in the mass and scale any -- anyone?

Stacey, you mentioned the Port Republic side addressing Port Republic, my thought is with the Zimmer's house, it's really the only -- one of the only residential buildings on that street. I see Port Republic as being another commercial street. That's my thought.

Not like Bay, but not like Craven or Washington. I think it's a pretty nice marrying of residential and commercial. Personally, I think it could be completely more commercial because I think it's a commercial street.

One thing that I think would be more appropriate would be to not do the board and batten on that side, I think it's kind of rural and you don't see that much in commercial buildings, or really at all. As much as just lap siding. And the banding where those joints kind of come together is odd, I

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think, so I'd like to see that be lap siding.

Any thoughts on that?

MR. SUTTON: Tell me that where that is again?

MR. SMITH: All -- on either side of the porches on the Port Republic side.

MR. SUTTON: Can you show us the elevation?

MR. SMITH: A203.

MR. TATE: Or do you want to go to the Port Republic one? I'm sorry. Well, it's on the backside also, but -- sorry. On the north elevation, A201.

MS. PRENTICE: I don't -- for me, I don't know, I'm just -- I'm concerned about the balconies in general.

MR. SMITH: Porches?

MS. PRENTICE: Yeah, the porches, because they're -- I actually -- I know we're not supposed to look on the inside, but there doesn't seem to be a lot of sufficient storage on the insides of the buildings, and these --

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these areas will become the dumping spot of the residents. And I don't know how you -- how that's addressed, but I do feel like you can't really police that once it's there. You can't police.

Some people have twinkly lights, some people -- I mean, it's going to be a mishmash of stuff, and that doesn't feel very historic to me. And given the historic district, it feels like what has happened, quite frankly, to Mount Pleasant, which is not very attractive, if you go and drive down Coleman Boulevard these days. I don't know if that's something we can address on this board or not, but it is -- it is a inevitable thing that will happen.

MS. APPLEGATE: So the prior board was concerned about the ones on the first floor, and I know that one of the staff comments, I don't -- I'm not looking at it verbatim, but kind of gave them a buy on that. I'm definitely concerned about the first

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floor.

And, I mean, it's hard because I -- I don't know how to paint it. I just don't know how to change it. But I -- I share your concern about the balconies. But again, if we're going to have residential --

MS. PRENTICE: There's plenty of residential. I've lived in a lot of apartment buildings all my life with no outdoor space, it's --

MS. LUTZ: And there could be homeowner requirements, it seems to me that could --

MS. PRENTICE: You can't police that, hard to police that. You can't police.

MR. SUTTON: You drive all over town, the porches all over, do you stop and say I don't like twinkling lights --

MS. PRENTICE: Well, it's not downtown Beaufort, though.

MR. SUTTON: It's in the same district.

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MS. LUTZ: And that's not right side by side.
MR. SMITH: The porch is side by side.
MR. SUTTON: The whole town --
(Cross talk.)
(Unintelligible audience speaker.)
MR. SMITH: No. Sorry. That's enough, please.
MR. SUTTON: Sir, we're not keeping you here at all, you're welcome to walk out right now.
MR. SMITH: We are discussing as a Board.
(Unintelligible audience speaker.)
MR. SMITH: This is how we're set up to do it in a public --
MS. APPLEGATE: Can't do that.
MR. SMITH: No, we're not allowed to be in a closed session. It's a public meeting. But you're not, however, required to be here.
MR. SUTTON: So I understand Michelle's concern about how you would control that, but there's ordinances

already in place in the district that might address that already. I mean, there's outdoor display on retail, there's signage ordinances, there's other things that would manage that, but I don't think it's an architectural review concern. I understand aesthetics --

MS. PRENTICE: You'll be walking down Bay Street and you will see mops, you will see all kinds of things. Like, in a lot of buildings, they provide locker spaces for the unsightly things that come into people's lives, and -- and it's just -- I mean, we will literally be walking down Bay Street and these -- these buildings right here, that is what we will be looking at.

MR. SUTTON: It's a different -- I agree -- I understand your concern. I don't know how to regulate that. Okay? And I'm not -- I don't think it's appropriate --

MS. PRENTICE: You don't have to

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have balconies in the apartment building.

MR. SUTTON: I think the building is much more attractive with the porches than it would be without them.

MR. SMITH: It's a predicament we -- the Board probably asked them to put them on.

MR. SUTTON: And -- and -- and if you go through the documents of the guidelines of the historic district, porches are a prominent feature of Beaufort. It brings connectivity of the public to the street. We're trying to make it a more pedestrian friendly area. It's a center core.

All the long range planning cities done for years and years relates to bringing people to live downtown. All these things that we've kind of knew was happening.

(Unintelligible audience speaker.)

MR. SUTTON: Hey, stop trying to run the meeting from out there.

(Unintelligible audience speaker.)

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MR. SUTTON: No.
(Unintelligible audience speaker.)
MR. SMITH: This is a Board discussion, sir.
(Unintelligible audience speaker.)
MR. SMITH: Yes, it does.
(Unintelligible audience speaker.)
MR. SMITH: A recess. Okay. We're going to take a five-minute recess.
(Short recess.)
MR. SMITH: We're back in session.
I just want to go over one part that -- sorry, my mic was off. I just want to remind everyone this statement, it is important that applicants receive a fair and impartial hearing. Emotional outbursts, cheering, and clapping, which create an adversarial atmosphere, will not be tolerated.
So we're at the point, Item 7, Board discussion, and we want to give this all the time that it needs. We spent an hour doing public comment, and these voluntary board appointments are

spending their own time here. We'll stay as long as we need to to come to a decision we all feel comfortable with. Thank you.

MS. LUTZ: I'd like to make a motion, Mr. Chairman.

I'd like to move that we give preliminary approval to this project with the caveat that when it comes for a final, it's indicated that all staff comments, conditions have been met. And I'd also like for our decision to be delayed until after the court rules as to whether the Zoning Board of Appeals decision on the size of the building was correct.

MR. SMITH: Okay. Do we have a second?

MS. PRENTICE: I'll second that.

MR. SMITH: Okay. So discussion. I'm not sure that it's appropriate for us to wait until another board makes a decision. I think the applicant has property rights and I think it would be fitting to follow through with our

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process.

I think another thing is that this project has already received preliminary approval --

MR. TATE: Conceptual, they received conceptual.

MR. SMITH: Okay. Never mind.

MS. LUTZ: I agree with the applicants' property rights, but I also wonder what would happen if the court came back and approved the appeal, what would that do to our decision, then?

MR. SUTTON: I don't have -- I won't support your motion.

MS. LUTZ: The city attorney is not here to rule, maybe somebody else can give us some information.

MR. PRICHARD: I talked to the city attorney about this very issue, about whether or not y'all could make a decision. He said yes, that you can make a decision independent of the ZBOA. They're two separate things. One doesn't necessarily follow the other.

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Okay. Regarding your question about whether -- what would happen. Let's say you -- you found and you gave approval, and the ZBOA ruled against the ZBOA -- I mean, the Appeals Court ruled against the ZBOA, then it would not go forward.

So it also, as a City, we -- we've decided that we're not going to issue a building permit until the ZBOA decision, the appeal has been decided. So there's -- there's no -- you're not approving it to be built. Okay?

MR. SMITH: Thank you.

MS. APPLEGATE: So here's my only -- well, here's an issue that I have with that, because I would like to issue preliminary approval today -- Can y'all hear me?

But if there's additional guidance or things that we disagree with the staff, we need to let the applicant know that now so at final, it's final, and that we're not hashing those things out. So you're okay with everything on

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that sheet and -- and with how the building looks and everything?

MS. LUTZ: I agree with you, those things need to be discussed.

MS. APPLEGATE: But if you do preliminary approval, you're saying everything's okay.

MS. LUTZ: I like what's there.

MR. SMITH: What changes?

MS. APPLEGATE: So you're -- you're good?

MS. LUTZ: I'm not good with the mass and scale of this building, but I do want to move this forward. And to me, this is the only way to do it. I sure don't want to move it to the final and I don't want to deny the project because I agree, it would be appropriate to have something on that corner. A Two story building, you know...

MR. SUTTON: If you deny a project, we're supposed to given written reasons why based on the documents we have. So applicants asked

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for final and you're going to get preliminary, but give -- give me, if you can, a couple of reasons why -- I mean, you've got nine -- eight staff conditions that need to be met and it looks like most of them are. Yeah. Maybe all of them are met.

Both sides have already said they would meet them. Three of them have already been approved. So, you know, pushing -- kick -- I just don't understand the process of kicking things down the road if you don't have a reason to say no.

MR. SMITH: Does seem a little unlike how we treated other projects. Unless we have specific concerns.

MS. APPLEGATE: I've already stayed mine.

MS. LUTZ: Do what?

MS. APPLEGATE: I've already stated my concerns.

MR. SMITH: The Port Republic side?

MS. APPLEGATE: Yeah. I mean, I

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have an issue with the balcony piece. I mean, am I going to say, like, no, because it has balconies, would I stop it? No, but I -- I do share Michelle's concerns. I think that there's some tweaking that we could do to make it -- to make it not look as -- what do you call it?

(Cross talk.)

MS. APPLEGATE: Well --

MR. SUTTON: What is the concern?

MS. PRENTICE: So I've got a concern that I don't know where the front of the building is.

MS. LUTZ: Yeah.

MS. PRENTICE: I think that corner entrance, and I think that -- that triangular overhang, I don't get that at all, it -- there's no reference to that in any historic anything. And I know we want to differentiate, but I've seen lots -- I've seen that applied in lots of buildings in big cities and they're extremely unsuccessful, they attract people hanging out there, that

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can be dangerous.

I haven't -- I have a lot of concern for the lack of a no real entrance to the building, personally, from a design perspective, I have that issue. And -- and that triangular space, which it sounds like maybe -- and this is where we are -- we are in a disadvantage because we weren't part of the process because it sounds like maybe the -- it was suggested that they move -- because I can't really tell where the front of the building is and it lacks any kind of centeredness.

You know, like, anybody else have that concern?

MS. LUTZ: I have a concern with the entrance to the apartments, that looks like a cave.

MS. PRENTICE: Well, and they actually pose a danger for people trying to get -- it -- it actually is dangerous, from a woman's perspective, and we know we've had problems with this in this area, with people being --

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I mean, there's been several incidences, so I do think it's a little tucked in, but again, that was something that I sounded -- like you guys suggested you wanted them to be recessed.

So I feel like I -- I understand the mix of, like, a completely new board is now looking at this and they've been getting different advice from, you know, the city planning, so I just -- there's just --

MR. SUTTON: So I'm hearing entrance, I'm hearing clutter on porches. It's the only thing I've heard, architecture -- and is not architecture related.

MS. PRENTICE: Well, mass.

MR. SMITH: The corner, I'd like to talk about the corner a little bit. I think the diagonal is a little odd. I don't know of any examples in town. At least from the drawings, you don't notice it as much. It doesn't, you know --

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MS. PRENTICE: You notice it when you're -- when you take the video tour, you really notice it. I mean, we all know that things look different in line drawings than they do in reality. And, quite frankly, the reality of seeing that was a little worrisome to me.

Particularly, let's say the building remains unoccupied for some period of time, I can tell you, it will attract people sleeping there.

MR. SUTTON: Why are we worried about that? That's not our concern.

MS. PRENTICE: I think it's a really big concern on -- we are -- our concern is what the downtown city looks like, and if there are -- if it's an -- it's an area that's attracting, that -- that is not appealing for any of us who live here or visit here, to have people sleeping in those areas.

MR. SUTTON: Show me on there --

MS. PRENTICE: This area is a triangle, and that is -- it just has no reference back to anything historical

in any reference. I mean -- and I'm not -- I -- I know we don't need to look historic, but I mean, there's -- at Hunter -- I mean, I could -- I could name several places where I've seen it be very unsuccessful.

MR. SUTTON: I would offer a suggestion.

MS. PRENTICE: Well, that's not really my position to offer suggestions as -- well, I mean, I'm not going to -- I shouldn't have to design the building, but I think this is a design flaw. Personally, I think it's a design flaw in that it will attract -- it --

MR. SMITH: It could.

MS. LUTZ: I agree with you, Michelle, and I'd like to make sure that my comments are added about the entrance to the apartment complex, that's very uninviting.

MR. SUTTON: So how would you change it?

MS. LUTZ: I'm not designing

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either, I'm just saying it looks like a cave.

MS. PRENTICE: Look --

(Cross talk.)

MS. LUTZ: It's --

MS. PRENTICE: That we are four new board members that this applicant now has to deal with, and I'm very sympathetic to that, but I don't feel like, in good conscience, I can't bring these issues up. I feel like I need to bring them up because I feel like I'm going to live in this city until I die and I don't want to walk past it and go, God, I could have done something if I just would have spoken up.

MR. SMITH: I think we can address these, and should. It only received conceptual approval, so...

MS. LUTZ: And I would say, Jeremiah, yes, we've approved other projects that went from conceptual to final, but this is a controversial project and it's a big box plopped down in the middle of our downtown. That's

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different.

MR. SMITH: I might suggest we -- that the applicant kind of square off that corner at Port Republic and Charles. I think the accessible ramp could still work if there was an entrance on each side instead of diagonally. And I think that's a good point for the apartment's entrance. Maybe the front door could be moved out on the other side of the mailboxes just for safety, or it could be moved out to here.

MS. LUTZ: Or even -- or even a metal gate or something that keeps --

MR. SUTTON: Well, there's a metal gate there.

MS. LUTZ: -- the public out.

MR. SUTTON: There's already a gate there, Maxine.

MR. SMITH: There's a little vestibule before the lobby, and that could just be moved out to the door. Does that make sense?

MS. PRENTICE: Let's make sure

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we're talking about the same areas. I'm talking about the Port Republic --

(Cross talk.)

MR. SMITH: I was talking about both.

MS. PRENTICE: Okay.

MR. SUTTON: Can we talk about one of them at a time?

MR. SMITH: Yeah.

MR. SUTTON: Which one you want to talk about, Mr. Chair?

MR. SMITH: So let's talk about the -- the main corner at Port Republic and Charles, the diagonal is a little odd and perhaps it would be -- it could be resolved by having -- having it squared off and an entrance on the Port Republic corner and an entrance on the Charles corner.

MR. SUTTON: How would that differentiate from what it is now? The diagonal is simply the ramp, right?

MS. PRENTICE: You would pull -- you would pull the glass forward instead of having -- you'd actually

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gain -- they would actually gain -- they would actually gain.

MR. SUTTON: Go in the door before you get in?

MS. PRENTICE: Well, again, I'm not designing, but I'm just saying that this -- this -- this element --

MR. SUTTON: It's pulling the glass out to the outside of the building.

MS. PRENTICE: Yes.

MR. SUTTON: So you're making it more of a glassed in foyer rather than an open space? And your reasoning for that is to cut down on void space.

MS. PRENTICE: First, I just -- I don't think that the triangular shape is an attractive --

MR. SUTTON: Glazing outside might be better.

MS. PRENTICE: I just don't think it's an attractive element from a -- from an architectural perspective, for no other reason. And then I will back it up to say I also think it has these

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other positive elements that could be added to it, is that you would not have people gathering there at all hours of the night.

MR. SUTTON: I'm following that. I don't have a (unintelligible) concept. I don't think it will change -- change much of the building, I think it would still have --

MS. PRENTICE: It wouldn't, but I think it would change the -- I think --

MR. SUTTON: Might change the look.

MS. PRENTICE: -- it would change the quality of our lifestyle living there not to have --

MR. SUTTON: I understand that part. Come back to the people here, the ramp goes up, that's what creates the angle. You don't see that. That's the only thing that's angled. One comment was made -- follow me on that? The ramp -- the ramp is the only angle, that's just to turn in. That a problem with that because you made a comment

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about it.

MR. SMITH: It's flat after here.

MR. SUTTON: Stop it there, it's a landing to make it -- get rid of the angle, make it a landing into the building, bring your glass door up to here and bring the glass door to there, right? You come in, you -- you meet in the building.

Now, what is that entrance?

MS. PRENTICE: Would actually gain square footage for the tenant, quite frankly.

MR. SUTTON: It would. What's -- that's a retail space, right?

MS. PRENTICE: Due to be, yeah.

MR. SUTTON: That's what the bottom is, is retail space, so we're talking about modifying the corner, it doesn't seem like it'd hurt a retail space.

MS. PRENTICE: Is that something you guys objected to originally?

MR. TATE: No.

MS. PRENTICE: Having -- I think

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somehow having something that makes -- I mean, is this a Charles -- will the address of these buildings be Charles Street or will they be Port Republic? Are some of the units going to have a Port Republic address and some units are going to have a Charles Street address? Or is it just the resident -- the retail space that will have the Charles Street address? I think that needs to be figured out to some extent.

MR. TATE: Miss, you just asked me a lot of stuff. Okay? So this is the previous HRB submittal that's on the screen right now. Okay? Where the entry --

MS. PRENTICE: I saw that.

MR. TATE: -- was here, there was another door to get out to an elevated -- kind of an outdoor patio area, and then there was an ADA entrance here. Our position at the conceptual level was to not -- to not separate the two entrances.

You -- you don't want to have your

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ADA entrance separate from a main entrance, I think you open yourself up to a lawsuit or, you know, just -- just not a good -- it doesn't feel right. That was our recommendation, to combine those into a single entry point.

Now from that, the applicant went and studied a number of entries and then landed at the one that they presented here.

MS. PRENTICE: Okay.

MR. TATE: So that's how that --

MS. PRENTICE: I heard. Okay.

MR. TATE: I believe that this will be to your other question. Again, I'll let the applicant answer that question, but I believe that it's addressed as to Charles Street on both the retail and the apartment, but I will let them clarify if that's different. Correct.

Yeah, one apartment building will be addressed to Charles Street, probably different units with a Charles Street unit address, and the retail

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would be Charles Street.

MS. PRENTICE: It just feels like there should be something prominent to say this is 211 Charles Street. A door of some significant --

MR. TATE: Want the plan or do you want an elevation?

MR. SUTTON: I wanted to see elevation again. You know, with those comments, I like to follow up with a visual to see exactly what does that mean when you say you'd like to see an entrance on Charles that shows itself as an entrance on Charles.

MR. TATE: Let me go back to that perspective.

MR. SUTTON: So that shows me it's a -- actually, it's -- all right. So if you blocked off the Charles Street side and that was the entrance, 211, right, that would look like the entrance.

MS. PRENTICE: It might help a lot if that were --

MR. SUTTON: That was blocked off.

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MS. PRENTICE: It's actually blocked off, it could still be windows.

MR. SUTTON: No, no, no, no, no. I'm just --

MS. PRENTICE: I just think that there needs to be something that says this is the door to the -- right now, that's in --

MR. SUTTON: Especially if you get rid of the diagonal.

MR. SMITH: The diagonal for the ramps?

MR. SUTTON: 45 degree angle. That's a -- that's a minor change. I think it helps the retail space, but I think that's easy to support. That's a -- if that's a feature that helps to define the entrance and you feel strongly about it, I'll support you on that. All right? Do you understand what that was?

MR. SMITH: I think it's a good suggestion.

MR. SUTTON: What I'm hearing, Stacy, is about the corner, instead of

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having a void space where you walk in and out of the rain, you actually have glass there, doorway entry.

MS. APPLEGATE: Right here?

MR. SUTTON: So it defines it as the -- as the entry point. I think it helps.

MS. APPLEGATE: I'm fine either way.

MS. PRENTICE: I think -- again, I think that's where we go back to -- that were maybe at preliminary and not at final.

MS. LUTZ: Yeah, because we really shouldn't be designing it for him. You should hear our suggestions and come back with an alternative.

MR. SUTTON: But what I've heard so far is entry definition, turn right. All right. So that addresses the entry definition concern for Charles Street, possibly. Somebody didn't think it was appropriate or -- for the apartment entrance, the cave, as Maxine calls it.

MS. LUTZ: For that whole -- that

whole corner, the brick wall, I -- that's just so forbidding.

MR. SUTTON: They made a recommendation that's in the -- that would have gone along with the recommendations that they agreed to that they'd make that a different material.

MS. LUTZ: Like what? What?

MR. SUTTON: Color different -- staff -- the staff report says use a lighter material to define that as a separate entrance. That would highly define the entrance different, if you simply change the material in that.

MS. PRENTICE: But the vote -- but the brick wall's not -- how did -- how was the brick wall addressed?

MR. TATE: I think the staff conditions, a different color brick or stucco in the --

MS. PRENTICE: For the entirety of the brick wall?

(Cross talk.)

MS. LUTZ: And how tall is that

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brick wall? I mean --

MR. SMITH: A lot of it's behind First Citizens.

MR. SUTTON: It's behind the building.

MR. SMITH: It's similar to what's there.

MS. LUTZ: What -- why can't it be brought -- well, there's a huge expanse of -- of wall there that faces the parking lot, why can't it be brought down like what's behind the bank, to having columns?

MR. SUTTON: So, Maxine, you're saying having columns -- columns in front of it, Maxine, were you saying?

MS. LUTZ: No. You see the columns right there. No, look at the screen, he's --

MR. SUTTON: Which ones, these?

MS. LUTZ: No. Look at what he's pointing out. These.

MR. SUTTON: Well, that's what you said, you said (unintelligible) --

MS. LUTZ: Yes.

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MR. SUTTON: Still be covered with fig ivy, but if those were down, would they be code? They still got to support a roof deck.

MS. LUTZ: Why can't they just -- why can't the fence be one design all the way across.

MR. SUTTON: Oh, I see. So Maxine brought up a good point, why couldn't it be articulated as a -- as a fence that goes corner to corner rather than a piece of building, then a fence, is that what you're saying?

MS. LUTZ: Yes, Mike.

MR. SMITH: Well, the lobby part is building, that whole mass.

MR. SUTTON: No, I'm trying to -- Maxine suggested that this look like all the way to the corner --

MR. SMITH: Oh.

MR. SUTTON: She's articulated that --

(Cross talk.)

MS. LUTZ: Now, is the original design?

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MR. TATE: This is the previous conceptual, and then there was a recommendation that this fence look like it was supporting that balcony. Right? So it looked a little odd to us the way that it was detailed, and so through that comment, that recommendation, this is what the applicant, through --

MS. LUTZ: And that was from the previous.

MR. TATE: -- the design, came back to actually make this a building, because that's what it is, it's a building, it's a -- it's a little part of that building to let the apartment inhabitants to come in. That's their lobby.

MS. LUTZ: Then the previous elevation -- yes. And the review board rejected that?

MR. TATE: The review board accepted the staff recommendation to --

MS. LUTZ: That was your recommendation?

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MR. TATE: Yeah, to -- to maybe more unify this element here, plus other elements above, which --

MS. LUTZ: To me, that's a lot more inviting.

MR. SMITH: I think it is odd that the columns are resting on what looks kind of like a fence with windows, but I think that would be negated because there's a balcony above it now, not columns coming all the way down.

MS. PRENTICE: What is the city ordinance with, like, barbecue grills and things like that, do you know? No, I mean -- I mean, seriously, that particular one that's right above that Cannon Building space is extremely fish bowly and I -- I don't know, is -- are they allowed in the city?

MR. SUTTON: They are. You can have barbecue grills.

MS. PRENTICE: There are other places you can't, so I'm not asking it as if it's --

MR. SUTTON: There's not an

ordinance against barbecue grills.

MS. PRENTICE: A lot of -- a lot of apartment buildings have them even within their own -- because they're -- because they're dangerous and cause fire.

MR. SMITH: So the HOA could. Okay.

MR. SUTTON: There's a block wall there now that has three windows in it, so now we've got a solid brick wall there, would be very similar to what's there, but the windows are missing. So what are we saying about this entrance? What -- staff has recommended changing the material to a lighter color to bring attention to it.

I think that's the reasoning, right, to give it a little more definition? Isn't that what we're looking for? Is that what I'm hearing?

MR. SMITH: I think some windows would be nice. I understand it's right to the build-to lines so somebody could build there one day, but seems like it

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would be nice to have some --
MS. PRENTICE: Yeah, somebody will build there someday.
MR. SUTTON: So if you had three windows in there, that change the fenestration. What was the -- what's the problem? Let's restate the problem or the concern. What's the concern of that entrance? Staff has one, it says it needs to be a different material -- it might be better as a different material. Same look, different material.
MS. APPLEGATE: Agree. If it -- for me, if there's a green living fence, it would be better.
MR. SUTTON: It's going to be fig ivy.
MS. APPLEGATE: That's what I'm saying.
MR. SUTTON: Can't control --
(Cross talk.)
MS. LUTZ: I don't --
MR. SUTTON: -- jasmine fence ain't going to work.

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MS. LUTZ: Has anybody ever trying to fight fig ivy?

MR. SUTTON: No, I wouldn't. They'd wish they didn't have it later.

But how do we get to the solution here? It's in the staff report as being addressed a different way and the -- the applicant has agreed that they would follow staff report. So, do we need to ask them what they do different?

MS. LUTZ: I'd like to see it go back to the original submission.

MR. SUTTON: You like those columns going up? Well, that's one -- that's one direction.

MR. SMITH: And the windows.

MS. LUTZ: Huh?

MR. SMITH: You like the windows?

MS. LUTZ: Uh-huh. I like the light coming into that space.

MR. SMITH: I do too, and I think Michelle brought up a good point about safety and that door could be brought out.

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MR. SUTTON: Okay. Anything -- staff had a problem with this, but do we have a problem with that?

MR. SMITH: I think their problem with it was that the columns were resting on the continuation of this fence. So that -- that doesn't exist anymore because these columns have gone away.

MR. SUTTON: Previous. This is set back into -- on a different design. Yeah. That goes away.

MR. SMITH: Brackets and a balcony.

MR. SUTTON: Maxine, this presentation, it looks like what you were talking about a while ago, right?

MS. LUTZ: Mm-hmm.

MR. SUTTON: Columns all the way down, and you like the glass?

MS. LUTZ: Mm-hmm.

MR. SMITH: So we'll let the applicant take that feedback.

MS. LUTZ: Mm-hmm.

MR. SMITH: Okay. Any other --

well, if I can go back to the board and batten, anybody have an opinion on that?

MS. LUTZ: I agree with you on it.

MS. APPLEGATE: I agree.

MS. PRENTICE: Works for me.

MR. SUTTON: Can we see that one again?

MR. SMITH: I would like to make a motion to go to lap siding instead of board and batten.

MR. SUTTON: I didn't -- I didn't -- I saw panels, I didn't see board and batten in that picture, this whole panel.

MR. TATE: Bring it up. There are board and batten.

MR. SMITH: It's on the south and north.

MR. SUTTON: Okay.

MR. TATE: It actually occurs -- let me go -- it's better to go back to an elevation. So the border -- well, this thing zoomed in too much.

So the board and batten exists in

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the plane of the stairs in between here, here, and then back again with those stairs.

MR. SUTTON: All right. You know, for longevity, we're trying to build strong buildings, what about a stucco concrete flat surface?

MS. PRENTICE: I think -- I think it needs to break up the -- I mean, we're talking about mass, I think at least that -- the wood breaks up the mass.

MR. SUTTON: During which one?

MS. PRENTICE: I think to get more of the brick -- I mean, to get more stucco or stone -- or I just think it's -- I think we -- I think keeping those -- softening this building is an appealing thing to do.

MR. SUTTON: Do they have -- they have siding on the middle section.

MS. PRENTICE: I know.

MR. SUTTON: But if they added down here -- well, they got it here already. Adding it here and here and

here.

MS. PRENTICE: It'll bring -- it will bring it down, I think, to keep the wood -- or wood like.

MR. SUTTON: Okay. So the shadow lines of lap siding is more appealing than the board and batten panel look, which is the question and/or I -- I'd like to see it -- if we can do that -- recommend something rather than the siding to differentiate the pieces.

The building looks like it's in pieces or separate buildings, is do different material in there. Like they tried to do with the board and batten, but given another option. There's other options. There's other fabrics, there's stucco finish.

MR. SMITH: I see what you're saying, but I think it would get too busy.

MR. SUTTON: It's all -- it's three of the same type of setbacks.

MR. TATE: Would you just consider asking them to restudy the board and

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batten materiality?

MS. PRENTICE: Yes.

MR. SUTTON: Yes.

MR. TATE: Okay.

MS. APPLEGATE: That was not your motion.

MR. TATE: So wait a minute, we actually have a motion and a second, and y'all are in discussion on that motion.

MS. APPLEGATE: Who seconded that?

MR. TATE: So the motion was made by Maxine and Michelle seconded it.

MS. APPLEGATE: Jeremiah made the motion, right? And, Michelle, you seconded it?

MR. TATE: No, no, no, I -- that was a motion by Maxine for preliminary approval. Gosh, did you write it down, Mary?

MS. APPLEGATE: Yeah, there's a -- there's a motion. Maxine moved for a preliminary approval. Michelle seconded, and we have not --

MR. SUTTON: Yeah, but she added

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more to it, it wasn't just preliminary approval. Preliminary approval plus delaying the project until after the legal issues with the whole other board.

MR. TATE: That's right.

MR. SUTTON: I can't support that.

MS. LUTZ: Never mind.

MR. TATE: I think you would need to vote on that motion either up or down or withdraw it.

MR. SMITH: You have a preference?

MS. LUTZ: No. I would like a vote on it, but I will amend it to eliminate the need for the court act.

MR. SUTTON: Okay. So the only motion then is --

MS. LUTZ: Preliminary approval.

MR. SUTTON: Okay. Have we worked out all the preliminary approval exceptions?

MR. SMITH: We can add to that.

MR. TATE: Now somebody would need to amend the motion to include these conditions.

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MR. SUTTON: Well, we only got three so far. All right. And there may be more. I know it's late, but, you know, you're trying to push -- push up a preliminary approval and have we given enough direction to do that?

MR. SMITH: Can we get a preliminary approval and then do other motions?

MR. SUTTON: No, you can't give them preliminary with those three exceptions, and I've got them written down here because then they get preliminary approval and then they come back and you don't like something else that they present because you didn't talk about it tonight.

MR. SMITH: Oh, wait.

MS. LUTZ: That's what we're here for.

MR. TATE: I think it'd be better if you included your -- once you complete your conditions, include them within an amended motion.

MS. APPLEGATE: I think it's too

early for preliminary approval.

MR. SMITH: Maxine, if you don't mind, I think we should pull it until we talk more about some of the little issues.

MS. LUTZ: All right. I'll pull it.

MR. TATE: You're withdrawing the motion?

MS. LUTZ: I'll withdraw my motion.

MS. PRENTICE: Second agrees.

MR. SUTTON: And what was the other items?

MR. SMITH: So we've given feedback on the board and batten, but no --

MR. SUTTON: We'll let them present something.

MR. SMITH: Okay. That's fine.

MR. SUTTON: It will be restudy board and batten section, but also the material choices.

MR. SMITH: Okay.

MS. LUTZ: Earlier, Michelle, you

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had questions about the service yard and whether that was adequate for --

MS. PRENTICE: I think we've concluded that there is no service yard, ultimately.

MS. LUTZ: Okay.

MS. PRENTICE: And that it's not required. Am I right about that? I mean, there's a service yard, but there's -- there's no place for anybody to unload their goods other than at one of the doors that penetrates the apartment buildings.

So people -- and by and large, I mean, just on that note, I think you can look at the plan and everybody will more likely than not use -- it seems to me all apartments can be accessed from the -- from the Port Republic side, so that's the -- that's where most people are going to land because it's quite a -- it's quite a -- it's quite a maze to get from the Charles Street.

I think people will go get their mail there, but that's -- unless

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they've gone out to dinner or -- but by and large, their coming and going is going to be on Port Republic Street.

MR. SMITH: At the two stairwells.

MS. PRENTICE: Mm-hmm. The two stairwells are going to be the most used entrances.

MS. LUTZ: And there's adequate space there for household trash and --

MS. PRENTICE: That would -- I -- I would assume that's in the service yard. I don't know how they're dealing with that.

MR. SMITH: Looks like a trash chute, a separate recycle and refuse area inside a dumpster, and other space in the service yard.

Okay. Other issues we need to resolve, concerns?

MR. SUTTON: I don't -- I actually like the porches because I think it brings the human scale into the streetscape, and I'm -- I'm less concerned about the -- what people do on them, but I know that that can be

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handled in a different way, by either the regime that owns the building and/or by code enforcement on certain issues that already apply.

MS. PRENTICE: As if that gets dealt with.

MR. SUTTON: Well, no, nut you --

MS. PRENTICE: I mean, it just doesn't -- we have got to be realistic here. We will be looking at mops and stuff like that, we just have to accept that.

MS. APPLEGATE: I mean, I have the original concern that we have -- that we had before with the porches being on the -- on the first story. I have a problem with that. I mean, upstairs, because there is transparent like railing. I don't know. I mean, I just wish that there was some way we could --

MR. SUTTON: You don't want porches on the first floor? You have one at your house.

MS. APPLEGATE: I'm going to slap

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you. I am just going to slap you. I'm also not on Port Republic Street. Will you stop it with people like walking by and they just walk by on Harrington.

I mean, I'm not going to, like, stop it if everybody else is okay with it, I'm just telling you my opinion. I mean, I kind of would like -- I just want to make it more --

MR. SMITH: What would you-all think about a balcony treatment there instead of those columns going all the way to the ground? So under those two porches on Port Republic, you'd have brackets holding up the second story porches like -- like the one to the right.

MR. SUTTON: It doesn't change the use.

MR. SMITH: And maybe the sidewalk would be larger there underneath and you wouldn't have --

MS. LUTZ: Certainly would be less busy if you look down Port Republic Street.

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MR. SMITH: And more space to walk.

MR. SUTTON: Don't understand the reasoning why because it's not architecture, the reason is people walking by. I mean, I don't get it. What's the architectural reason?

MR. SMITH: Well, it's the use.

MS. APPLEGATE: The design of the build -- yeah, the design of the building. I mean --

MR. SUTTON: That's not enough.

MS. APPLEGATE: I can have my --

MS. LUTZ: Well, for you, maybe, but we're allowed to express our opinion.

MR. SUTTON: Yeah. You are, Maxine. Give me your opinion.

MR. SMITH: I think those porches are just less private. They're like, you know, real close, especially if you're sitting, somebody walking by might be above you or at eye level, so they may not get used much and they might use it more for storage. There's

no access to the street from there, which I don't know.

(Cross talk.)

MS. LUTZ: Something lighter.

MR. TATE: I'm not sure where y'all are looking, but there's a railing.

MR. SUTTON: We're looking at trying to see if that's a street level accessible entry or not.

MR. TATE: This right here?

MR. SUTTON: Yes.

MR. TATE: Oh, it's elevated 24 inches above -- which is required by the --

MR. SUTTON: No, I'm not -- the entrance doesn't bother so much as whether or not the railing will allow you to access it from the street.

MR. TATE: Well, not in this configuration, though.

MR. SUTTON: And at least one board member --

MS. PRENTICE: Once it got a bracket on it, it would be accessible,

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then, from the street.

MR. SUTTON: Yes.

MS. PRENTICE: Would be, which I don't think is necessarily a good thing.

MR. SMITH: Right. It might become a window instead of a door.

MR. SUTTON: You know, those are the apartments, so that unit wouldn't have outdoor seating space --

MR. SMITH: Right.

MR. SUTTON: -- or outdoor smoking space or whatever they would do out there. No barbecue space.

MR. SMITH: Correct.

MR. SUTTON: Like it like it is. I think it gets used in the human scale and, you know, everybody likes form based code, nobody likes urban centers. But this is exactly what the city has been trying to get happened for a lot of years, is to have people move downtown and actually live down there and work down there and play down there.

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MS. APPLEGATE: I mean, I don't have issues with -- with residential being down there, but the building -- but y'all can -- y'all can --

(Cross talk.)

MR. SUTTON: Study the ground floor --

MS. PRENTICE: I -- I don't know why, I just keep going back to the fact, I think of this sweet, wonderful historic town we live in and I think of all the other sweet, wonderful historic towns that would not allow this to happen. That -- I understand the infill, I'm just telling you, there are -- there are a lot of places that just would not let this happen, and there are people who have regretted letting this happen.

MS. APPLEGATE: What are you -- what are you talking about, let what happen?

MS. PRENTICE: I just think you need to control the things that are going to happen. If this is going to

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be an apartment building, you need to control the things that are going to happen with natural human behavior. And we will be look -- I mean, we are -- you're going to be looking at grills and locks and stuff.

MR. SUTTON: People living.

MS. PRENTICE: Yeah, and I'm telling you, they're -- they're -- when you look at all the wonderful historic towns that have been wonderful historic towns for a long time, don't allow this to happen. That they got mops and grills and stuff in the heart of their downtown, most important street, that you can view it from the most important street, they don't allow it to happen.

And when you buy a building, I know you have use -- your right to use it and develop it, but you also have to know you bought in a historic district and that there's going to be pushback.

MR. SUTTON: So --

MS. PRENTICE: Like -- and the -- and just because -- I mean, everybody I

know who's lived downtown has complained about the noise and the music and then they become a nuisance to the businesses trying to do business downtown.

MS. LUTZ: Well, also, if this becomes short-term rentals, people will be here to party.

MR. SUTTON: What's wrong with that? What's wrong with people coming to enjoy our town? I mean, you guys are trying to regulate human behavior.

MS. PRENTICE: Believe me, I've got a -- I've got a short-term rental and I understand that side of the coin. It is different, though, on a residential street versus our tiny little plot of what makes us special.

MR. SUTTON: Give me something.

MS. PRENTICE: I just don't think there should be any balconies, period.

MR. SUTTON: Porches.

MS. PRENTICE: Porches, I don't think there should be any outdoor space or an apartment building in the

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downtown historic district, that would solve the -- a lot of people live in apartment buildings with no outdoor space.

MR. SUTTON: This is Beaufort and you just said how special it is, and we --

(Cross talk.)

MS. PRENTICE: They don't -- they don't have -- they don't have to rent, they -- they can choose. If you want to live downtown, you can live downtown. I mean, we -- we know somebody who lives downtown and doesn't have any outdoor space and they enjoy it.

MR. SMITH: At the waterfront park.

Any other thoughts on no porches?

MS. LUTZ: I agree with Michelle.

MS. APPLEGATE: I'd go with that.

MR. SMITH: It will change the look.

MS. APPLEGATE: I mean, I wish there was some way we could have some

kind of compromise on that.

MS. PRENTICE: Well, there -- there is -- there is or there isn't, there's no compromise of -- we either have -- it could be done really well, which -- the porches, by the way, those areas could become more square footage for inside the apartment. It could be a bonus to the renter.

MR. SMITH: The infill?

MS. PRENTICE: Yeah.

MR. SUTTON: What if it was enclosed with glass?

MR. SMITH: Sun room?

MR. SUTTON: What if that lower section was an enclosed room with glazing? I mean, I just -- yeah.

MS. LUTZ: What?

MR. SUTTON: You already got the upper porch, what if the downstairs pieces of the puzzle here was glazed in space? So it's not a porch, it was a room for that space that had the ability to be utilized. So we could tell -- if you're going towards

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preliminary and you're going to tell them to look at some things, this would be one area you want them to study.

MS. LUTZ: Yeah, look at it, but I'm not -- we're not suggesting that you put glaze.

MS. PRENTICE: I actually see it more as a room, additional room.

MR. SUTTON: If it's a room. It'd have a window.

MR. SMITH: Not all window.

MR. SUTTON: I didn't say a sun room, you said sun room, I'm talking about a room that might have a window, and in this case, let them figure it out.

MS. PRENTICE: Right.

MR. SUTTON: All right. Well, I'm supportive of what it is, but I'm not getting that -- seeing that here up on the board of being a porch on the ground floor. I don't know why you guys feel that way. I've heard your answers, I'm not satisfied with them, but that's my problem, not yours.

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MS. LUTZ: Yeah. That -- that's --
MR. SUTTON: My problem, not yours.
MS. LUTZ: Absolutely.
MR. SMITH: I think I understand what Michelle is saying. I think it's also maybe what makes it a real place that has ops, have some life. I don't want us to be, you know, only tourists and nothing change ever.
MS. PRENTICE: As a resident -- as a resident, I don't -- the idea of, like, walking down Bay Street, which I enjoy doing, it would be an eyesore to see the humanity of life going on in people's lives.
MR. SUTTON: So when I walk by your house, I don't see a mop?
MS. PRENTICE: It's -- well, if you go down the alley, you might.
MR. SUTTON: Okay. All right.
MR. SMITH: I think -- I think our central business district could use more residents. I think it's largely

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commercial. I think a mix --

MS. APPLEGATE: Maybe if -- and maybe if we -- I don't -- I don't know. I'm not a designer by any means, but I mean, maybe if we broke it up some. I don't know.

MR. SUTTON: What do you mean, broke it up?

MS. APPLEGATE: I mean -- well, so we're saying all or nothing.

MR. SMITH: Right.

MS. APPLEGATE: Maybe there's -- there's a --

MR. SUTTON: Well, the compromise was maybe taking the lower section porch off, right? Maybe making brackets or making it an enclosed area or leave it. I just don't -- I haven't yet understood why it's a problem to have a porch on the ground floor.

MS. PRENTICE: If you took the significance of -- like, you took a slice of Charleston and compared, like, our slice of Beaufort to a slice of Charleston in the historic district, is

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there anything that mimics what's being proposed to be done in a nearby southern town that has these apartment buildings with, you know, the ability to put barbecues and mops and things?

MS. LUTZ: In other words, what's been the solution elsewhere?

MS. PRENTICE: Yeah. It's because so -- so much of Charleston is historic. I mean, it's kind of -- it's kind of got this -- it's got the safety net around it, and so the buildings that are being proposed right now in Beaufort, those buildings are being forced out to north Charleston and around all the bridges and in otherwise commercial districts.

MR. TATE: Well, I mean -- so, it's hard to compare Beaufort to anything else because it's Beaufort.

MS. PRENTICE: I know. But that's what I'm saying, we've got so little of what other large districts have that it seems like you've got to figure out a way to preserve it.

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MR. TATE: So, I think, you know, the applicant made, in the presentation, that Port Republic's kind of a transitional street, right, because it is commercial core. And then across the street from Port Republic, you do get some commercial core, you get residential, and you get hotels. But then beyond that point, you're getting into more residential, right? So, you're in this transitional area.

You know, those transitional areas do happen, like, we just won't talk about Charleston, they -- they happen in a variety of places. Broad Street, right? High commercial. But then just behind Broad Street, south of Broad Street, it's all residential, for the most part. For the most part.

I'm -- when I look at something like this, I don't know, I'm thinking -- gosh, it's hard to compare it to anything, but waterfront park. I mean, you've got to -- you've got

balconies there, right on the waterfront park. They also have balconies that face out to the -- to the street where there's a parking garage across the street and you got the harbor club on that same street.

I mean, there's precedence for things like this in other cities. I don't go around looking at grills and stuff on porches.

MS. PRENTICE: What balconies do we have exposed on the waterfront park other than that one apartment?

MR. SUTTON: Hunter Bay has balconies.

MS. PRENTICE: And they've got TVs on them, have you noticed that?

MR. SUTTON: They got to watch TV somewhere.

MS. LUTZ: If porches were eliminated and -- and that square footage could be given over to creating more apartments, then could the height come down?

MR. SUTTON: It's only like --

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less than 38 feet, it's not a tall building.

MS. LUTZ: I'm looking at the streetscape.

MR. SUTTON: I'm okay with elevation.

MR. SMITH: I'm okay with the scale.

MR. SUTTON: Let's nail that down, scale down, for one thing. The porches, we can beat up all week, all night. I think we can ask them to study that and see if they can come up with a solution, but I don't know why we're asking them to do that yet, but y'all tell them.

MR. SMITH: I don't think the south porches will be super visible from Bay, especially when you're past First Citizens Bank. And if you think of the long term, there should be a larger building at the corner where First Citizens Bank parking is.

And First Citizens comes to like 2nd column on that brick, it's only one

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story, but it's there. Maybe even --

MR. SUTTON: How about any other thing architectural, can we talk about the --

MS. APPLEGATE: So, I think my thing is I wish it looked -- fenestration looked a little bit where it wasn't all like one big -- like I'm okay with the building being that big, but if -- like, I mean, we do differentiate it on the Port Republic side. But I wish there was --

MR. SMITH: So you're talking the Charles Street side?

MS. APPLEGATE: The Bay Street side. No, the Charles Street side, I'm fine with.

MR. SUTTON: Okay with the Charles Street side?

MS. APPLEGATE: Yes.

MR. SUTTON: Which one was it you had a problem with?

MR. SMITH: Bay Street.

MS. APPLEGATE: I mean, it's not a problem, but, I mean --

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MR. SUTTON: (Unintelligible).
MR. TATE: Do you want me to zoom in on this?
MS. APPLEGATE: I mean, I think one of the reasons why -- in my opinion, one of the reasons why I'm okay with the -- the mass of it is because the Cannon Building looks very different from the larger apartment building. So if the larger apartment building was designed to maybe look one part different than the other. I know it's more expensive. I don't know. And I'm just throwing things out there.
MR. SUTTON: They're doing that with the siding and the setback in the garden area in the middle, they're already doing that that way, so what recommendation would you go beyond that, add different materials?
MS. APPLEGATE: Maybe that, maybe different -- I don't know, I'd have to see some things. But that just kind of popped into my head because I -- I -- not on that side. Not on that side, on

the other side.

MR. SUTTON: A lot of public comment was based on breaking this building up into smaller pieces, and that's what they've done with it. And --

MS. APPLEGATE: Not on that side, on the other side, on the Bay Street side.

MR. SMITH: The south side.

MR. SUTTON: The Bay Street. Right? What would you do different?

MS. PRENTICE: How could we, like, simplify this process a little bit and walk away with giving -- I mean, I feel like there's so many balls in the air right now. Is there any suggestion from you that you think that we could --

MR. SMITH: We've given some good feedback and I'm looking at the applicant for any feedback. I know we've kind of been all over the place.

You understand this is an important project to us all. We've

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suggested a few, kind of, concrete things, and then the porches, maybe not so concrete. It's not -- not easy.

MS. APPLEGATE: Maybe if the -- if the railings were not metal, although I know metal is --

MS. PRENTICE: But again, I think that's -- that's designing for them. I mean, I think we need to give, like, I don't like or I don't --

MS. APPLEGATE: Well, I don't know the Beaufort style is metal railings.

MS. PRENTICE: No, I'm just -- no, I'm just saying, like, I don't know that we can necessarily --

MS. APPLEGATE: Well, here's the thing, we don't want to say, hey, we're going to give you preliminary approval to do, do, do, and then they come back and we have these same question -- and then we have the same -- I don't want to have this kind of -- this deal again.

MR. SUTTON: The way you nail that down is you -- the individual motions

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and the carries gives them finer details, right, so they don't come back and say, whoa, we didn't mean that. I mean, so you --

MS. APPLEGATE: Right. But they've already gotten direction from the last board, which they've done. And from staff, which they've done. And now we're like --

MR. SUTTON: Well, we can help with it. They got all the samples of stuff right out there. You like that stuff, you agree or disagree with it. That helps you -- helps them understand what materials -- we already mentioned the board and batten change into something.

MS. APPLEGATE: I mean, that's hard for me. I mean --

(Cross talk.)

MS. PRENTICE: Look, I will -- I will say that there was suggestion, and I'm not sure who made it, that it would be nice to see a sample of it, of the brick.

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MR. SUTTON: Right there.
MS. PRENTICE: No, if you build on Spring Island, you have to build a portion of the wall. I think that would be helpful to us to see a built -- it's required. I mean, I don't think that's unreasonable to build a house, you -- in order to get it approved by Spring Island, you have to also for -- for something that's going to go into downtown district and be part of our life for our lifetimes, it would be reasonable to say, let's see what it looks like, the brick looks like built. So, I think that could be one thing we could require.
MR. SMITH: So if we were to do that, would we have like a four x four brick, and maybe one of the siding or?
MS. LUTZ: Would it be that important to you, though?
MS. PRENTICE: I think that could be a really important aspect of what this brick looks like. You can go around see all the brick that's not

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good that was done in the '80s in town, because I really -- I don't like what I see on the board, I see what I like in the box. I think I might like it in the box, but I don't like the board itself.

MR. SUTTON: Jeremy, are those two different bricks?

MR. TATE: Those are the actual brick --

MR. SUTTON: The sample board? Yeah, but you're going to get that variance in a lot of bricks so they're -- they're going to be the same.

MS. APPLEGATE: Okay. It is brick.

MR. SUTTON: It looks a little --

MR. SMITH: Is it the rounded edges?

MS. PRENTICE: Yes.

MR. SMITH: Me too.

MR. SUTTON: Yeah, I'm okay with the brick without the wall, but I get it, sometimes you see it.

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Will you talk at all about the rounded edges, why that might be or?

MS. LUTZ: I think it looks like a middle school brick.

MR. MCCLURE: That is the right color, but I'm not sure that.

MR. SUTTON: They're close. They're just a stressed brick.

MR. SMITH: They're both Laurel Bay.

MR. SUTTON: Yeah, they're a stressed brick, it's just -- they give it the antiquing, but it's -- I mean, it makes it better -- it makes a softer glazing when you -- I mean, a softer mortar joint when you do it this way.

MS. PRENTICE: I just feel like it would be reasonable for us to request a board of how it will be applied.

MS. LUTZ: I agree.

MS. PRENTICE: I'm just saying from -- like, I'm just trying to move something forward.

MR. SUTTON: Okay. On the brick? I guess they can figure that out. I've

got five things up there. I'd like to get that -- you think it's getting too -- it's the important piece, you can't tell -- send them off and come back and disapprove that later, not if you can do a preliminary.

MR. SMITH: Like everybody -- most everybody is okay with this scale.

MR. SUTTON: I'll make a motion.

I'd like to make a motion that the Board accept it for -- and get a second on the scale of this building, being the 36 to 38 feet that has been listed. I think I saw one number at 38. Knowing the height of buildings in Beaufort, this is a fairly small building in height.

MR. TATE: I guess I want to ask why we want to make a motion on the scale because at conceptual level, the height, scale, mass of this building was approved.

MR. SUTTON: It was approved already?

MR. TATE: And it was now reduced

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from that both in height and length.
MR. SUTTON: But they gave us a number for this building. What was approved, a higher building?
MR. TATE: A higher building.
MS. PRENTICE: So we shouldn't be voting on that anyway?
MR. TATE: Well, you've reached -- for conceptual, it's height, scale, and mass.
MS. PRENTICE: We don't -- we can't change that.
MR. SUTTON: We can, but it -- is it appropriate, is the question. Is it appropriate to change it because if you lock this one in at 38, that's what it is, you don't come back. Conceptual could be taller. Okay. Not saying anything about it then.
MS. LUTZ: And -- and what was our agreement about the south -- the south wall that looks like the arsenal? We agreed that we'd like to see some changes there?
MR. SUTTON: On the brick wall

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between the building and --
MS. LUTZ: The parking lot.
MS. PRENTICE: That faces Bay Street.
MR. SUTTON: Well, we have it on here --
MS. APPLEGATE: They're doing the ivy.
MR. SMITH: We talked about glazing on the lobby.
MS. LUTZ: Yeah.
MR. SMITH: On the south side of the building.
MS. LUTZ: Okay. Okay. We're good.
MR. SUTTON: And the brick wall you were talking about, we have that in there on the entrance. You're talking about lowering the fence?
MS. LUTZ: Yeah, to the original concept that was presented.
MR. SUTTON: Yeah, yeah, that's one we talked about doing the entrance different. Remember, the staff recommend changing the material --

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MS. LUTZ: I just wanted to make sure that was on your list.

MR. SUTTON: Yeah, it's on here. Restudy -- let's see. Change the south entry, recommended they change the south entry back with columns or to match the fence, right?

MS. APPLEGATE: I have a comment on the Cannons.

MS. LUTZ: On what?

MS. APPLEGATE: On the Cannons, on the fence. I'm actually fine with those. I mean, that was --

MS. LUTZ: Do we get to discuss that? The name of the building?

MR. SMITH: No.

MS. APPLEGATE: Oh, no, just the -- just -- there was an issue --

MS. LUTZ: Cannons.

MS. APPLEGATE: There was an issue with those, I'm fine with that.

MS. LUTZ: But it's named for the Cannons and I don't know what historical reference there is there. It seems like a false historical

reference.

MS. PRENTICE: They seem to be willing to agree not to do those.

MR. SUTTON: Yeah, that was in the staff.

MS. PRENTICE: They seem willing not to do that as a design.

MS. LUTZ: How about the name?

MR. SUTTON: Name anything they want, we don't control the name.

MS. LUTZ: Maybe we should, it seems like a false reference to me.

MR. SUTTON: Okay. Have we exhausted all the possible questions that might come up on the next meeting?

MS. APPLEGATE: No.

MR. SUTTON: Got any you can think of?

MS. APPLEGATE: I just have to say that because, you know, I don't want to get to the next meeting and think of any.

MR. SMITH: I can't think of any either.

MS. PRENTICE: I feel like I've

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addressed the concerns that I've got.
MS. LUTZ: You feel like what?
MS. PRENTICE: I feel like I've addressed the concerns that I have.
MR. SMITH: See what happens.
MS. PRENTICE: Yeah, exactly.
MS. LUTZ: So we're back to my motion of preliminary with these questions?
MR. SUTTON: I'm going to have it for you in a minute.
MR. PRICHARD: Okay. Perfect.
MR. SMITH: Any other discussion or are we ready for --
MS. PRENTICE: We're waiting.
MR. SUTTON: I'm just trying to clarify them.
MR. SMITH: I wish we could be more direct with our feedback, Arnie, but I have faith in you. Good luck.
MR. SUTTON: All right. Maxine made a motion for preliminary approval with some -- following considerations, entry definition at the northwest corner be restudied to possibly include

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the window glazing be brought and door system be brought out to the corner of the building to define the corner as an entry point rather than the entry further up in the building. All right. So define, that's one.

Two, would change the south apartment entrance design to meet the staffs change in materials possibly. There's still a study, but possibly with the column line of the fence. The fenestration is showing a continuous wall, but with some glazing possibly in that to lighten the lobby area, the hallway entry when you come in.

And -- wasn't that the intent, to lighten that up?

MS. APPLEGATE: Is that like to going back to what they had for conceptual?

MR. SUTTON: Yeah, very similar to what they had. Now that the upper porch has been moved, so that's the second piece.

MR. SMITH: I would say it doesn't

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necessarily have to look like a fence.
MR. SUTTON: No, there's -- just some study of -- each of these are a study, but they're a concern. We have a concern with the -- the board and batten material between the buildings on the north elevation and the south elevation of the apartments.
We have a concern about the actual practice -- practical use of the porches at ground level, the non-accessible porches at ground level. And I think it's a hard one, but I'm not quite sure what to do. That study's on the ground level porches on the north side of the building on Port Republic Street.
I would like to see a sample board erected somewhere with -- on appropriate spot that this Board can review a glazing or a mortar application to those particular bricks. Look forward to staff to help recommend what that would be and where we would see it.

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MR. SMITH: And the size.
MR. SUTTON: And the size, yes. That was the -- that was the main pieces.
MS. APPLEGATE: Mine, but nobody agreed with me.
MR. SUTTON: Which one.
MS. PRENTICE: Potentially eliminating the -- the outdoor space altogether.
MR. SUTTON: Porches?
MS. PRENTICE: Eliminating the outdoor spaces altogether within the buildings.
MS. APPLEGATE: I would like to see it.
MS. LUTZ: I'd like to see them.
MR. SMITH: I'm confused, what is it?
MS. APPLEGATE: I already talked about it.
MR. SMITH: So the residential part would be broken up into multiple buildings on Port Republic?
MS. APPLEGATE: On the other --

the other side.
MR. SMITH: Right.
MS. APPLEGATE: The Bay Street side.
MR. SMITH: Back, though.
MS. APPLEGATE: I guess there was just one view that when we looked at it, it just seemed like one --
MS. LUTZ: Box?
MS. APPLEGATE: Yeah, it just -- I mean --
MR. SUTTON: This view here?
MS. APPLEGATE: -- and I was like, well, it is bigger than the -- maybe closer up, the color differentiation. Again, I'm -- the black railing. I mean, again, the Beaufort white pickets. I don't know. That's my preference, but maybe --
MS. LUTZ: Maybe we could have a sketch of that. I would suggest that instead of the black.
MS. APPLEGATE: Wouldn't have to do the -- they won't have to do wood, could do a more hearty material so it

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doesn't rot. I don't know. That's my -- the black just gives it -- which is an urban feel.

MR. SMITH: I kind of agree, it's at the Beaufort Inn on Craven, example, the black metal, and it's got to be 42 inches, I believe, which is a little higher than typical.

MS. LUTZ: You're saying that harsh?

MR. SMITH: Maybe not suited for Beaufort.

MS. APPLEGATE: So that's what -- I mean, I would like to see --

MR. SMITH: Any thoughts on that, you guys?

MR. SUTTON: What would you --

MR. SMITH: The railing systems, like typical wood look pickets.

MR. SUTTON: That exposure, they would last about five years.

MS. APPLEGATE: They wouldn't have to use wood.

MR. SUTTON: The wood look, how are you going to do that?

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MS. APPLEGATE: Is there a material that we can use that isn't wood?

MR. SMITH: PVC of fiber cement, but it's more expensive.

MR. SUTTON: There's no -- it's not -- I want them to build a strong buildings to last the test of time.

MS. APPLEGATE: I get it.

MR. SUTTON: The wrought iron, this metal will be there maintained, but the other stuff won't. So you gotta think about the practical building and methods and meeting code too.

MS. LUTZ: I don't know materials that well, but I do recall that permission has been given in the past for some substitute material that looks like wood. And I'd have to reach way back in memory.

MR. SUTTON: Anybody whose ever done that has regretted it, just so you know.

MS. APPLEGATE: Oh, really?

MS. LUTZ: What?
MR. SUTTON: Anybody whose has ever used that stuff has regretted it.
MS. LUTZ: What is it?
MR. SUTTON: Expands in the tracks, it's -- any of the plastic cast products will not hold up.
MS. PRENTICE: There's not a fiberglass one?
MR. SUTTON: Might be a fiberglass that could, I just don't know why you'd interject that when we have a suitable material that works.
MS. LUTZ: Well, in fact, as Jeremiah was saying it, it's harsh, it's a hard -- is there a way to lighten that?
MR. SUTTON: Paint. Just paint it a lighter color, gray or -- I mean, there's a lot of ways to lighten it.
MR. SMITH: I think we're just talking about the apartments, not the -- well, the apartment building, not the mixed use building brick.
MR. SUTTON: Okay. So we gave

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them the five things that we've brought up, entry in northwest corner, the apartment entrance, the board and batten, ground floor porches, and the sample board for brick.

Was there anything else that should be included in any motion for preliminary?

MS. PRENTICE: Consideration of no porches, no outdoor space, study of that.

MR. SUTTON: Well, that would be the ground floor porches.

MS. PRENTICE: No, I don't want any. I don't want any outdoor space.

MR. SMITH: You guys have any feedback for the applicants?

MR. SUTTON: See, I don't know if you've got the majority of us who would agree with you on it.

MS. PRENTICE: I know, I just -- but you're putting them down so y'all can shoot me down if you want --

MR. SUTTON: I'll put it down there.

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MR. SMITH: I would be --
(Cross talk.)
MS. LUTZ: What did she say?
MR. SMITH: Eliminating all the outdoor space, porches.
MR. SUTTON: I'm not asking them to go back and do a -- eliminate outdoor space when it's trying to be a human scale building.
MR. TATE: And -- and would that be only on the Port Republic and only on the apartment type? South elevation, Charles Street, building corner, all of it, the balconies and porches gone?
MR. SUTTON: Yeah.
MR. TATE: Reasoning?
MR. SUTTON: The --
MS. PRENTICE: There's lots of -- there's lots of apartment buildings that don't have any outdoor spaces.
MR. SUTTON: This is Beaufort, though, we need outdoor spaces.
MS. PRENTICE: No, there -- and you could live in -- someplace else in

Beaufort for outdoor spaces, but if you're going to live downtown, you comply to the way people live in downtown apartment buildings, which they don't have outdoor spaces.

MR. SUTTON: Should.

MS. PRENTICE: They don't.

MR. SUTTON: Because they're -- they're not good architecture.

MS. APPLEGATE: I'm okay with them doing away with -- that doesn't have outdoor spaces.

(Cross talk.)

MS. PRENTICE: I think it's worth a study.

MS. APPLEGATE: So you have the three of us so you can put it down.

MR. SUTTON: Okay. It's on there, it's on there.

MR. SMITH: I'm okay with it too.

MR. SUTTON: May not like that design when it comes back.

MR. SMITH: That's true.

MS. APPLEGATE: You then --

MS. PRENTICE: Well, you know, I

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can think of an apartment building in -- in -- in Charleston that's on the -- it's right -- I mean, it is -- there are no -- there are -- it's an old building and there are no outdoor spaces. I mean, they -- you have connection to the waterfront park, you do not need -- not everybody has to be given, granted the opportunity to have a grill. If you want to live downtown, there may just be some compromises.

MS. APPLEGATE: I'm sure this apartment complex won't allow there to be grills on the balcony.

MS. PRENTICE: Oh, yeah, there will. They -- it has to be a city ordinance.

MS. APPLEGATE: No, it doesn't. It doesn't.

MS. PRENTICE: You cannot -- you cannot control these things. You cannot control them.

MR. SUTTON: Lisa's can, you get kicked out.

MS. PRENTICE: No, you can't.

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You --

MR. SUTTON: It's a private building.

MS. PRENTICE: You ought to see all the stuff that isn't controlled in the downtown historic district, we've got barrels of machinery across the street from our historic cottage that are never dealt with. You cannot -- it is so hard to police this stuff, it's just naive for anybody to think that you can put a rule into this. It's human nature, its behavior.

MR. SUTTON: You can regulate it out of existence simply because you don't like it.

MR. SMITH: Can you tell us a little bit about that?

MR. STEWART: I think she brings a great point, thank you for bringing that up. We live here, we own this building, and we want to build this building. We would not allow mops, porches. We control our tenant spaces. If you look at any of our buildings

across the community, we don't have mops or grills on them. We will absolutely not allow that.

We want to be proud of this building, just like you do, and thank you for taking the time to review this, but please know our leases will not allow for stuff to be stored on the porch in a storage fashion other than the furniture that they're going to use to view the streetscape.

So thank you for bringing that up.

MS. PRENTICE: I appreciate you saying that, but when you sell your building, the next owner may not believe in the same concepts that you guys believe in. And eventually, the building will be sold to another owner, more likely than not.

MR. SMITH: Thank you.

MR. STEWART: We are not building this building with the intent of doing that. Thank you.

MS. PRENTICE: Do we know what we're making our motion on now?

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MR. SUTTON: Yeah. I'm just going to try to clear it up because it's got a little muddy there. Okay. I'm going to really make this simple, I hope.

Maxine's motion, I'm going to stick to it --

MR. SMITH: She took it back.

MR. SUTTON: Oh, you already did it?

MR. TATE: It can be your motion.

MR. SUTTON: All right. Make a motion for preliminary approval with the following studied areas to be taken into consideration prior to resubmittal, would be the staff comments that are on this submittal and the northwest corner to be restudied, the apartment entrance to be restudied, board and batten material used on the north facade and the south facade between the apartments. Ground floor porches, consider how that -- restudy the ground floor porches, and also consider no porch on the north side.

And it was only on the Port

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Republic side, right?

MR. SMITH: I agree.

MR. SUTTON: Just the one street side?

MS. PRENTICE: No porches at all within the entire building.

MR. SUTTON: Even in the alley in the back where it's not going to see some street?

MS. PRENTICE: I -- I'm sorry, I missed that one. I've been focused on the ones that you see.

MR. SUTTON: Yeah, I mean, you're talking about this side, but when you go around the corner, it's up inside block, it wouldn't be -- it wouldn't be as visible as this. Remember, this is a scale drawing, because you're here on the street level. It supports looking at the parking lot.

MS. PRENTICE: And it's going to be --

(Cross talk.)

MR. SMITH: That one is, yeah.

MR. SUTTON: Okay. We'll just

leave it.
MS. PRENTICE: Probably the most important one, actually.
MR. SUTTON: Possible no porches. Well, in your case, I'm going to put outdoor space.
MS. PRENTICE: That'd be -- that'd be a better way to put it.
MR. SUTTON: And then a sample board for the brick.
That's the -- that's the five areas of study for preliminary approval.
MS. PRENTICE: I'll second that.
MR. SMITH: Okay. Any other discussion?
All right. Maxine?
MS. LUTZ: Aye.
MR. SMITH: Stacy?
MS. APPLEGATE: Aye.
MR. SMITH: Aye.
MR. SUTTON: Aye.
MS. PRENTICE: Aye.
MR. SMITH: All right. Any further discussion number -- Item No.

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4? Discussion.

MR. SUTTON: Well, look, I just want to make -- it's related to this last project that --

MR. SMITH: Okay.

MR. SUTTON: -- just got preliminary approval with those conditions. But we talk about the scale, but we hear it's approved at conceptual. That follows through that that -- I mean, I want to make sure on record, that follows through now so at the -- and any other future submissions, we're not going to have a debate about elevation of this building, right? I mean --

MS. APPLEGATE: That's my understanding, that that's appropriate.

MS. PRENTICE: My understanding too.

MR. SUTTON: Okay. Because, I mean, normally, I would nail that down as it's such an important piece.

MR. SMITH: And the scale could probably go down, but not up.

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MS. PRENTICE: But not up.
MR. SUTTON: Right.
MR. SMITH: Jeremy?
MR. TATE: The applicant would like a clarification on the porch within that motion.
MR. MCCLURE: I apologize, but I do want to -- it is their job to respond to your --
MS. APPLEGATE: That's all right, I'm going to have to go back and listen to it too.
MR. MCCLURE: Look, I think there's -- of the particular items that you listed, I think, to me, the porch item is still a little muddy. It was getting clearer and then --
MR. SUTTON: Well, there was two parts of that and I think what I'm hearing is a concern about the first floor porch is the fact that they're really not a public accessible area, they're railed off, they're on the street level, but even the applicant -- the owners can't come out and they have

to climb over the rail to get out. So they're more of a balcony at ground level.

MR. MCCLURE: They are an outdoor living space. And to the same extent that there was concern about people gathering that shouldn't be gathering, that's why they are railed off from the public to be a private space.

MS. APPLEGATE: I think we had an issue with the ground floor porches at conceptual, right? I thought we did.

MR. SUTTON: Well, let's talk -- Mr. Chair, I guess we can talk about it because I'm trying to get some --

MR. MCCLURE: We're happy to look at enclosing them or finding some alternative. I don't want to say no to that. I think the confusion got where at the end, we also heard -- and if I understand this correctly, to study no porches at all, which I personally have a very difficult time proposing to build a building in Beaufort without a porch on it, but -- so -- so is it

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both? Should I be bringing back alternatives?

MR. SUTTON: I -- I mean, I don't know how to answer other than to say that if you brought back and the porches are still on it, I wouldn't have a heartache with that. Okay? And that don't help you much, but I disagree with a couple of comments up here about why you would eliminate all the outdoor space for a human scale building, and was actually exactly what we're trying to get to happen in Beaufort. So I feel your pain.

MR. SMITH: So maybe if each of us could give their opinion on it again for Arnie.

Mike has given his. Michelle is the other extreme.

MS. PRENTICE: It's -- it's not a right to have outdoor space, and to think that people can't live happily in a space if they don't have access to outdoor space is an unreasonable thought. And I think people will be

attracted to living in this building without outdoor space.

There were just -- there will be enough people in this scale building that will be interested because they also don't want to live in a space that has a mishmash of different weird furniture and plastic furniture on one -- I mean, it will become a hodgepodge no matter what you do, unless you issue furniture specific things that can be there, which is unreasonable.

So I think, from my perspective, you could have a very successful building that didn't have any access to outdoor space that -- and I -- I do love the idea of there being downtown apartments, and we -- there are downtown apartments with outdoor space, without outdoor space, and those people are pretty happy in them.

So, you know, I think it's not an impossibility and I think it's at least worth considering. And, you know,

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again, I'm clearly -- I'm probably a minority on that, but I -- I've lived most of my adult life in apartments with no outdoor space so it's not impossible to do that.

MR. SMITH: So my opinion would be, I think the building could look good without the porches. I'm also okay with the risk of stuff being on them.

MS. APPLEGATE: Oh, my opinion. I would prefer to see some porches, but if time allows, having a rendition with none of them would be a good thing for us to look at considering I'm also -- I have an issue with the fenestration. Probably doesn't help you.

MR. SMITH: Maxine?

MS. LUTZ: I'd like to see stand the test of time, the building that we point to with pride as an addition to our historic district. And I'd like to see a rendition that would include not having porches.

MR. SMITH: All right. Thanks.

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Any other discussion, general, or we will adjourn.

MR. TATE: Wait one more minute to get to 7:15.

MS. PRENTICE: Yes, we can.

MS. APPLEGATE: So -- so hey -- so -- Jeremiah, so are we going to start doing site visits?

MR. SMITH: We're going to reserve a time to do site visits.

MS. PRENTICE: And do we discuss a time?

MS. APPLEGATE: Do we need to talk about that?

MR. TATE: We should talk about that. So I think everybody wrote back day of seemed reasonable. Right? I think all of you said the day of would be reasonable, means at 2:00, we could meet from 9 to 11, 9 to 12, reserve that spot if that was okay.

MS. PRENTICE: I think we could -- I think we could come up with a smaller window of time.

MR. TATE: We could.

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MS. PRENTICE: Because, I mean, I think that even if --

MS. APPLEGATE: Long day.

MS. PRENTICE: -- we all took our own cars and everything, I think that we could all just kind of hop from place to place. And is it -- do we need -- do we need to agree that we all need to meet or?

MR. TATE: I think -- so, I don't know that all of you have to be there.

MS. PRENTICE: We just can't talk about it?

MR. TATE: And you can't -- shouldn't talk about it. I think there could motion that will at least state that --

MS. PRENTICE: We don't talk about it.

MR. TATE: -- Well, from nine to noon, it's available to you at your leisure because the applicant knows you're going to be stopping by and --

MS. LUTZ: So we could stop by separately.

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MR. TATE: -- and you would have the access to walk -- or feel like you have the access to walk around.

MS. PRENTICE: I think that seems really reasonable.

MR. SUTTON: Why don't you just make it simple in the application that just has a disclaimer that says, you know, prior to the meeting, prior to the day of the meeting, that the HRB may be walking and looking at your structure.

MS. PRENTICE: I'd feel more comfortable if there was a time frame because you don't want to get shot.

MS. APPLEGATE: Me too.

MR. TATE: Yeah, I think -- and I think that.

MS. APPLEGATE: And they need to know that.

MR. TATE: And I think when we submit the packet to you first before our review, right, so it comes a couple weeks early so you -- these are the ones that we've deemed complete to be

on the agenda.

You could all say, I don't see the need to go to a single site visit or I only see the need to go to these two.

MS. LUTZ: Yeah, because some of these buildings, we're intimately familiar with.

MS. APPLEGATE: Like if the.

MS. PRENTICE: I think -- I think if we could have it on the application that from 9 to 12, the day of, there -- it is reasonable for the members of the Board to be visiting the property and --

MR. SMITH: Exterior only.

MS. PRENTICE: -- leave it that way.

MR. TATE: Yeah, and we would -- we would take a step further, that if you say that, yes, we're going to go to the following addresses this month, we're going to reach out and let them let them know specifically that, yes, we're coming, somebody's going to come between nine and noon.

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MR. SUTTON: We've never had that problem in the past, I don't know why it's a problem now.

MR. TATE: I will say that it is typical on demolition projects for other jurisdictions to at least take a site visit to look at the demolition.

MR. SUTTON: No, I think it's important that everybody -- this board has traditionally gone and looked at every project without somebody holding their hand and saying, you need to get permission to go, you just walk by and look at the structure and if you knock on the door --

MS. PRENTICE: I would have liked to have gone behind Duke, the Duke Street project. I would like to have done that, but I honestly didn't feel comfortable doing it.

MR. SMITH: That makes sense.

MS. PRENTICE: That's -- that's the one project I didn't feel --

MR. SUTTON: I get it. I get that. It is a little creepy looking,

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but I guess if --

MS. PRENTICE: And it might not be creepy, but I just -- it feels very kind of secluded, and I thought, oh, I don't want to surprise somebody. I don't want somebody coming up on me and going like, what are you doing here? So I actually drove all the way around the building.

MR. SUTTON: Hey, they're the ones applying for us to do something. I mean, I just -- my MO is a little different because of -- I live in the neighborhood and worked the neighborhood so many years. But I -- I've never had a problem whenever the applicant knocks on the door and go, hey --

MS. PRENTICE: Women feel more scared than men.

MR. SUTTON: I understand. And you can always -- if you want to go, you want somebody to go, I'll meet you there.

MR. SMITH: Want to give us a

motion to adjourn?

MS. LUTZ: I give a motion to adjourn, please.

MR. SMITH: Second?

MR. SUTTON: Second.

MR. SMITH: All in favor?

(All aye.)

MR. SMITH: 7:18.

(Meeting adjourned at 7:18 p.m.)

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C E R T I F I C A T E

STATE OF GEORGIA:

CHATHAM COUNTY:

I, Kyle J. Saniga, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing transcription was transcribed by me, to the best of my ability, from (1) audio file(s) provided to Coastal Court Reporting (CCR) by the Law Firm of Harvey & Battey, and Coastal Court Reporting, Inc., received the audio file link on January 25, 2022, and the transcript was completed on January 31, 2022. I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Kyle J. Saniga

Kyle J. Saniga, CCR
Notary Public, B-2038
Savannah, Georgia

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CITY STAFF INTRODUCTION

211 CHARLES STREET

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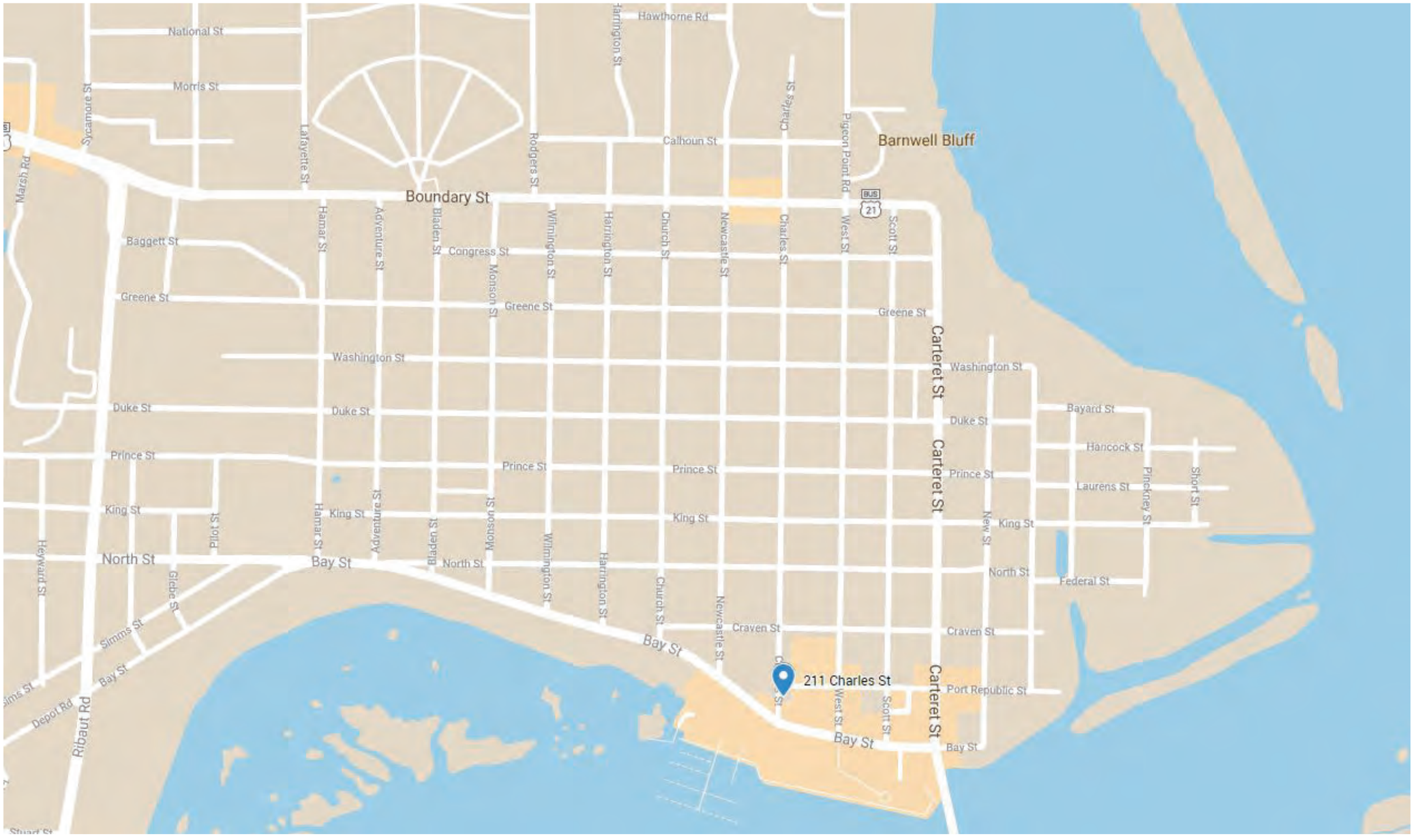

PROJECT LOCATION - 211 CHARLES STREET

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VIEW FROM CORNER OF CHARLES AND PORT REPUBLIC STREET LOOKING EAST

VIEW FROM CHARLES STREET LOOKING NORTHEAST

VIEW FROM CHARLES STREET LOOKING EAST

VIEW FROM CORNER OF CHARLES AND BAY STREET LOOKING NORTHEAST

OLD BAY MARKETPLACE (EAST OF SITE) ON PORT REPUBLIC STREET

TABBY PLACE EVENT VENUE ACCROS PORT REPUBLIC STREET FROM SITE

coast
architects
671 St. Andrews Blvd., Charleston, SC 29407
Phone: 843.763.7064 Fax: 843.763.7061
www.coastarchitects.net

08.11.2021

HRB FINAL REVIEW 11.10.2021 MEETING

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

DRAWN BY: FAM
CHECKED BY: FAM
DATE: 08.11.2021

COAST PROJECT NO.: 2015.00

CONTEXT PHOTOGRAPHS

G002

ROA377

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CITY OF BEAUFORT
HISTORIC REVIEW BOARD
1911 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902
(843) 525-7011 FAX: (843) 986-5606

DECISION LETTER

February 16, 2021

Arnie McClure
Coast Architects, Inc.
671 Saint Andrews Boulevard
Charleston, SC 29401

RE: 21-02 HRB.1.A 211 Charles Street – New Construction

Dear Mr. McClure:

On February 10, 2021, the City of Beaufort Historic District Review Board (HRB) met to review your application for new construction at 211 Charles Street. The HRB granted conceptual approval subject to the following staff comments:

1. In future applications, applicant to demonstrate that the proposed development meets the bicycle and motor vehicle parking requirements of Section 5.7 of the Beaufort Code.

2. Per Section 5.3.1 of the Beaufort Code, in the T5-DC district there is no minimum baseline tree canopy coverage requirements.

3. Staff believes that this building contains two different building types: The west mass along Charles Street is Livework/Mixed Use (defined in Section 4.5.8 of the Beaufort Code), and the rest of the building is an Apartment House (defined in Section 4.5.7 of the Beaufort Code).
   a. The Livework/Mixed Use portion of the building contains a Shopfront/Awning frontage type, which complies with Section 4.5.8 of the Beaufort Code. Applicant to note Section 2.5.6.A of the Beaufort Code, Encroachments over Sidewalks: "With approval of the City, county or SCDOT (whichever has authority over a street), awnings, arcades, canopies, and galleries (See Section 4.4) may encroach over a sidewalk to within 2 feet of the curb, but they shall provide a vertical clearance of at least 8 feet from any sidewalk." The current proposed design of the awnings appears to encroach over the existing sidewalk to within less than 2 feet of the curb. Applicant to ensure and demonstrate compliance with this code section in future submissions. Charles Street is maintained by SCDOT.
   b. Regarding the Apartment House Portion of the building, Staff views the primary entrance of the apartment building to be the lobby entrance off Charles Street, in accordance with Section 2.5.1.3 of the Beaufort Code, since this is the street from which the building derives

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its street address. This entrance is required by Section 4.5.7.B.1 of the Beaufort Code to have one of the following frontage types: stoop, forecourt, or balcony, and Staff prefers stoop or balcony with the current design. Applicant to refine the design of this entrance to have a code compliant frontage type. Frontage types are described in detail in Section 4.4 of the Beaufort Code.

4. Applicant to refer to Section 4.5.7 of the Beaufort Code for additional requirements for Apartment houses that will affect the design of the rest of the building:
    a. 4.5.7.A: "…The ground floor [must be] raised a minimum 18" for privacy."
    b. 4.5.7.B.1: "[Required frontage types are] Stoop, Forecourt, Balcony. Porches are not preferred, but may be used in buildings containing 12 units or less if they provide direct access to the unit from the street or sidewalk.
    c. 4.5.7.B.2: "In buildings with more than 6 residential units, all ground floor units facing a frontage line shall have individual entrances from that frontage line. Buildings with formal entry courtyards or lobbies are exempt from this requirement."

    The current proposed design of the rest of the building also includes 19 units and proposes porches at the ground level, which is not preferred per Section 4.5.7.B.1 noted above. Given the commercial nature and feel of Port Republic, staff prefers that the ground floor units do not have porches. Applicant to also demonstrate compliance with Section 4.5.7.A noted above, ensuring that the Apartment House portion of the building is raised a minimum of 18" off the ground level for privacy. Since the project includes a formal lobby, the project does not have to comply with Section 4.5.7.B.2 regarding ground floor unit entrances.

5. For the tenant portion of the building, Staff recommends altering the design so that the ADA entrance is not separated from the main entrance to allow all users the opportunity to use the main entrance.

6. The proposed roof design for the central apartments along Port Republic Street is currently too complex. In the elevations, renderings, and roof plan, it appears that each structure has two roofs at different levels. Applicant to simplify this design in future submissions. The same applies to the South Elevation.

7. Staff notes that the northeast corner of the project is portrayed differently in the renderings than it is shown in plan and elevation. Staff assumes the floorplan and elevations are the most up to date. Applicant to ensure all drawings are consistent in future submissions.

8. On the north elevation, the intersection between the apartment mass and the east stairwell is not appropriate or consistent with the language established on the west side of this elevation. Staff recommends aligning the north face of the east stairwell with the north face of the west stairwell and cladding both in the same material to establish a more consistent language of materials around the building. Staff supports the use of the apartment mass material in both locations.

9. Also, on the north elevation, the porch column spacing and their relationship to fenestration beyond does not provide good balance and not consistent with Section 4.6.1.B of the Beaufort Code or page 28 of the Preservation Manual Supplement. The mix of double columns and single columns is unresolved. Applicant to study the rhythms of the fenestration and space porch column bays more appropriately. Applicant to consider removing the shutters from the project. The same comment applies to the porch masses on the south elevation.

10. Applicant to ensure that all residential egress requirements by the IBC are met in this design. If egress needs to be provided from the courtyards of the ground floor units, this must be shown on

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the plan so that these changes may be reviewed by the Board.

11. Staff is in support of the overall massing of the corner brick portion of the building. It has nice proportional relationships that begin to establish a strong presence on the corner of the block. However, the current design of the balconies and patios on the north and south elevations of this building take away from this strong presence.
    a. Staff recommends removing the roof canopies from the third level on both north and south elevations.
    b. Staff recommends altering the placement of the canopies on the first level on the Port Republic elevation so that they are not installed immediately beneath the second-floor balconies.
    c. On the south elevation, the intersection of the second-floor balconies with the first-floor wall at the southwest mass is too complex. Staff recommends separating the first-floor masonry wall from the second-floor balcony thereby turning the first-floor masonry wall into a garden wall. This will cause the lobby to be revised. Staff also recommends making the balconies on this façade stylistically match those on the north façade and give them a lightness compared to the heavy masonry building mass behind them. The goal of the applicant should be to simplify this area so that the architectural language is clearly understood.

12. In future applications, applicant to include more street context to show how this building relates to its surrounding historic context. Specifically, the historic structure across Port Republic Street and the historic structure across Charles Street should be included in drawing context in future submissions.

13. Staff recommends that Coast Architects meets with Staff Architects during preparation of a preliminary application to help expedite the design, review, and approval process for this project.

If you have any questions, feel free to call the Planning Department at (843) 525-7011. Thank you for your patience and cooperation during the review process.

Sincerely,

John Dickerson,
Chairman

Digitally signed by John Dickerson, Chairman
DN: cn=John Dickerson, Chairman, o=City of Beaufort, ou=Historic Districk Review Board, email=john@sleepinhistory.com, c=US
Date: 2021.04.13 08:54:34 -04'00'

John Dickerson
Historic Review Board

cc: Dick Stewart

APPLICANT PRESENTATION

211 CHARLES STREET

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PAID 6/15/21 CK

DEVELOPMENT REVIEW PROCESS
HISTORIC REVIEW BOARD APPLICATION

Community & Economic Development Department
1911 Boundary Street, Beaufort, South Carolina, 29902
p. (843) 525-7011 / f. (843) 986-5606
www.cityofbeaufort.org

☐ Staff Review
■ Board Review

21-02 HRB-2

Application Fee: *see attached schedule*

OFFICE USE ONLY: **Date Filed:** 6/15 **Application #:** 2210 **Zoning District:** T5-DC
BCAGHS Survey: ☐ Yes ☐ No

Schedule: The Historic Review Board (HRB) typically meets the 2nd Wednesday of each month at 2pm. The complete schedule, along with the list of deadlines, may be found here - http://www.cityofbeaufort.org/historic-review-board.aspx

Submittal Requirements: All forms and information shall be submitted digitally. In addition to a complete application form, applicants shall submit the required items according to the checklists on the subsequent page.

Review Request: ☐ Conceptual ■ Preliminary ☐ Final ☐ Bailey Bill Approval* ☐ Change After Certification
**Requires a Bailey Bill – Part A Preliminary Review Application Form*

Pursuant to Section 6-29-1145 of the South Carolina Code of Laws, is this tract or parcel restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the activity described in this application? ☐ Yes ■ No

Applicant, Property, and Project Information

Applicant Name: ARNIE MCCLURE, COAST ARCHITECTS, INC.

Applicant Address: 671 SAINT ANDREWS BLVD. CHARLESTON, SC 29407

Applicant E-mail: arnie@coastarchitects.net Applicant Phone Number: 843.763.7064

Applicant Title: ☐ Homeowner ☐ Tenant ■ Architect ☐ Engineer ☐ Developer

Owner (if other than the Applicant): 303 ASSOCIATES

Owner Address: 2015 BOUNDARY STREET, SUITE 300 BEAUFORT, SC 29902

Project Name: THE CANNON BUILDING

Property Address: 211 CHARLES STREET

Property Identification Number *(Tax Map & Parcel Number)*: R120-004-000-909-000

Date Submitted: 06.15.2021

Certification of Correctness: I/we certify that the information in this application is correct.

Applicant's Signature: [signature] Date: 6/15/2021

Owner's Signature: Date:

(The owner's signature is required if the applicant is not the owner.)

See Section 9.10 of the Beaufort Code for complete information about Certificates of Appropriateness and Section10.7 for complete information about the Historic Review Board | This form is also available online at www.cityofbeaufort.org | updated April 16, 2021

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DEVELOPMENT REVIEW PROCESS
HISTORIC REVIEW BOARD APPLICATION

Community & Economic Development Department
1911 Boundary Street, Beaufort, South Carolina, 29902
p. (843) 525-7011 / f. (843) 986-5606
www.cityofbeaufort.org

Project Name: THE CANNON BUILDING - 211 CHARLES STREET

Property Size in Acres: 0.303 ACRES Proposed Building Use: APTS./COMMERCIAL

Nature of Work (check all that apply):

☒ New Construction, Primary Structure ☐ New Construction, Primary Structure ☐ Alterations / Additions

☐ Demolition* ☐ Relocation* **Demolition and Relocation requires a public hearing*

Building Square Footage (if multiple buildings, please list each one and their square footage by floor):
27,500 SF TOTAL (1ST=9,311 SF, 2ND=9,109 SF, 3RD=9130 SF)

Is this project a redevelopment project: ☑ Y ☐ N

Are there existing buildings on the site? ☑ Y ☐ N if yes, will they remain? ☐ Y ☑ N

Provide a brief Project Narrative (if requesting Bailey Bill Approval, this section may be left blank):
CONSTRUCTION OF A NEW 3-STORY BUILDING TO HOUSE APARTMENTS WITH SOME COMMERCIAL SPACE ON THE FIRST FLOOR FACING CHARLES STREET.

CONTACT INFORMATION –

Attention: Julie A. Bachety, Administrative Assistant II
City of Beaufort Department of Planning & Development Services
1911 Boundary Street, Beaufort, South Carolina 29902
E-Mail: jbachety@cityofbeaufort.org: | Phone: (843) 525-7011 | Fax: (843) 986-5606

See Section 9.10 of the Beaufort Code for complete information about Certificates of Appropriateness and Section10.7 for complete information about the Historic Review Board | This form is also available online at www.cityofbeaufort.org | updated April 16, 2021

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Meredith Jacobs

From: arnie@coastarchitects.net
Sent: Wednesday, November 17, 2021 11:55 PM
To: Meredith Jacobs; Jeremy Tate
Cc: Courtney Worrell
Subject: Cannon Building-updated drawings for HRB meeting

Meredith,

Here's the dropbox link for the updated drawings for the December HRB meeting: https://www.dropbox.com/sh/vlf7j01fqj19918/AAC0yJ4Yb3y5phkxBqUdzCe4a?dl=0

I've noted the changes I've made below:

- Lowered total building height an additional 1' (now 3'4" lower than previously approved submittal)
- Added 2nd Windows to eastern stair
- Added the transparency diagram to the elevation sheets
- Revised the diagram to take out the floor structure (increased % above requirements)
- Added the freeze board back under the soffit on walls with siding.
- Added soldier course at 1st floor level of brick facades to emphasize base.
- Added "red line" to show façade and parapet heights of original building (BTW, my rough estimate is that we've reduced the building mass by about 10% from the approved conceptual submittal)..
- Added additional mullions to the storefront windows.
- Tweaked the apartment building entrance details.
- Added additional info about the shutters & hardware. They are composite wood. I've requested a sample for the meeting.
- Added the bike rack cut sheet (y'all didn't ask for it, but I realized we hadn't submitted it).
- Added the parking diagram & calcs.

I will update the code review sheets and get you a revised video tomorrow (Thursday).

Thanks!

Arnie McClure, NCARB, LEED AP
Coast Architects, Inc.
843.763.7064

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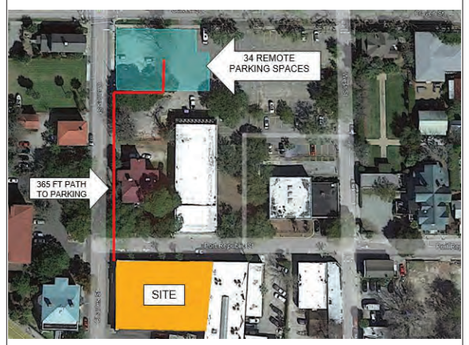
11/17/2021 11:22:30 PM

ABBREVIATIONS

A.F.F.	ABOVE FINISH FLOOR
ALUM.	ALUMINUM
ANOD.	ANODIZED
ARCH.	ARCHITECTURAL/ARCHITECT
@	AT
BRG.	BEARING
BTM.	BOTTOM
BLDG.	BUILDING
(C)	CAULK
CAB.	CABINET
C.F.C.I.	CONTRACTOR FURNISHED, CONTRACTOR INSTALLED
C.F.O.I	CONTRACTOR FURNISHED, OWNER INSTALLED
CLG.	CEILING
CPT.	CARPET
CTR.	CENTER
CLOS.	CLOSET
COL.	COLUMN
CONC.	CONCRETE
C.J.	CONTROL JOINT
DTL.	DETAIL
DIA.	DIAMETER
DIM.	DIMENSION
DN.	DOWN
DWG.	DRAWING
EA.	EACH
ELEC.	ELECTRIC/ELECTRICAL
E.W.C.	ELETRIC WATER COOLER
ELEV.	ELEVATION-GRADE OR BLG.
E.J.	EXPANSION JOINT
EPS	EXTRUDED POLYSTYRENE
EQ.	EQUAL
EQUIP.	EQUIPMENT
E.F.	EXHAUST FAN
EXIST.; (E)	EXISTING
EXT.	EXTERIOR
FT.	FEET
FIN.	FINISH
F.E.	FIRE EXTINGUISHER (WALL BRACKET)
F.E.C.	FIRE EXTINGUISHER CABINET (SEMI-RECESSED WALL CAB.)
FLR.	FLOOR
FRT	FIRE RETARDANT TREATED
F.D.	FLOOR DRAIN
GALV.	GALVANIZED
GA.	GAUGE
GYP.BD.	GYPSUM BOARD
HC	HANDICAP ACCESSABLE
HDWR.	HARDWARE
HT.	HEIGHT
H.M.	HOLLOW METAL
HORIZ.	HORIZONTAL
INSUL.	INSULATION
INT.	INTERIOR
JAN.	JANITOR
JT.	JOINT
K.S.	KNEE SPACE
LAM.	LAMINATE
LAV.	LAVATORY
MFR.	MANUFACTURER
M.O.	MASONRY OPENING
MATL.	MATERIAL
MAX.	MAXIMUM
MECH.	MECHANICAL
MTL.	METAL
(N)	NEW
N.I.C.	NOT IN CONTRACT
N.T.S.	NOT TO SCALE
O.C.	ON CENTER
O. F.C.I.	OWNER FURNISHED, CONTRACTOR INSTALLED
OPNG.	OPENING
O.H.	OPPOSITE HAND
O.R.D.	OVERFLOW ROOF DRAIN
(P)	PAINT
PLYWD	PLYWOOD
PR	PAIR
PREF.	PREFINISHED
PREFAB.	PREFABRICATED
P.T.	PRESSURE TREATED
RAD., R.	RADIUS
RE:	REFERENCE
REINF.	REINFORCE/REINFORCING
REQ'D.	REQUIRED
R.D. (L)	ROOF DRAIN (LEADER)
R.O.	ROUGH OPENING
SHT.	SHEET
SIM.	SIMILAR
SPECS.	SPECIFICATIONS
S.S.	STAINLESS STEEL
STD.	STANDARD
STL.	STEEL
STRUCT.	STRUCTURAL
TEL.	TELEPHONE
TR.	TREATED
TYP.	TYPICAL
U.N.O.	UNLESS NOTED OTHERWISE
(V)	VERIFY
V.A.T.	VINYL ASBESTOS TILE
V.C.T.	VINYL COMPOSITE TILE
VERT.	VERTICAL
V.T.R.	VENT THROUGH ROOF
W.C.	WATER CLOSET
WD.	WOOD

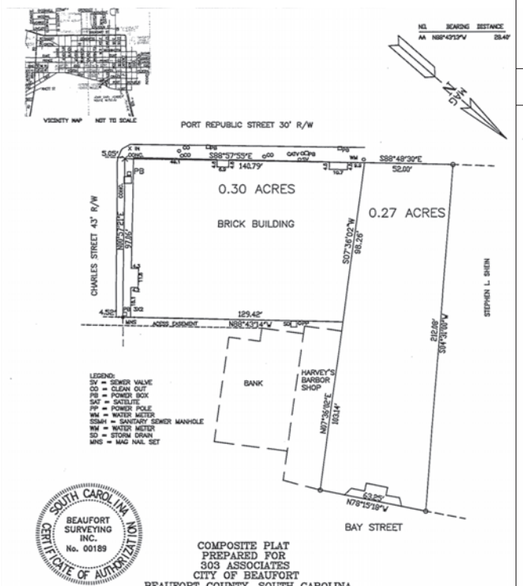
PARKING INFORMATION



REMOTE PARKING DIAGRAM
Showing 34 designated spaces within 400' of site along path of public ROW/walk on Charles Street

	REQUIRED SPACES	PROVIDED SPACES
Retail	0	0
Apartments	33.25	34

PLAT



THE CANNON BUILDING

211 CHARLES STREET BEAUFORT, SOUTH CAROLINA

OWNER

303 ASSOCIATES
2015 BOUNDARY STREET
SUITE 300
BEAUFORT, SC 29902
843.521.9000

ARCHITECT

COAST ARCHITECTS, INC.
671 SAINT ANDREWS BLVD.
CHARLESTON, SC 29407
843.763.7064

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HRB FINAL APPROVAL - 12.08.2021 MEETING

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11.18.2021

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

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TITLE SHEET & DRAWING INDEX

G001

ROA385

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VIEW FROM CORNER OF CHARLES AND PORT REPUBLIC STREET LOOKING EAST

VIEW FROM CHARLES STREET LOOKING NORTHEAST

VIEW FROM CHARLES STREET LOOKING EAST

VIEW FROM CORNER OF CHARLES AND BAY STREET LOOKING NORTHEAST

OLD BAY MARKETPLACE (EAST OF SITE) ON PORT REPUBLIC STREET

TABBY PLACE EVENT VENUE ACCROS PORT REPUBLIC STREET FROM SITE

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211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

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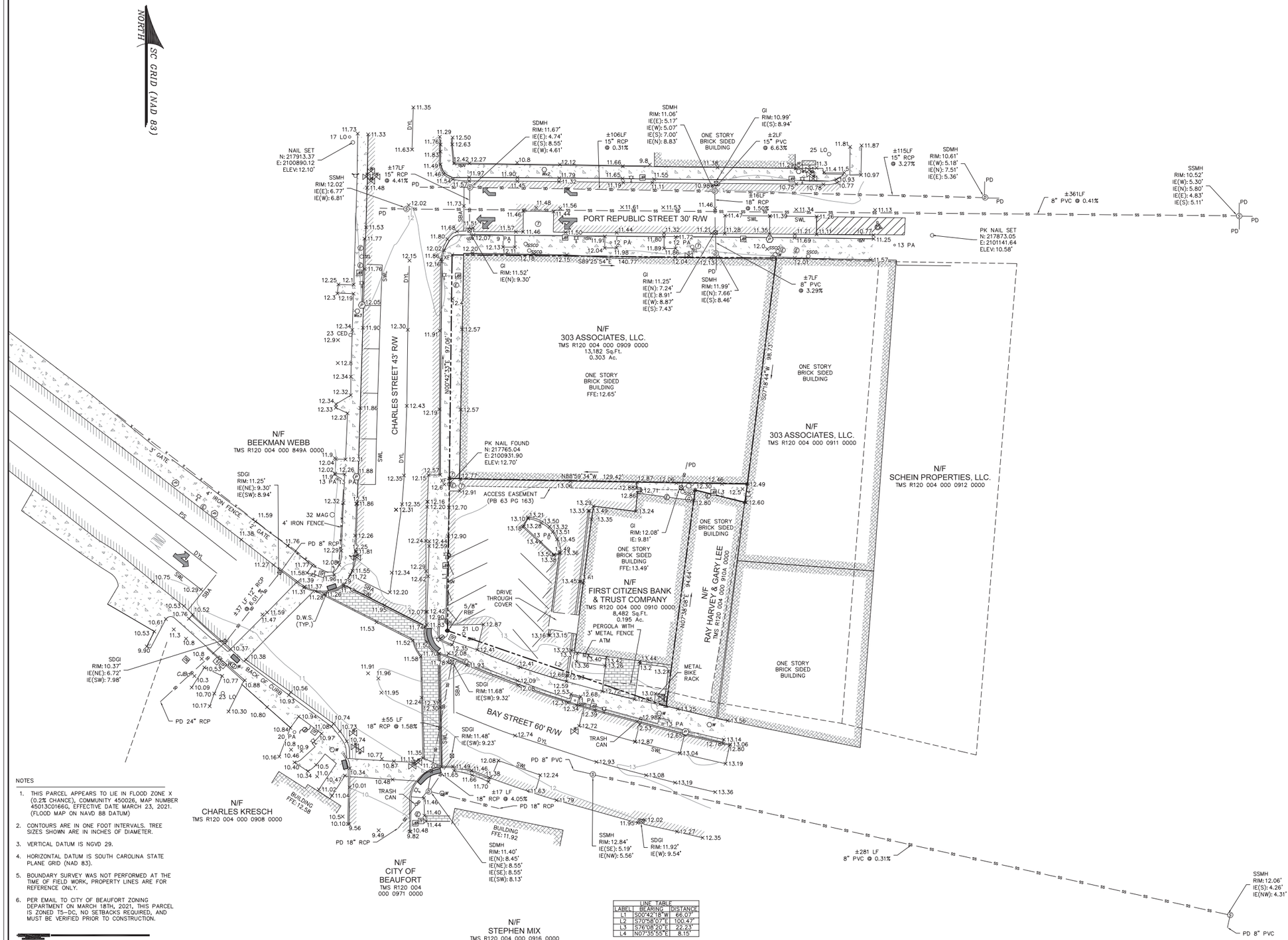
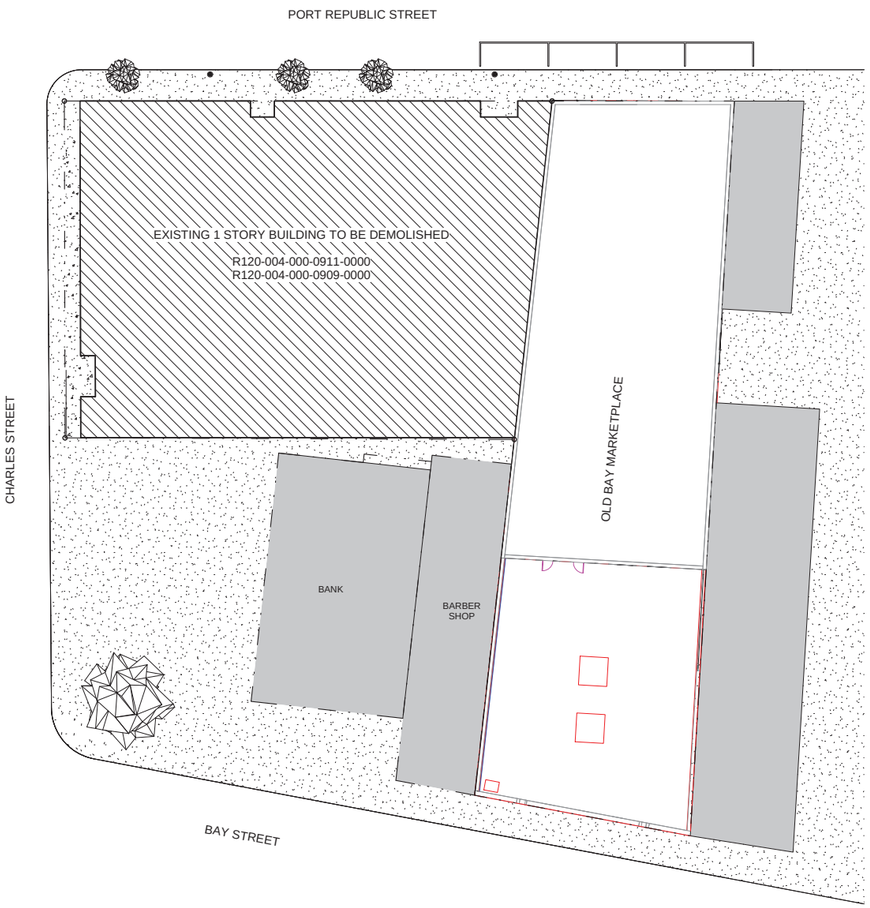
CONTEXT PHOTOGRAPHS

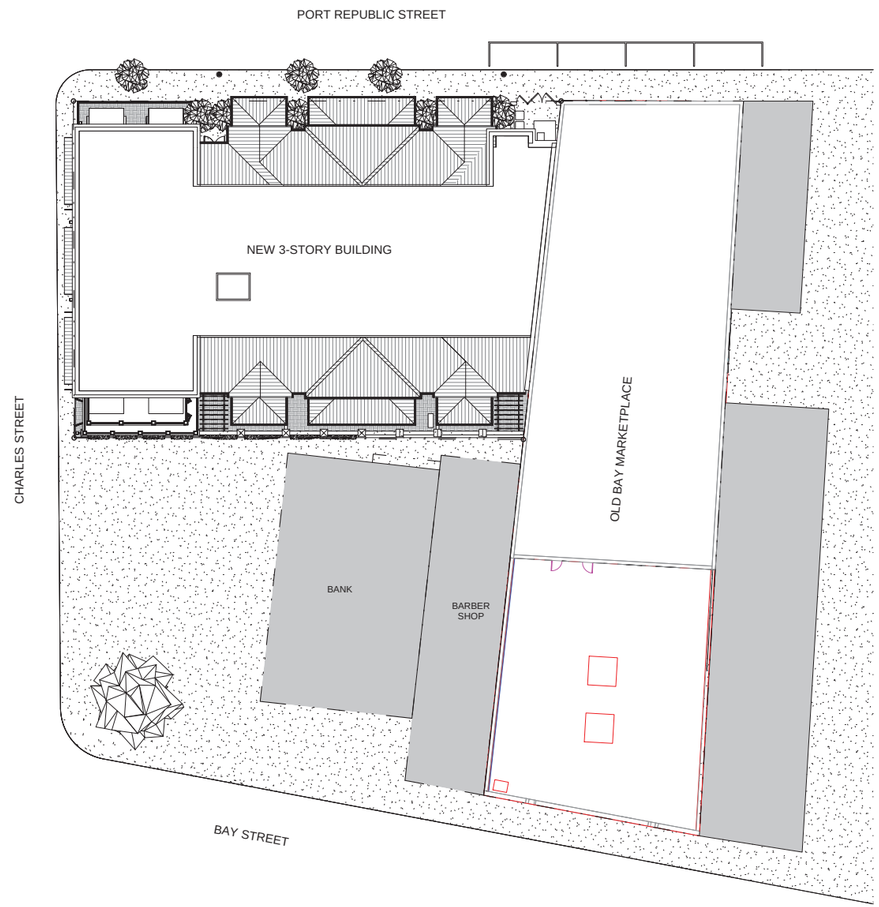
G002

ROA386


NORTH
SC GRID (NAD 83)
PORT REPUBLIC STREET 30' R/W
CHARLES STREET 43' R/W
BAY STREET 60' R/W
N/F
303 ASSOCIATES, LLC.
TMS R120 004 000 0909 0000
13,182 Sq.Ft.
0.303 Ac.
ONE STORY
BRICK SIDED
BUILDING
FFE:12.65'
N/F
303 ASSOCIATES, LLC.
TMS R120 004 000 0911 0000
N/F
SCHEIN PROPERTIES, LLC.
TMS R120 004 000 0912 0000
N/F
BEEKMAN WEBB
TMS R120 004 000 849A 0000
N/F
CHARLES KRESCH
TMS R120 004 000 0908 0000
N/F
CITY OF
BEAUFORT
TMS R120 004
000 0971 0000
N/F
STEPHEN MIX
TMS R120 004 000 0916 0000
N/F
FIRST CITIZENS BANK
& TRUST COMPANY
TMS R120 004 000 0910 0000
8,482 Sq.Ft.
0.195 Ac.
N/F
RAY HARVEY & GARY LEE
TMS R120 004 000 910A 0000
S89°25'54"E 140.77
N88°59'34"W 129.42'
N00°42'37"E 97.06'
S07°18'44"W 98.73'
N07°38'08"E 94.64'
NAIL SET
N: 2179137.37
E: 2100890.12
ELEV: 12.10'
PK NAIL FOUND
N: 217765.04
E: 2100931.90
ELEV: 12.70'
PK NAIL SET
N: 217873.05
E: 2101141.64
ELEV: 10.58'
ACCESS EASEMENT
(PB 63 PG 163)
SSMH
RIM: 12.02'
IE(E): 6.77'
IE(W): 6.81'
SDMH
RIM: 11.67'
IE(E): 4.74'
IE(S): 8.55'
IE(W): 4.61'
SDMH
RIM: 11.06'
IE(E): 5.17'
IE(W): 5.07'
IE(S): 7.00'
IE(N): 8.83'
GI
RIM: 10.99'
IE(S): 8.94'
SDMH
RIM: 10.61'
IE(W): 5.18'
IE(N): 7.51'
IE(E): 5.36'
SSMH
RIM: 10.52'
IE(W): 5.30'
IE(N): 5.80'
IE(E): 4.83'
IE(S): 5.11'
GI
RIM: 11.52'
IE(N): 9.30'
GI
RIM: 11.25'
IE(N): 7.24'
IE(E): 8.91'
IE(W): 8.87'
IE(S): 7.43'
SDMH
RIM: 11.99'
IE(N): 7.66'
IE(S): 8.46'
GI
RIM: 12.08'
IE: 9.81'
SDGI
RIM: 11.25'
IE(NE): 9.30'
IE(SW): 8.94'
SDGI
RIM: 10.37'
IE(NE): 6.72'
IE(SW): 7.98'
SDGI
RIM: 11.68'
IE(SW): 9.32'
SDGI
RIM: 11.48'
IE(SW): 9.23'
SSMH
RIM: 12.84'
IE(SE): 5.19'
IE(NW): 5.56'
SDGI
RIM: 11.92'
IE(W): 9.54'
SSMH
RIM: 12.06'
IE(S): 4.26'
IE(NW): 4.31'
SDMH
RIM: 11.40'
IE(N): 8.45'
IE(NE): 8.55'
IE(SE): 8.55'
IE(SW): 8.13'
±17LF
15" RCP
@ 4.41%
±106LF
15" RCP
@ 0.31%
±2LF
15" PVC
@ 6.63%
±115LF
15" RCP
@ 3.27%
±361LF
8" PVC @ 0.41%
±16LF
18" RCP
@ 1.50%
±7LF
8" PVC
@ 3.29%
±55 LF
18" RCP @ 1.58%
±17 LF
18" RCP @ 4.05%
±281 LF
8" PVC @ 0.31%
±37 LF 12" RCP
@ 0.67%
PD 8" RCP
PD 24" RCP
PD 18" RCP
PD 8" PVC
ONE STORY
BRICK SIDED
BUILDING
ONE STORY
BRICK SIDED
BUILDING
FFE:13.49'
ONE STORY
BRICK SIDED
BUILDING
ONE STORY
BRICK SIDED
BUILDING
PERGOLA WITH
3' METAL FENCE
ATM
METAL
BIKE
RACK
TRASH
CAN
TRASH
CAN
DRIVE
THROUGH
COVER
5/8"
RBF
D.W.S.
(TYP.)
BUILDING
FFE:11.58
BUILDING
FFE:11.92
4' IRON FENCE
3' GATE
4' IRON FENCE
32 MAG
12 PS
13 PA
12 PA
13 PA
20 PA
9 PA
12 PA
23 LO
21 LO
25 LO
17 LO
23 CED
±12 PA
±13 PA
±20 PA
±55 PA
±9 PA
±23 PA
±11 PA
±13 PA
±12 PA
±13 PA
±9 PA
±23 PA
±11 PA
±13 PA
±12 PA
±13 PA
±20 PA
±55



B1 C101 DEMOLITION SITE PLAN
SCALE: 1" = 20'-0"



B6 C101 PROPOSED SITE PLAN
SCALE: 1" = 20'-0"

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PREVIOUS HRB SUBMITTAL
211 CHARLES 14 of 49

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01/08/21

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

DRAWN BY: Author
CHECKED BY: Designer
DATE: 01/08/21

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SITE DEMOLITION & PROPOSED SITE PLAN

C101

ROA388

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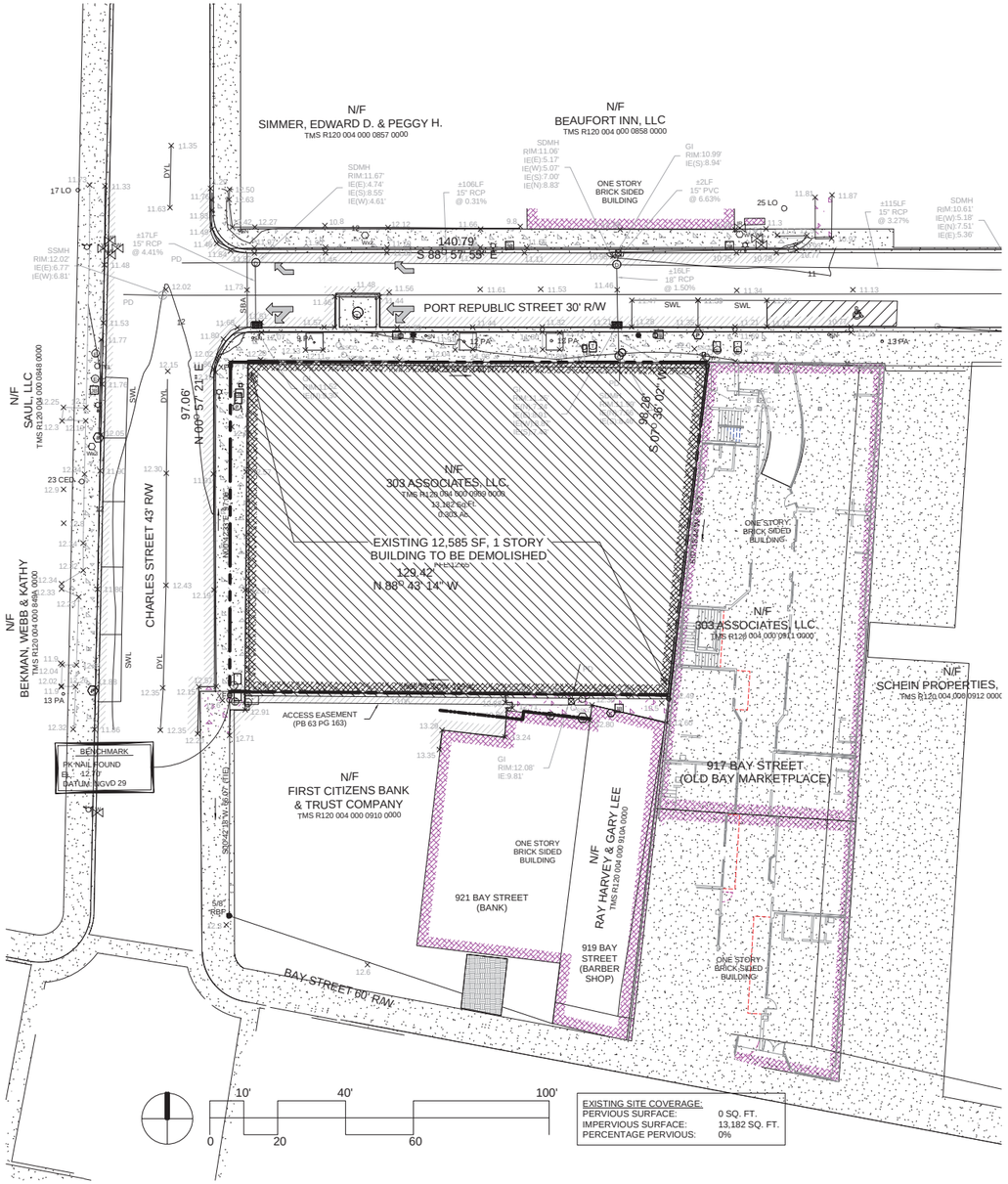
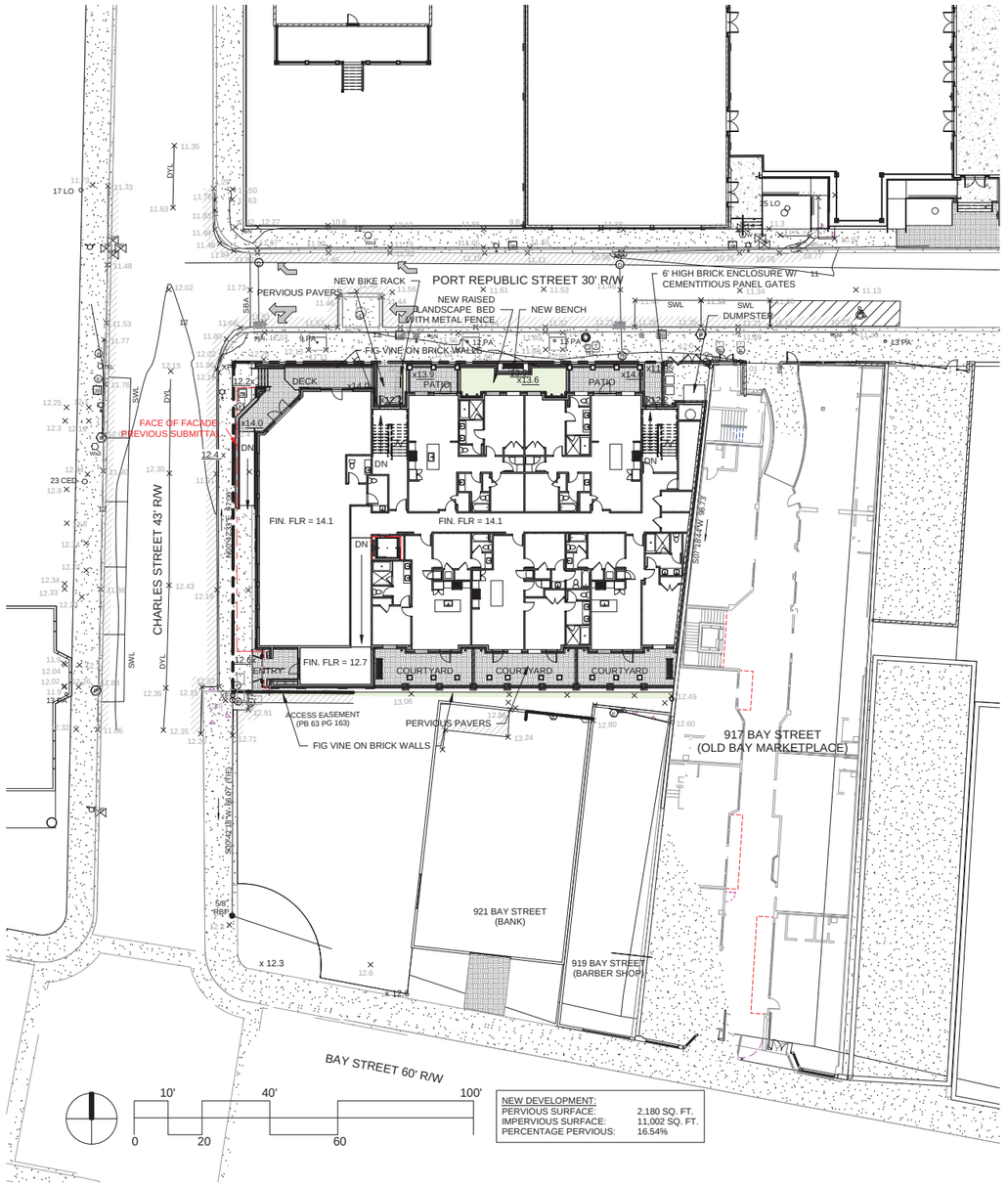


EXISTING SITE COVERAGE:

PERVIOUS SURFACE:	0 SQ. FT.
IMPERVIOUS SURFACE:	13,182 SQ. FT.
PERCENTAGE PERVIOUS:	0%

A1
C101

DEMOLITION SITE PLAN
SCALE: 1" = 20'-0"



NEW DEVELOPMENT:

PERVIOUS SURFACE:	2,180 SQ. FT.
IMPERVIOUS SURFACE:	11,002 SQ. FT.
PERCENTAGE PERVIOUS:	16.54%

A6
C101

PROPOSED SITE PLAN
SCALE: 1" = 20'-0"

HRB FINAL APPROVAL - 12.08.2021 MEETING

coast architects
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11.18.2021

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
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DRAWN BY: FAM
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SITE DEMOLITION & PROPOSED SITE PLAN

C101
ROA389

PLANT SCHEDULE

UNDERSTORY TREES	QTY	COMMON NAME	BOTANICAL NAME	CAL	CONT.	HEIGHT/SPREAD	REMARKS
	2	Cabbage Palmetto	Sabal palmetto	N/A	Bare Root	12-15` H	

SHRUBS	QTY	COMMON NAME	BOTANICAL NAME	CONT.	HEIGHT/SPREAD	LOP	REMARKS
	14	Blue African Lily	Agapanthus africanus 'Blue'	3 gal	12-15\"		
	79	Creeping Fig	Ficus pumila	1 gal	4-6\"		
	7	Rose	Rosa x `Pink Knockout`	3 gal	15-18\"		

PLANTING NOTES:

1. CONTRACTOR SHALL PROVIDE A SOIL ANALYSIS BY A QUALIFIED SOIL-TESTING LABORATORY RECOGNIZED BY THE STATE DEPARTMENT OF AGRICULTURE STATING PERCENTAGES OF ORGANIC MATTER, GRADATION OF SAND, SILT, AND CLAY CONTENT, CATION EXCHANGE CAPACITY, DELETERIOUS MATERIAL, pH, AND MINERAL AND PLANT-NUTRIENT CONTENT OF TOPSOIL. REPORT TO BE PROVIDED TO OWNER'S REPRESENTATIVE. CONTRACTOR TO FURNISH SUITABILITY REPORT OF TOPSOIL FOR LAWN AND PLANT GROWTH. STATE RECOMMENDED QUANTITIES OF NITROGEN, PHOSPHOROUS, AND POTASH NUTRIENTS AND SOIL AMENDMENTS TO BE ADDED TO PRODUCE A SATISFACTORY TOPSOIL. IF ADDITIONAL TOPSOIL IS REQUIRED, CONTRACTOR TO PROVIDE STOCKPILED TOPSOIL OR IMPORTED OR MANUFACTURED TOPSOIL FREE OF ROOTS, PLANTS, SOD, STONES, CLAY LUMPS, AND OTHER EXTRANEOUS MATERIALS HARMFUL TO PLANT GROWTH AND HAVING THE APPROPRIATE PERCENTAGES AS RECOMMENDED BY SUITABILITY REPORT.

2. ANY DEVIATION FROM THESE PLANS MUST BE SPECIFICALLY APPROVED BY LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE.

3. NOTIFY LANDSCAPE ARCHITECT OF ANY SITE CONDITIONS WHICH MAY NECESSITATE MODIFICATION TO THE PLAN. LANDSCAPE ARCHITECT SHALL, IF NECESSARY, MAKE "IN-FIELD MODIFICATIONS".

4. FINE GRADING SHALL CONSIST OF HAND RAKED SMOOTH, FREE OF DEBRIS, ALL AREAS TO RECEIVE LANDSCAPE PLANTING AND/OR PINE STRAW MULCH.

5. CONTRACTOR IS RESPONSIBLE FOR INSPECTION OF EXISTING CONDITIONS AND PROMPTLY REPORTING ANY DISCREPANCIES.

6. CONTRACTOR IS RESPONSIBLE FOR LOCATING EXISTING AND PROPOSED UTILITIES AND IS RESPONSIBLE FOR ANY DAMAGE THAT MAY OCCUR TO EXISTING AND PROPOSED UTILITIES.

7. CONTRACTOR TO SUPPLY AUTOMATIC IRRIGATION SYSTEM, COMPLETE AND INSTALLED. SYSTEM TO INCLUDE ALL VALVES, PIPES, HEADS, FITTINGS AND BACKFLOW CONTROLLER, AND TO PROVIDE 100% COVERAGE OF ALL SOD, SPRIG AND PLANTING BEDS. SEE IRRIGATION PLANS FOR INFORMATION.

8. MULCH ALL PLANTING BEDS WITH PINE STRAW TO A 4" DEPTH.

9. CONTRACTOR VERIFIES THAT ALL PLANT MATERIAL IS DETERMINED AVAILABLE AS SPECIFIED WHEN BID/PROPOSAL IS SUBMITTED.

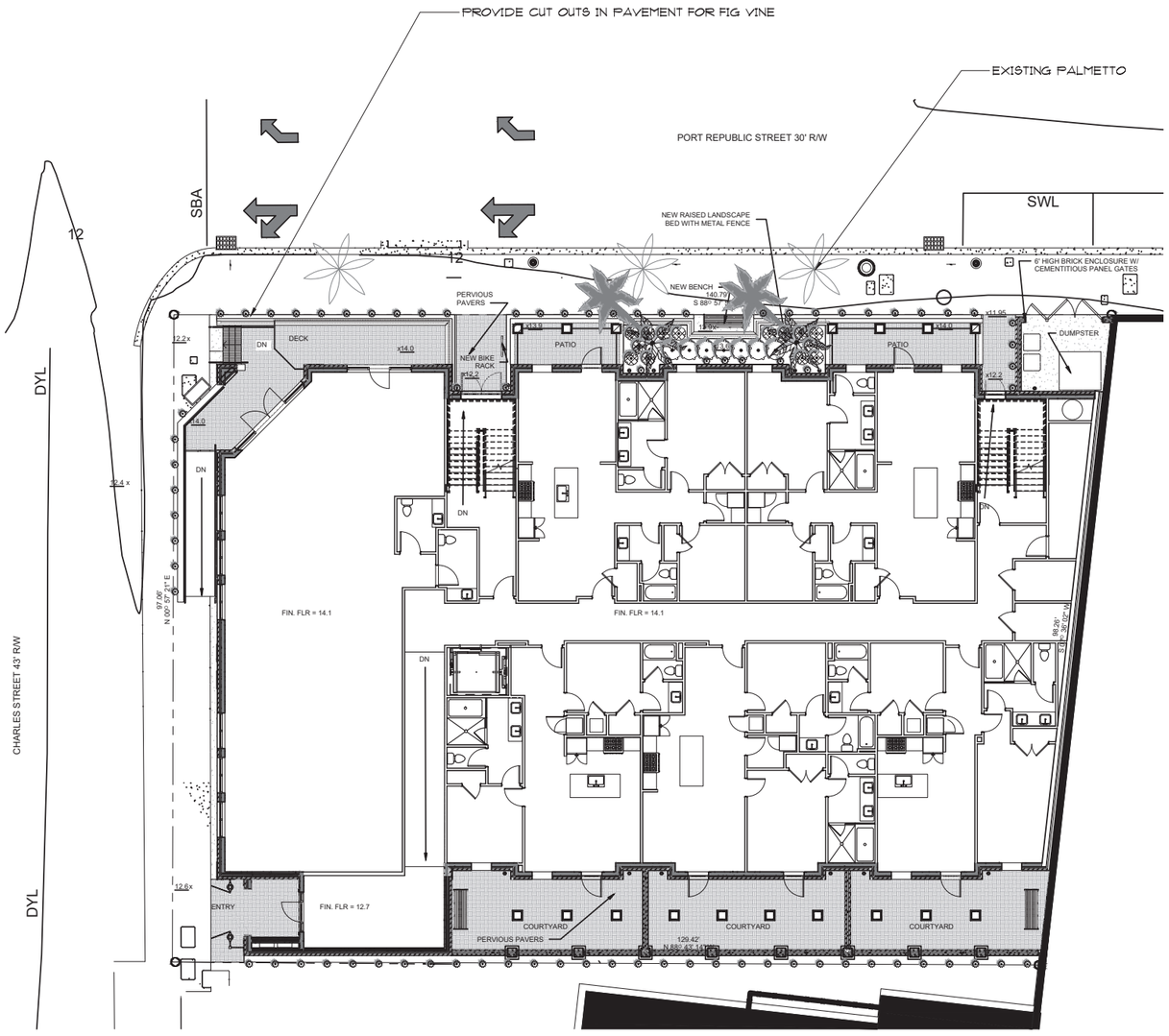
10. PLANT SCHEDULE WAS PREPARED FOR ESTIMATING PURPOSES. CONTRACTOR SHALL MAKE OWN QUANTITY TAKEOFFS USING DRAWINGS TO DETERMINE QUANTITIES TO HIS SATISFACTION, REPORTING PROMPTLY ANY DISCREPANCIES WHICH MAY AFFECT BIDDING.

11. ROOT TYPE MAY BE FREELY SUBSTITUTED IN CASE OF BALLED-IN-BURLAP OR CONTAINER.. OTHER SPECIFICATIONS REMAINING UNCHANGED, EXCEPT IN THE CASE OF CONTAINER GROWN SPECIMEN TREES AS INDICATED IN THE TREE PLANTING SCHEDULE.

12. AREAS SHOWN WITH SOD ARE APPROXIMATE. ADDITIONAL SOD MAY BE REQUIRED DURING INSTALLATION.

13. ALL TREE SHRUBS, & GROUNDCOVERS ARE TO BE GUARANTEED FOR A PERIOD OF 1 YEAR BEGINNING UPON ACCEPTANCE.

14. CONRACTOR IS RESPONSIBLE FOR STAKING ANY PLANT MATERIALS IN HIGH WIND SITUATIONS OR ANY OTHER THAT WOULD REQUIRE STAKING. CONSULT L.A. FOR PROPER STAKING TECHNIQUES.



211 CHARLES 16 of 49

NORTH

0 10 20 30 feet

SCALE: 1" = 10'

JACKSON & SMALL ASSOCIATES
LANDSCAPE ARCHITECTS
PO Box 1788
TYBEE ISLAND, GA 31328
912-704-1118
MICHAELSMALL.ASLA@GMAIL.COM

THE CANNON BUILDING
21 CHARLES STREET
BEAUFORT, SC

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Correct plan scale is based on a 24x36 sheet.
Do not scale dimensions from prints.

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Date: July 21, 2021
Project #:
REVISIONS:

No.	Date

Drawn By: MSS
Checked By: MSS
Project #: 0

Drawing Title

Planting Plan

SOUTH CAROLINA REGISTERED LANDSCAPE ARCHITECT No. 778 MICHAEL S. SMALL

Drawing Number

ROA390 L1.1

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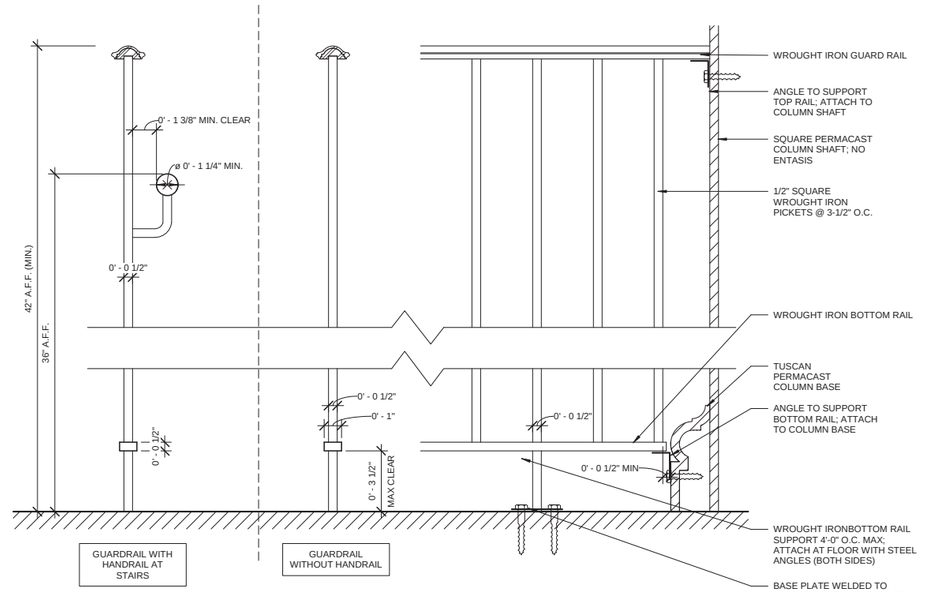
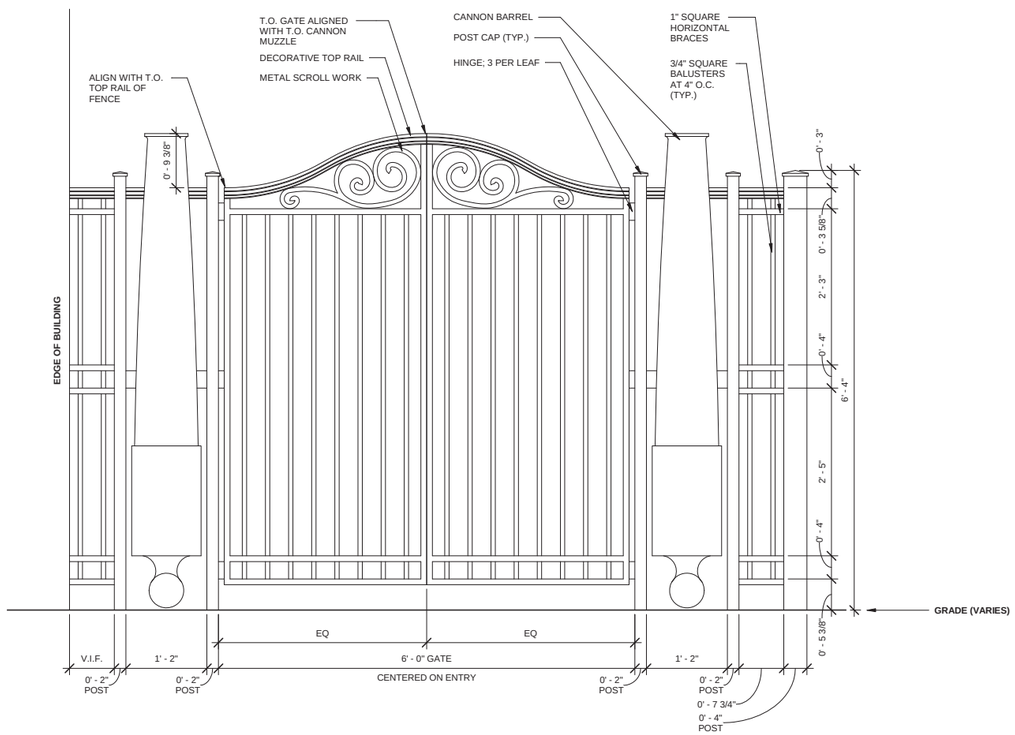
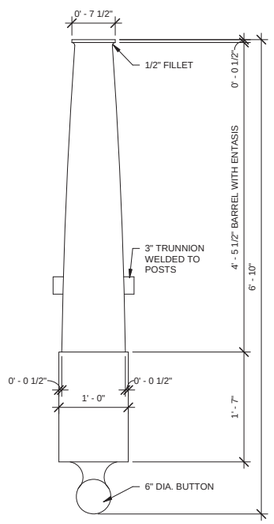


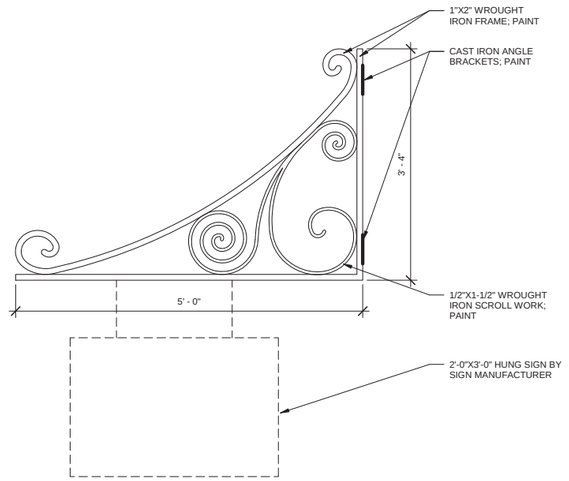
E1 / A002 GUARDRAIL DETAILS
SCALE: 3" = 1'-0"



A1 / A002 CHARLES STREET CANNON GATE ELEVATION
SCALE: 1" = 1'-0"



A6 / A002 CANNON DETAIL
SCALE: 1" = 1'-0"



A7 / A002 BLADE SIGN BRACKET DETAIL
SCALE: 1" = 1'-0"

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HRB FINAL APPROVAL - 12.08.2021 MEETING

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

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CANNON GATE ELEVATION AND DETAILS

A002

ROA391

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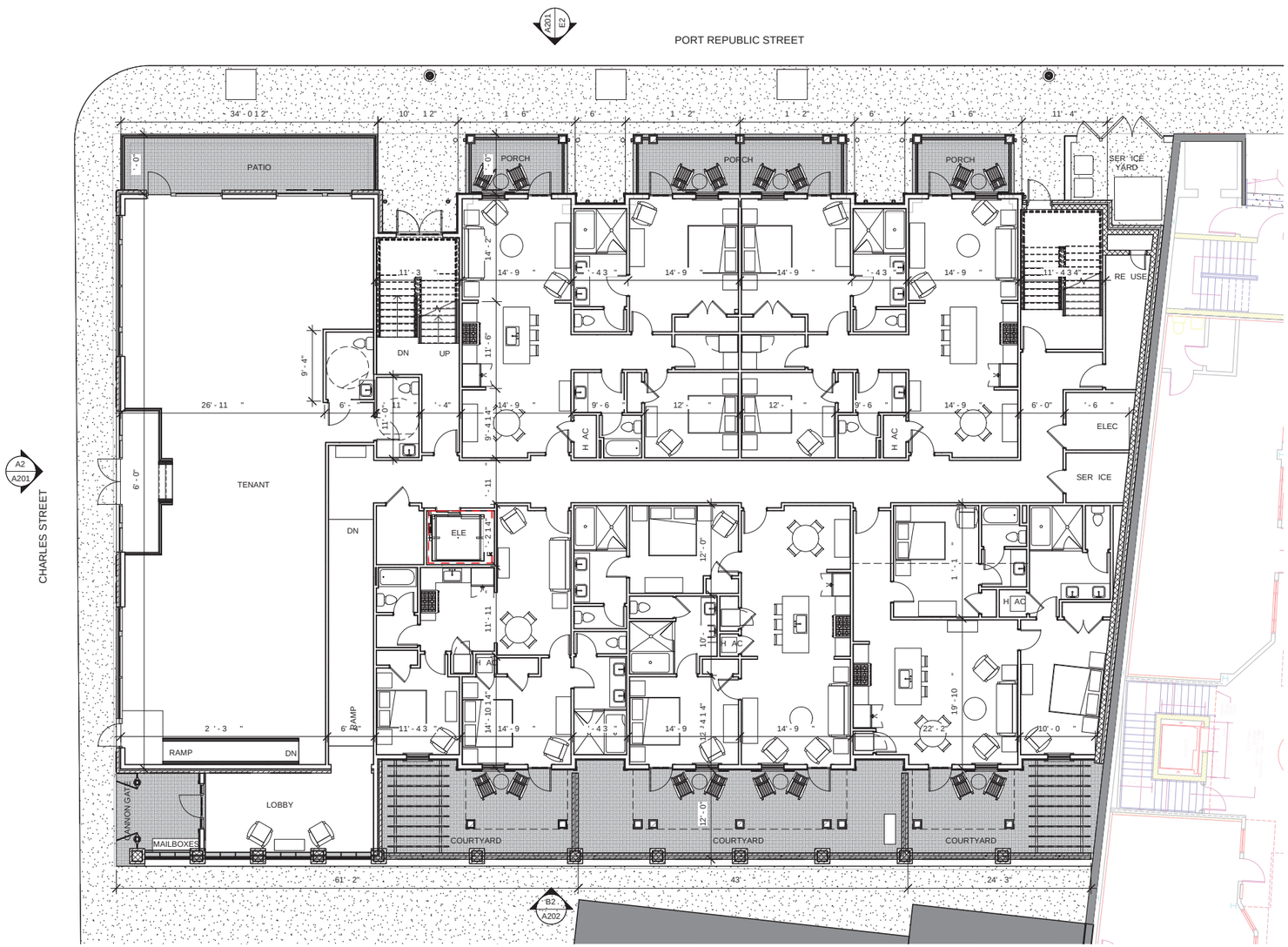

A1
A101

IRST LOOR

SCALE: 1 " = 1'-0"

0' 4' ' 16' 32'

PREVIOUS HRB SUBMITTAL

211 CHARLES 18 of 49

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1ST FLOOR PLAN

A101

ROA392

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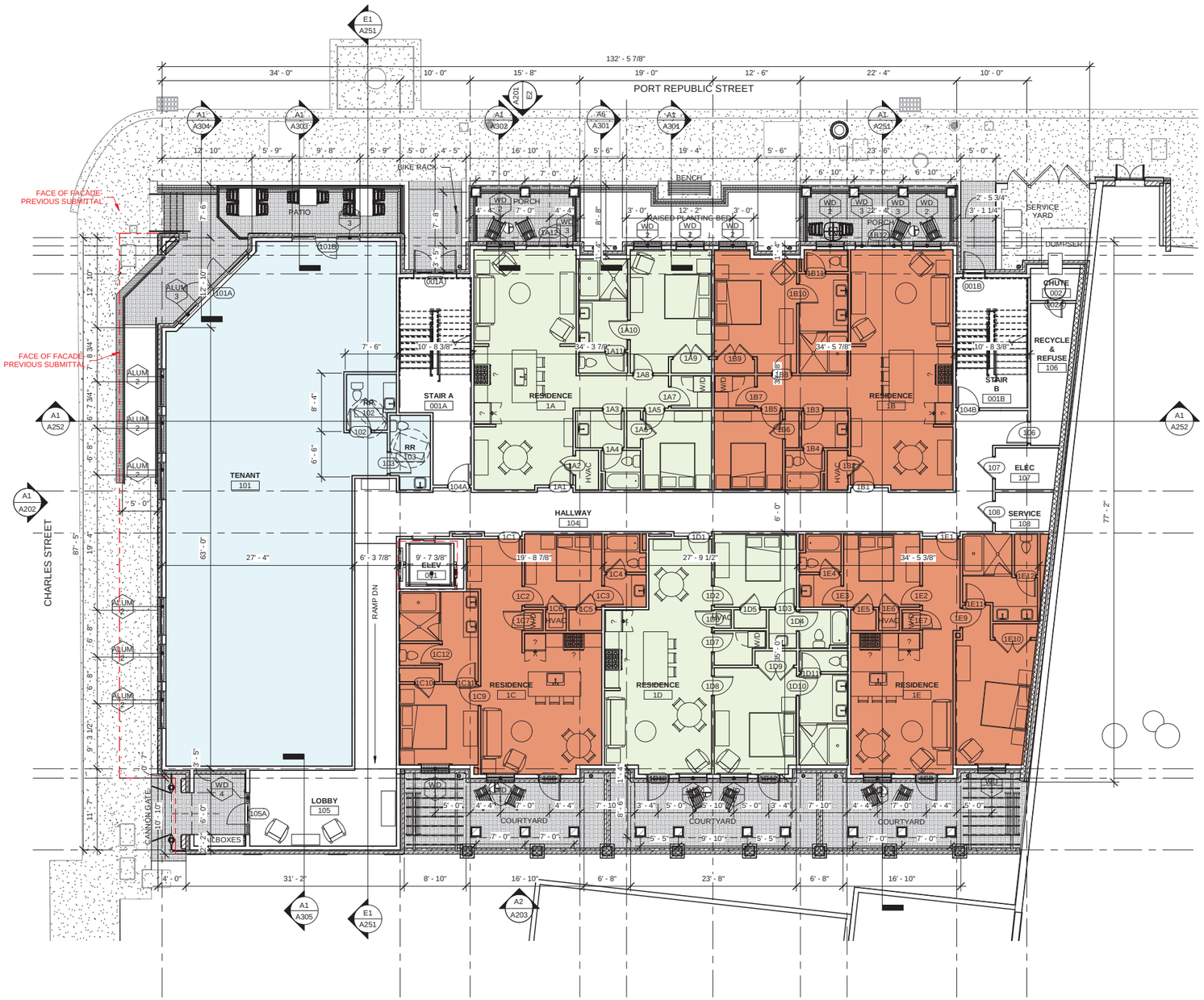

A1 A101 FIRST FLOOR PLAN (CURRENT PROPOSED)
SCALE: 1/8" = 1'-0"

0' 4' 8' 16' 32'

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FIRST FLOOR PLAN (CURRENT PROPOSED

A101

ROA393

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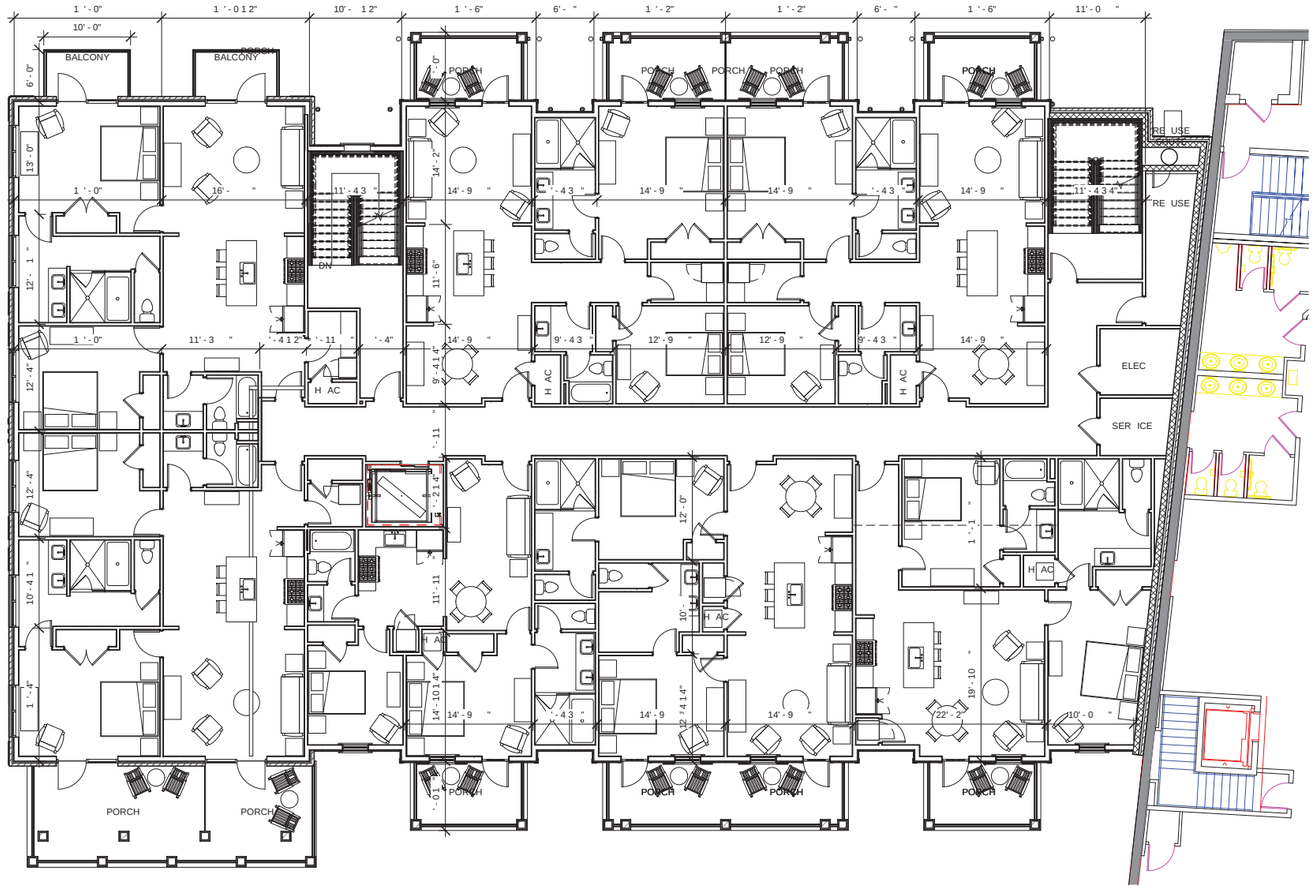

1 A102 SECOND THIRD LOOR PLANS
SCALE: 1 " = 1'-0"

0' 4' ' 16' 32'

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211 CHARLES 20 of 49

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SECOND & THIRD FLOOR PLANS

A102

ROA394

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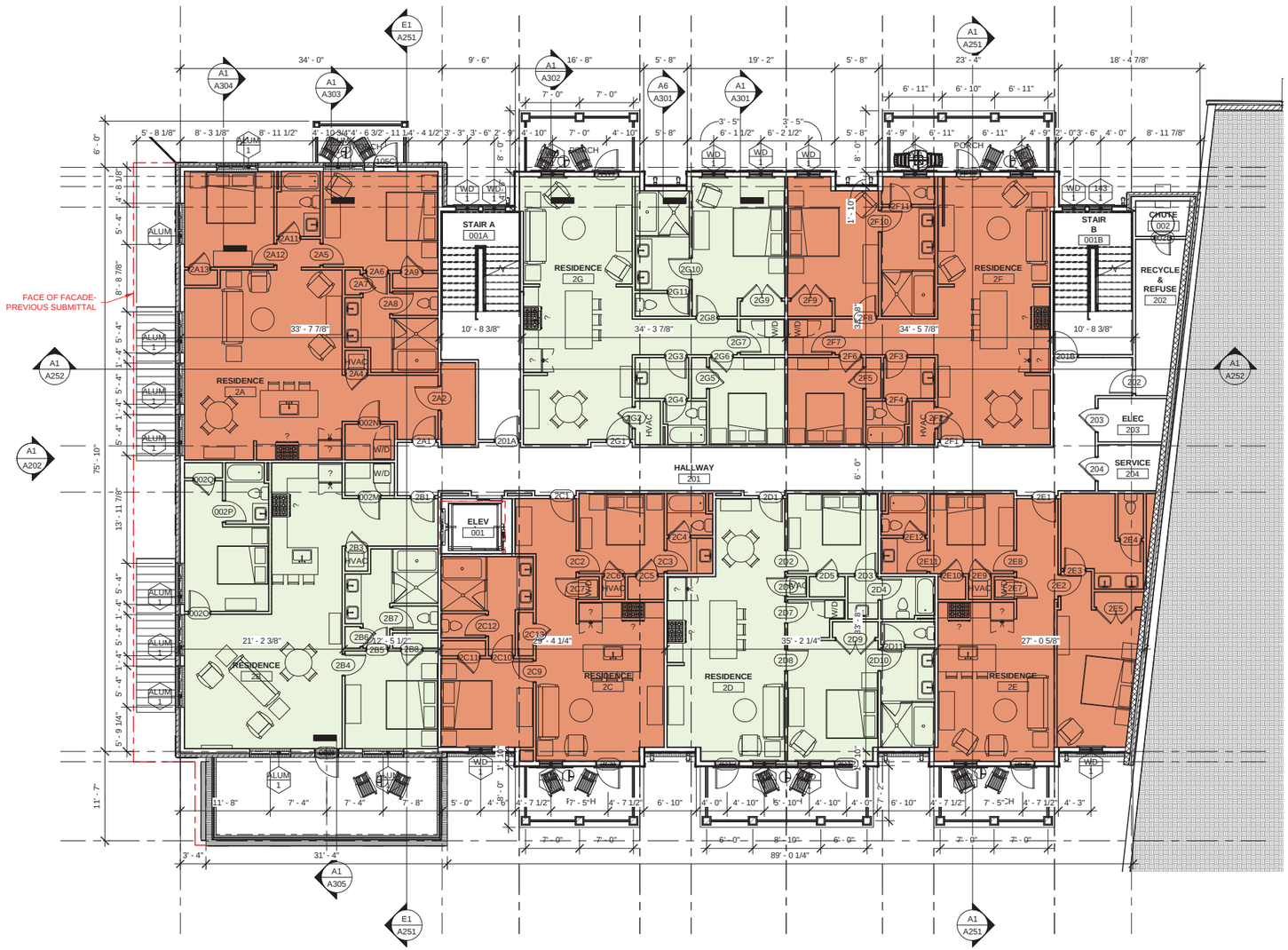

A1 A102 SECOND & THIRD FLOOR PLANS (CURRENT PROPOSED)
SCALE: 1/8" = 1'-0"

0' 4' 8' 16' 32'

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SECOND & THIRD FLOOR PLANS (CURRENT PROPOSED)

A102

ROA395

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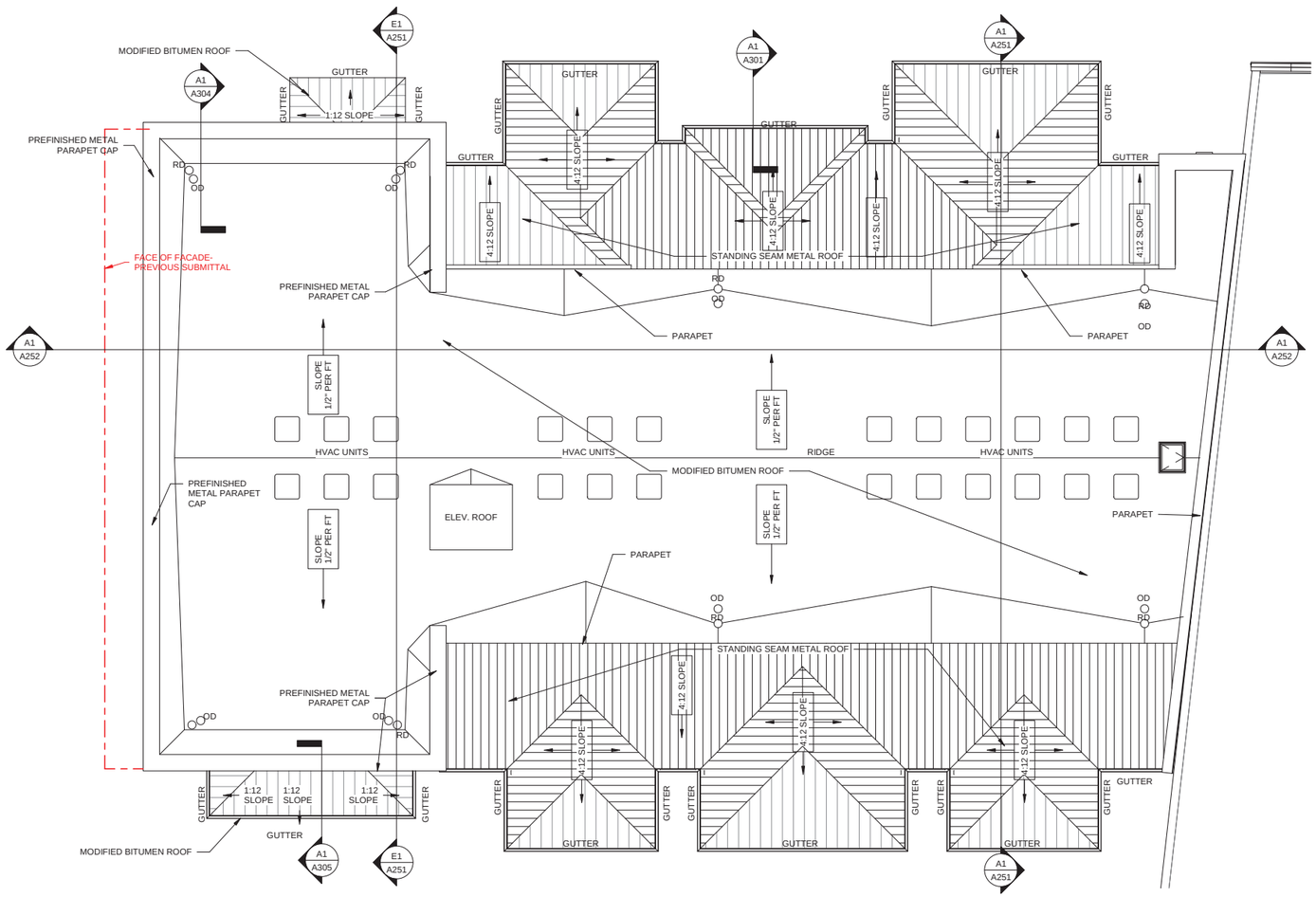

A1 A103 ROOF PLAN
SCALE: 1/8" = 1'-0"

0' 4' 8' 16' 32'

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ROOF PLAN

A103
ROA396

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F1 A200 STREET ELEVATION-PORT REPUBLIC
SCALE: 1/16" = 1'-0"

D1 A200 STREET ELEVATION-CHARLES
SCALE: 1/16" = 1'-0"

A1 A200 STREET ELEVATION-BAY STREET
SCALE: 1/16" = 1'-0"

211 CHARLES 23 of 49

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STREET ELEVATIONS

A200

~~ROA397~~

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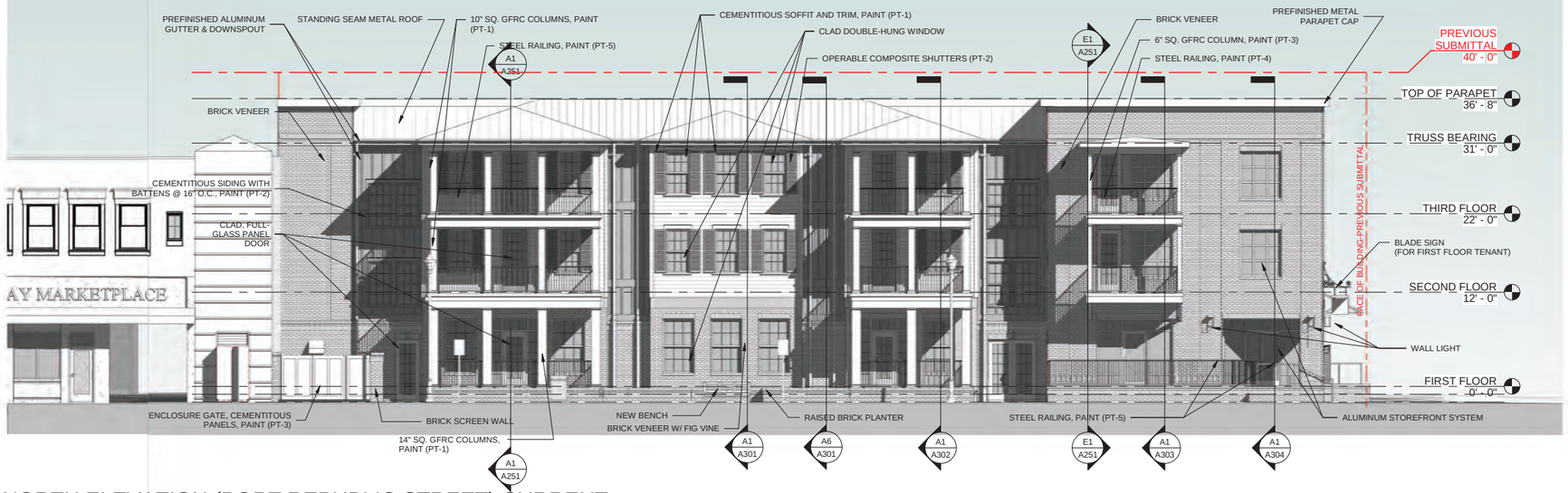
TRANSPARENCY DIAGRAM



E2
A201

NORTH ELEVATION (PORT REPUBLIC STREET) CURRENT PROPOSED

SCALE: 1/8" = 1'-0"

0' 4' 8' 16' 32'

211 CHARLES 24 of 49

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NORTH EXTERIOR ELEVATION

A201
ROA398

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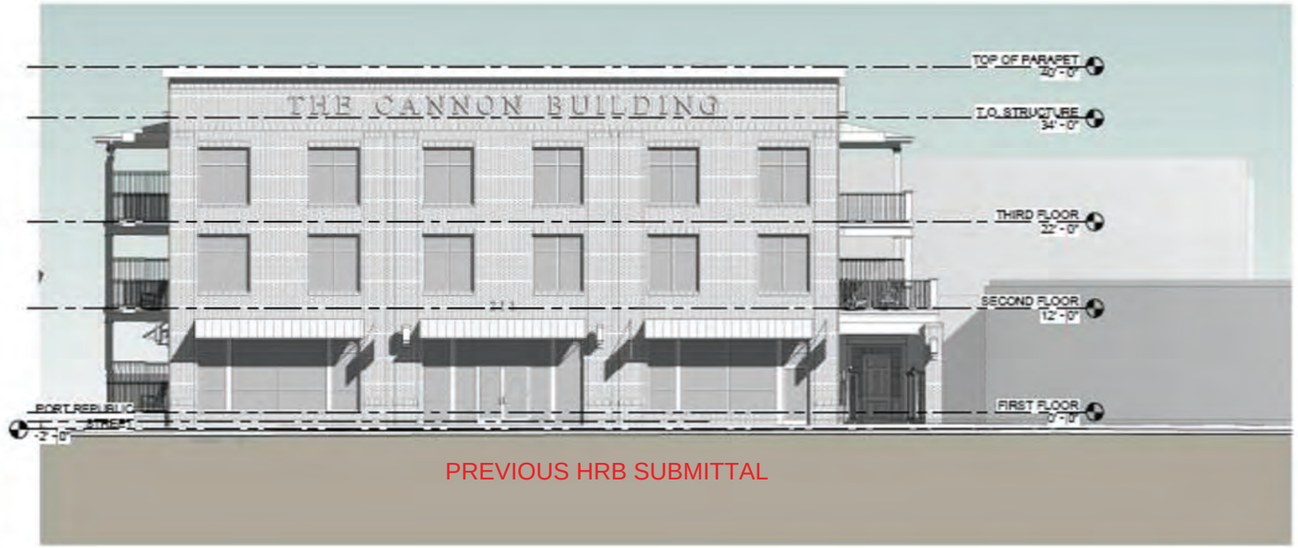

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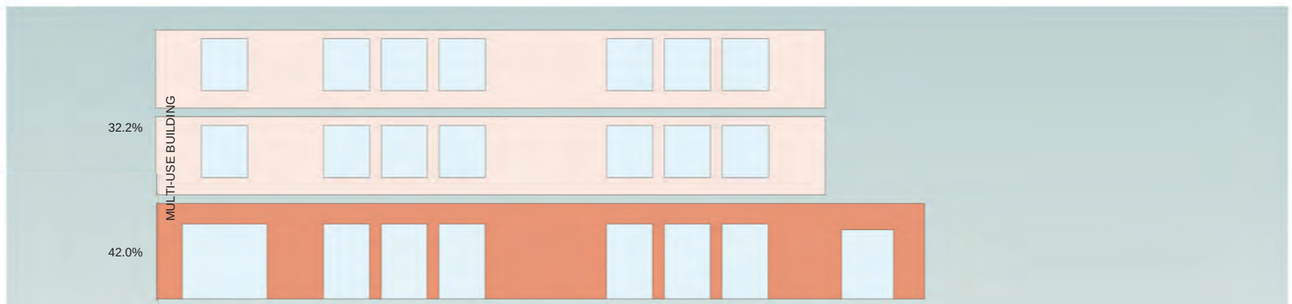

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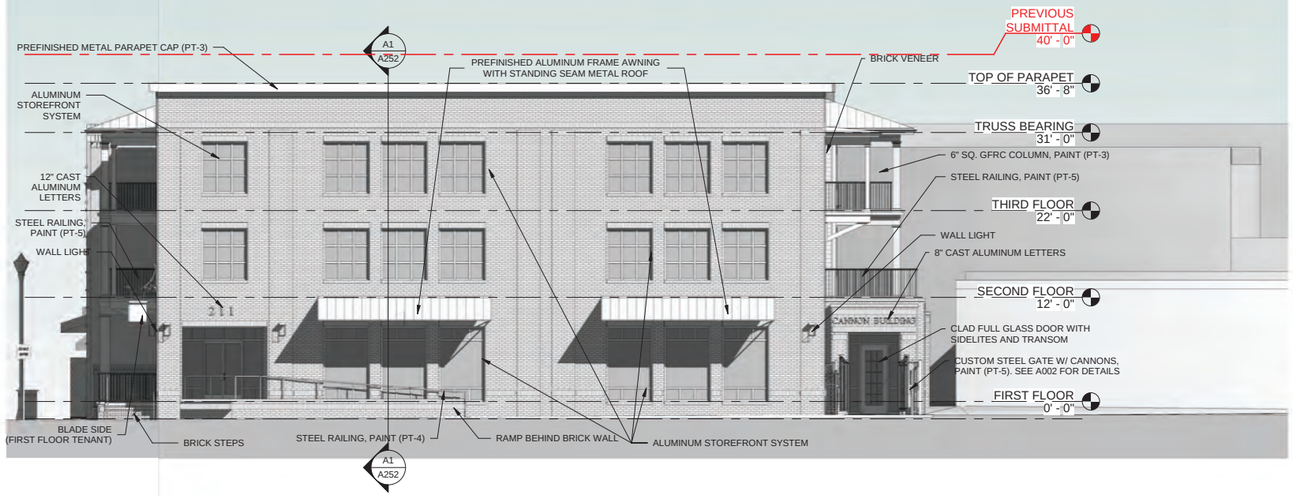
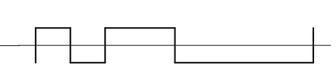


A1
A202

WEST ELEVATION (CURRENT PROPOSED)

SCALE: 1/8" = 1'-0"



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WEST EXTERIOR ELEVATION

A202

ROA399

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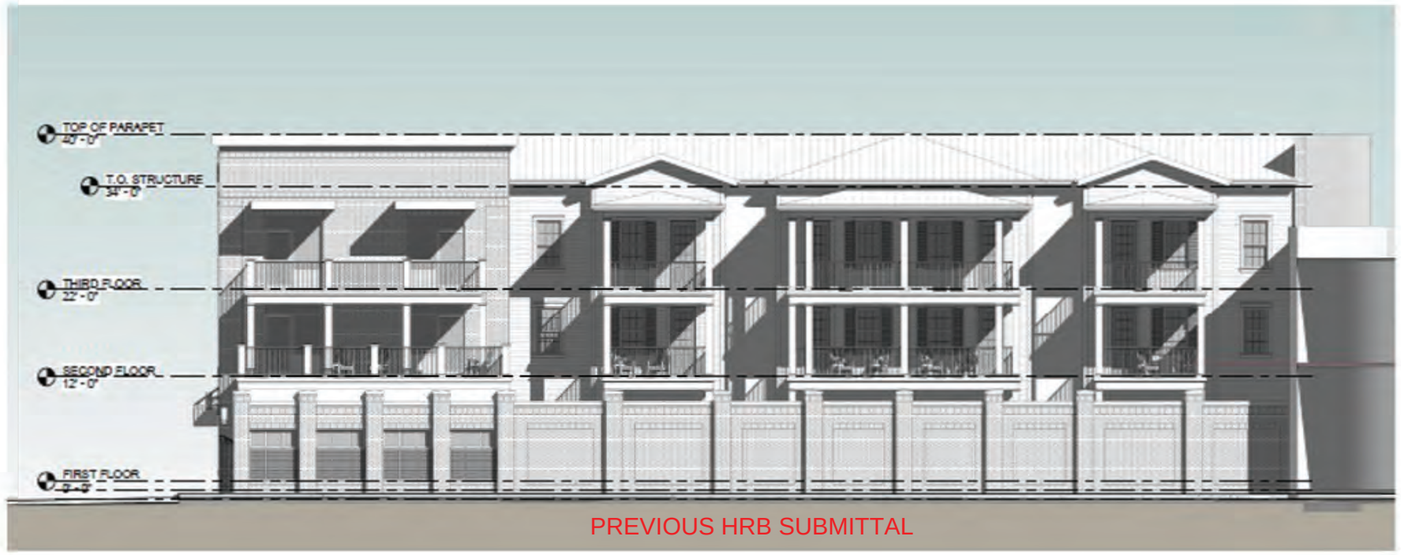

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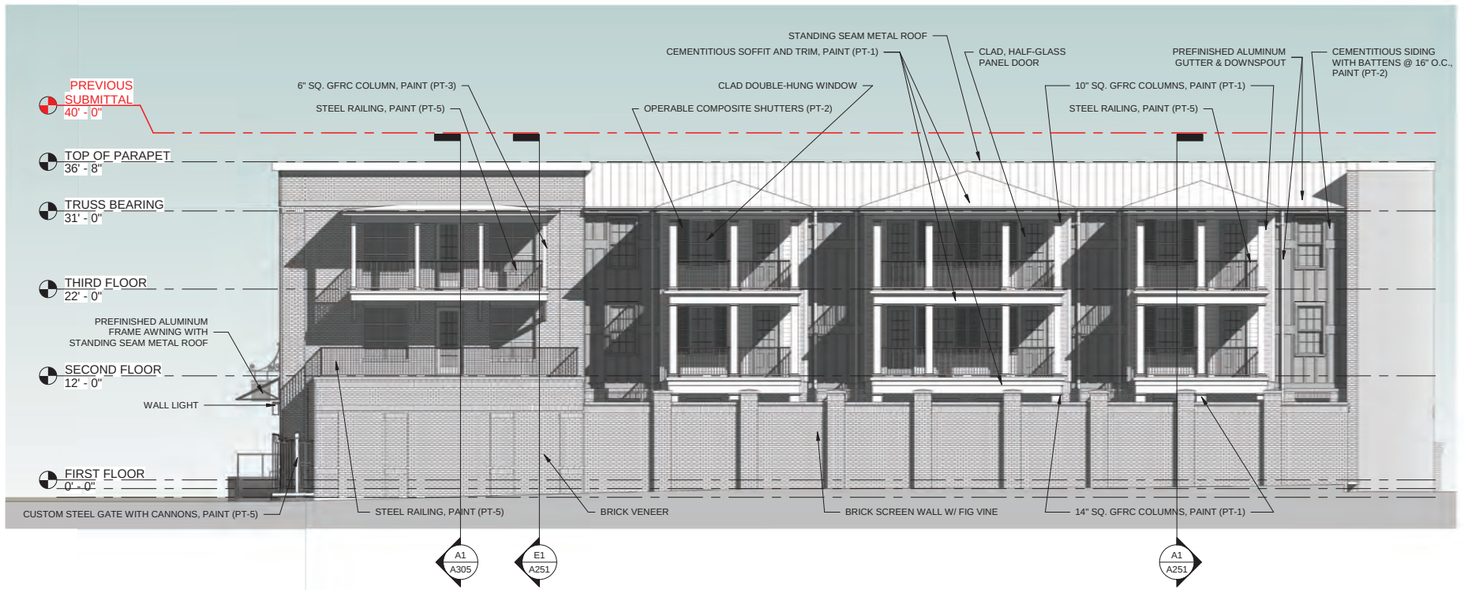

A2 A203 SOUTH ELEVATION (CURRENT PROPOSED)
SCALE: 1/8" = 1'-0"

0' 4' 8' 16' 32'

EXTERIOR FINISH MATERIAL SCHEDULE

MATERIAL	DISCRIPTION - BASIS OF DESIGN
COLUMNS (ON PORCHES)	10" & 14" SQUARE PERMACAST COLUMNS (PAINT PT-1)
COLUMNS (ON BALCONIES)	8" SQUARE PERMACAST COLUMNS (PAINT PT-3)
PT-1 (WHITE)	"PURE WHITE" SW 7005 BY SHERWIN WILLIAMS
PT-2 (LIGHT WARM GRAY)	"AMAZING GRAY" SW 7044 BY SHERWIN WILLIAMS
PT-3 (MEDIUM WARM GRAY)	COLOR MATCH METAL ROOF
PT-4 (PALE BLUE)	"BATHE BLUE" SW-6771 BY SHERWIN WILLIAMS
PT-5 (BLACK)	"BLACK MAGIC" SW6991 BY SHERWIN WILLIAMS
STANDING SEAM METAL ROOF	"MAXIMA" 1.5 INCH HIGH BY MCELROY; COLOR: "CHAMPAGNE METALLIC"
GUTTER & DOWN SPOUTS	MCELROY METALS, COLOR: "REGAL WHITE"
ALUMINUM STOREFRONT AND ENTRANCES	IR-500 FRAMING WITH IR-350 ENTRANCES BY KAWNEER; COLOR: "ANTIQUE BRONZE" UC 100027
GLAZING	"SOLARGRAY" BY VITRO
ALUMINUM CLAD DOUBLE-HUNG WINDOWS (IN SIDING)	"RESERVE" WITH SIMULATED DIVIDED LIGHTS, BY PELLA; COLOR: "CLASSIC WHITE"
ALUMINUM CLAD DOUBLE-HUNG WINDOWS (IN BRICK)	"RESERVE" WITH SIMULATED DIVIDED LIGHTS, BY PELLA; COLOR: "SAND DRIVE"
BRICK	"LAUREL BAY" MODULAR, BY PALMETTO BRICK
MORTAR	"SEASHELL" BY HOLCIM
LAP SIDING	HARDIEPLANK SIDING, SMOOTH FINISH, 6" EXPOSURE (PAINT PT-1)
BOARD AND BATTEN SIDING	HARDIEPANEL SIDING, SMOOTH FINISH, WITH BATTENS @ 16" O.C. (PAINT PT-2)
RAILINGS AND GATES	CUSTOM STEEL FABRICATION (PAINT PT-5)
SHUTTERS	LOUVERED SHUTTER BY ATLANTIC SHUTTERS (MATCH PT-2)

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SOUTH EXTERIOR ELEVATION

A203
ROA400

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PALMETTO " LAUREL BAY" MODULAR BRICK,
WITH HOLCIM "SEASHELL" MORTAR

COLUMNS PAINTED PT-1*
STEEL RAILING, PAINTED PT-5

ATLANTIC SHUTTERS
OPERABLE SHUTTERS-PAINTED PT-2

CEMENTITIOUS LAP SIDING AND TRIM
6" EXPOSURE, SMOOTH FACE

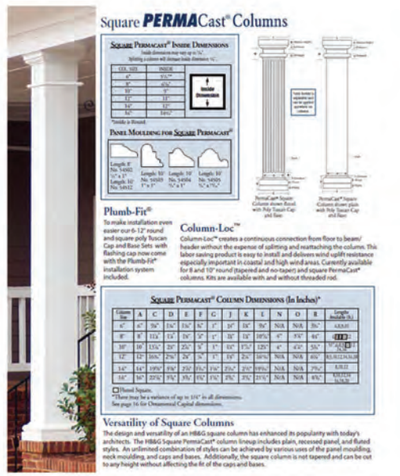
CEMENTITIOUS BOARD AND BATTEN SIDING
1X3 BATTENS @ 16" O.C., SMOOTH FACE

*COLUMNS & TRIM ON BRICK PORTION OF BUILDING:
MATCH STOREFRONT

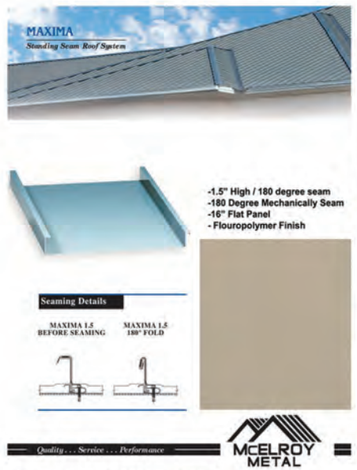
PORCH CEILINGS

STEEL RAILINGS AND GATE

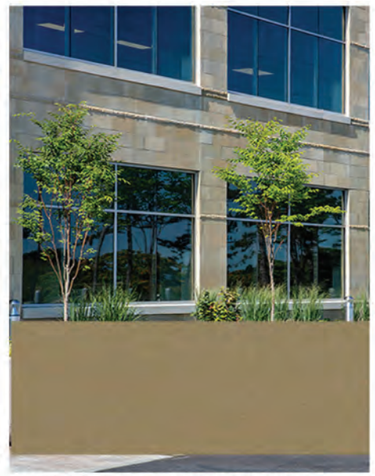
EXTERIOR MATERIALS



SQUARE GFRC COLUMNS, PAINTED PT-1 & PT-3



STANDING SEAM METALROOF-
MCELROY CHAMPAGNE METALLIC



ALUMINUM STOREFRONT-KAWNEER
TRIFAB 451IR ANTIQUE BRONZE UC100027

ETEREA applique

IP65

small: IK 05
2,5 mm Photo-etched methacrylate

medium and large: IK08
4 / 6 mm thick white tempered glass

100 x 100 x h. 200 mm
150 x 150 x h. 300 mm
215 x 215 x h. 455 mm

standard finishes

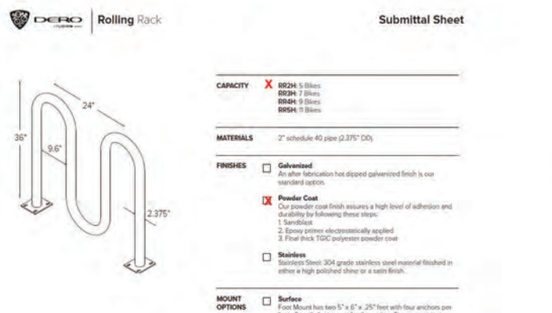
Platek®

Outdoor Wall Sconce: "Eterea Applique"
Large & Medium in "Antrocite" finish with frosted glass

EXTERIOR LIGHTING

PELLA "RESERVE" ALUMINUM CLAD DOUBLE-HUNG WOOD
WINDOWS & DOORS. WINDOWS HAVE SIM. DIVIDED LITES

EXTERIOR CLAD DOORS AND WINDOWS



BICYCLE RACK

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EXTERIOR MATERIALS & LIGHTING

A211

ROA401

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VIEW FROM PORT REPUBLIC STREET LOOKING SOUTHWEST

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211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

DRAWN BY: FAM
CHECKED BY: FAM
DATE: 11.18.2021

COAST PROJECT NO.: 2015.00

EXTERIOR PERSPECTIVE

A221

ROA402

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PREVIOUS SUBMITTAL

VIEW FROM CORNER OF CHARLES AND PORT REPUBLIC STREETS LOOKING SOUTHEAST

HRB FINAL APPROVAL - 12.08.2021 MEETING

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11.18.2021

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

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COAST PROJECT NO.: 2015.00

EXTERIOR PERSPECTIVE

A222

ROA403

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PREVIOUS SUBMITTAL

VIEW FROM CHARLES STREET LOOKING NORTHEAST

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EXTERIOR PERSPECTIVE

A223

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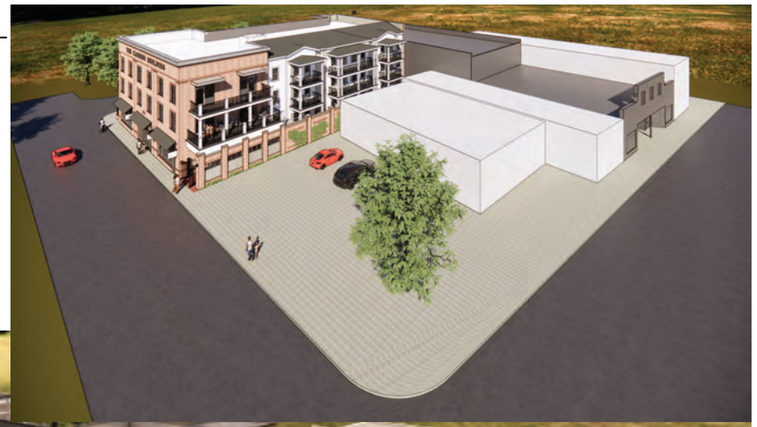

OVERALL VIEW OF PROPOSED DEVELOPMENT FROM THE CORNER OF CHARLES AND BAY STREETS LOOKING NORTHEAST

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THE CANNON BUILDING
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BEAUFORT, SOUTH CAROLINA

HRB FINAL APPROVAL - 12.08.2021 MEETING

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EXTERIOR PERSPECTIVE

A224

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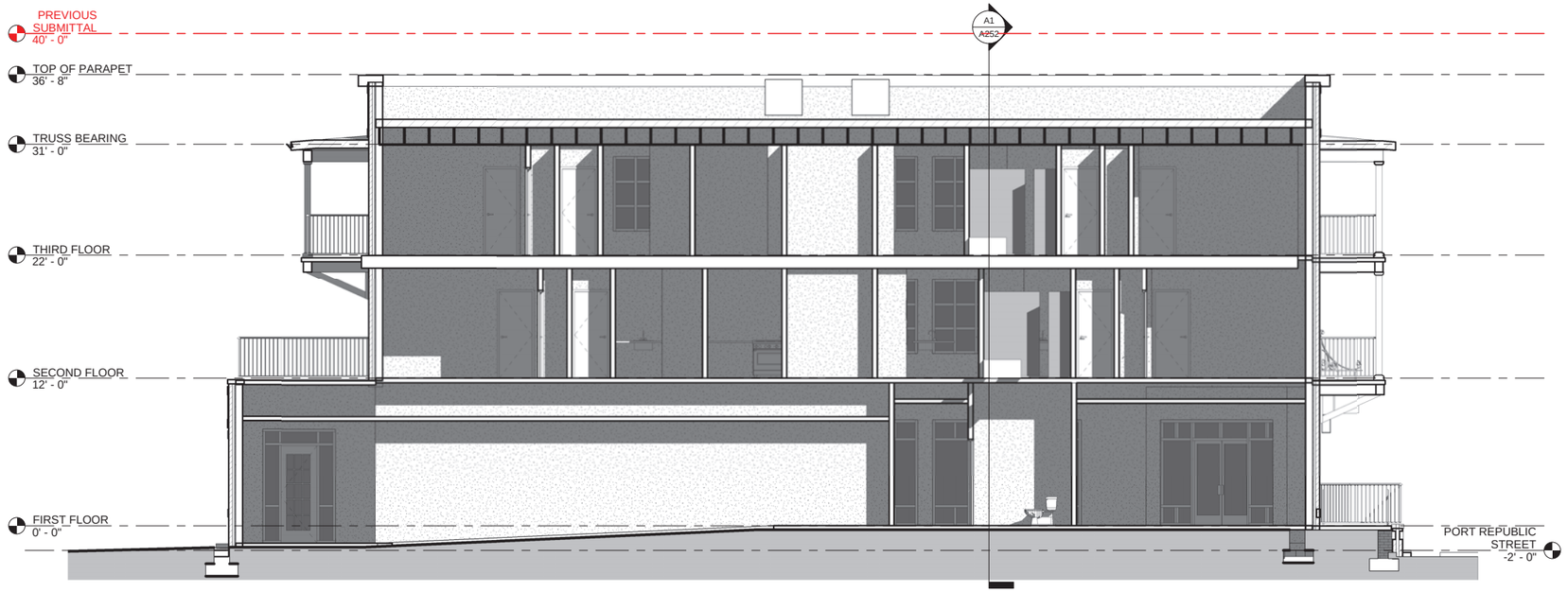
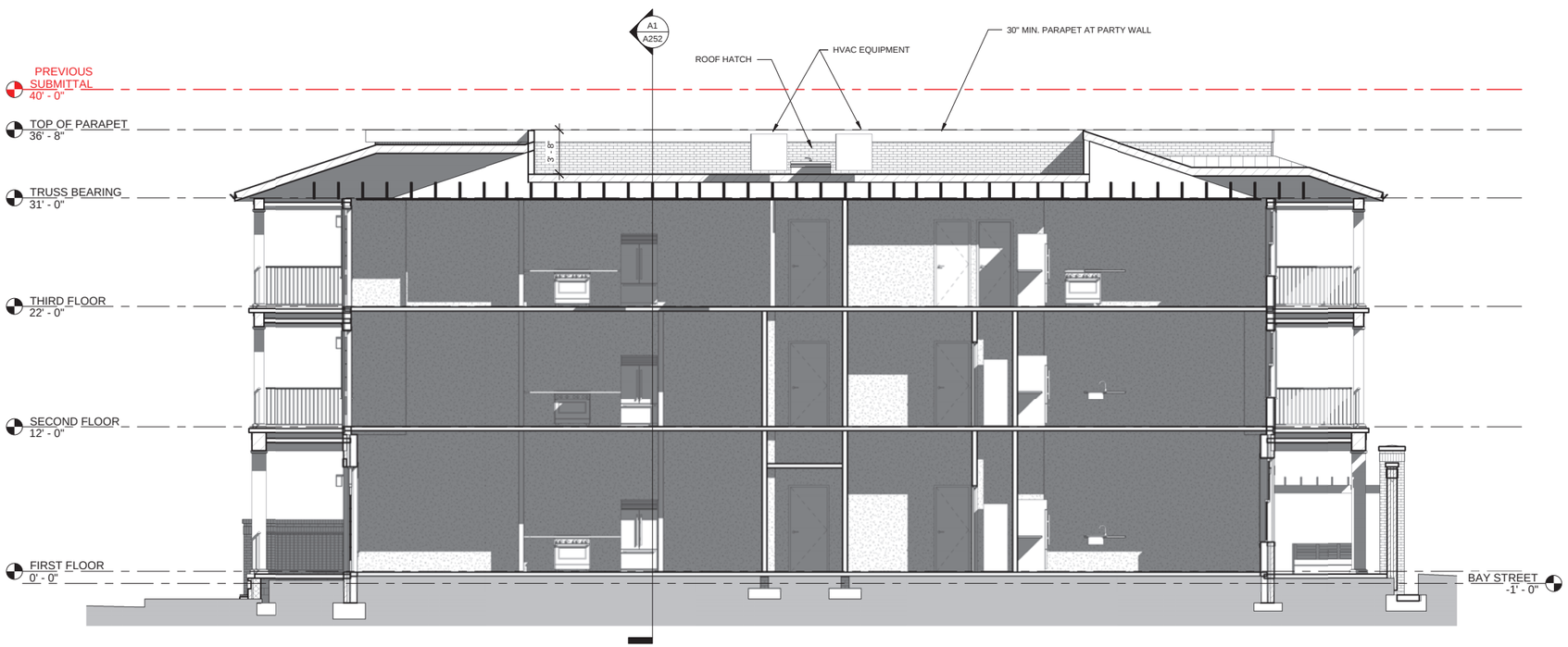


E1 / A251 TRANSVERSE BUILDING SECTION-LOOKING WEST
SCALE: 3/16" = 1'-0"



A1 / A251 TRANSVERSE BUILDING SECTION LOOKING EAST
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THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

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BUILDING SECTIONS

A251

~~ROA406~~

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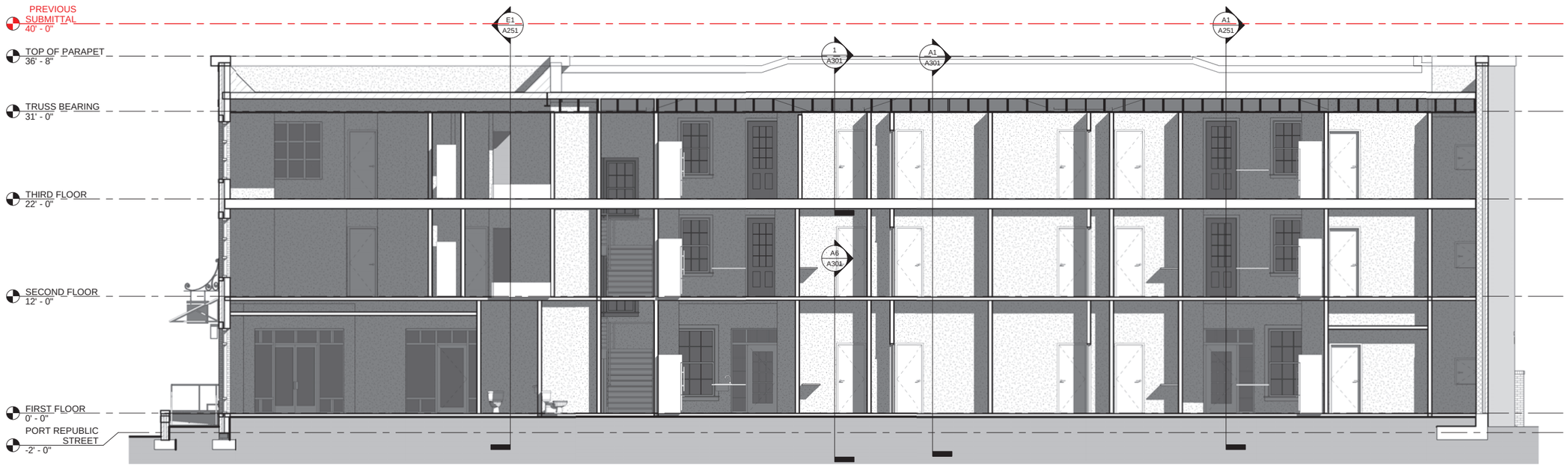

A1 / A252 LONGITUDINAL BUILDING SECTION-LOOKING NORTH
SCALE: 3/16" = 1'-0"

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THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
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COAST PROJECT NO.: 2015.00

LONGITUDINAL BUILDING SECTION

A252

ROA407

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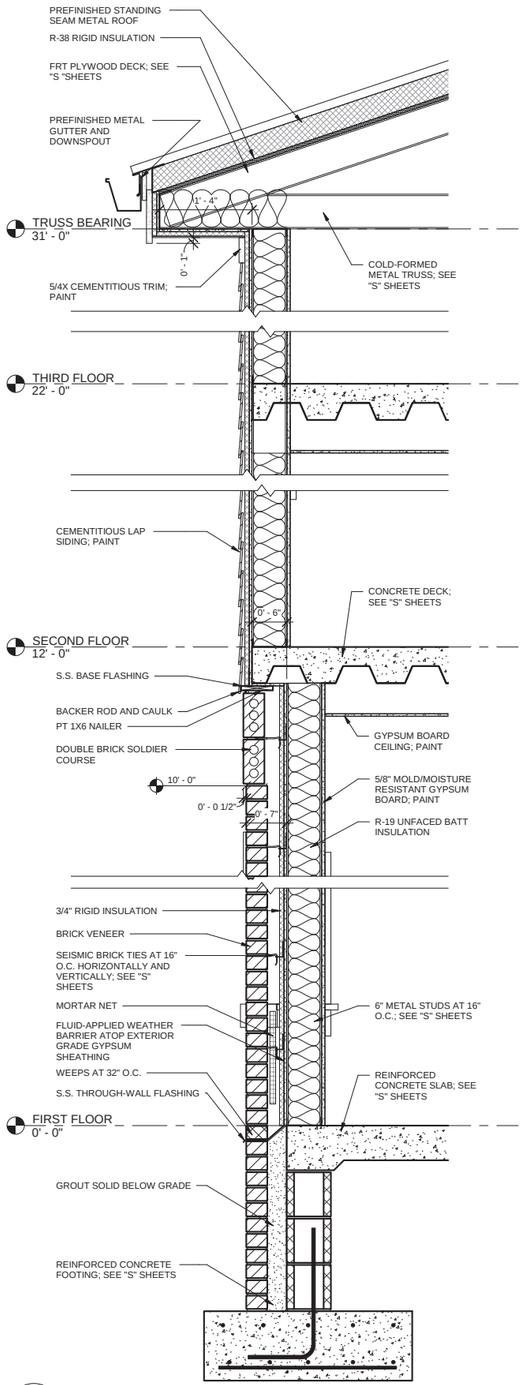
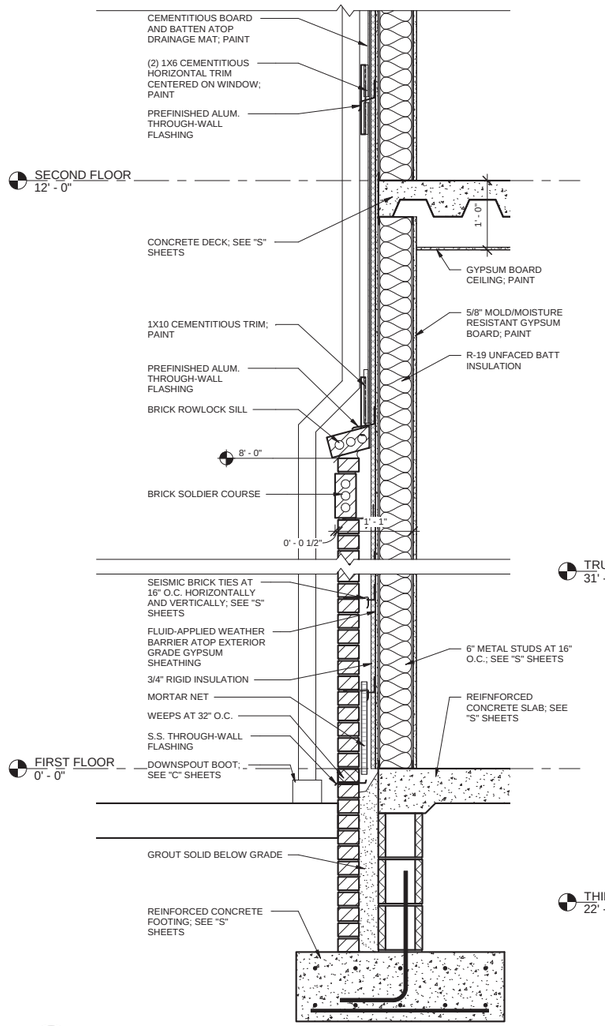
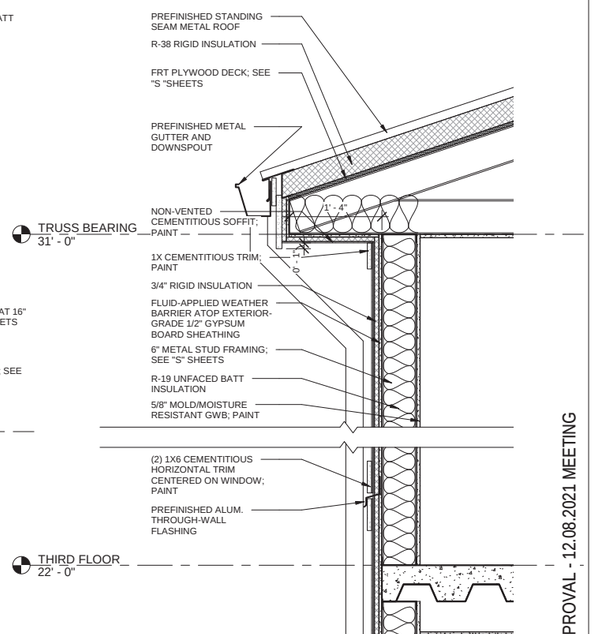


A1 / A301 WALL SECTION AT LAP SIDING OVER BRICK
SCALE: 1" = 1'-0"



A6 / A301 WALL SECTION AT BOARD AND BATTEN
SCALE: 1" = 1'-0"



211 CHARLES 34 of 49

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THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
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WALL SECTIONS

A301

ROA408

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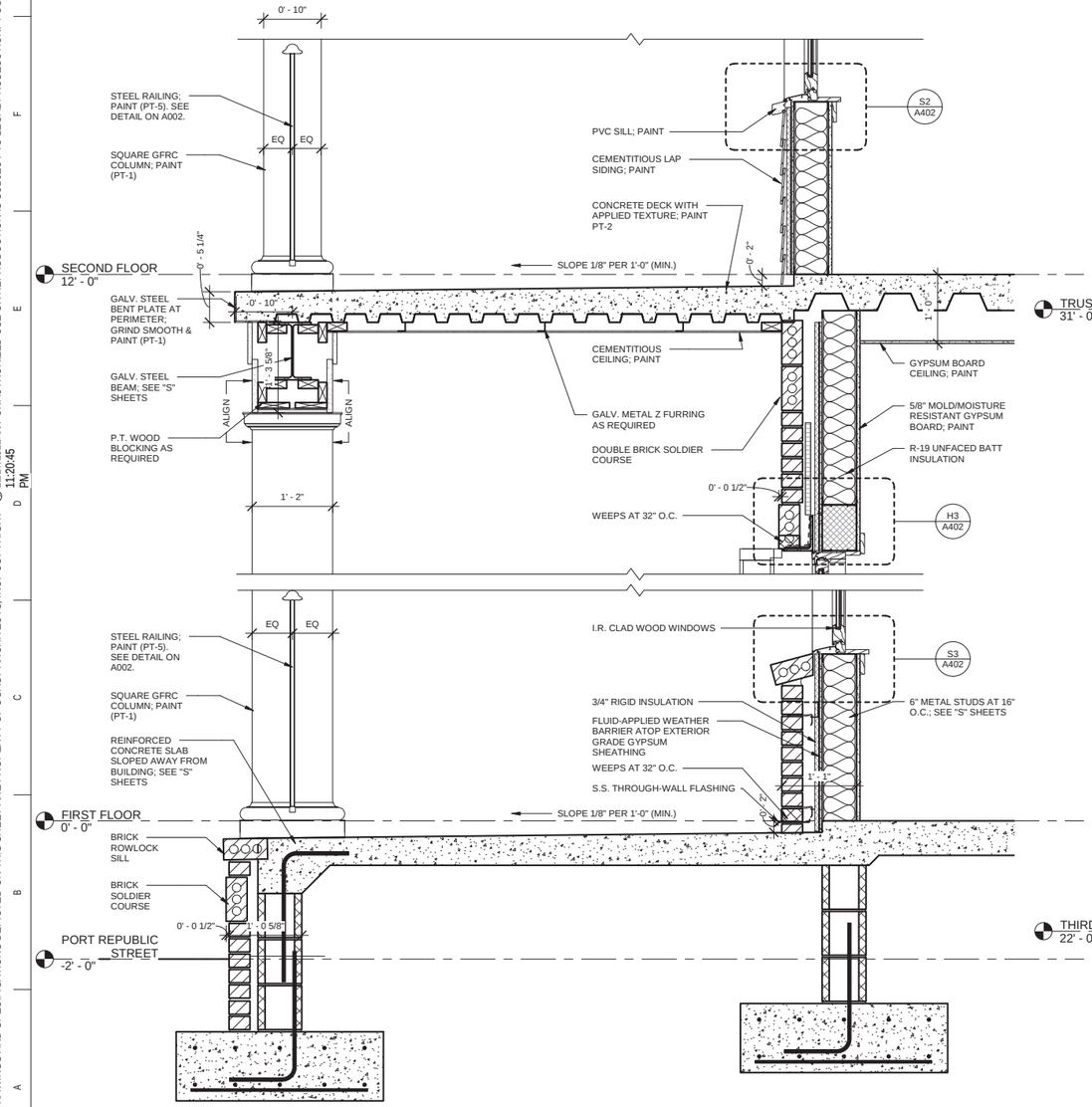

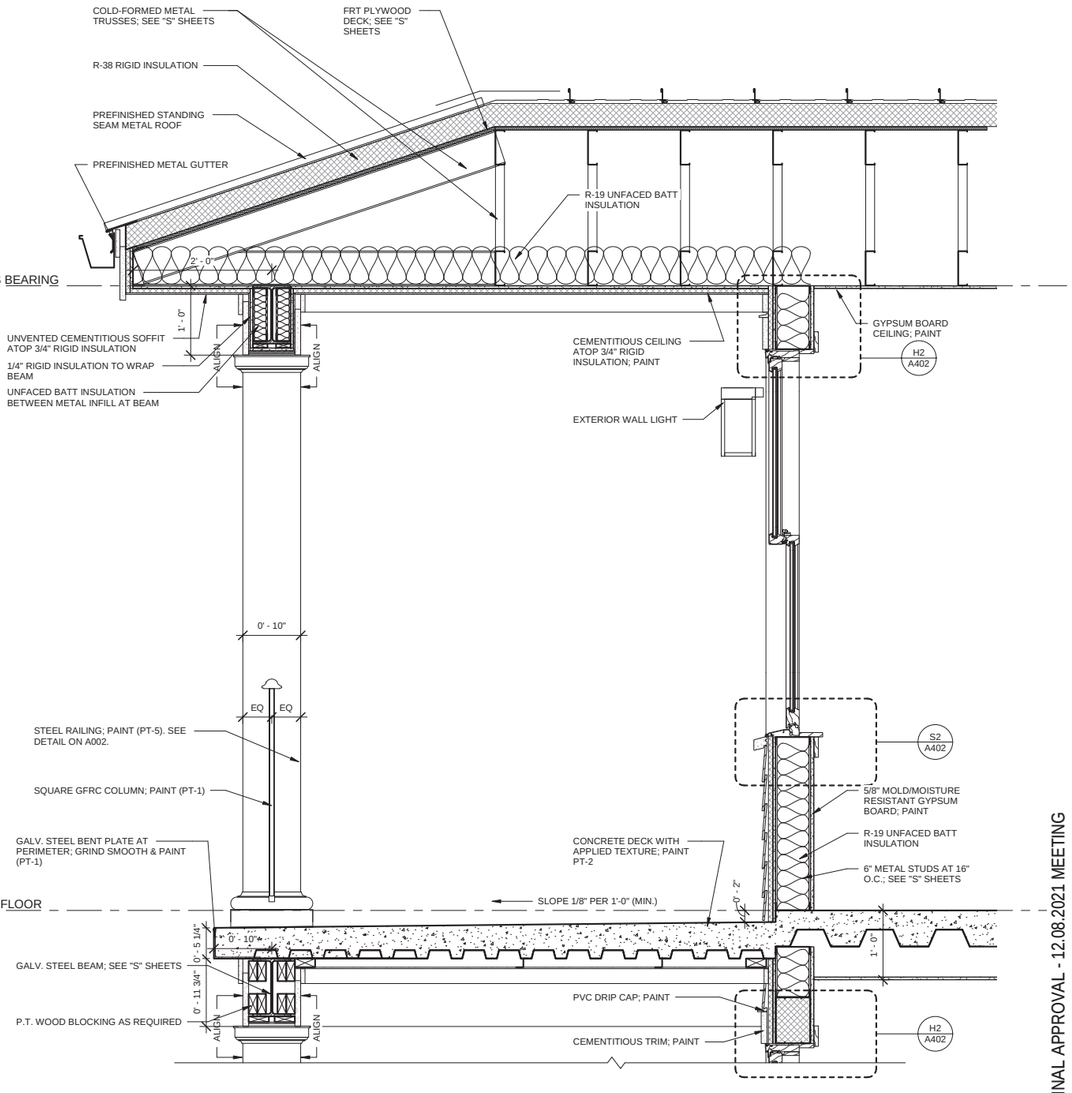

A1
A302

WALL SECTION THROUGH PORCH AT LAP SIDING

SCALE: 1" = 1'-0"

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211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

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WALL SECTIONS

A302

~~ROA409~~

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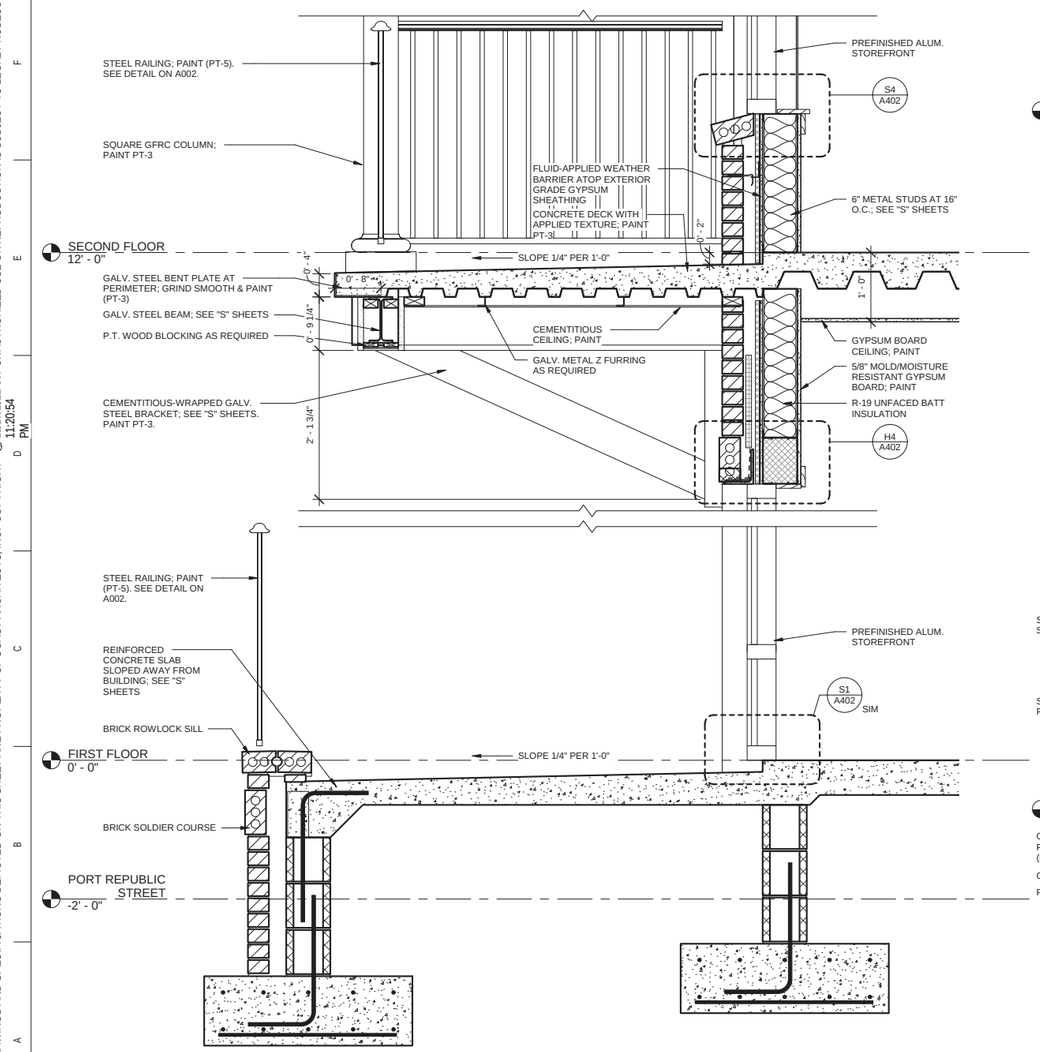

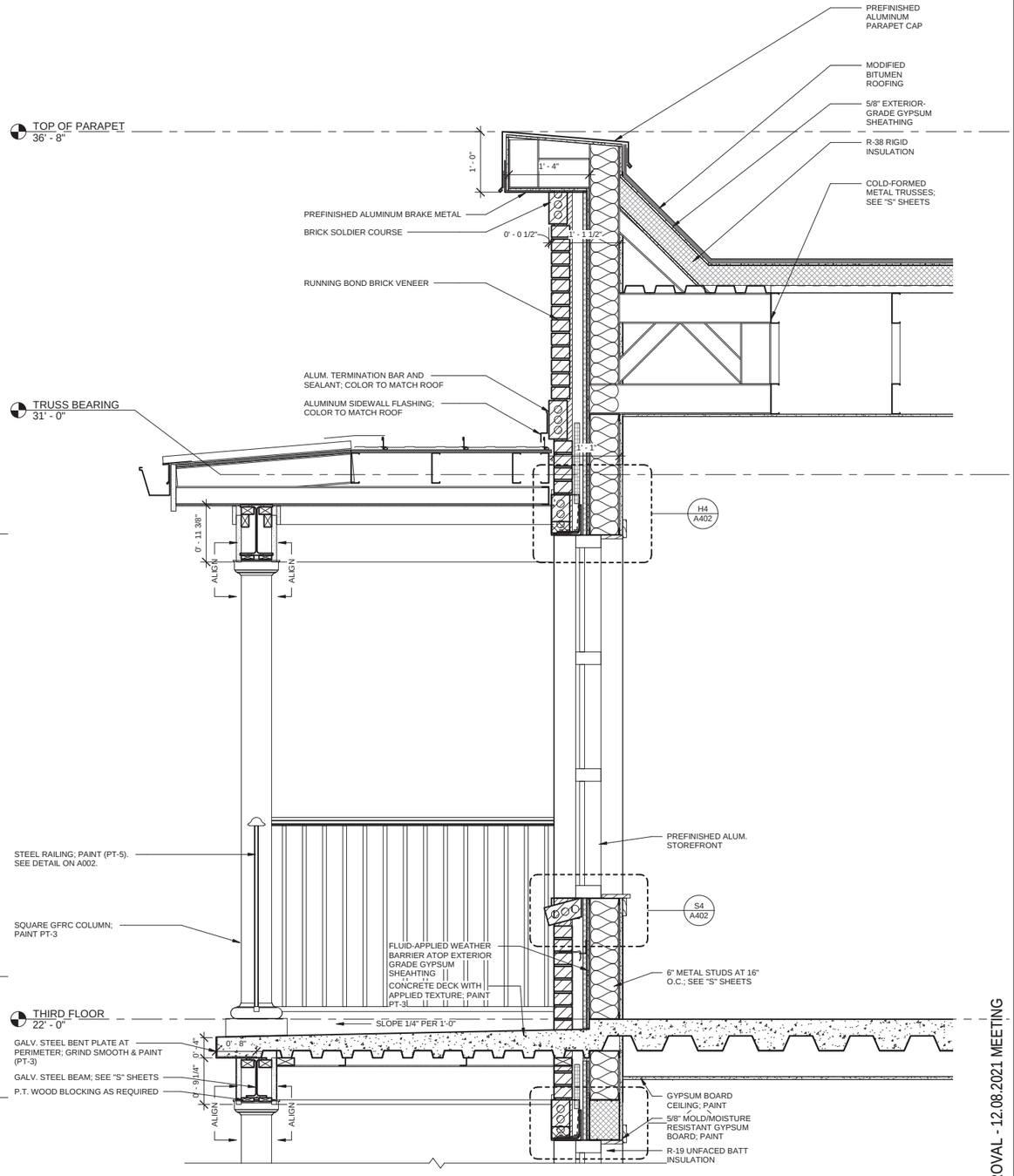

A1 / A303 WALL SECTION THROUGH BALCONIES AT BRICK FACADE
SCALE: 1" = 1'-0"

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211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

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WALL SECTIONS

A303
ROA410

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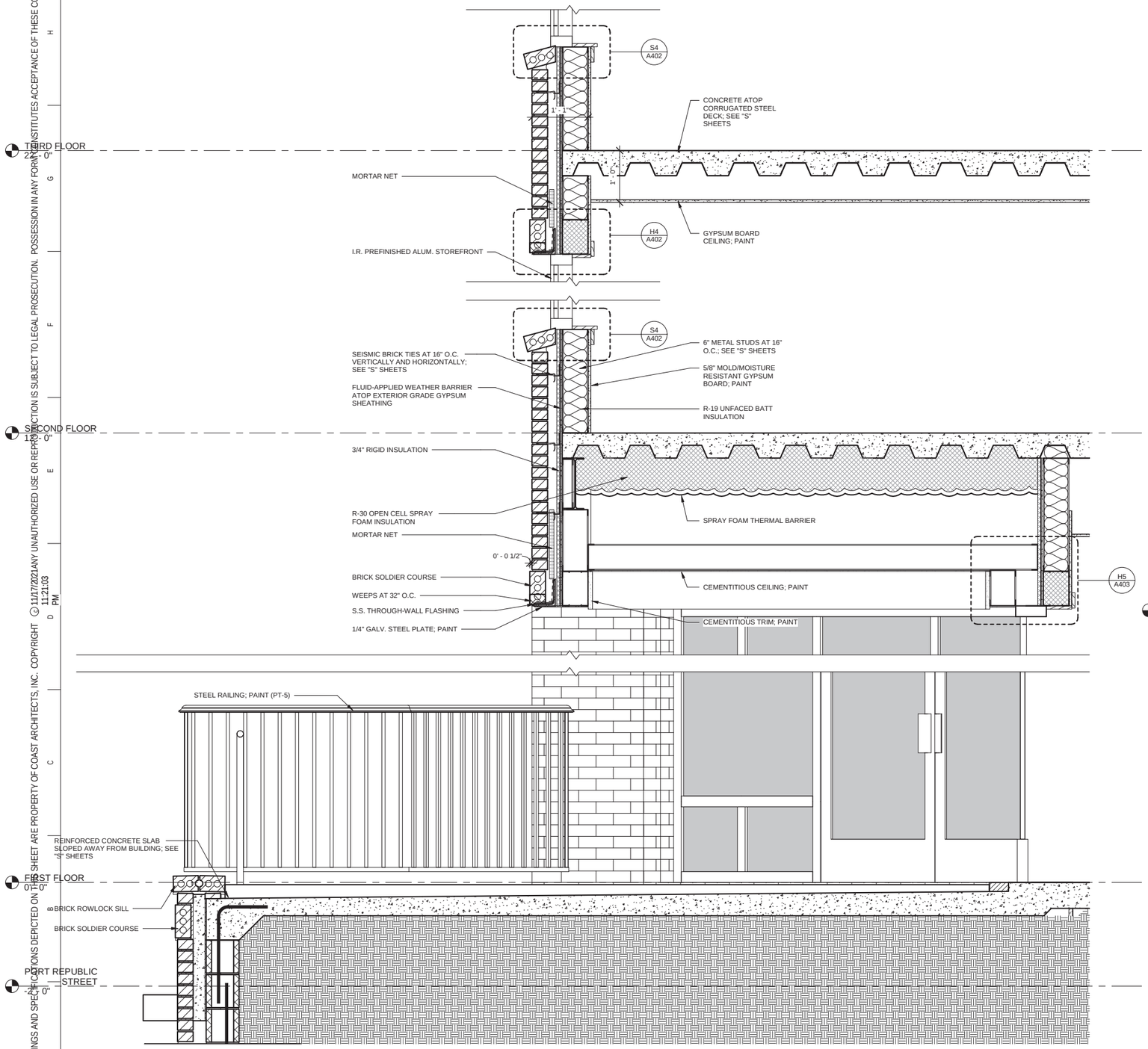

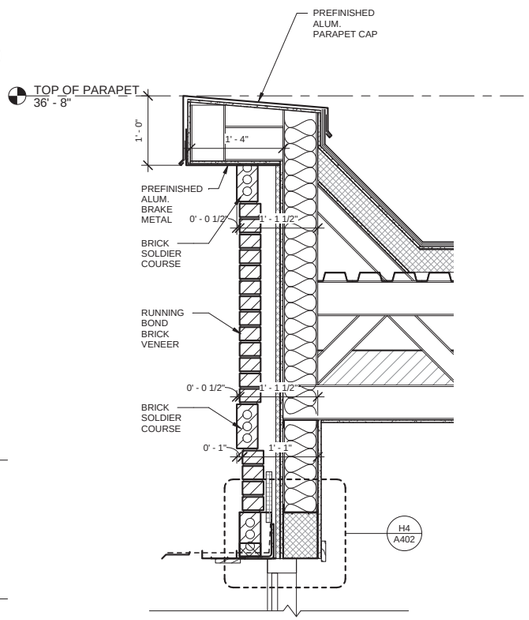

WALL SECTION THROUGH BRICK FACADE AT CORNER OF PORT REPUBLIC AND CHARLES STREET

A1 / A304

SCALE: 1" = 1'-0"

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WALL SECTIONS

A304

~~ROA411~~

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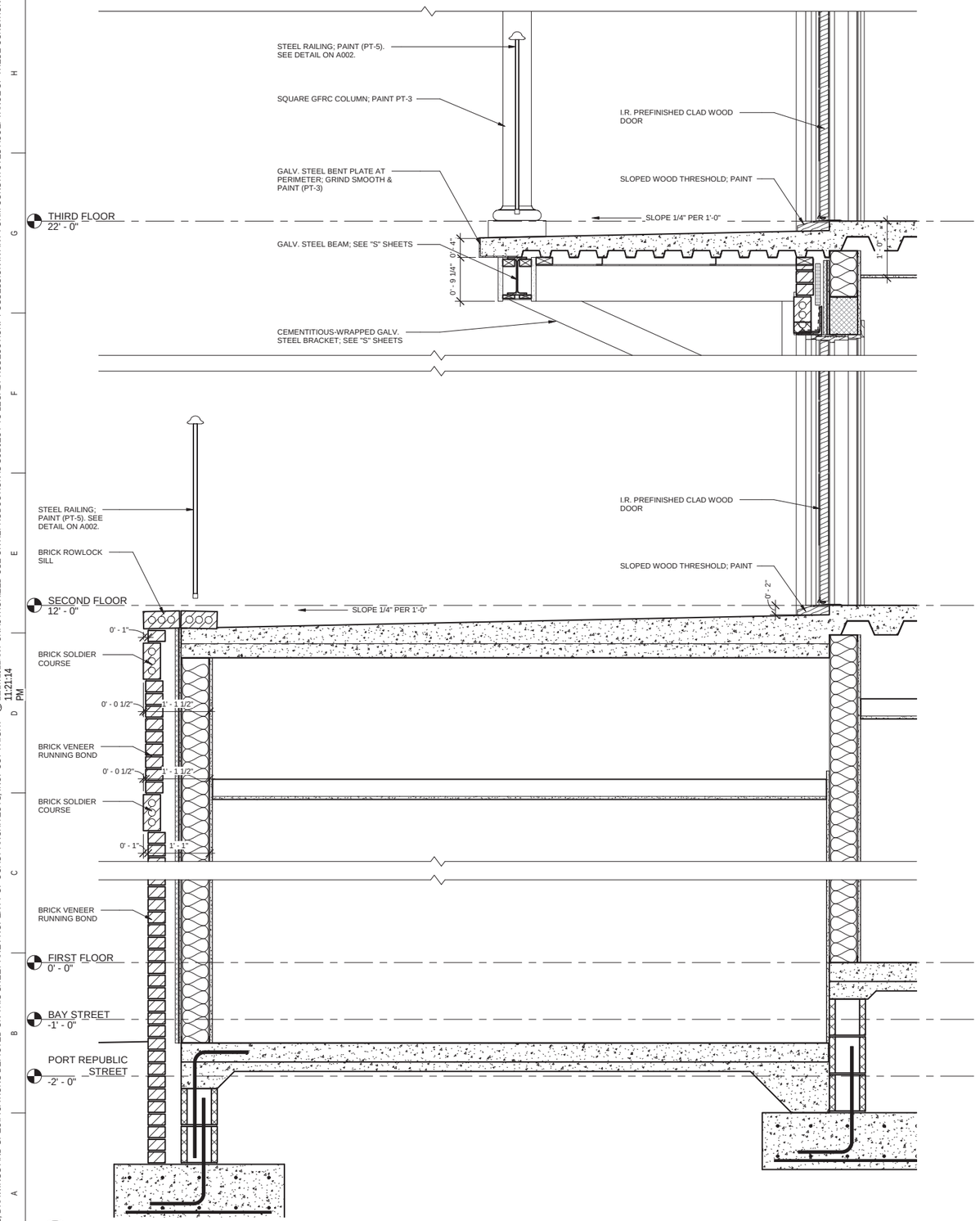

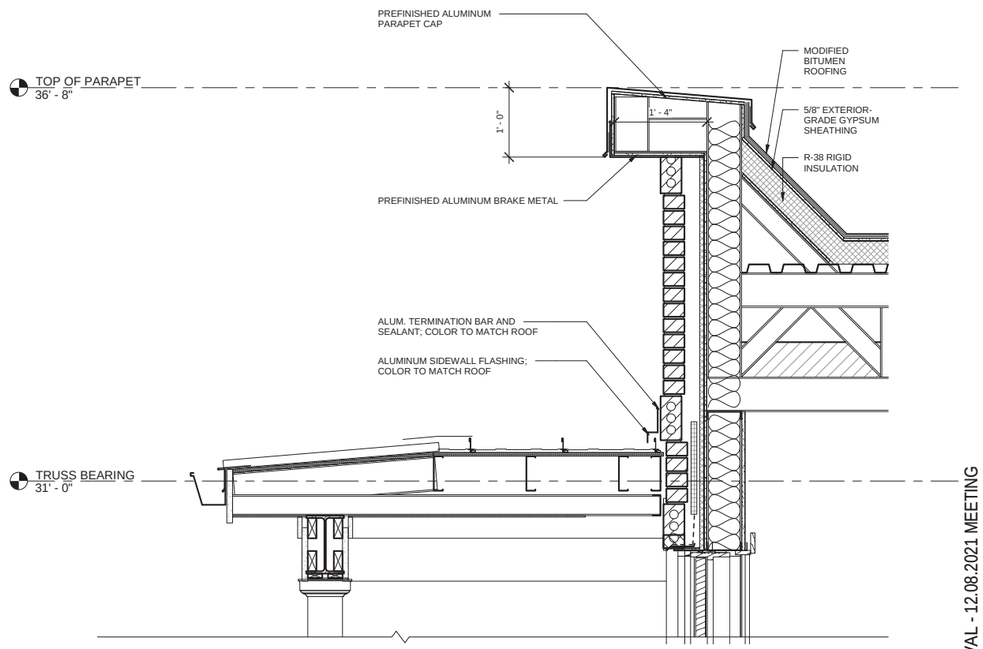

A1 / A305 WALL SECTION THROUGH LOBBY
SCALE: 1" = 1'-0"

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WALL SECTION

A305

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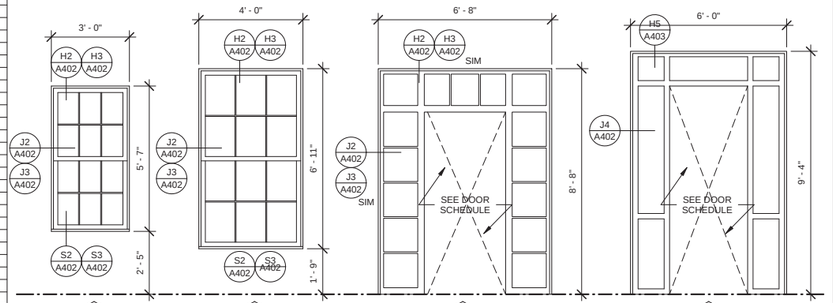
DOOR SCHEDULE

DOOR NO.	ROOM NAME	DOOR TYPE	DOOR WIDTH	DOOR HEIGHT	DOOR THICKNESS	FRAME TYPE	Fire Rating	COMMENTS
001A	STAIR A	D	3' - 0"	8' - 0"	0' - 1 3/4"			
1A1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
1A2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A6		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A9		G	5' - 0"	7' - 0"	0' - 1 3/4"			
1A10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1A12		C.1	3' - 1 1/2"	7' - 0"	0' - 1 3/4"			
1A15		F	3' - 0"	7' - 0"	0' - 1 3/4"			
001B	STAIR B	C	3' - 0"	7' - 11"	0' - 1 3/4"			
1B1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
1B2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B6		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B9		G	5' - 0"	7' - 0"	0' - 1 3/4"			
1B10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1B12		C.1	3' - 1 1/2"	7' - 0"	0' - 1 3/4"			
1C1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
1C2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C6		F	2' - 4"	7' - 0"	0' - 1 3/4"			
1C7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C8		C	3' - 0"	7' - 11"	0' - 1 3/4"			
1C9		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1C12		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
1D2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D6		F	2' - 4"	7' - 0"	0' - 1 3/4"			
1D7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D9		G	5' - 0"	7' - 0"	0' - 1 3/4"			
1D10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1D12		C	3' - 0"	7' - 11"	0' - 1 3/4"			
1D13		C	3' - 0"	7' - 11"	0' - 1 3/4"			
1E1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
1E2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E6		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E8		C	3' - 0"	7' - 11"	0' - 1 3/4"			
1E9		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E10		G	5' - 0"	7' - 0"	0' - 1 3/4"			
1E11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
1E12		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002A	RECYCLE & REFUSE	F	2' - 0"	2' - 6"	0' - 1 3/4"			
2A1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
2A2		F	3' - 0"	7' - 0"	0' - 1 3/4"			
2A4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2A5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2A6		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2A7		F	2' - 4"	7' - 0"	0' - 1 3/4"			
2A8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2A9		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2A11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2A12		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2A13		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002B	RECYCLE & REFUSE	F	2' - 0"	2' - 6"	0' - 1 3/4"			
2B1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
2B3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2B4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2B5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2B6		F	2' - 4"	7' - 0"	0' - 1 3/4"			
2B7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2B8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002C			2' - 0"	2' - 6"	0' - 1 3/4"			
2C1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
2C2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C6		F	2' - 4"	7' - 0"	0' - 1 3/4"			
2C7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C8		C	3' - 0"	8' - 0"	0' - 1 3/4"			
2C9		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C12		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2C13		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
2D2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D6		F	2' - 4"	7' - 0"	0' - 1 3/4"			
2D7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D9		G	5' - 0"	7' - 0"	0' - 1 3/4"			
2D10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2D12		C	3' - 0"	8' - 0"	0' - 1 3/4"			
2D13		C	3' - 0"	8' - 0"	0' - 1 3/4"			
2E1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
2E2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E5		G	5' - 0"	7' - 0"	0' - 1 3/4"			
2E6		C	3' - 0"	8' - 0"	0' - 1 3/4"			
2E7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E9		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2E12		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
2F2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F6		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F9		G	5' - 0"	7' - 0"	0' - 1 3/4"			
2F10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2F12		C	3' - 0"	8' - 0"	0' - 1 3/4"			
2G1	RESIDENCE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
2G2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G6		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G9		G	5' - 0"	7' - 0"	0' - 1 3/4"			
2G10		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
2G12		C	3' - 0"	8' - 0"	0' - 1 3/4"			
002I		C	3' - 0"	7' - 11"	0' - 1 3/4"			
002J		C	3' - 0"	7' - 11"	0' - 1 3/4"			
002M		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002N		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002O		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002P		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002Q		F	2' - 8"	7' - 0"	0' - 1 3/4"			
002R			2' - 6"	1' - 0 19/32"				
3A1		F	3' - 0"	7' - 0"	0' - 1 3/4"			
3A2		F	3' - 0"	7' - 0"	0' - 1 3/4"			
3A3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3A4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3A5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3A8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3A11		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3B1		F	3' - 0"	7' - 0"	0' - 1 3/4"			
3B2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3B4		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3B5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3B6		F	2' - 4"	7' - 0"	0' - 1 3/4"			
3B7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3B8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3C8		C	3' - 0"	8' - 0"	0' - 1 3/4"			
3D12		C	3' - 0"	8' - 0"	0' - 1 3/4"			
3D13		C	3' - 0"	8' - 0"	0' - 1 3/4"			
3E2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3E6		C	3' - 0"	8' - 0"	0' - 1 3/4"			
3E7		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3E8		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3F2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3F3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3F5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3F6		F	2' - 8"	7' - 0"	0' - 1 3/4"			

DOOR SCHEDULE

DOOR NO.	ROOM NAME	DOOR TYPE	DOOR WIDTH	DOOR HEIGHT	DOOR THICKNESS	FRAME TYPE	Fire Rating	COMMENTS
3F12		C	3' - 0"	8' - 0"	0' - 1 3/4"			
3G2		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3G3		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3G5		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3G6		F	2' - 8"	7' - 0"	0' - 1 3/4"			
3G12		C	3' - 0"	8' - 0"	0' - 1 3/4"			
101A	TENANT	B	6' - 2 1/2"	7' - 0"				
101B	TENANT	A	3' - 0"	7' - 0"	0' - 1 3/4"			
102	RR	F	3' - 0"	7' - 0"	0' - 1 3/4"			
103	TENANT	F	3' - 0"	7' - 0"	0' - 1 3/4"			
104A	STAIR A	F	3' - 0"	7' - 0"	0' - 1 3/4"			
104B	HALLWAY	F	3' - 0"	7' - 0"	0' - 1 3/4"			
105A	LOBBY	C	3' - 0"	8' - 0"	0' - 1 3/4"			
105C		C	3' - 0"	7' - 11"	0' - 1 3/4"			
105D		C	3' - 0"	7' - 11"	0' - 1 3/4"			
106	HALLWAY	F	3' - 0"	7' - 0"	0' - 1 3/4"			
107	ELEC	F	3' - 0"	7' - 0"	0' - 1 3/4"			
108	HALLWAY	F	3' - 0"	7' - 0"	0' - 1 3/4"			
201A	HALLWAY	F	3' - 0"	7' - 0"	0' - 1 3/4"			
201B	HALLWAY	F	3' - 0"	7' - 0"	0' - 1 3/4"			
202	RECYCLE & REFUSE	F	3' - 0"	7' - 0"	0' - 1 3/4"			
203	ELEC	F	3' - 0"	7' - 0"	0' - 1 3/4"			
204	HALLWAY	F	3' - 0"	7' - 0"	0' - 1 3/4"			
302		F	3' - 0"	7' - 0"	0' - 1 3/4"			
303		F	3' - 0"	7' - 0"	0' - 1 3/4"			
304		F	3' - 0"	7' - 0"	0' - 1 3/4"			
305	RESIDENCE	F	2' - 8"	7' - 0"	0' - 1 3/4"			

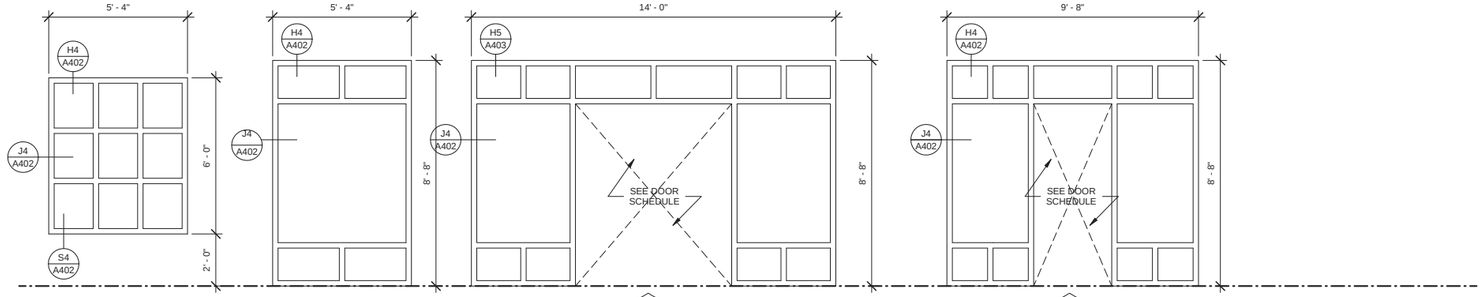


CLAD WOOD DOUBLE-HUNG WINDOW

CLAD WOOD DOUBLE-HUNG WINDOW

CLAD WOOD FIXED SIDE LITES AND TRANSOM

CLAD WOOD FIXED SIDE LITES AND TRANSOM

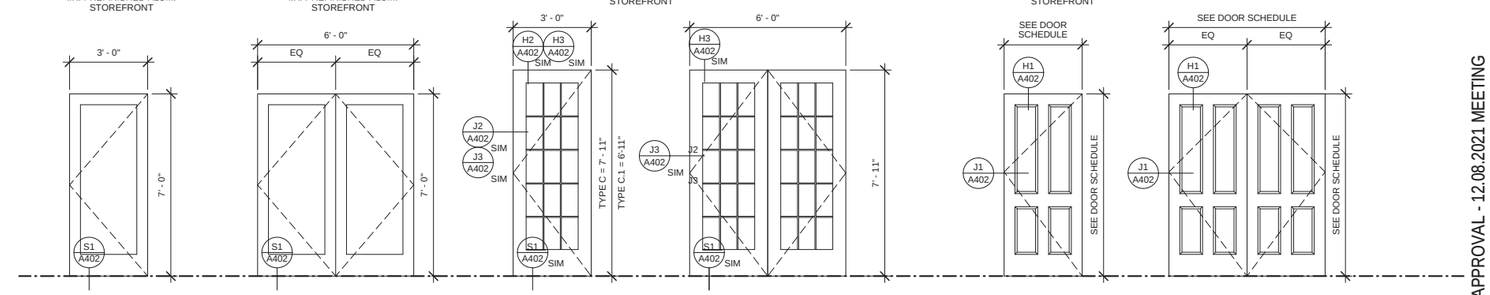


I.R. PREFINISHED ALUM. STOREFRONT

I.R. PREFINISHED ALUM. STOREFRONT

I.R. PREFINISHED ALUM. STOREFRONT

I.R. PREFINISHED ALUM. STOREFRONT



DOOR TYPE A
I.R. PREFINISHED ALUM. STOREFRONT DOOR

DOOR TYPE B
I.R. PREFINISHED ALUM. STOREFRONT DOUBLE DOOR

DOOR TYPE C/C.1
CLAD FULL GLASS WOOD DOOR WITH SIM. DIVIDED LITES

DOOR TYPE D
CLAD FULL GLASS WOOD DOUBLE DOOR WITH SIM. DIVIDED LITES

DOOR TYPE E
(OMITTED)

DOOR TYPE F
INTERIOR COMPOSITE DOOR

DOOR TYPE G
INTERIOR COMPOSITE DOUBLE DOOR

DOOR & WINDOW ELEVATIONS
SCALE: 3/8" = 1'-0"

211 CHARLES 39 of 49

HRB FINAL APPROVAL - 12.08.2021 MEETING

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11.18.2021

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

DRAWN BY: LWM
CHECKED BY: FAM
DATE: 11.18.2021
COAST PROJECT NO.: 2015.00

DOOR SCHEDULE AND DOOR & WINDOW ELEVATIONS

A401

ROA413

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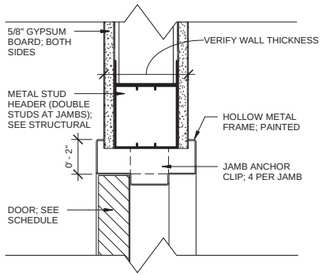
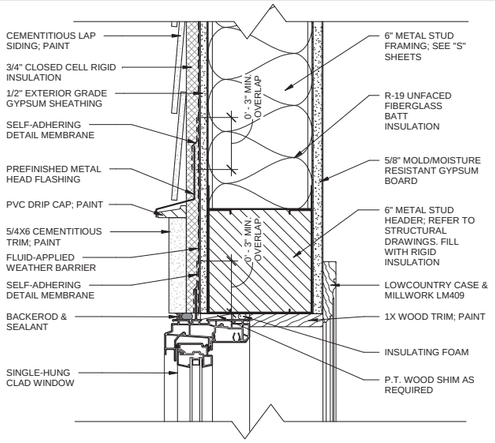


H1/J1 A402

HEAD/JAMB FOR INTERIOR HM FRAME DOOR

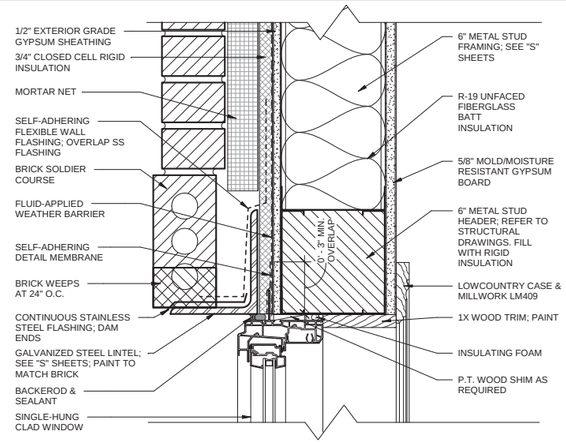
SCALE: 3" = 1'-0"



H2 A402

HEAD FOR DOUBLE-HUNG WINDOW AT CEMENTITIOUS SIDING

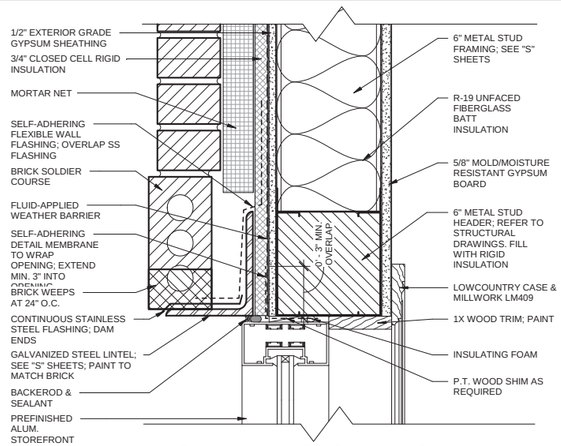
SCALE: 3" = 1'-0"



H3 A402

HEAD FOR DOUBLE-HUNG WINDOW AT BRICK SIDING

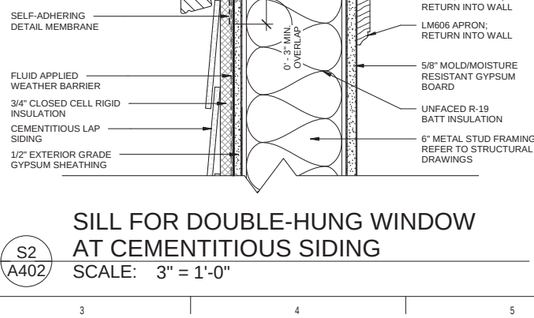
SCALE: 3" = 1'-0"



H4 A402

HEAD FOR ALUM. STOREFRONT AT BRICK SIDING

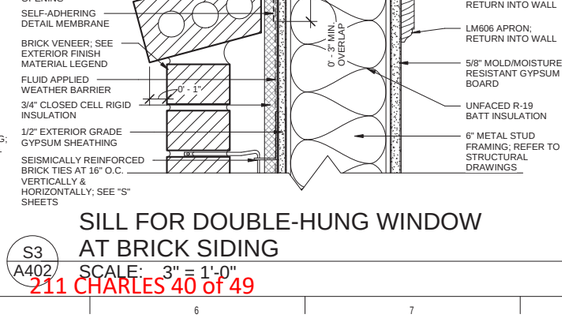
SCALE: 3" = 1'-0"



J2 A402

JAMB FOR DOUBLE-HUNG WINDOW AT CEMENTITIOUS SIDING

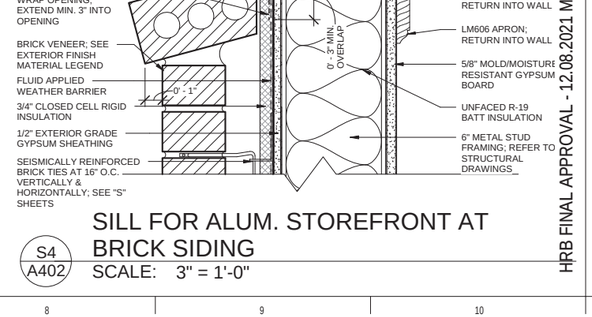
SCALE: 3" = 1'-0"



J3 A402

JAMB FOR DOUBLE-HUNG WINDOW AT BRICK SIDING

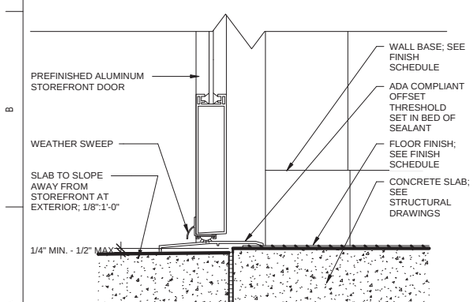
SCALE: 3" = 1'-0"



J4 A402

JAMB FOR ALUM. STOREFRONT AT BRICK SIDING

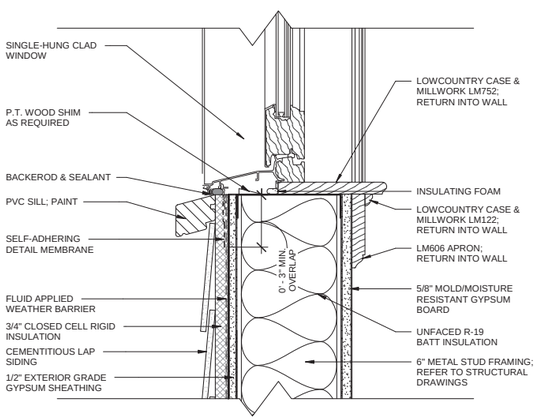
SCALE: 3" = 1'-0"



S1 A402

SILL FOR ALUM. STOREFRONT DOOR AT EXTERIOR WALL

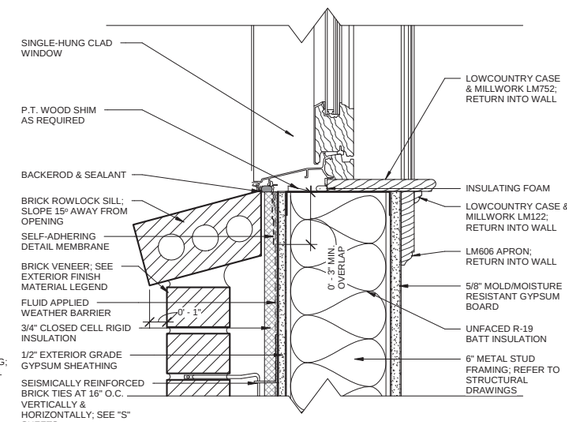
SCALE: 3" = 1'-0"



S2 A402

SILL FOR DOUBLE-HUNG WINDOW AT CEMENTITIOUS SIDING

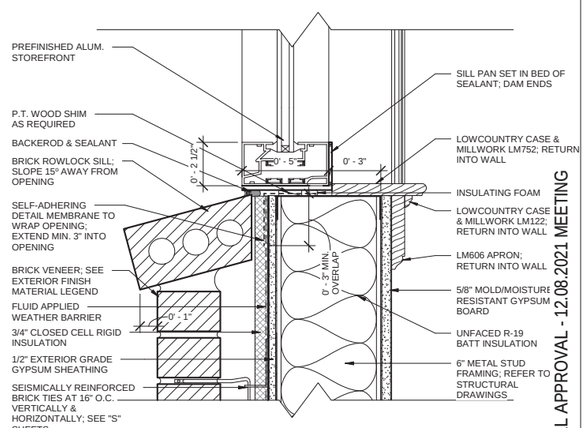
SCALE: 3" = 1'-0"



S3 A402

SILL FOR DOUBLE-HUNG WINDOW AT BRICK SIDING

SCALE: 3" = 1'-0"



S4 A402

SILL FOR ALUM. STOREFRONT AT BRICK SIDING

SCALE: 3" = 1'-0"

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11.18.2021

THE CANNON BUILDING
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BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

DRAWN BY: LWM
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DOOR & WINDOW DETAILS

A402

ROA414

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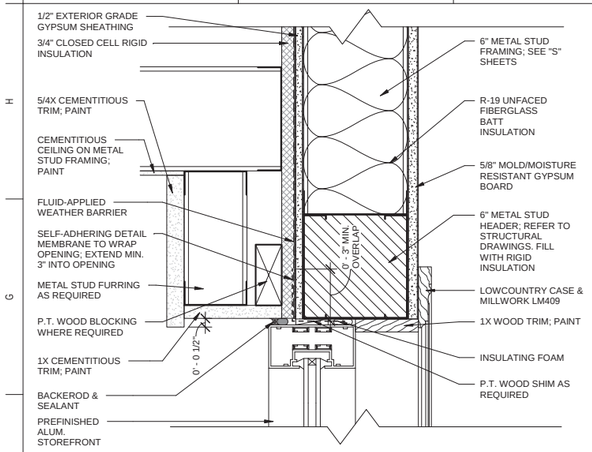

HEAD FOR ENTRY STOREFRONT AT CEMENTITIOUS TRIM

H5
A403

SCALE: 3" = 1'-0"

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DOOR & WINDOW DETAILS

A403
ROA415

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COMPLIANCE REVIEW – BEAUFORT CODE
211 CHARLES STREET

TMS: R120 004 000 0909 0000 Zoning: T5-DC Date Prepared: 11.18.2021

CODE	REQUIREMENT	AS DESIGNED	COMPLIES (Y/N)
2.4.1 District Development Standards			
A.1	Lot Width: n/a	97 ft	Y
A.2	Lot Size: n/a	0.303 Acres	Y
A.3	Max Lot Coverage: n/a	83.46%	Y
A.4	Frontage Buildout: 100%	100%	Y
B.1	Front Setback: 0 ft Min./Max. Prevailing Setback Max.	6’-6” on Charles Street	Y
B.2	Side Setback Corner: 0’ Min./15’ Max.	12’-8” max. on Port Republic Street	Y
B.3	Side Setback Interior: 0’ Min.	0’	Y
B.4	Rear Setback: 0’ Min.	0’	Y
D.1	Building Height: 3 Stories Max. at Property Line/4 Stories Max 15’ back from Property Line	3 Stories at Property line and 15’ back from property line	Y
D.2	Building Width at Frontage: 100 ft. max	132’ (*BOZA Variance granted 08.09.2021)	Y*
2.5. General Lot Standards			
B	Facades shall be parallel to principal frontage, public streets, and right-of-ways	Facades are parallel to Charles and Port Republic Street	Y
D	Principal pedestrian entrance on front façade, corner entrance shall face street from which address is derived	The retail space utilizes the corner entrance, and the apartments have a separate entrance, both address Charles Street	Y
2.6 Height			
1.A	Max. Story Height: 15’	Max. Story Height: 14’ *(1st floor)*/10’ (*upper floors)*	Y
1.G	Max 3 Stories at Property Line/Max 4 Stories 15’ back from Property Line	3 Stories at Property line and 15’ back from property line	Y
2.A	Min. 1’ freeboard above floor/exception for floodproofed building	This project was initially conceived and received conceptual approval prior to the implementation of new flood maps on 3/23/2021. The Main floor was designed to be above the required 14.0 elevation *(approx. 1.5 feet above Charles St.).* The new flood maps changed the flood zone to “shaded X”, which could have up to 1’ of flooding. The main floor elevation will remain as designed, as the threat of up to 1’ of floodwaters needs to be mitigated.	Y

671 St. Andrews Blvd. Charleston, SC 29407 843.763.7064 Fax: 843.763.7061
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ROA416

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2.D.1	Apartment buildings shall be min. 18" above Grade.	Apartments are located approx. 24" above Port Republic Street	Y
2.D.2	Ground floor of residential structures shall be a min. of 10' ceiling height	Ground floor apartments ceiling height: 11'	Y
2.D.4 & 2.D.5	Ground floor ceiling height shall be min. 12' ceiling height, (*HRB may permit deviation for compatibility with context)	Ground floor commercial ceiling height: 11'	Y*
2.D.6	Stories above Ground Floor: 8' min. ceiling height	Upper Floor Ceiling Height: 9'	Y
2.6.3	2-story buildings required within 250 of any significant intersection	Building is 3 Stories	Y
4.4 Private Frontage Types			
4.4	In T5 Zoning the following types are allowed: C. Forecourt D. Stoop E. Balcony F. Shopfront/Awning G. Gallery/Colonnade H. Arcade	Building utilizes the following types: C. Forecourt (Port Republic St.) D. Stoop (Apt. Entrance on Charles St.) F. Shopfront/Awning (Charles St.)	Y
4.5.7 Building Types- Multi-Use and Apartment House			
A	Apartment House: Larger Scale Building containing 4 or more units on corner lots and/or full blocks	Building use is primarily Apartment House. It includes 19 apartments and is located on a corner lot.	Y
B.1 & B.2	Frontages Types/Building Entries: Stoop, Forecourt, Balcony, Porches are not preferred but may be used. Buildings with formal entry courts or lobbies are exempt from direct unit access from street	Port Republic Street has a Forecourt Entrance Charles Street has a Stoop Entrance	Y
B.3	Parking: On-site parking must be access off a rear ally	Parking is provided off-site in parking lot *(see diagram on sheet G001).*	Y
B.4	Size: No building dimension shall exceed 160' in any direction	Max. Building Dimension: 132'-10"	Y
4.6 Building Design Standards			
.1.A	Size, Mass, and Scale of buildings shall be appropriate with neighboring context	The Port Republic St. façade recognizes the residential scale of the adjacent homes, while the Charles St. façade addresses the more commercial context of Bay and Charles Street.	Y
1.B	Building bays, porches, openings, ect, proportions should be square or vertical	Building design features vertical masonry bays, window openings, and porches.	Y
1.C	Building wall material changes should be horizontal. A change in plane is required for vertical material changes.	Building material changes comply with this requirement	Y
1.D	Primary Sloped Roofs shall have a min. slope of 4:12	Primary roofs have a slope of 4:12	Y

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1.F	Trash & Mechanical Equipment shall be screened.	Trash is screened by brick walls and gate. Mechanical Equipment is screened by building parapets.	Y
1.G	Building colors shall not express corporate identity	Building colors relate to the existing context and do not represent a corporate identity	Y
3.A.	Building wall materials, foundations, columns, railings, doors, roofs, shall be constructed of approved types listed in this section, and shall not be constructed of materials prohibited by this section.	Building is designed with brick walls, cementitious lap siding, and cementitious panel *(board and batten)* siding. Columns are "Permacast." Railings are wrought iron. Doors and double-hung windows are wood with metal cladding. Shutters are made of composite wood. Larger fixed window are aluminum storefront. Visible roofs are standing seam metal.	Y
3.B	Roof forms shall be of specific approved types, flat roofs shall be concealed from street, and gutters/downspouts shall be approved type of metal	The building utilizes hipped roofs that extend to a parapet, along with a brick parapet on the west end of the building. Gutters and Downspouts are prefinished aluminum.	Y
3.C.1	Window and Door openings shall be a min. of 40% on ground floor and 20% on upper floors. HRB may grant reduction to 30% for ground floor apartments. **see design statement at end of table*	For the purpose of computing transparency, the Port Republic façade is divided into 2 segments: Apartment Building and Multi-Use Building. Openings in facades on Port Republic Street and Charles Street comply with the code requirements (see Transparency Diagrams above building elevations in drawings).	Y
3.C.2	Windows shall not be flush with the wall, have detailed surrounds, multi-story buildings shall have different sized windows, and mullions shall not be more than 2' apart.	The window design and placement meet the intent of these requirements	Y
3.2.D	Architectural details including operable shutters, maximum column spacing, and delineation of base, floor levels, and cornices are required	The building design incorporates both masonry and siding details that meet the intent of these requirements.	Y
5.3 Tree Planting and Protection			
.1	T5-UC has no min. tree requirements	Palmetto Trees are incorporated into the raised garden area on Port Republic Street	Y
5.5 Perimeter Landscaping and Screening			
.1	None required since side and rear abut same zoning district	No buffers provided on side and rear property lines	Y
5.7 Parking			
.3	Bicycle racks for 5% of required off-street vehicular parking, or a min. 2 bikes	A bike rack for **2 bikes** is provided near the Port Republic Street entrance to the	Y

	(whichever is greater).	apartment building.	
.4	Parking Space Requirements: Retail Uses: 1/300 gsf: Note: 5.7.4.B.4 exempts parking for the retail space. Multi-Family (2 bedrooms): 1.75/unit Offsite parking must be within 400' and connected via walkway. A written parking agreement shall be provided to the City.	Designated parking spaces to be provided in off-site parking lot: Retail Use: 0 Required Residential: 19 units x 1.75/unit = 33 .25 **Total parking required/provided = 34** A written parking agreement will be provided for approval at the time of permitting. Off-site parking will be provided in the Owner's current parking lot located at the corner of Charles and Craven Street. 34 spaces will be designated with signs for use by building residential occupants (*See parking diagram on sheet G001)*	Y
5.8 Lighting			
.4	Post mounted lights shall not exceed 15' in height and shall be full-cutoff if they exceed 1800 lumens, and not exceed 2.5 foot-candles in adjacent T4 districts.	There are no post-mounted lights. All wall mounted lighting will be full-cutoff with a maximum average foot-candle along sidewalks not exceeding 2.5.	Y

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Historic Review Board Meeting Staff Report

From the Department of Community and Economic Development
08 December 2021

1 Summary of Request

211 Charles Street, New Construction
Applicant: Arnie McClure/Coast Architects Inc.
The applicant is requesting Final Approval of a 3-story apartment/commercial building.

Background:

In February of 2021, demolition of the existing structure on this property was granted Final Approval by the Historic Review Board, with the condition that "the demolition permit will not be issued until after a building permit is issued for the replacement building."

In February of 2021, a previous submission for this project was granted Conceptual Approval by the Historic Review Board with noted Staff Conditions.

In August of 2021, the Zoning Board of Appeals granted a Special Exception per Section 4.5.10.B.5 to allow a building with frontage in excess of 100 feet on a T5-DC zoned property.

The applicant has provided a video walkthrough of this project, which may be accessed through the following link:

https://www.dropbox.com/s/yr5zcby09ytfu2d/211%20Charles%20Walk%20Around%202021-11-18.mp4?dl=0

2 Facts

Property Address:	211 Charles Street
Parcel ID:	R120 004 000 0909 000
Case Number:	21-02 HRB.2
Applicant:	**Arnie McClure/Coast Architects Inc.**
Type of Request:	New Construction
Zoning:	T5-DC
Current Use:	Commercial
Proposed Use:	Residential/Commercial

District Development Standards for T5-DC:

- **Setback requirements – Primary Structure:**
  - *Front- 0' min./Prevailing setback on block max.*
  - *Rear setback – 0' min.*
  - *Side Corner/Alley – 0'min./15' max.*
  - *Side Interior – 0'min.*
- **Maximum Lot Coverage***:* 100%
- **Frontage Buildout:** 75% Min
- **Permitted Uses:** Includes Apartment House and Retail/Restaurant Use

References:

- The Beaufort Code
- The Beaufort Preservation Manual
- The Beaufort Preservation Manual Supplement

3 STAFF COMMENTS

Staff Acknowledgements:

A. This building has been approved by the ZBOA as a large footprint building. Staff also continues to view the building as a single large footprint building that contains two building types per Section 4.4 of the Beaufort Code: The west mass along Charles Street is Livework/Mixed Use, and the rest of the building is an Apartment House.

B. Staff finds all conditions of Conceptual Approval to be satisfied, with the following comments and clarifications:

   a. Condition 3 of Conceptual Approval noted specific guidelines for the frontage types of the two building types included within this project. The current submission is compliant with the Code regarding frontage types, with the following Staff interpretations:

      i. Staff considers the frontage of the Livework/Mixed Use portion of the building on the corner of Port Republic Street and Charles Street to be both shopfront/awning and arcade, as defined by Section 4.4 of the Beaufort Code.

      ii. Staff considers the primary frontage of the Apartment House portion of the building to be the lobby entrance on Charles Street and views this to have a balcony frontage type that is compliant with Section 4.4.E of the Beaufort Code.

   b. Condition 4 of Conceptual Approval recommended eliminating the previously proposed porches along Port Republic Street and asked the applicant to ensure compliance with Section 4.5.7 of the Beaufort Code. The current submission complies with Section 4.5.7 regarding apartment houses with the following Staff Interpretations:

      i. Section 4.5.7.B.1: *Frontage Types: Stoop, Forecourt, Balcony. Porches are not preferred, but may be used in buildings containing 12 units or less if they provide direct access to the unit from the street or sidewalk.*

         1. The apartment house portion of the building has a balcony frontage type at its primary entrance on Charles Street, and the Port Republic

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façade of the building contains porches. The term "may" used above is defined by Section 4.2.1.C to be used in "ideal guidelines…[which] would result in an outcome that is very compliant with the City's goals and objectives; however, they are not specifically required to be met." While porches are "not preferred", the Code does not state that they are not allowed. While Staff was not in favor of the use of porches in the previous submission, Staff is in favor of the use of the porches in this area within the current submission now that one of the previous porches has been eliminated. Staff feels that the porches along Port Republic help to break down the scale of the Apartment House façade as currently designed.

ii. *Section 4.5.7.B.2: Building Entries: In buildings with more than 6 residential units, all ground floor units facing a frontage line shall have individual entrances from that frontage line. Buildings with formal entry courtyards or lobbies are exempt from this requirement.*

1. The Apartment House portion of this project is exempt from this requirement because a lobby has been provided.

c. Condition 10 of Conceptual Approval required the applicant to ensure that residential egress requirements by the IBC are met in the design. Staff has not reviewed the plans with the IBC and assumes that the proposed drawings comply. If any egress components are added in the future that affect the exterior of the building, these must be brought back to the HRB for review.

d. Staff is in support of the changes made to the balconies in response to Condition 11 of Conceptual Approval.

C. As designed, the ramp on Charles Street provides a usable pedestrian entry that is less than 50' away from the entrance to the Apartment House. The project is compliant with Section 2.5.1.D.4.

D. The parapet cap of this building has been lowered 3'-4" since the conceptual approval, and the applicant has shifted the building façade along Charles Street back from the street significantly. It appears from Sheet A102 that this reduction in building length is slightly more than 5'.

E. The Applicant has taken the time to list code compliance with applicable sections for this project. Staff wants to acknowledge the following regarding this Code Review Document:

a. The applicant has misidentified the proposed frontage types for this building within the code compliance sheet. As designed, the building frontage types comply with the Code, per Acknowledgement B.a above.

b. The applicant has noted that the Beaufort Code requires a 12' ceiling height for commercial structures (Section 2.6.D) and that the retail component along Charles street has an 11' ceiling height. As noted by the Applicant, Section 2.6.2.D.5 notes that, in this district, the Historic Review Board may permit deviations from this minimum height requirement if "doing so would allow a structure to be more compatible with the surrounding context." Staff agrees with the applicant that the proposed 11' ceiling height in this area is compatible with the surrounding context.

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c. Staff is in support of the presented 33.8% transparency at the ground floor of the Apartment House portion of the building along Port Republic Street as this meets the Beaufort Code requirement section 4.6.3.C.1 if approved by the Board.

Staff Conditions:

1. On the Charles Street Elevation, Staff recommendation is that the Cannon Building entry is further differentiated from the strong adjacent Livework/Mixed use brick mass along Charles Street as well as the south courtyard wall to the rear of the entry on the south elevation. Staff recommends using a different color brick or stucco in this area.
2. Regarding the proposed columns:
    a. On the South Elevation, the central bay of balconies on the upper levels currently has uneven column spacing. Staff recommendation is that the column spacing is equal in size in this area.
    b. This project proposes Perma-cast columns. From the cut sheet provided, Staff assumes that the proposed columns will be the square plain column. Staff is in support of this Perma-Case Column because when it is painted out, it will provide a more low-maintenance option as opposed to a wood column. Applicant and Board to note that the use of this column must be approved by the Board per Section 4.6.3.A.8.
    c. In drawings A1 on Sheet A302, Staff recommendation is that the outside face of the proposed column base aligns with the outside face of the foundation wall below. Staff recommends the Applicant revise design of porches to achieve this relationship.
3. Staff is not in favor of the utilization of cannons within the ironwork at the entry gate on Charles Street as drawn on Sheet A002, Drawing A1 because they begin to create a false sense of history on the project site.
4. On Sheet A301, Drawing A1, Staff recommendation is that a skirt board is added at the termination of the lap siding where it meets the brick below.
5. Regarding Drawing A1 on Sheet A305, Wall Section Through Lobby, Applicant to clarify if any drainage elements associated with this second-floor terrace will be visible. If so, Applicant to provide a detail.
6. Applicant to clarify material of awning framing, roofs, etc., along Charles Street and provide a detail of a typical awning.
7. Applicant to provide a detail of the mounting and framing of the proposed signage on the corner of Charles Street and Port Republic Street.
8. Applicant to provide cut sheets of the following:
    a. The proposed cementitious service gate panels proposed on Port Republic Street
    b. Proposed gutters and downspouts

STAFF RECOMMENDATION:

Final Approval with Staff Conditions noted.

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CITY OF BEAUFORT
HISTORIC REVIEW BOARD
1911 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902
(843) 525-7011 FAX: (843) 986-5606

December 15, 2021

Arnie McClure
Coast Architects, Inc.
671 Saint Andrews Boulevard
Charleston, SC 29401
Arnie@coastarchitects.net

RE: 21-02 HRB.1 **211 Charles Street—New Construction**

Dear Mr. McClure,

On December 8, 2021, the City of Beaufort Historic Review Board (HRB) met to review your application for new construction at 211 Charles Street. The HRB voted to grant preliminary approval with staff conditions and the following board conditions:

Board Conditions:

1. The Board approved deviation from the 12' ceiling height requirement and allowed applicant to use proposed 11' ceiling height.

2. Proposed 33.8% fenestration approved.

3. Perma-cast porch columns approved.

4. Preliminary approval granted with the following studied areas to be taken into consideration prior to resubmittal:

    - The Staff Comments that are on this Submittal (Staff Conditions included below)
    - Entry at the NW corner to be restudied.
    - Apartment entrance to be restudied.
    - Board and Batten material used on the north façade and the south façade between the apartments [to be restudied].
    - Restudy the ground floor porches and consider possibly no outdoor space.
    - Provide a sample board "mock-up" for the brick.

Staff Conditions:

1. On the Charles Street Elevation, Staff recommendation is that the Cannon Building entry is further differentiated from the strong adjacent Livework/Mixed use brick mass along Charles

Street as well as the south courtyard wall to the rear of the entry on the south elevation. Staff recommends using a different color brick or stucco in this area.

2. Regarding the proposed columns:
    a. On the South Elevation, the central bay of balconies on the upper levels currently has uneven column spacing. Staff recommendation is that the column spacing is equal in size in this area.

    b. This project proposes Perma-cast columns. From the cut sheet provided, Staff assumes that the proposed columns will be the square plain column. Staff is in support of this Perma-Case Column because when it is painted out, it will provide a more low-maintenance option as opposed to a wood column. Applicant and Board to note that the use of this column must be approved by the Board per Section 4.6.3.A.8.

    c. In drawings A1 on Sheet A302, Staff recommendation is that the outside face of the proposed column base aligns with the outside face of the foundation wall below. Staff recommends the Applicant revise design of porches to achieve this relationship.

3. Staff is not in favor of the utilization of cannons within the ironwork at the entry gate on Charles Street as drawn on Sheet A002, Drawing A1 because they begin to create a false sense of history on the project site.

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5. Regarding Drawing A1 on Sheet A305, Wall Section Through Lobby, Applicant to clarify if any drainage elements associated with this second-floor terrace will be visible. If so, Applicant to provide a detail.

6. Applicant to clarify material of awning framing, roofs, etc., along Charles Street and provide a detail of a typical awning.

7. Applicant to provide a detail of the mounting and framing of the proposed signage on the corner of Charles Street and Port Republic Street.

8. Applicant to provide cut sheets of the following:

    a. The proposed cementitious service gate panels proposed on Port Republic Street

    b. Proposed gutters and downspouts

If you have any questions, feel free to call the office of Community & Economic Development at (843) 525-7011.

Sincerely,

Jeremiah Smith, Chair
Historic Review Board

cc: file copy

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1.4.2 - COMPLETE APPLICATIONS

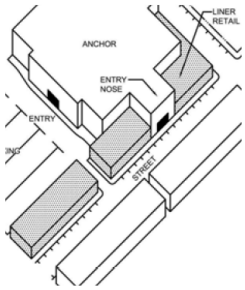
A. If an application for a Project Permit or Design Review is accepted as complete before the effective date of this chapter or any amendment thereto, but is still pending final action as of that date, the application shall be reviewed and decided, at the applicant's option, wholly in accordance with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

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

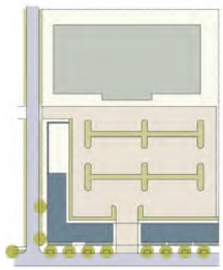
C. To the extent a pending application is approved in accordance with the prior standards and proposes development that does not comply with this Code, the subsequent development, although allowed, shall be nonconforming and subject to the provisions of Article 11 (Nonconformities).

4.5.9 - LINER BUILDING

LINER BUILDING EXAMPLES



sketch view



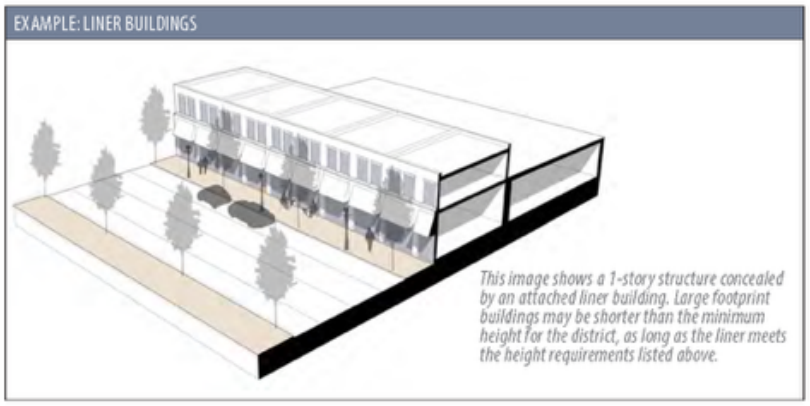
plan view

example

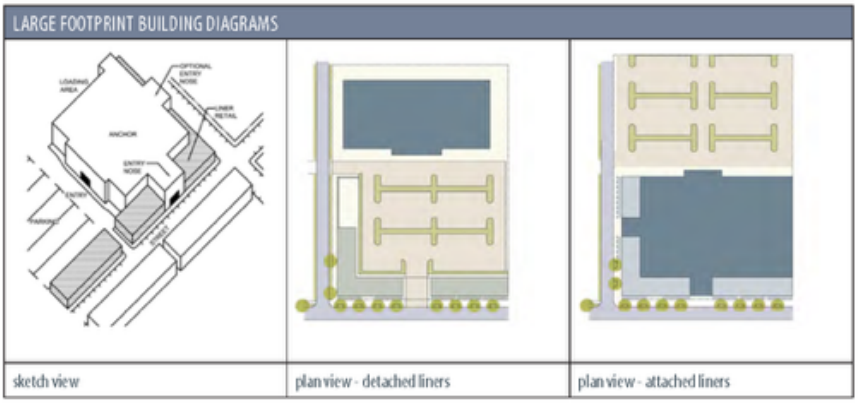
A. **Description:** This is a shallow structure, typically 25—30 feet deep, which is placed close to the street frontage. It is typically used in conjunction with other Liner Buildings to conceal surface or structured parking, or large-scale commercial buildings. These buildings may contain a variety of uses, including ground floor commercial, and upper-level offices or residential.

B. **Special Requirements:**

1. **Frontage Types:** Balcony, Shopfront/Awning, Gallery/Colonnade, Arcade.
2. **Frontage Build-Out:** 75% minimum.
3. **Height:** The minimum height for Liner Buildings is 1 story; however, when attached to another structure, it must be tall enough to conceal the building it is screening. Where Liner Buildings conceal a parking structure, the Liner Building shall be a minimum of 1 story; however it is preferred that it be built to such a height that the structure cannot be seen from the right-of-way.
4. **Connection:** Liner Buildings may either be detached from or attached to the building they are lining.



4.5.10 - LARGE FOOTPRINT BUILDING



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

B. **Special Requirements:**

1. **Frontage Types:** Shopfront/Awning, Gallery/Colonnade, Arcade — Balconies may be used if there is true habitable space on the upper floor(s).
2. **Liner Buildings:** Liner Buildings (Section 4.5.9) are required in the T4 and T5 districts between the Large Footprint Building and the Primary Street frontage. They may be used in other districts to fulfill the requirements of this Code, such as height, entrances on the street, and parking location.
    a. **Exceptions:** When a Large Footprint building provides an entry on the primary street frontage, and a minimum of 40% clear and unobstructed glazing along that street, liners are not required.
3. **Height:** Buildings may be 1 story in height on the interior of the block, but should be at least 2 stories in height along all Primary Street frontages (see Street Hierarchy Diagram in Appendix C). This may be accomplished with multi-story buildings, higher ceiling heights, parapets, and/or separate Liner Buildings. See Section 2.6.3 for more details on two-story building requirements.
4. **Entrances:** See Section 2.5.1 D.
5. **Location:** In the Historic District, except along Boundary Street, these are permitted by special exception only.

LARGE FOOTPRINT BUILDING EXAMPLE

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

6. **Size:** Building footprints shall not be larger than a single block. Floor area of buildings shall not cantilever over public rights-of-way.
7. **Parking Location:**
   a. **Specific to T4 and T5:** A minimum of 75% of all parking shall be located behind the primary building or a Liner Building.
   b. **All other districts:** The majority of the parking spaces shall be located to the side or rear of the building, or behind a Liner Building.

9.1.4 - PERMIT/DEVELOPMENT DESIGN REVIEW/HISTORIC REVIEW APPLICATION TYPE TABLE

See following pages.

APPLICATION TYPE	SECTION	PROCESS TYPE	REVIEWING AGENCY	PUBLIC NOTIFICATION (9.1.5)	APPROVING AGENCY	APPROVAL PERIOD	APPROVAL EXTENSION
ADMINISTRATIVE PERMITS							
Zoning Permit	9.4	Ministerial	Admin	No	Admin	6 months	6 months, 1 time
Building Permit	9.5	Ministerial	Admin	No	Admin	6 months	Resubmit
Certificate of Occupancy	9.7	Ministerial	Admin	No	Admin	n/a	n/a
DEVELOPMENT DESIGN REVIEW							
Development Design Review, Minor Site Plan	9.8.1	Ministerial	Admin	No	Admin	24 months	12 months, 1 time
Development Design Review, Major Site Plan	9.8.2	Discretionary	Admin, TRC	Yes	PC	24 months	12 months, 1 time

SUBDIVISION REVIEW							
Sketch Plan	7.5.3	Discretionary	Admin, TRC	Yes	PC	12 months	12 months
Preliminary Plat	7.5.4	Discretionary	Admin, TRC	Yes	PC	24 months	12 months, 1 time
Final Plat	7.5.5	Ministerial	Admin, TRC	No	Admin	24 months	12 months, 1 time
Minor Subdivision	7.5.6	Ministerial	Admin	No	Admin	n/a	n/a
HISTORIC PRESERVATION							
Beaufort Historic District - Certificate of Appropriateness, Minor	9.9	Ministerial	Admin	Demolition Only: Yes	Admin	24 months	12 months, up to 3 times
Beaufort Historic District - Certificate of Appropriateness, Major	9.9	Discretionary	Admin	Demolition & Design Exception only: Yes	HRB	24 months; no expiration for demolitions	12 months, up to 3 times
ADJUSTMENTS							
Administrative Adjustment	9.12	Ministerial	Admin	No	Admin	24 months	12 months, up to 3 times
Special Exception	9.12	Discretionary	Admin	Yes	ZBOA	24 months	12 months, up to 3 times
Variance	9.13	Discretionary	Admin	Yes	ZBOA	24 months	12 months, up to 3 times

Admin-Administrator / PC-Planning Commission / CC-City Council / ZBOA-Zoning Board of Appeals / HRB-Historic District Review Board / TRC-Technical Review Committee / Court - Circuit Court

Note: Any appeals that are assigned to Court are eligible for pre-litigation mediation pursuant to S.C. Code § 6-29-1155.

(Ord. No. 2025/14, Exh. A, 8-19-2025)

9.2.5 - CONCURRENT PROCESSING

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

(Ord. No. 2025/14, Exh. A, 8-19-2025)

9.10: - CERTIFICATE OF APPROPRIATENESS

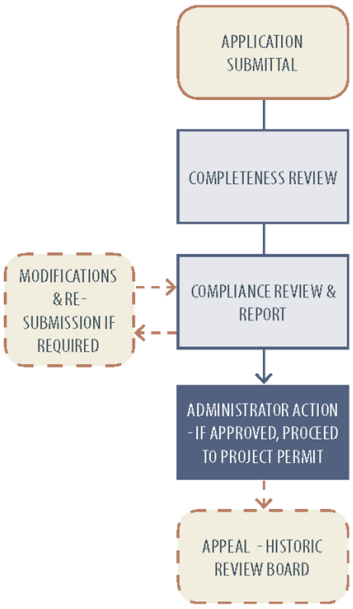
9.10.1 - APPLICABILITY

A. A Certificate of Appropriateness shall be required for any construction activity in any historic district, including:
    1. New structures.
    2. Modification to, or expansion of, existing structures, including those that apply for the Bailey Bill Special Tax Assessment for Rehabilitated Historic Properties.
    3. Relocation of any existing structure.
B. Demolition or partial demolition of any structure.

(Ord. No. 2025/14, Exh. A, 8-19-2025)

9.10.2 - PROCESS AND APPROVAL

A. **Process Type:** The review process required to approve Certification of Appropriateness is based on the following project types:
    1. **Minor:** Administrative review shall apply to applications for a Certification of Appropriateness for the following items. The Administrator may submit any applications that are subject to staff approval to the Historic District Review Board (HRB) for approval.
        a. Changes to a building or property, to include fences, paint color, roof materials, canopies and awnings, site changes, and window replacements on noncontributing structures.
        b. New construction and building modifications to include construction of non-habitable accessory buildings in the Beaufort Preservation Neighborhood.



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

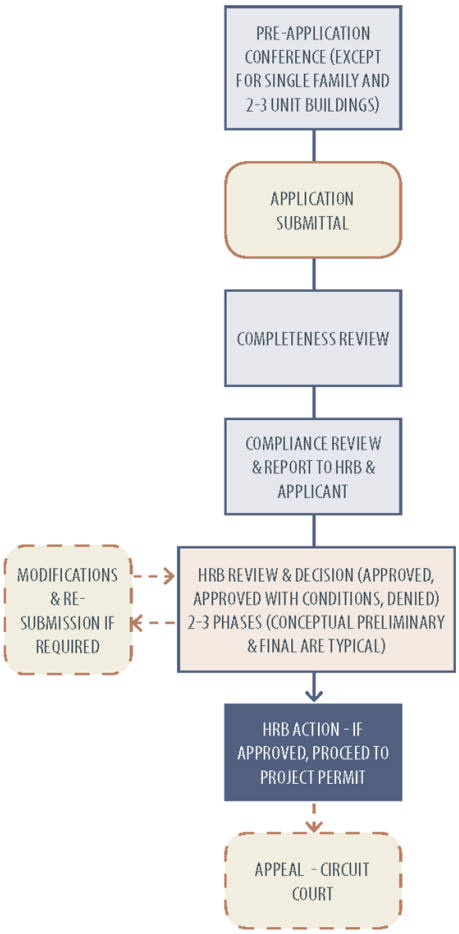
d. Demolitions of non-contributing structures in the BCN.

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

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

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

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



3. **Design Exception:** Design Exceptions shall be used to modify any dimensional standards or design requirements, found in Articles 2 and 4, for development projects that have unique characteristics that justify a deviation from the underlying standards. Such deviations are intended to provide flexibility from the underlying standards to permit compatible development patterns which are indicative of the surrounding area and/or use an innovative approach or technique. The process is intended to provide the minimum relief necessary to create a more innovative and context-sensitive development consistent with the City's adopted plans. This tool is not intended to circumvent the map amendment (rezoning) procedure where that tool would provide a similar modification of standards.
    a. **Applicability:** The HRB shall have the authority to authorize a variance of up to 35 percent from any numerical standard set forth in Article 2 (Maps and Districts) — except for Section 2.6, Height and Section 2.7.4, Air Installation Compatibility Use Zone (AICUZ) overlay district standards — and Article 4 (Building Design and Infill Standards).
    b. **Review Criteria:** The HRB may approve an application for a Design Exception where it reasonably determines that there will be no significant negative impact upon residents of surrounding property, or upon the general public. The board shall consider the following criteria in its review:
        i. **Compatibility:** The proposed exception is appropriate for its location. It is compatible with the character of surrounding properties and the development permitted by the zoning of the surrounding properties, and will not reduce property values of surrounding properties.
        ii. **No Adverse Impact:** The design of the proposed exception minimizes adverse effects including visual impacts of the proposed use on surrounding properties; furthermore, the proposed exception does not create a nuisance for surrounding properties.
        iii. **Consistency with Adopted Plans:** The proposed development is in general conformity with the City's

Comprehensive Plan, Civic Master Plan and other plans officially adopted by the City.

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

1. The "Beaufort Preservation Manual," August 1979, and the "Beaufort Preservation Manual, Supplement," August 1990, shall be utilized by the HRB for review of projects located within the Beaufort Preservation Neighborhood.
2. The "Northwest Quadrant Design Principles," May 1999 shall be utilized by the HRB for the review of projects located within the Beaufort Conservation Neighborhood.
3. The Secretary of Interior's "Standards for Rehabilitation" shall be utilized for review of all projects that modify a contributing structure.
4. The Building Design Standards, in Article 4 of this Code, shall be utilized for review of all new construction.
5. The Historic District Infill Design Guidelines, in Section 4.7 of this Code, shall be utilized for review of all new construction.
6. Any special area policies adopted by the HRB.

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

D. **Demolitions:**

1. In all applications involving the demolition of a contributing primary structure or contributing accessory structure, provisions shall be made for a public hearing as set forth in Section 9.1.5. Demolition of non-contributing structures are approved by the Administrator.
2. In any case involving the demolition or partial demolition of a structure, before granting approval or requiring a postponement, the HRB may call on the Administrator to provide them with a report on the state of repair and structural stability of the structure under consideration.
3. Upon receiving an application for demolition or partial demolition of a structure that is listed in the "1997 Beaufort County Historic Sites Survey" and lies within the limits of the city but outside the Beaufort Historic District, the Administrator, within 30 days of receiving the application, shall either approve it, or find that the preservation and protection of historic places and the public interest will be best served by postponing the demolition for a designated period — this shall not exceed 60 days from the receipt of the application, and notify the applicant of such postponement. The application will be announced to the public in accordance with the notification standards set forth in Section 9.1.3. Within the period of postponement of demolition or alteration of any building, the Administrator shall take steps to ascertain what may be done to preserve the building, including consultation with private civic groups, interested private citizens and other public boards or agencies, including investigation of the potential use of the power of eminent domain when the preservation of a given building is clearly in the interest of the general welfare of the community and of certain historic and architectural significance.

E. **Denial of Certificate of Appropriateness:** The HRB may refuse any application that, in the opinion of the HRB, does

not comply with the standards and guidelines listed in Section 9.10.2.B and thus would be detrimental to the interests of the city. In case of disapproval, the HRB shall state the reasons therefore in a written statement to the applicant, and may give verbal advice to the applicant and make recommendations in regard to appropriateness of design, arrangement, texture, material, color, etc. of the property involved.

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

1. Arresting and spectacular effects.
2. Violent contrasts of materials or colors and intense or lurid colors.
3. A multiplicity or incongruity of details resulting in a restless and disturbing appearance.
4. The absence of unity and coherence in composition, that is not in consonance with the dignity and character of the present structure, in the case of repair.
5. Construction of, remodeling, or enlargement of an existing building in a manner not consistent with the prevailing character of the neighborhood.

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

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

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

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

(Ord. No. 2025/14, Exh. A, 8-19-2025)

10.3: - ZONING BOARD OF APPEALS

10.3.1 - POWERS AND DUTIES

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

B. **Territorial Jurisdiction:**

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

C. **Powers and Duties:**

1. **Appeals:** The ZBOA shall hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an Administrative Official in the enforcement of this Code.
2. **Variances:**

a. The ZBOA shall hear and decide requests for Variance from the requirements of this Code when strict applicatio of the Ordinance would result in unnecessary hardship.

b. The ZBOA shall hear and decide requests for Variance from the requirements of Chapter 4 of the City of Beaufort Code of Ordinances's "Flood Damage Prevention Ordinance."

3. **Special Exception:** The ZBOA shall permit uses by Special Exception subject to the terms and conditions set forth for such uses in this Ordinance.

10.3.2 - MEMBERSHIP, TERMS, AND COMPENSATION

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

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

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

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

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

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

10.3.3 - OFFICERS, MEETINGS, AND QUORUM

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

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

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

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

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

F. **Rules of Proceeding:**

1. The ZBOA shall adopt and adhere to rules of procedure for the conduct of business.
2. An abstention from voting shall be considered a vote to deny the motion.

G. **Decisions:** The concurring vote of 3 members of the ZBOA shall be necessary to: reverse any order, requirement,

decision, or determination of the Administrator or building official, or to decide in favor of an applicant on any matter upon which it is required to pass judgement, or to affect any variation of this Code. On all appeals, applications and matters brought before the ZBOA, the ZBOA shall inform in writing all the parties involved of its decisions and the reasons therefore.

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

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

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

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

10.7: - HISTORIC DISTRICT REVIEW BOARD

10.7.1 - DESIGNATION

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

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

10.7.2 - POWERS AND DUTIES

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

B. **Powers and Duties:**

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

nominations proposed for any building within its jurisdiction at its discretion.

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

10.7.3 - MEMBERSHIP, TERMS, AND COMPENSATION

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

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

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

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

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

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

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

10.7.4 - OFFICERS, MEETINGS, AND QUORUM

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

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

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

D. **Rules of Proceeding:**

1. The HRB shall adopt and adhere to rules of procedure for the conduct of business.
2. An abstention from voting shall be considered a vote to deny the motion.

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

13.1: - DEFINITIONS OF SPECIALIZED TERMS

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

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

and pool houses; storage sheds; and outdoor saunas. Accessory structures normally associated with a non-residential use property include, but are not limited to: garages (unenclosed or enclosed) for the storage of automobiles and work related vehicles and equipment (including incidental restoration and repair); storage structures; workshops; and studios.

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

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

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

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

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

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

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

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

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

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

1. **Livestock and Sales Yards.** The raising, breeding, feeding, or keeping of animals for purposes of dairy manufacturing, processing, slaughter, or sales, kept wholly or partially outside of a residential structure, including, but not limited to: horses, mules, llamas, bison, elk deer, cattle, swine, sheep, ostrich and goats. Does not include animals normally considered as household pets (as determined by the Administrator).

2. **Large Lot Feed Operations.** The raising, breeding, feeding, and/or keeping of confined animals in production operations separate from standard agricultural activities (i.e. crops, vegetation, or pasture foraging are not sustained over any porti facility), and that sustain activities for a minimum of 45 days during any 12-month period.

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

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

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

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

Arborist Report. See Appendix A.

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

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

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

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

Bank/Financial Services. See "General Services."

Bar/Tavern/Night Club.

1. **Bar, Tavern.** A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May also include beer brewing as part of a micro brewery ("brew-pub"), and other beverage

tasting facilities.

2. **Night Club.** A facility serving alcoholic beverages for on-site consumption, and providing entertainment, examples of which include live music and/or dancing, comedy, etc. Does not include adult-oriented businesses.

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

Bed and Breakfast. See "Lodging."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. **Custodial Care Facility.** A facility providing care and treatment in a protective living environment for persons residing voluntarily, by court placement, or under protective control of federal, State, county, or City governance including, without limitation, post-correctional facilities, temporary detention facilities, chronically ill tenants, domestic violence victims, outpatient clients, and developmentally disabled.
2. **Homeless Shelter.** A supervised publicly or privately operated shelter and services designed to provide temporary living accommodations to individuals or families who lack a fixed, regular and adequate nighttime residence.
    a. **Emergency Shelter.** A facility that provides temporary housing on a first-come, first-served basis where clients must leave in the morning and have no guaranteed bed for the next night OR provide beds for a specific period of time, regardless of whether or not clients leave the building. Facilities that provide temporary shelter during extremely cold weather (such as churches) are also included.
    b. **Short-Term Housing.** A facility that provides housing for individuals or families (not to exceed 6 months) with a continued identified bed space. The facility would also provide personal assistance to indigent, needy, homeless or transient persons who lack a fixed, regular, and adequate nighttime residence. Such personal assistance must include food and/or shelter, and in addition may include needed and necessary supportive services.
    c. **Transitional Housing.** A structure or a group of structures providing housing for clients with a maximum stay of two years and offer supportive services to promote self-sufficiency and to help obtain permanent housing.

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

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

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

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

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

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

1. **Family Day Care Home.** A licensed facility in a private home where an occupant of the residence provides family day care for up to 6 adult clients or minor children for periods of less than 24 hours per day for any client. Facilities include but are not limited to: infant centers, nursery schools, preschool, after-school or extended day care, and school age child care centers. See "Home Occupation - Minor."
2. **Group Care Home.** A licensed day care facility that provides non-medical care and supervision to 7-12 adult clients or minor children for periods of less than 24 hours per day for any client. Facilities include, but are not limited to: infant centers, nursery schools, preschools, after-school or extended day care, and school age child care centers.
3. **Commercial Care Center.** A licensed day care facility licensed that provides non-medical care and supervision to more than 12 adult clients or minor children for periods of less than 24 hours per day for any client. Facilities include, but are not limited to: infant centers, nursery schools, preschools, after-school or extended day care, and school age child care centers. Conditional Use. These uses that require Administrator approval for conditional uses allowed within a zone.

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

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

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

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

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

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

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

Dooryard. See Section 4.4 (Private Frontage Types).

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

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

1. **Accessory.** An auxiliary dwelling unit located within an accessory structure of a primary dwelling unit on the lot. Includes, but is not limited to dwelling units in guest houses, carriage houses, pool houses, and above or beside a garage.
2. **Single-Family.** A structure containing one primary dwelling unit on a single lot.
3. **Family.** A structure containing two dwelling units on a single lot.
4. **Three-Family.** A structure containing three dwelling units on a single lot.
5. **Multi-Family.** A structure containing four or more dwelling units on a single lot.
6. **Multi-Family Development.** One parcel that contains multiple buildings containing housing units, either as apartments, or condominium. Each building may have one or more units.

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

Effect and Adverse Effect.

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

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

Engaged. See Section 4.4 (Private Frontage Types).

Facade. The vertical surface of a building.

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

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

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

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

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

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

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

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

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

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

1. For lots with frontages along multiple thoroughfares, the Primary Frontage is determined by the Street Hierarchy Diagram in Appendix C. All other frontages may be considered to be side street frontages.
2. For lots with frontages along a thoroughfare and a civic space, the Front may be the frontage along either the thoroughfare or the civic space, or both frontages may be treated as Fronts, with the following exception: the frontage along certain Civic Spaces may be required to be a Front, as per the standards in Section 7.4 (Civic and Open Space).
3. For lots with a single frontage along a thoroughfare or a Civic Space, but not both, that frontage is the Front.
4. Frontages along alleys, service drives, and parking drives may never be a front.

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

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

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

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

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

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

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

General Retail. Stores and shops intended to serve as destination retail, convenience shopping, and provision of general services. Examples of these stores, lines of merchandise, and services include: Art galleries; retail; art supplies, including framing services; books, magazines, and newspapers; cameras and photographic supplies; clothing, shoes, and

accessories; collectibles (cards, coins, comics, stamps, etc.); drug stores and pharmacies; dry goods; fabrics and sewing supplies; furniture and appliance stores; hobby materials; home and office electronics; jewelry; luggage and leather goods; musical instruments; neighborhood markets; parts; accessories; small wares; specialty grocery store; specialty shops; sporting goods and equipment; stationery; toys and games; variety stores; videos, DVDs, records, and CDs, including rental stores. May include sales of materials produced on the premises.

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

1. **Bank/Financial Services.** Financial institutions, including, but not limited to: banks and trust companies, credit agencies, holding (but not primarily operating) companies, lending and thrift institutions, other investment companies, securities/commodity contract brokers and dealers, security and commodity exchanges, and vehicle finance (equity) leasing agencies. Includes ATM facilities (see "ATM").
2. **Business Services.** Establishments providing direct services to consumers. Examples of these uses include employment agencies, insurance agent offices, real estate offices, travel agencies, utility company offices, elected official satellite offices, etc. This use does not include "Bank, Financial Services," which is separately defined.
3. **Business Support Service.** An establishment within a building that provides services to other businesses. Examples of these services include, but are not limited to: Computer-related services (rental, repair) (see also "Maintenance Service - Client Site Services"), copying, quick printing, and blueprinting services, film processing and photofinishing (retail), mailing and mailbox services.
4. **Personal Services.** Establishments that provide non-medical services to individuals as a primary use. Examples of these uses include: barber and beauty shops, body piercing facilities, clothing rental, dry cleaning pick-up stores with limited equipment, home electronics and small appliance repair, laundromats (self-service laundries), locksmiths, massage (licensed, therapeutic, non-sexual), nail salons, pet grooming with no boarding, shoe repair shops, tailors, tanning salons, tattoo parlors. These uses may also include accessory retail sales of products related to the services provided.
5. **Professional, Administrative Services.** Office-type facilities occupied by businesses that provide professional services, or are engaged in the production of intellectual property. Examples of these uses include: Accounting, auditing and bookkeeping services, advertising agencies, attorneys, business associations, chambers of commerce, commercial art and design services, construction contractors (office facilities only), counseling services, court reporting services, design services including architecture, engineering, landscape architecture, urban planning, detective agencies and similar services, educational, scientific and research organizations, financial management and investment counseling, literary and talent agencies, management and public relations services, media postproduction services, news services, photographers and photography studios, political campaign headquarters, psychologists, secretarial, stenographic, word processing, and temporary clerical employee services, security and commodity brokers, writers' and artists' offices.

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

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

1. **Eight or Fewer Residents, in a Home.** Residential facility for eight or fewer unrelated persons providing living

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

2. **More than 8 Residents, in a Community Residence.**
    a. **Dormitories.** A building or portion thereof which contains living quarters for nine or more students, staff, or members of a college, university, primary or secondary boarding school, theological school, or other comparable organization, provided that such building is either owned or managed by such organization. Single family and two-family dwellings are defined separately. See "Rooming and Boarding Facilities."
    b. **Convent or Monastery.** The living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.
    c. **Congregate Care Facility.** A facility for long-term residence exclusively by persons 62 years of age or older, and which may include, without limitation, common dining and social and recreational features, special safety and convenience features designed for the needs of the elderly, such as emergency call systems, grab bars and handrails, special door hardware, cabinets, appliances, passageways, and doorways designed to accommodate wheelchairs, and the provision of social services for residents which must include at least two of the following: meal services, transportation, housekeeping, linen, and organized social activities.
    d. **Nursing Home.** A health care institution other than a hospital or sheltered care home which provides inpatient or resident beds and is licensed by the South Carolina Department of Health and Environmental Control as a skilled nursing facility for two or more unrelated persons. A nursing home provides services to those who need continuous care but do not require hospital care or direct daily care from a physician.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lodging. (Syn. Overnight Guest Accommodation)

1. **Bed and Breakfast Inn (B&B).** (10 or Fewer Rooms) The use of a single residential structure for commercial lodging purposes, with up to ten bedrooms used for the purpose of the lodging transient guests and in which meals may be prepared for them, provided that no meals may be sold to persons other than such guests except as provided for in Section 3.6.2 C.1.e.
2. **Hostel.** A facility for residence of under twenty-nine (29) days that provides simple dormitory or sleeping rooms and common rooms for cooking, meeting, recreational, and educational use; that is chartered or approved by the International Hostel Federation or its national or regional affiliates, or similar organizations; and that is supervised by resident house-parents or managers.
3. **Hotel/Motel (25 or more rooms).** A lodging establishment of 25 or more rooms in a building or group of buildings offering transient lodging accommodations on a daily rate to the general public. Additional services may include a restaurant, meeting rooms, and recreational facilities.

4. **Inn (6 to 24 rooms).** A building or group of buildings used as a lodging establishment having six to 24 guest rooms provi overnight accommodations and breakfast to transient guests.
5. **Resort.** Lodging that serves as a destination point for visitors, located and designed with some combination of recreational uses or natural areas, such as marinas, beaches or pools, tennis, golf, equestrian, other special recreation opportunities, and/or a variety of restaurants and shops to serve the guests. Buildings and structures in the resort shall complement the scenic and natural qualities of the location and area where it is situated.
6. **Rooming and Boarding Facility.** A residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent, or rental agent is in residence. Includes dormitories, single room occupancy, fraternities, and sororities.
7. **Short-Term Rental.** A single-family dwelling, individual two-family or three-family dwelling, multifamily dwelling, or boat docked in approved marina, or any portion thereof, that is available for use or is used for accommodations or lodging of guests paying a fee or other compensation for a period of less than 30 days. When a portion of a dwelling unit is being rented, only one rental party may rent space at one time. If separate parties are renting rooms simultaneously, the use is considered a Bed and Breakfast.

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

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

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

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

1. **Artisan/Craft Product Manufacturing.** An establishment that manufactures and/or assembles small products primarily by hand, including jewelry, pottery and other ceramics, as well as small glass and metal art and craft products, where any retail sales are incidental to the manufacturing activity.
2. **Clothing and Fabric Product Manufacturing.** An establishment that assembles clothing, draperies, and/or other products by cutting and sewing purchased textile fabrics, and related materials including leather, rubberized fabrics, plastics and furs. Does not include custom tailors and dressmakers not operating as a factory and not located on the site of a clothing store (see "Personal Services"). Does not include the production of textile fabrics and related materials.
3. **Furniture and Fixtures Manufacturing, Cabinet Shop.** A business that manufactures wood and metal household furniture and appliances; bedsprings and mattresses; all types of office furniture and partitions, shelving, lockers and store furniture; and miscellaneous drapery hardware, window blinds and shades. Includes furniture re-upholstering businesses, and wood and cabinet shops, but not sawmills or planing mills.
4. **Handicraft Industries, Small-Scale Manufacturing.** Establishments manufacturing and/or assembling small products primarily by hand, including jewelry, pottery and other ceramics, as well as small glass and metal art and craft products, and taxidermists. Also includes manufacturing establishments producing small products not classified in

another major manufacturing group, including: brooms and brushes; buttons, costume novelties; jewelry; musical instruments; pens, pencils, and other office and artists' materials; sporting and athletic goods; toys; etc.

5. **Media Production.** Facilities for motion picture, television, video, sound, computer, and other communications media production.
6. **Photo/Film Processing Lab.** A facility that provides high volume and/or custom processing services for photographic negative film, transparencies, and/or prints, where the processed products are delivered to off-site retail outlets for customer pick-up. Does not include small-scale photo processing machines accessory to other retail businesses.
7. **Printing and Publishing.** An establishment engaged in printing by letterpress, lithography, gravure, screen, offset, or electrostatic (xerographic) copying; and other establishments serving the printing trade such as bookbinding, typesetting, engraving, photoengraving and electrotyping. This use also includes establishments that publish newspapers, books and periodicals; establishments manufacturing business forms and binding devices. "Quick printing" services are included in the definition of "Business Support Services."

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

1. **Chemical Product Manufacturing.** An establishment that produces or uses basic chemicals, and other establishments creating products predominantly by chemical processes. Examples of these products include: basic chemicals, including acids, alkalis, salts, and organic chemicals; chemical products to be used in further manufacture, including synthetic fibers, plastic materials, dry colors, and pigments; and finished chemical products to be used for ultimate consumption, including drugs/pharmaceuticals, cosmetics, and soaps; or to be used as materials or supplies in other industries including paints, fertilizers, and explosives. Also includes sales and transportation establishments handling the chemicals described above, except as part of retail trade.
2. **Concrete, Gypsum, and Plaster Product Manufacturing.** An establishment that produces bulk concrete, concrete building block, brick, and/or other types of precast and prefabricated concrete products. Also includes ready-mix concrete batch plants, lime manufacturing, and the manufacture of gypsum products, including plasterboard.
3. **Glass Product Manufacturing.** An establishment that manufactures glass and/or glass products by melting silica sand or cullet, including the production of flat glass and other glass products that are pressed, blown, or shaped from glass produced in the same establishment. Artisan and craftsman type operations of a larger scale than home occupations are instead included under ("Manufacturing—Light - Handcraft Industries and Small-Scale Manufacturing").
4. **Paving and Roofing Materials Manufacturing.** The manufacture of various common paving and petroleum-based roofing materials, including bulk asphalt, paving blocks made of asphalt, creosote wood, and various compositions of asphalt and tar.
5. **Petroleum Refining and Related Industries.** Industrial plants for purifying petroleum, and the compounding of lubricating oils and greases from purchased materials. Also includes oil or gas processing facilities, liquefied natural gas (LNG) facilities, the manufacture of petroleum coke and fuel briquettes, tank farms, and terminal facilities for pipelines. Does not include petroleum pipeline surge tanks and pump stations ("Public Services"), or petroleum product distributors ("Flammable Liquid, Gas, and Bulk Fuel - Storage and Sale").
6. **Plastics, Other Synthetics, and Rubber Product Manufacturing.** The manufacture of rubber products including: tires, rubber footwear, mechanical rubber goods, heels and soles, flooring, and other rubber products from natural, synthetic, or reclaimed rubber. Also includes establishments engaged primarily in manufacturing tires; products from recycled or reclaimed plastics or styrofoam; molding primary plastics for other manufacturers, manufacturing

miscellaneous finished plastics products, fiberglass manufacturing, and fiberglass application services. Does not include establishments engaged primarily in recapping and retreading automobile tires (See "Vehicle Sales and Services").

7. **Primary Metal Industries.** An establishment engaged in: the smelting and refining of ferrous and nonferrous metals from ore, pig, or scrap; the rolling, drawing, and alloying of metals; the manufacture of castings, forgings, stampings, extrusions, and other basic metal products; and the manufacturing of nails, spikes, and insulated wire and cable. Also includes merchant blast furnaces and by-product or beehive coke ovens.
8. **Pulp and Pulp Product Manufacturing.** An establishment that manufactures pulp, paper, or paperboard. Includes pulp, paper, and paperboard mills. Does not include establishments primarily engaged in converting paper or paperboard without manufacturing the paper or paperboard, including envelope manufacturing, converted paper products, paper coating and glazing, paper bags, assembly of paperboard boxes, wallpaper (See "Manufacturing—Light - Paper Product Manufacturing").
9. **Textile and Leather Product Manufacturing.** An establishment that converts basic fibers (natural or synthetic) into a product, including yarn or fabric, that can be further manufactured into usable items (See "Manufacturing—Light - Clothing and Fabric Product Manufacturing"), and industries that transform hides into leather by tanning or curing. Includes: Coating, waterproofing, or otherwise treating fabric; Manufacturing woven fabric, carpets, rugs from yarn; Dressed and dyed furs Preparation of fiber and subsequent manufacturing of yarn, threads, braids, twine cordage; Dying and finishing fiber, yarn, fabric, and knit apparel Scouring and combing plants; Leather-tanned, curried, and finished upholstery manufacturing; Manufacture of knit apparel and other finished products from yarn and thread mills; and Manufacture of felt goods, lace goods, non-woven fabrics and miscellaneous textiles.

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

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

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

1. **Clinic, Urgent Care.** A facility other than a hospital where medical, mental health, surgical and other personal health services are provided on an outpatient basis. Examples of these uses include: Medical offices with five or more licensed practitioners and/or medical specialties, outpatient care facilities, urgent care facilities, other allied health services. These facilities may also include incidental medical laboratories. Counseling services by other than medical doctors or psychiatrists are included under "Offices - Professional/Administrative."
2. **Doctor Office.** A facility other than a hospital where medical, dental, mental health, surgical, and/or other personal health care services are provided on an outpatient basis, and that accommodates no more than four licensed primary practitioners (for example, chiropractors, medical doctors, psychiatrists, etc., other than nursing staff) within an individual office suite. A facility with five or more licensed practitioners is instead classified under "Medical Services - Clinic, Urgent Care." Counseling services by other than medical doctors or psychiatrists are included under "Office - Professional, Administrative."
3. **Extended Care.** Residential facilities providing nursing and health-related care as a primary use with in-patient beds. Examples of these uses include: board and care homes; convalescent and rest homes; extended care facilities; and skilled nursing facilities. Long-term personal care facilities that do not emphasize medical treatment are included under "Residential Care."

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

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

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

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

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

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

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

Museum. See "Community Oriented Civic Facility."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recreation Facility, Commercial or Institutional.

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

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

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

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

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

Residential. Premises used primarily for human habitation.

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

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

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

School, Private or Public. Includes the following facilities:

1. **Elementary, Middle, Secondary.** A public or private academic educational institution, including elementary (kindergarten through 6th grade), middle and junior high schools (7th and 8th grades), secondary and high schools (9th through 11th grades), and facilities that provide any combination of those levels. May also include any of these schools that also provide room and board.
2. **Does not include pre-schools and child day care facilities (see "Day Care, Child or Adult").** See also the definition of "Studio - Specialized Education/Training" for smaller-scale facilities offering specialized instruction.

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

Sexually Oriented Business. See Appendix B.

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

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

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

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

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

loaded, unloaded or otherwise carries out its principal function, which circumstances indicate that the primary purpose of the display is to attract the attention of the public rather than to serve the business of the owner thereof in the manner which is customary for the vehicle.

31. **Wall Sign.** A sign mounted parallel to or painted on a building facade or other vertical building surface. Wall signs shall not project more than 18 inches from the wall surface.
32. **Window Sign.** Any sign which is painted on, applied to, attached to or projected upon or within the exterior or interior of a building glass area, including doors, or located within 15 feet of the identification, message, symbol, insignia, visual representation, logotype, or any other form which communicates information, can be read from off-premises contiguous property or public right-of-way.
33. **Window Sign, Temporary.** A window sign of a temporary nature used to direct attention to the sale of merchandise, or a change in the status of the business, including, but not limited to, sign for sales, specials, going out of business, and grand openings.

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

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

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

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

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

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

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

Storage, Outdoor. See "Outdoor Storage."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tree, Shade. See "Canopy Tree."

Tree, Street. See "Street Tree."

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

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

Unit. See "Dwelling Unit."

Utilities. See "Infrastructure and Utilities."

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

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

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

Vehicle Services.

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

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

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

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

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

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

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

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

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Court Case No. 2025-000624

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

v.

City of Beaufort, Beaufort Historic District Review Board,
and 303 Associates, LLC, ... Respondents.

CERTIFICATE OF COUNSEL

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

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