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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. 2025-000623

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

v.

City of Beaufort, City of Beaufort Zoning Board of Appeals,
and 303 Associates, LLC, ... Respondents.

RECORD ON APPEAL

W. Andrew Gowder, Jr. (SC Bar No. 7895)
Austen & Gowder, LLC
1629 Meeting Street, Suite A
Charleston, South Carolina, 29405
(843)727-2229
andy@austengowder.com

Counsel for Appellants

Benjamin E. Nicholson, V (SC Bar No. 10137)
Burr & Forman LLP
1221 Main St, Ste 1800
Columbia, SC 29201
(803)799-9800
nnicholson@burr.com

Counsel for Respondent 303 Associates, LLC

Alexis K. Lindsay (SC Bar No. 78049)
Lawrence E. Flynn, III (SC Bar No. 074931)
Virginia P. Bozeman (SC Bar No. 104939)
POPE FLYNN, LLC
1441 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4900
alindsay@popeflynn.com
lflynn@popeflynn.com
gbozeman@popeflynn.com

*Counsel for Respondent City of Beaufort and
City of Beaufort Zoning Board of Appeals*

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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. 2021CP0701639

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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 came 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

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.



Beaufort Common Pleas

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

Case Number: 2021CP0701639

Type: Order/Electronic Form 4

So Ordered

s/ Edward W. Miller

Electronically signed on 2023-08-29 13:11:36 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-01639
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Petitioners,	)	ORDER GRANTING MOTION TO
	)	RECONSIDER AND DENYING
v.	)	PETITION OF APPEAL
	)	
City of Beaufort, City of Beaufort Zoning Board of Appeals, and 303 Associates, LLC,	)	
	)	
Respondents.	)	

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 Zoning Board of Appeals (the “ZBOA”) dated August 9, 2021. Respondents City of Beaufort (the “City”) and the ZBOA (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 ZBOA 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.

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 the issuance of a Special Exception by the ZBOA pursuant to Section 4.5.10.B.5 of the Beaufort Code, the applicable municipal development code, to allow the construction of the Apartment Project, a building with a proposed frontage exceeding 100-feet on property zoned T5-Downtown Core District ("T5-DC"), on August 9, 2021.

The Beaufort Code includes development standards specific to each zoning district. Structures built in the T5-DC district with a frontage wider than 100 feet must comply with the Large Footprint Building Standards set out in the Beaufort Code. Beaufort Code § 2.4.1.D.fn.9. As pertinent to the arguments before this Court, those standards require Liner Buildings between the Large Footprint Building and the Primary Street frontage in the T4 and T5 districts unless there is an entry on the primary street frontage and a minimum of 40% clear and unobstructed glazing along that street. Beaufort Code § 4.5.10.B.5(B)(2)(a). Further, in the Historic District, Large Footprint Buildings are permitted by Special Exception only. Beaufort Code § 4.5.10.B.5(B)(5).

The ZBOA has the ability to grant a Special Exception only on terms and conditions that comply with the City's zoning ordinance. Beaufort Code § 10.3.1.C.3 ("The ZBOA shall permit uses by Special Exception subject to the terms and conditions set forth for such uses in this Ordinance."); *see also* S.C. Code Ann. § 6-29-800(A)(3) ("The board of appeals has the following powers: ... (3) to permit uses by special exception subject to the terms and conditions for the uses

set for such uses in the zoning ordinance.”). Consistent with this authority, the Beaufort Code establishes these terms and conditions for Special Exceptions:

Special Exceptions may be made for situations in which proposed land uses are generally compatible with the land uses permitted by-right in a district (per Section 3.2 Table of Permitted Uses) but require individual review of their location, design, and configuration to evaluate the potential for adverse impacts on adjacent property and uses. The Special Exception process ensures the appropriateness of the use at a particular location within a given [Zoning] District.

Beaufort Code § 9.13.1.

When reviewing a Special Exception request, the Beaufort Code requires that the ZBOA consider the following criteria (the “Special Exception Criteria”):

1. The proposed use’s compatibility with existing land uses in the surrounding area.
2. The harmony of the proposed site plan, circulation plan, and schematic architectural designs with the character of the surrounding area.
3. The likely impact on public infrastructure — such as roads, parking facilities, and water and sewer systems —and on public services — such as police and fire protection and solid waste collection — and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City (a traffic impact analysis shall be required per Section 7.3.2).
4. The general conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City.
5. The likely impact on public health and safety.
6. The potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts.

Beaufort Code § 9.13.2.F.

The ZBOA may then approve the Special Exception if after considering the Special Exception Criteria, it “reasonably determines there will be no significant negative impact upon residents of the surrounding property or upon the general public.” *Id.* If it grants the Special

Exception, the “ZBOA may impose such conditions and restrictions upon the application as may be necessary to minimize or mitigate any potential adverse impacts of the proposed use.” Beaufort Code § 9.13.2.G.

At the meeting held August 9, 2021, Dan Frazier, City Planner, presented his staff report and, when doing so, addressed and discussed evidence supporting all six Special Exception Criteria. When discussing the Special Exception request, the ZBOA, likewise, addressed each Special Exception Criteria and referenced evidence supporting all six. The ZBOA then granted the Special Exception based on an affirmative majority vote of its members. This timely appeal followed.

ARGUMENTS ON APPEAL

In support of their Appeal, Petitioners assert the ZBOA erred as a matter of law when issuing the Special Exception because it failed to fully consider the criteria set forth in Section 9.1.3.2(F) of the Beaufort Code, including the fact that due to its large scale, the Apartment Project would be incompatible with surrounding land uses, out of character with surrounding architectural design, and in conflict with the City’s Civic Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. In addition, Petitioners claim that the ZBOA did not adequately consider the impact of the Apartment Project on public infrastructure, including associated runoff problems, parking deficiencies, and traffic uncertainties. Finally, Petitioners argue that procedurally, the ZBOA should have considered the Special Exception request before the Historic Review Board (“HRB”) conditionally approved the design plans.¹ For these reasons, Petitioners assert the actions of the ZBOA were arbitrary,

¹ When reviewing design applications, the HRB follows a stepped procedure of Conceptual Approval, Preliminary

capricious, not supported by the record, and contrary to law, so its decision to grant the Special Exception must be reversed.

In opposition, Respondents contend the record contains evidence that: the Apartment Project is compatible with existing land uses in the area; the schematic character of the Apartment Project's architectural design is in harmony with the architectural design of surrounding buildings; and the Apartment Project generally conforms with the City's Civic Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. Further, the ZBOA properly considered the likely impact of the Apartment Project on public infrastructure, and there is evidence in the record that the project would not have a negative impact on that infrastructure. Finally, the timing of the HRB approvals is irrelevant to the timing of the ZBOA's consideration of the Special Exception request. Petitioners have not cited any authority requiring the ZBOA to consider project-related matters prior to the HRB, and there is none. Those bodies serve different functions, and the decision of one body does not impact the other, so the sequence in which the act is inconsequential.

After considering these arguments, the applicable law, and the entire record before this Court, Petitioners' argument is not well-taken and their Appeal is denied.

STANDARD OF REVIEW

"On appeal, the findings of fact by the [ZBOA] 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.*

Approval, and Final Approval. All projects must receive Final Approval. To achieve Final Approval, Developers may go through all three steps or skip to the Preliminary Approval or Final Approval stages. When seeking approval of the Apartment Project, 303 Associates pursued all three steps. Only the Conditional Approval of the project was appealed, and that appeal is currently pending before this Court in *West Street Farms, LLC v. City of Beaufort, et seq.*, South Carolina Court of Common Pleas for the Fourteenth Judicial Circuit Case Number 2022-CP-07-00039.

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 also* S.C. Code Ann. § 6-29-840(A) (Supp. 2020) (“The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.”) (emphasis added). “The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings.” *Berberich v. Jack*, 392 S.C. 278, 284, 709 S.E.2d 607, 610 (2011) (emphasis added).

Thus, a “[z]oning [b]oard’s findings of fact are final and conclusive on appeal.” *Bishop v. Hightower*, 292 S.C. 358, 360, 356 S.E.2d 420, 421 (Ct. App. 1987). “A reviewing court in a zoning case may rely on 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 [ZBOA] 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 [ZBOA] 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)).

However, a court will not substitute its judgment for the judgment of the board in a zoning law case. *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). As stated by the Supreme Court:

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.

Id. (quoting *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952)).

In this matter, Respondents need only show there is evidence in the record that supports the ZBOA's decision to grant the Special Exception to 303 Associates. As such, Petitioners have the burden of showing there is no evidence supporting the decision of the ZBOA or that the decision was arbitrary or capricious. Petitioners have not met this burden.

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 ZBOA and, therefore, the Appeal is denied

I. The Record Contains Evidence the Apartment Project Meets the Criteria Required to Approve the Special Exception.

A. Special Exception Criteria Numbers 1, 2, and 4

Petitioners address Criteria Numbers 1, 2, and 4 together, so this Court has done the same. Petitioners challenge the evidence supporting Criteria Numbers 1, 2, and 4 by pointing to evidence in the record that arguably supports a different conclusion, essentially asking this Court to re-weigh the evidence. This is not the standard of review this Court is tasked with applying. Instead, this Court must give deference to the findings of the ZBOA and leave it undisturbed unless the record

is without any evidence that reasonably supports the board's decision. *Wyndham Enters.*, 401 S.C. at 148, 735 S.E.2d at 661. The record reveals evidence that reasonably supports the ZBOA's conclusion that the Apartment Project is compatible with existing land uses in the surrounding area, compatible with the architectural design of the surrounding buildings, and compatible with the City's Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. Petitioners have, therefore, failed to meet their burden, so their Appeal is denied.

In support of their argument that the evidence does not support an affirmative finding as to Criteria Numbers 1, 2, and 4, Petitioners claim (1) the Apartment Project is "incongruous" and not "harmonious" with its neighbors; (2) the Apartment Project is a threat to the National Park Service's designation of the Beaufort National Historic Landmark District; (3) the Apartment Project is not consistent with the Civic Master Plan for "sensitive" infill; (4) the Apartment Project is not consistent with the "emotional core" of Beaufort; (5) a two story building would be more in character with the surrounding area; (6) special attention should be assigned to the designs elements of a large building; (7) monolithic massing is bad and out of character with the surrounding area; (8) certain elements of the Civic Master Plan and the general need for "intimate scale" development make the Apartment Project improper; (8) the Apartment Project does not fit the "area's architectural context;" (9) the Apartment Project should be set back from the street per *The Beaufort Preservation Manual*; (10) *The Beaufort Preservation Manual* requires the Apartment Project to "blend harmoniously with the historic fabric of the town;" (11) the Apartment Project is across from two "significant historic properties following the architectural form of the Beaufort Style;" (12) the Apartment Project is "out of scale with neighboring properties" and will

“tower over” them; (13) the placement of the service entrance “disrupts and dominates the streetscape and vista;” and (14) per *The Beaufort Preservation Manual*, a historic building, like the 1947 A&P store currently onsite, should not be demolished.

Every single one of these concerns is based on Petitioners’ subjective interpretation of what is or is not the right type of project for the area. Those are all factual determinations. None are legal issues. Petitioners have simply picked general language from the Beaufort Code and molded that language to fit their desired outcome. The issues raised by Petitioners are the precise sort the ZBOA was statutorily created to handle. As noted, the Court may not disturb the findings of the ZBOA unless those findings are wholly unsupported by the evidence in the record. *Berberich*, 392 S.C. at 278, 709 S.E.2d at 610. This Court’s review of the record reveals evidence supporting the ZBOA’s finding that each enumerated Special Exception Criteria indicates the Apartment Project will not negatively impact the public. As such, Petitioners’ arguments are not well-taken, and their Appeal is denied.

1. Compatibility with Existing Land Uses in the Surrounding Area

With respect to Criteria Number 1, the record includes this supporting evidence:

- a. ZBOA staff recited the characteristics of the neighborhood, including the manner in which other properties in the area are used, and the nature of the Apartment Project in general. ZBOA staff additionally presented the architectural drawings of the Apartment Project submitted by 303 Associates. When doing so, ZBOA staff noted twice that the “proposed use is compatible with existing land uses in the surrounding area” citing the mixed-use area and integrated streetscape. (R. 11:12-18:3; *also see* Staff Report at R. pages 197-

202 of PDF²).

- b. ZBOA staff informed the body that the old A&P building to be demolished was not a contributing historic structure per the National Register of Historic Places (contradicting the claim of Petitioners that it should be.) (R. 12:24-13:4).
- c. The ZBOA also heard substantial public debate regarding the Apartment Project and its compatibility with surrounding land use. These comments were both in support of and against the Apartment Project.

When considering the evidence presented regarding the nature of the Apartment Project in contrast with the property uses in the surrounding neighborhood, the ZBOA likewise engaged in substantial debate. This debate reflected the body's careful consideration of the evidence presented in support of and against the Apartment Project. Ultimately, three members voted in favor of the Special Exception and two members voted against it. (R. 145-146). Thus, there is evidence in the record supporting Criteria Number 1, so there was no abuse of discretion by the ZBOA. *Newton*, 396 SC at 116, 719 S.E.2d at 284.

2. Harmony of the Proposed Site Plan, Circulation Plan, and Schematic Architectural Designs with the Character of the Surrounding Area

With respect to Criteria Number 2, the record includes this supporting evidence:

- a. ZBOA staff noted the proposed development had "received conceptual approval by the HRB based on height, scale, mass, three-dimensional form of the building, and general architectural direction." (R. 18:4-19:7; *also see* Staff

² PDF page numbers are referenced because the administrative record filed with this Court does not contain page numbers for those parts of the record separate from the official transcript of the ZBOA hearing.

Report at R., PDF pages 197-202).

- b. ZBOA staff noted the T5-DC zone district has a zero-setback requirement (contracting Petitioners' citation to the Beaufort Preservation Manual.) (R. 18:21-19:7).

Thus, there is evidence in the record supporting Criteria Number 2, so there was no abuse of discretion by the ZBOA. *Newton*, 396 SC at 116, 719 S.E.2d at 284.

3. General Conformity with the City's Civic Master Plan, Comprehensive Plan, and Other Plans Officially Adopted by the City

With respect to Criteria Number 4, the record includes this supporting evidence:

- a. ZBOA staff noted that the proposed development conforms with the recommendations included in Civic Master Plan, including Section 3.2 entitled "Redefining and Expanding Downtown Discussion," which recommends an expansion of the vibrancy of the Bay Street core to other parts of the City through mixed-use corridors. (R. 21. 5-15).
- b. Specifically, ZBOA staff quoted the Civic Master Plan and explained,

The perception of downtown Beaufort needs to expand beyond its Bay Street core into a continuous vibrancy that connects other parts of the City. Five streets in the Sector 1 study area, that's Boundary, Bladen, Charles, Carteret, and Ribaut, are re-imagined in this plan as mixed-use corridors that form the broad and extensive foundation of a reinvigorated downtown district

As key streetscape investments in these corridors create a series of places and experiences that attract more residents and businesses, both historic and new neighborhoods within this corridor framework will begin to fill with new places to live, work, and shop.

(R. 21:16-22:9 (internal quotations omitted); *also see* Staff Report at R., PDF pages 197-202).

- c. ZBOA staff additionally presented slides quoting the language of the applicable provisions of the Beaufort Code, Civic Master Plan, and Comprehensive Plan and compared the requirements of each to the specifications and intended use of the Apartment Project. By pointing to individual elements of the project, ZBOA staff explained precisely how the Apartment Project meets each applicable requirement. (R. 23:5-30:24; *also see* Staff Report at R. pages 197-202 of PDF).
- d. To illustrate the Apartment Project's compliance with the Comprehensive Plan, ZBOA staff displayed a conceptual drawing of a three-story mixed-use building with rooftop venue used in the Comprehensive Plan as an example of the type of development the plan envisions in the area where the Apartment Project will be located and noted the similarities of that illustration to the Apartment Project. (R. 24:1-25:6; 28:12-29:1).

Petitioners cite cherry-picked and vague sections of the Civic Master Plan and *The Beaufort Preservation Manual* in support of their argument that the evidence considered by the ZBOA did not support Criteria Number 4. In addition to their general assertions summarized at the outset of this Section A, Petitioners contend *The Beaufort Preservation Manual* suggests that 303 Associates must have considered alternative sites for the Apartment Project before picking a location requiring a Special Exception. This sort of vetting process is not required by the Beaufort Code or any other controlling law prior to the receipt of a Special Exception. Likewise, all other arguments raised by Petitioners appear to be guidelines or matters of interpretation as opposed to examples of errors made by the ZBOA when applying the applicable law to the facts before it.

The record before this Court contains evidence that the Apartment Project generally conforms with the City's Civic Master Plan, Comprehensive Plan, and other plans officially adopted by the City, including *The Beaufort Preservation Manual*. See *Newton*, 396 SC at 116, 719 S.E.2d at 284. There was no abuse of discretion by the ZBOA with respect to its consideration of Criteria Number 4. *Id.*

B. Special Exception Criteria Number 3

Special Exception Criteria Number 3 required the ZBOA to consider “the likely impact [of the Apartment Project] on public infrastructure — such as roads, parking facilities, and water and sewer systems — and on public services — such as police and fire protection and solid waste collection — and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City (a traffic impact analysis shall be required per Section 7.3.2).” Beaufort Code § 9.13.2.F. Petitioners argue the ZBOA erred when granting the Special Exception because the Apartment Project will have a negative impact on public infrastructure due to (1) storm water runoff problems; (2) inadequate parking; and (3) an insufficient Traffic Analysis Report. By making this argument, Petitioners not only ask this Court to reweigh the evidence considered by the ZBOA and reach a different conclusion but also ask this Court to consider evidence that is not part of the record. Again, this is not the correct standard of review. This Court is instead tasked with determining whether there is evidence in the record supporting the findings of the ZBOA, and here, there is. See *Berberich*, 392 S.C. at 278, 709 S.E.2d at 610.

The record before this Court includes the following evidence supporting the ZBOA's decision as to Criteria Number 3:

- a. ZBOA staff noted the Apartment Project is an infill development located in an area of the City with existing streets, infrastructure, and public services that are all adequate to serve the project without detriment to existing uses. (R. 19:8-22; *also see* Staff Report at R., PDF pages 197-202).
- b. ZBOA staff pointed out the Apartment Project has a footprint of approximately 9,000 square feet so it is not a Large Footprint Building, defined by the Beaufort Code as a building with a footprint of greater than 20,000 square feet, and requires a Special Exception because it has street frontage of 132 feet, only slightly exceeding the 100-foot minimum. (R. 34:19-35:6; *also see* Staff Report at R. pages 197-202 of PDF).
- c. ZBOA staff discussed the traffic analysis submitted by 303 Associates, noting it analyzed two separate development scenarios. The first involved the redevelopment of the existing building as 12,120 square feet of retail space and found that use would result in 458 daily vehicle trips. It then analyzed a development with 2,000 square feet of retail space and nineteen apartments, which closely mirrors the Apartment Project, and found the second use would result in 218 daily vehicle trips. (R. 19:23-20:24; PDF pages 195-196).
- d. ZBOA staff addressed the parking requirements set out in the Beaufort Code and, again pointing to individual elements of the Apartment Project, explained that twenty-seven parking spots are required, where those parking spots would be located offsite, and why the offsite location complies with the Beaufort Code. (R. 29:2-30:24).

- e. The ZBOA had a robust discussion about parking that included acknowledgment of the number of parking spots required, the pros and cons of offsite parking, and a reference to the need for parking in the City's downtown area. (R. 113:5-115:5; 125:2-10).

Rather than point to legal errors in the ZBOA's analysis, Petitioners generally site to runoff issues without pointing to any evidence that the Apartment Project would cause a runoff problem that could not be adequately addressed by the City's existing infrastructure. Petitioners had the opportunity to express their concerns to the ZBOA yet offered no facts supporting legitimate runoff concerns or engineering studies or expert opinions on the subject. The opinion of legal counsel offered in the letter to the ZBOA and Petitioners' memorandum supporting appeal is not enough. "[T]he circuit court erred in relying on counsel's arguments before the Board as evidence of a nonconforming use. *See S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."); *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.").

Likewise, Petitioners' parking concerns are not well-taken. The decision of the ZBOA as to the interplay of the parking requirements of the Beaufort Code and the specifications of the Apartment Project must stand. "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 ZBOA found parking to be adequate after considering the facts before it and applying its own development code, and absent an abuse of discretion, which Petitioners have not shown, this Court cannot disturb that decision.

Finally, Petitioners' concerns regarding the sufficiency of the traffic analysis do not persuade the Court that the ZBOA erred when relying on that study when finding the Apartment Project will not have a negative impact on public infrastructure. Petitioners express their dissatisfaction with the extensiveness of the traffic study without citing a legal deficiency. The ZBOA considered and relied on the traffic study submitted by 303 Associates when granting the Special Exception. It was within the discretion of the ZBOA to request a more detailed traffic analysis or additional information had it been needed, and the ZBOA did not do so.

Again, great deference must be given to the ZBOA when interpreting its own ordinances. *Wyndham Enters.*, 401 S.C. at 148, 735 S.E.2d at 661. When considering the traffic study, the ZBOA noted its conclusion that a development like the Apartment Project would have a smaller impact on traffic than redeveloping the existing structure to its former big box-type retail use. Moreover, by granting the Special Exception, the ZBOA necessarily found the traffic analysis to be sufficient. This Court must accept these findings.

Once again, the evidence included in the record before this Court supports the ZBOA's finding that the Apartment Project will not have a negative impact on public infrastructure, so there was no abuse of discretion with respect to Criteria Number 4. *Newton*, 396 SC at 116, 719 S.E.2d at 284. Petitioners' Appeal is denied on this ground as well.

II. The Timing of the HRB Approvals is Irrelevant to the Decision of the ZBOA.

Petitioners claim the ZBOA should not have heard the Special Exception application because the HRB conceptually approved a different, updated architectural rendering of the Apartment Project at its meeting on February 10, 2021. Petitioners assert the ZBOA's decision to grant the Special Exception should be vacated, and the matter should be remanded to the HRB for

consideration of the updated design prior to the resubmission of the Special Exception application to the ZBOA. Petitioners fail to cite any legal authority in support of this argument. Moreover, they have taken the opposite stance in *West Street Farms, LLC v. City of Beaufort, et seq.*, South Carolina Court of Common Pleas for the Fourteenth Judicial Circuit Case Number 2022-CP-07-00039, their appeal of the HRB's preliminary approval of the updated design on December 8, 2021, in which they argue without success that the Apartment Project could not proceed before the HRB without first receiving a Special Exception from the ZBOA. Petitioners continue to cherry-pick arguments on whim that support their narrow position without considering the development process as a whole or providing legal justification. For the reasons set forth below, this Court also finds this argument to be without merit and denies the Appeal.

As also articulated by this Court in its order denying the afore-referenced HRB appeal, the ZBOA and HRB are different boards that serve separate and distinct functions. *Compare* S.C. Code Ann. § 6-29-800 (the ZBOA has the power to hear and decide appeals of determinations made by the zoning administrator relating to the enforcement of the zoning ordinance, hear and decide appeals for variance from the requirements of the zoning ordinance, and grant special exceptions subject to the terms of the zoning ordinance), *and* Beaufort Code § 10.3.1 (giving the ZBOA the same powers available to it under state law); *with* S.C. Code Ann. § 6-29-880 (the HRB, as a board of architectural review, has those powers involving historic and architecturally significant structures and neighborhoods given to it by the zoning ordinance, including appeals of decisions made by the zoning administrator relating to historic and architecturally significant structures and neighborhoods), *and* Beaufort Code §§ 10.7.1-10.7.2 (giving the HRB the ability to review and take action on projects located within the Historic District, including changes to the

exterior of any structure and new construction, and reviewing and taking action on Major Certificates of Appropriateness). As pertinent here, only the ZBOA can consider a request for Special Exception submitted for a proposed development in the Historic District that, like the Apartment Project, has street footage exceeding 100 feet. Likewise, only the HRB can approve the architectural design of a development, like the Apartment Project, to be built in the Historic District following the demolition of an existing structure. Not only do the functions of the two boards not overlap, but one board does not oversee or hear appeals of decisions made by the other.

Careful consideration of the Development Review Procedures set forth in the Beaufort Code confirms the ZBOA and HRB act independent of one another, and there is no mandated sequential order in which their decisions must be made. The articulated purpose of the Development Review Procedures is to establish “an orderly process to develop land” through “a clear and comprehensible development process.” Beaufort Code § 9.1.1. Consistent with this purpose, the Beaufort Code includes a comprehensive table that breaks the City’s land development procedures down by permit and process type. Beaufort Code § 9.1.4. The table organizes the stages of development by topic, and for each stage, it references the controlling section of the Beaufort Code, identifies the permit/process type, identifies the reviewing agency, identifies the approving agency, and identifies the body charged with the first level of administrative appeal. *Id.* This table makes it evident that the ZBOA and HRB are never tasked with reviewing, approving, or hearing the appeal of the same permit or process. Likewise, the ZBOA and HRB are never tasked with hearing an appeal of a decision made by the other body.

The ZBOA and HRB are separate bodies created for the purposes of serving distinct statutorily defined roles. There is no support in the Beaufort Code or elsewhere for Petitioners’

assertion that one body must act before the other. Likewise, there is no legal authority for this Court to overturn the ZBOA's decision to grant the Special Exception and remand the matter to the HRB for further consideration of the associated design elements.³ Such an outcome would be illogical given the independent nature of the bodies and appeal processes associated with each.

To the contrary, state law requires this Court to give the ZBOA great deference when applying the Beaufort Code, the local ordinance it is tasked with interpreting and applying. *Wyndham Enters.*, 401 S.C. at 148, 735 S.E.2d at 661. Petitioners made a similar timing argument to the ZBOA at hearing of the Special Exception application. (R. PDF pages 210-212). By granting the Special Exception, a decision supported by evidence in the record, the ZBOA rejected this argument, a decision falling within the vast swath of discretion given to that body. This Court cannot disturb that decision.

Petitioners have failed to show the ZBOA abused its discretion when granting the Special Exception despite the status of the separate, ongoing design review being conducted by the HRB. This Appeal is denied on this basis as well.⁴

CONCLUSION

Petitioners ask this Court to usurp the function of the ZBOA by reweighing conflicting evidence and determining the ZBOA reached the wrong conclusion. This is not the legal standard to be applied by this Court. Instead, this Court is tasked with determining whether the record

³ Even if the Beaufort Code and supporting state law gave this Court the ability to remand a ZBOA application for Special Exception to the HRB for consideration of the associated design criteria, this Court would be precluded from doing so because the HRB has already considered the design elements of the associated development plan, and Petitioners have separately appealed that HRB approval in *West Street Farms, LLC v. City of Beaufort, et seq.*, South Carolina Court of Common Pleas for the Fourteenth Judicial Circuit Case Number 2022-CP-07-00039.

⁴ As an additional sustaining ground, the Petitioners litigated and lost the same issue in *Historic Beaufort Foundation v. City of Beaufort, et al*, Unpublished Opinion No. 2024-CP-372, so they are collaterally estopped from re-litigating that issue in their present appeal.

contains evidence supporting the ZBOA's decision to grant the requested Special Exception such that it was not arbitrary and capricious. *Newton*, 396 SC at 116, 719 S.E.2d at 284. The record contains evidence affirmatively supporting all six factors the ZBOA must consider when determining whether to grant a Special Exception allowing the construction of a building, like the Apartment Project, with street frontage in slight excess of 100 feet in the Historic District. For the reasons set forth above, Petitioners have not met their burden of showing the ZBOA abused its discretion by rendering an arbitrary and capricious decision when granting the Special Exception at issue, so their Appeal is DENIED.

IT IS SO ORDERED.

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



Beaufort Common Pleas

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

Case Number: 2021CP0701639

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-07-01639
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Petitioners,	)	
	)	AMENDED PETITION
v.	)	
	)	(Appeal of Award
City of Beaufort, City of Beaufort Zoning	)	of Special Exception
Board of Appeals, and 303 Associates, LLC,	)	by Zoning Board of Appeals)
	)	
	)	<i>Non-Jury</i>
Respondents.	)	

TO: THE ABOVE-NAMED RESPONDENTS

The above-named Petitioners file this petition, pursuant to S.C. Code Ann. § 6-29-820 and The Beaufort Code Section 9.13.2(H), appealing the decision of the Zoning Board of Appeals (ZBOA) issued on August 9, 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 are near the projects that are the subject of this petition and will be impacted by that project.
2. The City of Beaufort, South Carolina (the “**City**” or “**Beaufort**”) is a municipal corporation and body politic created by and subject to the laws of the State of South Carolina.
3. The City of Beaufort Zoning Board of Appeals (“**ZBOA**”) is a five-member board of zoning appeals appointed by the members of Beaufort City Council pursuant to Section 10.3 of The Beaufort Code

in accordance with the authority granted by S.C. Code Ann. § 6-29-780. According to the City's website, the ZBOA's authority includes the power and duty to "permit uses by special exception subject to the terms set forth in the Beaufort Code."

4. Upon information and belief, 303 Associates LLC (the "LLC") is a limited liability company organized and existing pursuant to the laws of the State of Georgia that is authorized to do business and does business in Beaufort County, South Carolina.
5. Upon information and belief, the LLC owns the property located in the City of Beaufort that is the subject of this Petition and Notice of Appeal: 211 Charles Street (Property Identification No. R120 004 000 0909 0000).
6. Petitioners are aggrieved by the decision of the ZBOA on August 9, 2021, which granted the LLC a Special Exception pursuant to Section 4.5.10.B.5 of the Code to allow a building with frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5- DC) in the Beaufort Historic District (HD) Overlay.
7. The Petitioners appeal that decision on the grounds more fully described in the paragraphs which follow.
8. This Court has both subject matter jurisdiction and personal jurisdiction over the parties to this action.
9. Venue is proper in Beaufort County pursuant to the provisions of S.C. Code Ann. § 6-29-820 and Section 9.13.2(H) of the Code.

**THE APPROVAL IS INVALID DUE TO NUMEROUS LEGAL ERRORS AND
THE LACK OF ANY FACTUAL BASIS FOR THE ZBOA'S DECISION**

A. Burden of Proof

10. The proposed building at 211 Charles has a front façade of over 132 feet which is 30% more than is allowed by right in the downtown historic district. The proposed building is 3 stories tall and, if approved, would replace a 1 story building currently located on the property. It would also become

the single, largest building in downtown historic Beaufort at over 27,000 square feet.

11. In the T5-DC Transect zoning district, buildings are restricted to 100 feet building width at the frontage. (Beaufort Code 2.4.1(D)(3) adopted June 27, 2017). Infill buildings which have front facades (street facades) of longer than 100 linear feet must follow the Large Footprint building standards located in section 4.5.10 of the Beaufort City Code. These standards require that a Special Exception be granted by the Zoning Board of Appeals and that 75% of all parking must be accommodated on site.
12. This building is 133 feet at frontage, so it would require a Special Exception under the Beaufort Code.
13. To obtain a Special Exception, the burden is on the applicant to prove that there are unique circumstances specific to this project sufficient to warrant making an exception to the Beaufort Code.
14. The Special Exception requirement exists to protect the National Historic Landmark District. The public participated in an 18-month public process to develop the City's Civic Master Plan and the pertinent ordinances. The result was a special covenant with the public which must not be breached except in the most extraordinary circumstances.
15. Section 9.13.2 provides that the ZBOA may only approve an application for a Special Exception where it reasonably determines that there will be no significant negative impact upon residents of surrounding property or upon the general public.

B. The Project Should Not Have Been Considered at the August 9th Board Meeting

16. At the hearing on August 9 the staff reported to the ZBOA that the Historic Review Board (HRB) had given the project preliminary conceptual approval and that the Board should accept the HRB's decision.
17. Although 211 Charles has been to the HRB, the City never informed the HRB of 211 Charles'

zoning issue nor its Large Footprint status. Additionally, City process dictates that all zoning items be addressed prior to submission to the HRB.

18. The HRB, however, did not issue a certificate of appropriateness for 211 Charles.
19. In fact, the design given preliminary conceptual approval by the HRB on February 10, 2021, differed greatly from the design presented on August 9.
20. Specifically, the designs, the massing and 3-Dimensional form of the structure presented to the ZBOA on June 9 was significantly altered by the addition of balconies, shed roofing, porches, and the addition of a prominent projecting tower.
21. Additionally, on February 10, 2021, the HRB granted preliminary conceptual approval without including or recognizing the thirteen (13) distinct conditions introduced by staff as requiring attention in order for approval to be granted.
22. Therefore, the ZBOA's decision should be vacated, and the project should be remanded to the HRB for consideration of the revised design submitted to the ZBOA and the staff conditions proposed for approval.

C. The ZBOA Failed to Consider the Criteria Required to Approve a Special Exception

23. Further, the ZBOA granted the Special Exception without due consideration of the criteria for approval mandated by the Code.
24. The Beaufort Code gives the ZBOA the independent authority and responsibility to decide if this plan meets the required criteria to grant a Special Exception.
25. Section 9.13.2 (F) specifies the criteria that the ZBOA must consider when exercising its authority. Specifically, that section of the Code, requires the ZBOA to "reasonably determine that there will be no significant negative impact upon residents of surrounding property or upon the general public. In doing so, the ZBOA shall consider the following criteria:

- 1) Compatibility with existing land uses in the surrounding area.
- 2) Harmony of proposed site plan, circulation plan and schematic architectural designs with the character of the surrounding area.
- 3) Likely impact on public infrastructure – such as roads, parking facilities, and water and sewer systems – and on public services – such as police and fire protection and solid waste collection – and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City.
- 4) General conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the city.
- 5) Likely impact on public health and safety.
- 6) Potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazards, or other injurious or obnoxious impacts.”

26. The applicant failed to carry its burden of proof on four of the six criteria set out in Section 9.13.2(F).

Criteria #1, #2 and #4

27. Criteria #1 requires the ZBOA to consider whether a project is compatible with existing land uses in the area.

28. Similarly, Criteria #2 mandates a consideration of the “[h]armony of the “schematic architectural design with the character of the surrounding area”.

29. Criteria #4 requires the ZBOA to evaluate the “[g]eneral conformity of the proposed uses and designs with the City's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City,” including the Beaufort Code and Beaufort Preservation Manual”.

30. The building at 211 Charles given its large size and its architecture that is incongruous with its neighbors, would not protect and enhance Beaufort's unique aesthetic character; it would not blend harmoniously with the natural surroundings and neighboring development; and it would potentially jeopardize Beaufort's National Historic Landmark District designation.

31. The National Parks Service in a May 10, 2021, email to the City of Beaufort has expressed concerns about “potential threats to the historic character of the Beaufort National Historic Landmark District” over which the National Parks Service is the primary steward. The “potential threats” to

which the National Parks Service is referring includes the large footprint building at 211 Charles Street.

32. Given its non-conforming front façade length requiring it to follow the Large Footprint Building standards combined with its 3-story height, 211 Charles clearly does not harmoniously fit with the character of the surrounding area. Nor does its schematic architectural design fit with the neighboring buildings. Furthermore, this building will become the single largest building in the downtown historic district.
33. The City's Civic Master Plan adopted in March 2014, dictated in chapter 3.1 "this plan anticipates and encourages sensitive infill, renovation, and restoration in a manner that is consistent with the Beaufort Preservation Manual, the Historic Preservation Plan, the Northwest Quadrant Design Principles and other relevant documents". The Civic Master Plan goes on to say that "the careful encouragement of infill of vacant sites and the redevelopment of non-contributing properties in a manner consistent with its scale and character."
34. 211 Charles is in no way consistent with the scale and character in downtown historic Beaufort. The mere fact of requesting for a Special Exception to the 100' foot front façade limit is a testament to this fact.
35. Chapter 3.2 of the Civic Master Plan states that "the emotional core of Beaufort has long been the three blocks of Bay Street between Charles and Carteret Streets." It is exactly in this "emotional core" that the applicant is petitioning to build a large footprint building which itself is incongruous with the "emotional core".
36. In chapter 3.3, the Civic Master Plan provides a conceptual illustration of Port Republic Street bordered by appropriate 2- story, modest front façade length buildings as infill development along Port Republic Street. It does not show a building such as 211 Charles which is 130' long, 3 stories tall, and at 27,000 square feet the largest building in downtown Beaufort!

37. “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.” 4.3.2.C. Beaufort Code, Contextual Design Guidelines. Massing and Articulation.
38. The design of the proposed building also fails to satisfy the design criteria for Large Footprint Buildings set forth in Section 4.5.10 of the Code. That section defines a Large Footprint Building as a building that has a footprint greater than 20,000 square feet. Significantly, Section 4.5.10 requires that in the T4 and T5 transect zones, Large Footprint Buildings must be “integrated into the streetscape or screened with Liner Buildings.”
39. Monolithic massing that disrupts the predominant building pattern of the neighborhood and corridor is strongly discouraged under Section 4.3.2B of the Code.
40. 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”. ***Beaufort Code. 4.3.2.A. Conformity with Civic Master Plan.***
41. The *Civic Master Plan* “proposes infill commercial development along Port Republic Street to extend the shopfront environment of Bay Street through downtown”. The conceptual illustration shown in the Civic Master Plan envisions “intimate scale” development that would “slow traffic speeds and better serve the retail character of the area.” ***City of Beaufort Civic Master Plan, Section 3.3 Port Republic Street***

42. Section 3.2, Civic Master Plan, states that “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.” The applicant has shown that he knows how to design and build appropriate and sensitive infill through his work on the Cottages on Craven. HBF recognized the Craven Street project with a preservation award for sensitively designed infill.
43. 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. Therefore, it does not meet the ZBOA Criteria for “Conformity of proposed use and designs with the City’s Civic Master Plan” (ZBOA criteria 2 & 4) and “Harmony with the character of the surrounding area.”
44. Large-scale structures should be set back from every street on which they have frontage, including the rear...to avoid becoming the dominant element of a vista or streetscape. Beaufort Preservation Manual, page 16, New Construction, High Density/Large-scale construction.
45. The Beaufort Preservation Manual, page 41, 46, Chapter 3. New Construction teaches that “...new construction in Beaufort must go beyond the aspect of “form follows function.” And “blend harmoniously with the historic fabric of the town.”
46. “No building is so insulated from its surroundings as to avoid an impact on the townscape.” The Beaufort Preservation Manual, page 41, 46, Chapter 3. New Construction.
47. To minimize negative impacts – Large-scale structures along period commercial streetscape should be strongly discouraged. If, however, the situation is unavoidable, the upper stories of the facade should be stepped back. From a pedestrians view on the street the façade should thus appear consistent in height and proportions with neighboring buildings. The lower most two to three stories should follow the building line of the street and should not create a setback, or gap in the continuity

of the commercial structures. Beaufort Preservation Manual, page 44, New Construction.

48. The proposed project at 211 Charles Street is does not blend harmoniously with the design of the surrounding area. It is directly across from two significant historic properties following the architectural form of the Beaufort Style – The Elliott House at Bay and Charles, and the Lucius Cuthbert House at Port Republic and Charles. This proximity requires a sensitive infill that “blends harmoniously” with the adjacent historic fabric. A building of this height, mass and scale is inappropriate for this site under Criteria #1.
49. Further, it is completely out of scale with the neighboring properties. The proposed building is 2.5 times longer and a story taller than the surrounding buildings therefore violates the criteria for contextual “harmony and compatibility” set out in criteria 2.
50. At a height of 40 feet, the proposed building will tower above the adjacent structures fronting Port Republic and Bay Street and will be extremely visible from Bay, Charles and Port Republic Streets and the river. The site is a prominent street corner at Charles and Port Republic Street and is directly visible from Bay Street. The proposed project will be the dominant element of the vista and streetscape, diminishing the importance of the surrounding historic structures and district.
51. The upper stories of the façade are not stepped back as required by the Beaufort Preservation Manual. Additionally, the lower most stories do not follow the building line of the street.
52. Placement of a service entrance between the new structure and old Bay Marketplace creates a first-floor gap in the continuity of the commercial structures on the Port Republic Street frontage. The addition of a prominent projecting tower at the corner of Charles and Port Republic disrupts and dominates the streetscape and vista of the surrounding area and neighboring buildings.
53. The *Beaufort Preservation Manual* provides on page 44 in section on *New Construction* that no development or large-scale construction should be permitted which is predicated upon demolition of historic buildings for its implementation.

54. Construction of the proposed building will require the demolition of a property built in 1947 for the A&P Grocery. The City has recently commissioned an update to the Above Ground Historic Resources (AGHR) listing. Prior to the hearing on August 9 the Petitioner contacted the consultants who are working on the AGHR listing to ask if this property was among those under consideration for inclusion on the City's Contributing List. The consultants reported to the Petitioner they have indeed reviewed it and will be recommending that the former A&P Grocery be added to the ContributingList.
55. Removal of this property is no longer in keeping with the City Code and PreservationManual. Therefore, the ZBOA should have denied the application.
56. If alternative sites are not available, seek locations within the Historic Beaufort Overlay district which best accommodate larger scale structure, such as areas previously intrudedupon by modern construction, large lots which can be easily screened, areas with few of no historic structures, or areas which can best accommodate parking facilities. Beaufort Preservation Manual, page 15, New Construction, High Density/Large-scale construction.
57. Per *the Beaufort Preservation Manual, page 44, New Construction*, "To minimizenegative impacts – Large-scale structures along period commercial streetscape should be strongly discouraged."
58. "Prior to admitting such (Large Scale) construction within the district, the review board and city administration should require that an effort be made to seek acceptable alternative sites beyondthe boundaries of the district."
59. The proposed site is directly adjacent to or across from historic structures including The George Parsons Elliott House, ca. 1844 at Charles and Bay Street; The Lucius Cuthbert House, ca.1810s; Edwards Department Store (now Old Bay Marketplace), ca. 1954; and the current First Citizens Bank building, ca.1965. There are more appropriate sites along Boundary Street or Ribaut Road some of which are owned by the applicant.

60. There is no evidence in the record that alternate sites were considered for this project.

Criteria #3

61. Criteria #3 requires the ZBOA to consider the likely impact of a project on public infrastructure “such as roads, parking facilities, and water and sewer systems – and on public services – such as police and fire protection and solid waste collection – and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City.”
62. Storm water run-off is a Major issue for the city of Beaufort. The city is having to invest massive amounts to address this in neighborhoods and in the commercial districts. While the footprint will be essentially the same as the current footprint the increase in demand of fifty (50) commodes being flushed multiple times a day is not the same as a retail shop or office building. Laundry.
63. Considering that 5 large-scale structures are in the planning or approval stages for the Port Republic Street Corridor, the question presents itself whether the full-scale impact of all projects if realized, has been studied. Has the City Planning Department or the applicant contracted to have a study done for the impact of this proposed development? The primary desire for this transition area is to be a successful neighborhood commercial district.
64. In keeping with Section 2.4.1 and Section 4.5.10 of the Beaufort Code, Large Footprint Buildings; specific to T4 and T5: a minimum of 75% of all parking shall be located to the side or rear of the building, or behind a liner building.” Parking is NOT addressed in applicant’s submission indicating that the requirement has not been met. This is a fatal flaw in the application and in the ZBOA’s decision and requires a reversal of the ZBOA’s decision.
65. Section 9.13.2.F of the Beaufort Code. Special Exception Review Criteria, Item 3. States that “a traffic impact analysis shall be required per section 7.3.2” of the Code.” While the applicant’s submission includes a trip generation report that indicates that there will be no significant impact,

it is important to also note the significant increase in land use intensity that will occur with this project.

66. Section 1.3.2.3 of the Beaufort Code, states that “an increase in the intensity of land use, such as an increase in the number or size of nonresidential or residential uses in a structure or on land or in the number of parking spaces....” are subject to the provisions and standards of the Beaufort Code. The proposed project would replace a one-story structure underutilized since vacated by Alcoa’s offices in the early 2000s. If realized, this three-story, 27,000 square foot mixed-use building 19 residential units and 4000 square feet of retail/commercial space, would generate an intensity of use that is five times what the site has seen in more than 20 years. The trip generation report does not take into consideration the planned expansion of Tabby Place; the addition of roughly 100 hotel rooms, and the proposed 494-space parking garage all within the same two block area as the project under review today.
67. A Traffic Impact Analysis must be required before the ZBOA could reasonably exercise its authority because of the following contingencies:
 - a. Pedestrian and automobile traffic leading to garage, tabby place convention space, hotels, and retail spaces all within a two-block area.
 - b. Service Vehicular Traffic.
 - c. Narrow one-way street.
 - d. Intensification of uses on a narrow one-way street within a two-block area.
 - e. Intensification of the need for more loading and unloading, moving vans, garbage pick-up, and servicing.
68. Consideration of these criteria is not optional or discretionary. The Code states that these criteria “shall” be considered when evaluating an application for a special exception.
69. The ZBOA’s failure to consider these criteria was an abuse of discretion which requires reversal of

the approval granted on August 9th.

D. THE APPROVALS WERE ARBITRARY AND CAPRICIOUS AND CONTRARY TO LAW BECAUSE THERE IS NO SUPPORTING EVIDENCE IN THE RECORD.

70. The applicant failed to present any evidence that the proposed building qualified for a special exception under of the guidance documents that govern the ZBOA's decision-making as a matter of law, as provided in The Beaufort Code, Sections 3.1.1 (C) and 9.13.
71. In the absence of such evidence, the ZBOA's decision to grant approval was arbitrary and capricious and an error of law.
72. The applicants did not present evidence before the ZBOA, or make arguments to the ZBOA, establishing even a minimum compliance with any of the guidelines the ZBOA is required to apply in its decision-making under The Beaufort Code (or the UDO, even if it were to apply). Based on this dearth of evidence before the ZBOA, the ZBOA erred in granting the relief requested by the applicants in the absence of even a minimum threshold of evidence by the applicant.

SUMMARY

73. The proposed building does not meet four of the six the ZBOA Criteria to grant approval for Special Exception # 1) Compatibility with existing land-uses in the surrounding area; #2) Harmony of proposed site plan, circulation plan and schematic architectural designs with the character of the surrounding area; #3) Likely impact on public infrastructure – such as roads, parking facilities and on public services such as police and fire protection and solid waste collection and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City; and #4) General conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the city.
74. Before the impact of this can be assessed, the application must show that 75% of all parking can be

accommodated onsite in accordance with the Beaufort Code.

75. The intensity of use for this and the cumulative projects require a full traffic and circulation analysis and infrastructure master plan.
76. Parking Garage is subject of three (3) independent and separate court actions and will not be resolved in the near future.
77. The prior decision is questionable due to the numerous significant procedural questions detailed above. In particular, the alteration of the building design following the February 2021 meeting puts HRB Preliminary Approval of Height, Mass & Scale into question.
78. Therefore, the approvals must be reversed by this Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for this Honorable Court to reverse the actions of the ZBOA and remand these matters to the ZBOA for further action and grant such other, further, or different relief as may be just and proper.

Respectfully Submitted,

AUSTEN & GOWDER, LLC

/s/ W. Andrew Gowder, Jr.

W. Andrew Gowder, Jr.

1629 Meeting Street, Suite A

Charleston, SC 29405

(843) 727-0060

andy@austengowder.com

ATTORNEYS FOR PETITIONERS

September 9, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-01639
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Amended	)	
Petitioners,	)	RESPONDENT
	)	303 ASSOCIATES, LLC'S
v.	)	AMENDED
	)	RESPONSE TO AMENDED
City of Beaufort, City of Beaufort Zoning Board of Appeals, and 303 Associates, LLC,	)	PETITION
	)	
Respondents.	)	

Respondent 303 Associates, LLC (“Associates” and/or “Respondent”) hereby submits its Amended Response to the Amended Petition of West Street Farms, LLC and Mix Farms, LLC (collectively “Amended Petitioners”) generally that each and every allegation of the Amended Petition (“Amended Petition”) that is not expressly and specifically admitted herein is denied, and Respondent expressly and specifically responds to the allegations of the Amended Petition as follows:

GENERAL STATEMENT OF DENIAL

Respondent denies all headings and subparts of the Amended 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 Amended Petition, and so denies the same.

2. Respondent admits the allegations of Paragraph 2 of the Amended Petition.
3. Respondent admits the allegations of Paragraph 3 of the Amended Petition to the extent they are not legal conclusions.
4. Respondent admits the allegations of Paragraph 4 of the Amended Petition.
5. Respondent admits the allegations of Paragraph 5 of the Amended Petition to the extent they reflect the public ownership records.
6. Respondent denies the allegations of Paragraph 6 of the Amended Petition.
7. Respondent denies the allegations of Paragraph 7 of the Amended Petition.
8. Respondent admits the allegations of Paragraph 8 of the Amended Petition to the extent it alleged personal jurisdiction exists but denies that this court has subject matter jurisdiction and alleges that Petitioners lack standing to bring this action.
9. Respondent admits the allegations of Paragraph 9 of the Amended Petition.
10. Respondent denies the allegations of the first sentence, admits the allegations of the second sentence, and denies the allegations of the third sentence of Paragraph 10 of the Amended Petition.
11. In response to the allegations of the first and second sentences of Paragraph 11 of the Amended Petition, Respondent denies the allegations and craves reference to the ordinance, which speaks for itself. Respondent denies the allegations of the third sentence.
12. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of Paragraph 12 of the Amended Petition, and so denies the same, except that to the extent the ordinance is cited, said ordinance speaks for itself.
13. Respondent denies the allegations of Paragraph 13 of the Amended Petition as stated and craves reference to the ordinance and law.

14. Respondent denies the allegations of the first sentence of Paragraph 14 of the Amended Petition. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of the second sentence; and Respondent denies the allegations of the third sentence.

15. Respondent denies the allegations of Paragraph 15 of the Amended Petition as stated and craves reference to the ordinance and law cited.

16. Respondent denies the allegations of Paragraph 16 of the Amended Petition as stated, in that the HRB granted conceptual approval, not “preliminary” conceptual approval.

17. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of the first sentence of Paragraph 17 of the Amended Petition, and so denies the same. Respondent denies the remaining allegations of Paragraph 17, except that to the extent the ordinance and law are cited, said ordinance speaks for itself.

18. Respondent admits the allegations of Paragraph 18 of the Amended Petition. Respondent alleges that the Special Exception was needed before such approval can be given.

19. Respondent denies the allegations of Paragraph 19 of the Amended Petition.

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

21. Respondent denies the allegations of Paragraph 21 of the Amended Petition as stated, in that the HRB granted conceptual approval, not “preliminary” conceptual approval. Respondent alleges that the HRB is not required to accept staff recommendations.

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

23. Respondent denies the allegations of Paragraph 23 of the Amended Petition.

24. Respondent denies the allegations of Paragraph 24 of the Amended Petition as stated and craves reference to the ordinance and law cited.

25. Respondent denies the allegations of Paragraph 25 of the Amended Petition as stated and craves reference to the ordinance and law cited.

26. Respondent denies the allegations of Paragraph 26 of the Amended Petition.

27. Respondent denies the allegations of Paragraph 27 of the Amended Petition as stated and craves reference to the ordinance and law cited.

28. Respondent denies the allegations of Paragraph 28 of the Amended Petition as stated and craves reference to the ordinance and law cited.

29. Respondent denies the allegations of Paragraph 29 of the Amended Petition as stated and craves reference to the ordinance and law cited.

30. Respondent denies the allegations of Paragraph 30 of the Amended Petition.

31. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of the first sentence of Paragraph 31 of the Amended Petition, and so denies the same. Respondent denies the remaining allegations of Paragraph 31, except that to the extent the ordinance and law are cited, said ordinance speaks for itself.

32. Respondent denies the allegations of Paragraph 32 of the Amended Petition.

33. Respondent denies the allegations of Paragraph 33 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

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

35. Respondent denies the allegations of the first sentence of Paragraph 35 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited. Respondent denies the allegations of the second sentence.

36. Respondent denies the allegations of the first sentence of Paragraph 36 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited. Respondent denies the allegations of the second sentence.

37. Respondent denies the allegations of Paragraph 37 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

38. Respondent denies the allegations of the first sentence of Paragraph 38 of the Amended Petition. Respondent denies the remaining allegations as stated and craves reference to the ordinance and document(s) cited.

39. Respondent denies the allegations of Paragraph 39 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

40. Respondent denies the allegations of Paragraph 40 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

41. Respondent denies the allegations of Paragraph 41 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

42. Respondent denies the allegations of the first sentence of Paragraph 42 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited. Respondent admits the allegations of the second and third sentences except to the extent Respondent is referred to as “he;” otherwise Respondent admits such allegations.

43. Respondent denies the allegations of Paragraph 43 of the Amended Petition.

44. Respondent denies the allegations of Paragraph 44 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

45. Respondent denies the allegations of Paragraph 45 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

46. Respondent denies the allegations of Paragraph 46 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

47. Respondent denies the allegations of Paragraph 47 of the Amended Petition, but if the allegations cite to an ordinance or document, Respondent craves reference to the same.

48. Respondent denies the allegations of the first sentence of Paragraph 48 of the Amended Petition. Respondent admits the allegations of the second sentence except the phrase “following the architectural form of the Beaufort Style,” as Respondent is unaware of a formal definition of such; and Respondent denies the allegations of the third sentence as stated and craves reference to the ordinance and document(s) cited.

49. Respondent denies the allegations of Paragraph 49 of the Amended Petition.

50. Respondent denies the allegations of the first and third sentences and admits the allegations of the second sentence of Paragraph 50 of the Amended Petition.

51. Respondent denies the allegations of Paragraph 51 of the Amended Petition.

52. Respondent denies the allegations of Paragraph 52 of the Amended Petition.

53. Respondent denies the allegations of Paragraph 53 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

54. Respondent denies the allegations of the first sentence of Paragraph 54 of the Amended Petition, but alleges that Respondent has already received the required HRB Final Approval for demolition of such structure at that address. Respondent admits the allegations of the second sentence of Paragraph 54, and Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of the third sentence of Paragraph 54 of the Amended Petition, and so denies the same.

55. Respondent denies the allegations of Paragraph 55 of the Amended Petition.

56. Respondent denies the allegations of Paragraph 56 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

57. Respondent denies the allegations of Paragraph 57 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

58. Respondent denies the allegations of Paragraph 58 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

59. Respondent admits the allegations of the first sentence and denies the allegations of the second sentence of Paragraph 59 of the Amended Petition.

60. Respondent denies the allegations of Paragraph 60 of the Amended Petition.

61. Respondent denies the allegations of Paragraph 61 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

62. Respondent is without information or knowledge sufficient to form a belief as to admit the allegations of the first and second sentences of Paragraph 62 of the Amended Petition, and so denies the same. Respondent does admit that storm water runoff is an issue of national concern. Respondent denies the remaining allegations of Paragraph 62.

63. Respondent denies the allegations of Paragraph 63 of the Amended Petition.

64. Respondent denies the allegations of the first sentence of Paragraph 64 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited. Respondent denies the remaining allegations of Paragraph 64.

65. Respondent denies the allegations of the first sentence of Paragraph 65 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited. Respondent denies the remaining allegations of Paragraph 65, except that a trip generation report was submitted by Respondent.

66. Respondent denies the allegations of the first sentence of Paragraph 66 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited. Respondent denies the remaining allegations of Paragraph 66.

67. Respondent denies the allegations of Paragraph 67 of the Amended Petition.

68. Respondent denies the allegations of Paragraph 68 of the Amended Petition as stated and craves reference to the ordinance and document(s) cited.

69. Respondent denies the allegations of Paragraph 69 of the Amended Petition.

70. Respondent denies the allegations of Paragraph 70 of the Amended Petition.

71. Respondent denies the allegations of Paragraph 71 of the Amended Petition.

72. Respondent denies the allegations of Paragraph 72 of the Amended Petition.

73. Respondent denies the allegations of Paragraph 73 of the Amended Petition.

74. Respondent denies the allegations of Paragraph 74 of the Amended Petition.

75. Respondent denies the allegations of Paragraph 75 of the Amended Petition.

76. Respondent denies the allegations of Paragraph 76 as stated but admits that five separate lawsuits or appeals have been filed by the non-Beaufort resident owner of the Petitioners, or their proxy.

77. Respondent denies the allegations of Paragraph 77 of the Amended Petition.

78. Respondent denies the allegations of Paragraph 78 of the Amended Petition.

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

- A. Dismissing all claims asserted against Respondent in the Amended Petition;
- B. Awarding Respondent its attorneys' fees and costs in defending against the claims in the Amended Petition; and

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

s/ Benjamin E. Nicholson, V
Benjamin E. Nicholson V, Esquire
SC Bar # 10137
nnicholson@burr.com
G. Wade Leach, III, Esquire
SC Bar # 104841
wleach@burr.com
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800

ATTORNEYS FOR 303 ASSOCIATES, LLC

October 11, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-01639
	)	
West Street Farms, LLC, and Mix Farms, LLC.	)	
	)	
Petitioners,	)	RESPONSE TO APPEAL PETITION BY
	)	RESPONDENTS CITY OF BEAUFORT AND
v.	)	CITY OF BEAUFORT ZONING BOARD OF
	)	APPEALS
City of Beaufort and City of Beaufort	)	
Zoning Board of Appeals, and 303	)	
Associates, LLC,	)	
	)	
Respondents.	)	

Respondents City of Beaufort (City) and City of Beaufort Zoning Board of Appeals (ZBOA)(collectively herein Respondents), answering the Amended Petition of Petitioners, would allege generally that each and every allegation of the Amended Petition that is not expressly and specifically admitted herein is denied, and Respondents specifically respond to the allegations of the Amended Petition as follows:

1. Respondents are without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1, and therefore deny same.
2. Respondents admit the allegations of Paragraph 2.
3. Respondents admit the allegations of Paragraph 3 concerning the authority and formation of the ZBOA. The duties and responsibilities are set forth in

statutes and ordinances, and in the law concerning the discretion rendered to ZBOA in such matters.

4. Respondents admit, upon information and belief, the allegations of Paragraph 4.
5. Respondents admit, upon information and belief, the allegations of Paragraph 5.
6. Respondents deny the allegations of Paragraph 6.
7. Paragraph 7 is a legal conclusion that requires no response.
8. Respondents admit the allegations of Paragraph 8, but would deny that Petitioners have standing to appeal.
9. Respondents admit the allegations of Paragraph 9.
10. Answering Paragraph 10, Respondents would crave reference to the application and other documents presented to the ZBOA for its hearing on August 9, 2021, for the full terms and content thereof, and would deny any allegation inconsistent therewith.
11. Answering Paragraph 11, Respondents crave reference to the application before the ZBOA for its hearing on August 9, and the ordinances applicable thereto, for the full terms, conditions and restrictions, and would deny any allegation inconsistent therewith.

12. Respondents admit so much of Paragraph 12 that a Special Exception was required.
13. Answering Paragraph 13, Respondents would crave reference to the ordinances applicable to this project, and the discretion granted by law to the ZBOA in making its decisions, and would deny any allegation inconsistent therewith.
14. Answering Paragraph 14, Respondents would crave reference to the ordinances applicable to this project, and the discretion granted by law to the ZBOA in making its decisions, and would deny any allegation or inference inconsistent therewith.
15. Answering Paragraph 15, Respondents would crave reference to the ordinances applicable to this project, and the discretion granted by law to the ZBOA in making its decisions, and would deny any allegation or inference inconsistent therewith.
16. Answering Paragraph 16, Respondents would crave reference to the application and other documents, and to the presentations made to the ZBOA. Respondents would also crave reference to previous rulings by other Boards which are part of the public record. Respondents would deny any allegations or inferences inconsistent therewith.

17. Answering Paragraph 17, Respondents would crave reference to the applications and other materials previously presented to the HRB on this project, the hearing that was conducted and the decisions of the HRB on this project, none of which were appealed and are therefore final and of record.
18. Answering Paragraph 18, Respondents would crave reference to the applications and other materials previously presented to the HRB on this project, the hearing that was conducted and the decisions of the HRB on this project, none of which were appealed and are therefore final and of record.
19. Answering Paragraph 19, Respondents would crave reference to the applications and other materials presented to the HRB and the ZBOA on this project, the hearings that were conducted and the decisions of the HRB and the ZBOA on this project.
20. Respondents deny the allegations of Paragraph 20.
21. Answering Paragraph 21, Respondents would crave reference to the applications and other materials previously presented to the HRB on this project, the hearing that was conducted and the decisions of the HRB on this project, none of which were appealed and are therefore final and of record.
22. Respondents deny the allegations of Paragraph 22.
23. Answering Paragraph 23, Respondents would crave reference to the applications and other materials, and the presentations made and presented to

the ZBOA on this project, the hearing that was conducted, the discretion given by law to the ZBOA in making its decision, and the decisions of the ZBOA on this project, and Respondents would deny any allegation or inference inconsistent therewith.

24. Answering Paragraph 24, Respondents would crave reference to the statutes, ordinances and caselaw that define the duties and responsibilities of the ZBOA, and would deny any allegation or inference inconsistent therewith.

25. Answering Paragraph 25, Respondents would crave reference to the statutes, ordinances and caselaw that define the duties and responsibilities of the ZBOA, and would deny any allegation or inference inconsistent therewith.

26. Respondents deny the allegations of Paragraph 26.

27. Answering Paragraph 27, Respondents would crave reference to the statutes, ordinances and caselaw that define the duties and responsibilities of the ZBOA, and would deny any allegation or inference inconsistent therewith.

28. Answering Paragraph 28, Respondents would crave reference to the statutes, ordinances and caselaw that define the duties and responsibilities of the ZBOA, and would deny any allegation or inference inconsistent therewith.

29. Answering Paragraph 29, Respondents would crave reference to the statutes, ordinances and caselaw that define the duties and responsibilities of the ZBOA, and would deny any allegation or inference inconsistent therewith.

30. Respondents deny the allegations of Paragraph 30, and would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.
31. Answering Paragraph 31, Respondents would crave reference to the applications and other materials, including the communication referenced in this paragraph, and the presentations made and presented to the ZBOA on this project, the hearing that was conducted, the discretion given by law to the ZBOA in making its decisions, and the decisions of the ZBOA on this project, and Respondents would deny any allegation or inference inconsistent therewith.
32. Respondents deny the allegations of Paragraph 32, and would show that the ZBOA, after full and proper consideration of the application and other materials presented, and after hearing from all parties, and exercising the authority granted to it by law, approved the application and therefore found otherwise.
33. Answering the allegations Paragraph 33, Respondents crave reference to the Civic Master Plan, the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith.

34. Respondents deny the allegations of Paragraph 34, and would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.
35. Respondents deny the allegations of Paragraph 35 and would crave reference to the Civic Master Plan, the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.
36. Respondents deny the allegations of Paragraph 36 and would crave reference to the Civic Master Plan, the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.
37. Answering Paragraph 37, Respondents would crave reference to the ordinances of the City for the full terms thereof, and would deny any allegation or inference inconsistent therewith.

38.Respondents deny the allegations of Paragraph 38 and would crave reference to the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.

39.Respondents deny the allegations of Paragraph 39, and would crave reference to the ordinances and other relevant guides and documents.

40.Answering Paragraph 40, Respondents would crave reference to the Civic Master Plan, the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith.

41.Answering Paragraph 41, Respondents would crave reference to the Civic Master Plan, the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith.

42.Answering Paragraph 42, Respondents would crave reference to the Civic Master Plan, the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith.

43.Respondents deny the allegations of Paragraph 43 and would crave reference to the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show

that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.

44. Answering Paragraph 44, Respondents would crave reference to the full Beaufort Preservation Manual, and to the other relevant ordinances, guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

45. Answering Paragraph 45, Respondents would crave reference to the full Beaufort Preservation Manual, and to the other relevant ordinances, guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

46. Answering Paragraph 46, Respondents would crave reference to the full Beaufort Preservation Manual, and to the other relevant ordinances, guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

47. Answering Paragraph 47, Respondents would crave reference to the full Beaufort Preservation Manual, and to the other relevant ordinances, guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

48. Respondents deny the allegations of Paragraph 48 and would crave reference to the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.

49. Respondents deny the allegations of Paragraph 49 and would crave reference to the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.

50. Respondents deny the allegations of Paragraph 50. Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.

51. Respondents deny the allegations of Paragraph 51 and would crave reference to the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show that the ZBOA, after full and proper consideration of the application, materials

presented and after hearing from all parties, approved the application and therefore found otherwise.

52. Respondents deny the allegations of Paragraph 52 and would crave reference to the City ordinances, and other relevant guides and documents, and would deny any allegation inconsistent therewith. Further, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application and therefore found otherwise.

53. Answering Paragraph 53, Respondents would crave reference to the full Beaufort Preservation Manual, and to the other relevant ordinances, guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

54. Answering Paragraph 54, Respondents would crave reference to the prior decision of the City HDRB, which have not been appealed, and would deny any allegation inconsistent therewith. Respondents are without knowledge to form a belief as to the truth of the remaining allegations of Paragraph 54, and would therefore deny same.

55. Respondents deny the allegations of Paragraph 55.

56. Answering Paragraph 56, Respondents would crave reference to the full Beaufort Preservation Manual, and to the other relevant ordinances,

guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

57. Answering Paragraph 57, Respondents would crave reference to the full Beaufort Preservation Manual, and to the relevant ordinances, guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

58. Answering Paragraph 58, Respondents would crave reference to the full Beaufort Preservation Manual, and to the other relevant ordinances, guidelines and other documents of the City, and would deny any allegation or inference inconsistent therewith.

59. Answering Paragraph 59, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application before it.

60. Respondents deny the allegations of Paragraph 60.

61. Answering Paragraph 61, Respondents would crave reference to the City Ordinances, manuals, guidelines and other documents, and would deny any allegation inconsistent therewith. Respondents would further show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application before it.

62.While acknowledging that storm water run-off is an issue with any development, Respondents are without knowledge or information to form a belief as to the truth of the allegations of Paragraph 62, and therefore deny same.

63.Answering Paragraph 63, Respondents would show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application before it.

64.Respondents deny the allegations of Paragraph 64.

65.Respondents deny the allegations of Paragraph 65, and would crave reference to the ordinances, guidelines and other relevant documents of the City, and would deny any allegation inconsistent therewith. Respondents would further show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application before it.

66.Respondents deny the allegations of Paragraph 66, and would crave reference to the ordinances, guidelines and other relevant documents of the City, and would deny any allegation inconsistent therewith. Respondents would further show that the ZBOA, after full and proper consideration of the application, materials presented and after hearing from all parties, approved the application before it.

67.Respondents deny the allegations of Paragraph 67.

68.Respondents deny the allegations of Paragraph 68 and would crave reference to the City ordinances and other relevant documents, and would deny any allegation inconsistent therewith.

69.Respondents deny the allegations of Paragraph 69.

70.Respondents deny the allegation of Paragraph 70.

71.Respondents deny the allegations of Paragraph 71.

72.Respondents deny the allegations of Paragraph 72.

73.Respondents deny the allegations of Paragraph 73.

74.Respondents deny the allegations of Paragraph 74.

75.Respondents deny the allegations of Paragraph 75.

76.Respondents deny the allegations of Paragraph 76 as stated.

77.Respondents deny the allegations of Paragraph 77, and would show that the prior decision of the HDRB as to this project was not appealed.

78.Respondents deny the allegations of Paragraph 78.

79.Except as is hereabove specifically admitted, each and every allegation of the Petition is expressly denied.

Wherefore, Respondents pray that the Petition be denied, and that the decision of the ZBOA be affirmed, for the costs and attorneys' fees of this action, and for such other and further relief as this Court may deem just and proper.

HARVEY & BATTEY, P.A.

By: /s/ William B. Harvey, III

WILLIAM B. HARVEY, III

P.O. Box 1107

Beaufort, SC 29901-1107

Telephone: 843-524-3109

Facsimile: 843-524-6973

bharvey@harveyandbattey.com

Attorneys for Respondents City of
Beaufort and City of Beaufort Zoning
Board of Appeals (ZBOA)

Beaufort, South Carolina

October 8, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-01639
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Amended	)	
Petitioners,	)	RESPONDENTS' JOINT
	)	MEMORANDUM IN
v.	)	OPPOSITION TO
	)	AMENDED PETITION TO
City of Beaufort, City of Beaufort Zoning Board of Appeals, and 303 Associates, LLC,	)	APPEAL
	)	
Respondents.	)	
	)	

Respondents City of Beaufort (“City”), City of Beaufort Zoning Board of Appeals (“ZBOA”) (collectively, “City Defendants”) and 303 Associates, LLC (“303”) hereby submit their Joint Memorandum in Opposition to the Appeal by Amended Petition of West Street Farms, LLC and Mix Farms, LLC (collectively “Petitioners”) of the ZBOA decision of August 9, 2021 granting a Special Exception to 303 as follows:

I. INTRODUCTION & BACKGROUND

Respondents incorporate herein by reference thereto their Joint Memorandum in Opposition to Appeal in “*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 which is Petitioners’ appeal of a Historic Review Board decision on the same project that is the subject of this appeal from the Zoning Board of Appeals. Because the Petitioners raise some of the same issues in both appeals, Respondents must likewise do the same.

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.") The citizen review boards of the City of Beaufort have approved these projects over a dozen times.

These appeals of the HRB and ZBOA decisions are but one part of a recent fight by Petitioners West Street Farms, LLC and Mix Farms, LLC, 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. Prior to 2021, there had been very few challenges to a City of Beaufort HRB or ZBOA decisions 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.") (HBF 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 Fourth Lawsuit.¹ Judge Bentley Price ruled for Respondents in the Second and Third Lawsuits² 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.³

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 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 and HBF do not think that the mass, scale and height of each of these projects is appropriate for the Historic District. However, the Petitioners and HBF 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 all projects had their mass, scale and height approved.

For the Apartment Project, Conceptual Approval of the mass, scale and height of the Apartment Project was approved by the HRB at its **February 10, 2021** meeting. Petitioners failed to appeal that ruling as required by the Beaufort Code. Further, the HRB approved at its **March 10, 2021** meeting the demolition of the existing structure on site. Such demolition is required for

¹ The Historic Beaufort Foundation has filed a companion case with identical issues at the Fifth Lawsuit, Civil Action No. 2021-CP-07-01644.

² A copy of this Order is attached hereto as Exhibit A. The Petitioners have appealed this Order to the South Carolina Court of Appeals.

³ 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.

construction of this new building. Petitioners failed to appeal this ruling. After the appeal from **December 8, 2021** Preliminary Approval by the HRB⁴, the subject of the Sixth Lawsuit, the HRB granted Final Approval of the Apartment Project at its **July 22, 2022** meeting. Petitioners failed to appeal that ruling as well.

The approvals of the HRB are relevant as the Petitioners attempt to insert the completely separate HRB approval process into their appeal.

II. STANDARD OF REVIEW

“On appeal, the findings of fact by the [Zoning Board] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8–9, 776 S.E.2d 753, 757, 2015 WL 5155285 (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, 2012 WL 3828237 (Ct. App. 2012)); *see* S.C. Code Ann. § 6-29-840(A) (“The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.”)(Emphasis added.) “The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings.” *Berberich v. Jack*, 392 S.C. 278, 284, 709 S.E.2d 607, 610, 2011 WL 1235210 (2011) (emphasis added.)

Thus, a “[z]oning [b]oard’s findings of fact are final and conclusive on appeal.” *Bishop v. Hightower*, 292 S.C. 358, 360, 356 S.E.2d 420, 421 (Ct. App. 1987). However, “[a] reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a

⁴ 303 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.

zoning board's findings.” *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898, 150 Oil & Gas Rep. 479, 2000 WL 1121363 (Ct. App. 2000).

“In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [Zoning] Board 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 municipal [Z]oning Board 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, 2011 WL 5546073 (Ct. App. 2011) (quoting *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904, 2002 WL 331955 (Ct. App. 2002), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15, 159 Lab. Cas. P 61003, 2010 WL 2035367 (2010)).

However, a court will not substitute its judgment for the judgment of the board in a zoning law case. *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446, 1999 WL 332966 (1999). As stated by the Supreme Court:

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. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Id. (quoting *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952)).

In this matter, the Respondents need only show any evidence supporting the grant of the Special Exception to 303. Contrary to Petitioners' assertions in their Petition, clearly the burden here is on the Petitioners to show there is no evidence supporting the decision of the ZBOA or that the decision was arbitrary or capricious. They cannot meet this burden.

III. BACKGROUND

A. The Zoning Code, the Zoning Board of Appeals, 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 at Section 10.3.1.C.3 provides for a Zoning Board of Appeals ("ZBOA") which is expressly delegated the authority to hear, among other things, applications for Special Exceptions: "The ZBOA shall permit uses by Special Exception subject to the terms and conditions set forth for such uses in this Ordinance." This is consistent with S.C. Code Ann. § 6-29-800(A)(3) which provides in pertinent part "[t]he board of appeals has the following powers: ... (3) to permit uses by special exception subject to the terms and conditions for the uses set for such uses in the zoning ordinance."

The Code outlines when Special Exceptions are to be provided by the BOA in Section 9.13.1:

Special Exceptions may be made for situations in which proposed land uses are generally compatible with the land uses permitted by-right in a district (per Section 3.2 Table of Permitted Uses) but require individual review of their location, design, and configuration to evaluate the potential for adverse impacts on adjacent property and uses. The Special Exception process ensures the appropriateness of the use at a particular location within a given District.

The Criteria for Special Exceptions outlined in Section 9.13.2.5 of the Code are as follows:

- F. **Special Exception Review Criteria:** The ZBOA may approve an application for a Special Exception where it reasonably determines that there will be no significant negative impact upon residents of surrounding property or upon the general public. The ZBOA shall consider the following criteria in its review:
1. The proposed uses compatibility with existing land uses in the surrounding area
 2. The harmony of the proposed site plan, circulation plan, and schematic architectural designs with the character of the surrounding area
 3. The likely impact on public infrastructure — such as roads, parking facilities, and water and sewer systems — and on public services — such as police and fire protection and solid waste collection— and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City (a traffic impact analysis shall be required per Section 7.3.2.)
 4. The general conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City;
 5. The likely impact on public health and safety
 6. The potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts

The Code also 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 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”)⁵ and the Code follows a stepped procedure of Conceptual Approval, Preliminary Approval, and Final Approval. Code § 9.10.2.

Although this is not an appeal of a decision of the HRB (that is the Sixth Lawsuit), part of the Petitioners’ complaint concerns a claim that the ZBOA decision should not have been made or was otherwise affected by the Apartment Project’s status as it sought approval with the HRB. *See* Complaint, ¶¶ 16-22). The HRB’s grant of Conceptual Approval and Preliminary Approval of this project prior to the ZBOA meeting is also an issue injected into this appeal by Petitioners.

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.⁶ As noted, the HRB rejected such attacks three times and approved the Apartment Project for matters under its jurisdiction.

Although from reading the Petitioners’ histrionics, one would think that the Apartment Project is a huge departure from the essence of downtown Beaufort, the facts show otherwise. The Apartment Project *barely qualifies* as one that requires a Special Exception in the first place. The Apartment Project will be a building almost 133 feet long. (R. 13:11-16.) The Code considers a building to be a “Large Footprint Building” in this part of the Historic District if it is 100 or more feet long. Code § 4.5.10.B.5. However, the Apartment Project is replacing an old A&P supermarket built in 1947 that was *over 140 feet long*. (R. 12:24-25; 55:11-21.)

⁵ The Unified Development Code is the City’s predecessor to the Beaufort Code.

⁶ Of note, the HRB at every stage approved the mass, scale and height of the Project and has issued such approvals, ending with Final Approval by the HRB at its July 22, 2022 meeting. While the two separate administrative bodies have separate functions, in this one instance, both entities do look at similar factors. It is instructive that both the HRB and the ZBOA have now approved the Project.

As noted by HRB staff in recommending that the Special Exception be approved, the City's Civic Master Plan considers the area for the Apartment Project to be "Catalyst Site 2.7," where the Plan encourages increased density. This site has a graphic conceptual drawing of *a three-story building with a rooftop venue*. (R. 28:4-29:1.) That depicted building is larger than the Apartment Project. Below is a conceptual sketch of the Apartment Project (*see* R. page 211):
[SEE NEXT PAGE]



This is hardly the structure described by Petitioners. It is not that different from a Large Footprint Building depicted in the Code at Section 4.5.10.5:



Thus, when reviewing the Petitioners' arguments, it is necessary to think of the Apartment Project in the real context of where it is going and what it is replacing.

IV. ARGUMENTS

Petitioners incorrectly claim that 303 failed to meet its burden of proof on four of the six criteria of Section 9.13.2(F) of the Code. *See* Complaint, ¶ 26. As stated *supra*, at this stage, it is the Petitioners' burden here to show that there is no evidence supporting the ZBOA's decision, not the other way around. The Court may only disturb the findings of the ZBOA if wholly unsupported by the evidence. *Newton*, 719 S.E.2d at 284.

Respondents address each of Petitioners' arguments below.

A. The Timing of Approvals by the HRB is Irrelevant to the ZBOA's Decision.

Petitioners claim that the ZBOA should not have heard the Special Exception application because of matters that occurred within the purview of the HRB, and argued that the ZBOA should have addressed a Special Exception before the HRB addressed any approval. *See* Complaint, ¶¶

16-22.

The timing of when the HRB and ZBOA should review the same project has already been ruled on by Judge Price in the Second and Third Lawsuits. In his Order in the Second Lawsuit, Judge Price ruled with respect to the Hotel Project and the Parking Garage Project:

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 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.)(Emphasis added.)

Judge Price's Order is well reasoned and the Court should follow his reasoning that there is no requirement that any project, including the Apartment Project, must be approved by the ZBOA before it goes before the HRB.⁷

Finally, Petitioners argue that the HRB approvals were for a different Apartment Project design than the ZBOA submission, and for some reason that should affect the decision of the ZBOA.⁸ However, this claim was presented to the ZBOA during its hearing. (R. PDF pages 210-212). The ZBOA obviously considered this claim and rejected it in granting the Special Exception. There is no abuse of discretion here by the ZBOA. *Newton*, 719 S.E.2d at 284.

B. There is Evidence Supporting the ZBOA's Decision That the Apartment Project Meets **Criteria No. 1**: "Compatibility with existing land uses in the surrounding area."

Petitioners lump together their arguments that 303 did not meet the requirements of Criteria Nos. 1, 2 and 4. *See* Complaint, ¶¶27-60. However, in doing so Petitioners obscure that a reasoned analysis of the Record supports the ZBOA's decision as to each of these criteria.

⁷ The Petitioners are also collaterally estopped to relitigate that issue now. *See Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164, 166 (1986).

⁸ Most of this claim in Petitioners' Brief is not supported by any evidence in the Record. The Court may not hear evidence outside of the Record. S.C. Code Ann. § 6-29-840(A).

Petitioners' complaints are easily summarized as a disagreement with the determinations the ZBOA made by pointing out what the Petitioners consider to be conflicting evidence before the ZBOA that supports Petitioners' positions. The combined approach is intended to persuade the Court that the weight of the evidence supports Petitioners. However, that is not the Court's scope of review; as noted, the Court must find that the ZBOA's decision was arbitrary and capricious. Such a holding is not supported by the Record.

Petitioners claim that (1) the Apartment Project is "incongruous" and not "harmonious" with its neighbors (Complaint, ¶30); (2) would be a threat to the National Park Service's designation of the Beaufort National Historic Landmark District (¶31); (3) is not consistent with the City's Civic Master Plan for "sensitive" infill (¶33); (4) not consistent with the "emotional core" of Beaufort (¶35); (5) cites a two story building in the City Civic Master Plan as more in character with what should be located as the site (¶36); (6) special attention needs to be assigned to a large building's designs elements (¶37); (7) monolithic massing is bad (¶38); (8) cherry-picked citations from the Civic Master Plan with general statements like the need for "intimate scale" development (¶¶40-42); (8) does not fit the "area's architectural context" (¶43); (9) it should be set back from the street, citing the *Beaufort Preservation Manual* (¶44); (10) it should "blend harmoniously with the historic fabric of the town," citing the *Beaufort Preservation Manual* (¶45); (11) the Apartment Project is across from two "significant historic properties following the architectural form of the Beaufort Style" (¶¶48, 59); (12) it is "out of scale with neighboring properties" and will "tower over" them (¶¶49-50); (13) service entrance placement "disrupts and dominates the streetscape and vista" (¶52); and (14) no historic buildings should be demolished for the Apartment Project, claiming the 1947 A&P store is historic, citing the *Beaufort*

Preservation Manual (§§53-55).

Every single one of these concerns is based on Petitioners' subjective interpretation of what is or is not the right type of project for this area. Those are all factual determinations. None of them are legal issues. Petitioners have simply picked pieces of the Code with general descriptions and molded them to their own ideas. These are precisely the sort of issues that the ZBOA (and in a different forum, the HRB) is designed to handle. As noted, the Court may not disturb the ZBOA's findings that contradict the claims of Petitioners unless there is no evidence in the Record that reasonably supports the ZBOA's findings. *Berberich*, 709 S.E.2d at 610.

The evidence in the Record that the Board considered for Criteria No. 1 was as follows:

1. The ZBOA staff member recited the neighborhood characteristics and the physical characteristics of the Apartment Project; he also presented the architectural drawings submitted for the Apartment Project. ZBOA staff noted twice that the "proposed use is compatible with existing land uses in the surrounding area" citing the mixed use area and integrated streetscape. (R. 11:12-18:3; *also see* Staff Report at R. pages 197-202 of PDF.⁹)
2. ZBOA staff noted that the 1947 "A&P" building to be demolished was not a contributing historic structure per the National Register of Historic Places (contradicting the claim of Petitioners that it should be.) (R. 12:24-13:4.)¹⁰
3. There was substantial debate and comment by members of the public and the ZBOA

⁹ PDF page numbers are referred to because the Record does not contain page numbers for the parts of the Record that are not the official transcript of the proceedings.

¹⁰ An argument of Petitioner' that illustrates the subjective nature of their arguments is that they admit that the City of Beaufort rejected the A&P Building as a historic contributing structure, but they insist it is one anyway. Brief pp. 14-15. The Petitioners would have the Court overrule the ZBOA on a matter that the City has already addressed.

on these issues. (R. 36:9-146).

4. The ZBOA listened to the debating points of view about whether or not the Apartment Project was compatible with the area. Ultimately, after hearing all of the evidence, three members voted in favor of the Special Exception and two members against. All the evidence was clearly carefully considered by the ZBOA. (R. 145-146).
 5. Thus, there is evidence in the Record to support this Criteria No. 1, so there is no abuse of discretion by the ZBOA. *Newton*, 719 S.E.2d at 284.
- C. There is Evidence Supporting the ZBOA's Decision That the Apartment Project Meets **Criteria No. 2**: "Harmony of proposed site plan, circulation plan and schematic architectural designs with the character of the surrounding area."

The evidence in the Record that the Board considered for Criteria No. 2 was as follows:

1. The ZBOA staff member noted that the proposed development had "received conceptual approval by the HRB based on height, scale, mass, three dimensional form of the building, and general architectural direction." (R. 18:4-19:7; *also see* Staff Report at R., PDF pages 197-202.)
2. ZBOA staff noted that the T5-DC zone district has a zero setback requirement (contracting Petitioners' citation to the Beaufort Preservation Manual.) (R. 18:21-19:7.)
3. Thus, there is evidence in the Record to support this Criteria No. 2, so there is no abuse of discretion by the ZBOA. *Newton*, 719 S.E.2d at 284.

- D. There is Evidence Supporting the ZBOA's Decision That the Apartment Project Meets **Criteria No. 3**: "The Likely impact on public infrastructure..."

Petitioners separate their allegations with respect to Criteria No. 3 from their lumped approach for Criteria Nos. 1, 2 and 4. Petitioners claim that (1) there would be a problem with

storm water runoff (Complaint, ¶62); (2) adequate parking could not be provided (¶64); and (3) there was not a sufficient Traffic Analysis Report (¶¶64-68.)

However, the same analysis applies with the same result. The evidence in the Record that the Board considered for Criteria No. 3 was as follows:

1. There is no evidence in the Records supporting Petitioners' claims with respect to storm water runoff. To the contrary, the ZBOA staff member noted that the proposed development "would not negatively impact existing uses in the area and in the City. This is an infill development in an area with existing streets, infrastructure, and public services that are currently adequate to serve the proposed use without detriment to existing uses." (R. 19:8-22 *also see* Staff Report at R., PDF pages 197-202.)
 - a. Further, there is no evidence in the Record except counsel's arguments that the infrastructure could have issues; no engineering studies or opinions were offered. There are no facts to support these arguments. "Further, the circuit court erred in relying on counsel's arguments before the Board as evidence of a nonconforming use. See *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513, 2003 WL 22887982 (Ct. App. 2003) ("Arguments made by counsel are not evidence."); *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.").
2. The Petitioners' claim of insufficient parking is identical to the one raised (and lost) by them in the Sixth Lawsuit, where, among other things, they appeal the HRB's determination that there was adequate parking as required by the Code. 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 ZBOA 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 not 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 project site. Accordingly, this standard does not apply.¹¹

- a. The ZBOA’s decision regarding the interplay of the parking ordinance must stand. “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, 1995 WL 63330 (Ct. App. 1995).
 - b. Regardless, there was robust discussion of the parking issues. (R. 26:16-27:18; 29:2-30:24.) Clearly, the ZBOA considered this issue and determined as a factual matter there was sufficient parking.
3. Petitioners’ claim that a Traffic Impact Analysis was required is not supported by the Code.
- In fact, Section 7.3.2.A.3 expressly provides that a Traffic Study is not required for

¹¹ 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.

property in this area of the Historic District.

- a. Regardless, the ZBOA staff noted that 303 provided the ZBOA a traffic analysis which addressed the effect of the Apartment Project on traffic in the area. (R. 19:23-20:24; PDF pages 195-196.) The traffic analysis may not have been as extensive as the type of analysis sought by Petitioners, but it was up to the ZBOA to determine if the analysis was sufficient. Petitioners cite no ordinance requirement for the ZBOA to review a more detailed analysis than what was provided. Clearly, the majority of the ZBOA thought the traffic analysis was sufficient. Therefore, 303 complied with this requirement.
4. Thus, there is evidence in the Record to support this Criteria No. 3, so there is no abuse of discretion by the ZBOA. *Newton*, 719 S.E.2d at 284.
- E. There is Evidence Supporting the ZBOA's Decision That the Apartment Project Meets **Criteria No. 4**: "General conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the city."

The evidence in the Record that the Board considered for Criteria No. 4 was as follows:

1. The ZBOA staff member noted that the proposed development "conforms with the recommendations included in City Civic Master Plan, the proposed develop aligns well with the CMP, Civil Master Plans Section 3.2 entitled "Redefining and Expanding Downtown Discussion, which recommends an expansion of the vibrancy of the Bay Street core to other parts of the City to reimagine mixed-use corridors. (R. 21. 5-15.)
2. ZBOA staff then quoted more of the report that recommended a mixed-use corridor at the Apartment Project site area. (R. 21:16-22:9; *also see* Staff Report at R., PDF pages 197-202.)

3. ZBOA staff noted that the Apartment Project looked very similar to a conceptual building depiction in the Vision Beaufort 2009 Comprehensive Plan that had a three-story mixed-use development with a rooftop venue in the same area as the Apartment Project. (R. 24:1-25:6; 28:12-29:1.)
 5. Thus, although Petitioners cite to cherry-picked and vague sections of the Civic Master Plan and the Beaufort Preservation Manual, clearly other controlling documents provided support for the Special Exception.
 6. Thus, there is evidence in the Record to support this Criteria No. 4, so there is no abuse of discretion by the ZBOA. *Newton*, 719 S.E.2d at 284.
- E. There is No Requirement for 303 to have considered “Alternate Sites” for the Special Exception.

Petitioners contend that *The Beaufort Preservation Manual* suggests that alternative sites must have been considered by 303 for the location of the Apartment Project. There is nothing in the Beaufort Code that lists that as a criteria for a Special Exception. Petitioners once again cherry pick from hundreds of pages of guidance documents to support their appeal. Further, the language cited by Petitioners says the HRB should consider this issue, not the ZBOA. As noted in the Record, the HRB has approved the Apartment Project already. Thus, Petitioners’ argument fails.

V. CONCLUSION

The Petitioners ask this Court to usurp the function of the ZBOA by finding that among conflicting evidence, the ZBOA’s decision was wrong. However, the legal standard is that if there is any evidence to support the ZBOA’s decision, and the decision is not arbitrary and capricious, the Court must affirm the ZBOA. *Newton*, 719 S.E.2d at 284. Respondents have herein carefully provided evidence in the Record refuting every claim by the Petitioners. Thus, the appeal must

fail.

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

s/ Benjamin E. Nicholson, V

Benjamin E. Nicholson V, Esquire
SC Bar # 10137
nnicholson@burr.com
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800

*ATTORNEYS FOR RESPONDENT
303 ASSOCIATES, LLC*

s/ Alexis K. Lindsay

Alexis K. Lindsay (SC Bar #78049)
Virginia P. Bozeman (SC Bar #104939)
Lawrence E. Flynn III (SC Bar #74931)
1411 Gervais Street, Ste. 300
Columbia, South Carolina 29201
alindsay@popeflynn.com
gbozeman@popeflynn.com
lflynn@popeflynn.com
(803) 354-4900

*Attorneys for City of Beaufort and City of
Beaufort Historic District Review Board*

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-01231

West Street Farms, LLC, and Mix Farms,	)
LLC,	)

Petitioners,	)

ORDER DENYING APPEAL

v.	)

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

Respondents.	)

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.

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

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.

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

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.

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.

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 portecochere 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.

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

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.

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.”)

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 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 rehear 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

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

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

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

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

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

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.

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.

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.

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

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

Further, 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. There is No Requirement that the HRB Defer Decisions with Respect to Matters under the Jurisdiction of the City's Zoning Board of Appeals.

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).

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.

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 aforesated, the Court DENIES the Appeal.

The Honorable Bentley Price

January __, 2022
_____, South Carolina



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

Electronically signed on 2022-01-19 12:10:03 page 20 of 20

ELECTRONICALLY FILED - 2022 Jan 20 2:57 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701231

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 2021-CP-07-01639
West Street Farms, LLC, and Mix Farms, LLC,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
City of Beaufort, City of Beaufort Zoning	)	
Board of Appeals, and 303 Associates, LLC,	)	
	)	
	)	
Respondents.	)	

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

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 Zoning Board of Appeals ("ZBOA") issued on August 9, 2021. The ZBOA decision granted Respondent 303 Associates, LLC a Special Exception pursuant to Section 4.5.10.B.5 of the Beaufort Code to allow a building with frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5- DC) in the Beaufort Historic District (HD) Overlay.

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:

1. The rulings in other appeals and challenges to other projects undertaken by the applicant 303 Associates in Beaufort are not relevant to the facts and legal issues in this appeal related to a proposed apartment complex and no other order of the Circuit Court in those matters acts through collateral estoppel to determine any facts or legal decisions in this appeal.
2. The proposed Apartment is a Large Footprint Building as defined under the Beaufort Code, Section 4.5.9, and such Large Footprint Buildings in the T4 and T5 transect districts must 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. The Project that was approved appealed 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 and so does not comply with the ordinance.
3. 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. The Project as planned and submitted to the HRB on December 8, 2021, has no onsite parking and so does not comply with the ordinance.
4. The SC Comprehensive Planning Enabling Statute requires that the BZA issue findings of fact and conclusions of law in writing, so that the Court can review its actions. S.C. Code Ann. Sec. 6-29-800. This the BZA did not do in this case, and for that reason its decision must be reversed and sent back to the BZA for a hearing and decision in accord with SC statute.

For these reasons, Petitioners 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.
W. Andrew Gowder, Jr.
AUSTEN & GOWDER, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-0060
andy@austengowder.com

ATTORNEYS FOR PETITIONERS

September 8, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-01639
West Street Farms, LLC, and Mix Farms,	)	
LLC,	)	
	)	
Amended	)	
Petitioners,	)	RESPONDENTS' JOINT
	)	MEMORANDUM IN
v.	)	OPPOSITION TO
	)	MOTION TO RECONSIDER
City of Beaufort, City of Beaufort Zoning	)	
Board of Appeals, and 303 Associates,	)	
LLC,	)	
	)	
Respondents.	)	
	)	

Respondents City of Beaufort, City of Beaufort Zoning Board of Appeals, 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.

Washington Savannah 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." Hutchinson 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.").

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

Benjamin E. Nicholson V, Esquire
SC Bar # 10137
nnicholson@burr.com
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800

ATTORNEYS FOR RESPONDENT
303 ASSOCIATES, LLC

s/ Alexis K. Lindsay

Alexis K. Lindsay (SC Bar #78049)
Virginia P. Bozeman (SC Bar #104939)
Lawrence E. Flynn III (SC Bar #74931)
1411 Gervais Street, Ste. 300
Columbia, South Carolina 29201
alindsay@popeflynn.com
gbozeman@popeflynn.com
lflynn@popeflynn.com
(803) 354-4900

*Attorneys for City of Beaufort and City of
Beaufort Board of Zoning Appeals*

RECEIVED

Apr 01 2025

SC Court of Appeals

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. 2021-CP-07-01639

West Street Farms, LLC and
Mix Farms, LLC,

Appellants,

v.

City of Beaufort, City of Beaufort Zoning
Board of Appeals, 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.

W. Andrew Gowder, Jr., (SC Bar No. 7895)

AUSTEN & GOWDER, LLC

Charleston, South Carolina 29405

Phone: (843) 727-2229

andy@austengowder.com

Counsel for Appellants

Other Counsel of Record:

Benjamin E. Nicholson, V (SC Bar No. 10137)
Burr & Forman LLP
1221 Main St, Ste 1800
Columbia, SC 29201
(803)799-9800
nnicholson@burr.com

Counsel for Respondent 303 Associates, LLC

Alexis K. Lindsay (SC Bar No. 78049)
Lawrence E. Flynn, III (SC Bar No. 074931)
Virginia P. Bozeman (SC Bar No. 104939)
POPE FLYNN, LLC
1441 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4900
alindsay@popeflynn.com
lflynn@popeflynn.com
gbozeman@popeflynn.com

*Counsel for Respondent City of Beaufort and
City of Beaufort Board of Zoning Appeals*

RECEIVED

Apr 01 2025

SC Court of Appeals

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. 2021-CP-07-01639

West Street Farms, LLC and Mix
Farms, LLC

Appellants,

v.

City of Beaufort, City of Beaufort
Zoning Board of Appeals, 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:

Benjamin E. Nicholson, V (SC Bar No. 10137)
Burr & Forman LLP
1221 Main St, Ste 1800
Columbia, SC 29201
(803)799-9800
nnicholson@burr.com

Counsel for Respondent 303 Associates, LLC

Alexis K. Lindsay (SC Bar No. 78049)
Lawrence E. Flynn, III (SC Bar No. 074931)
Virginia P. Bozeman (SC Bar No. 104939)
POPE FLYNN, LLC
1441 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4900
alindsay@popeflynn.com
lflynn@popeflynn.com
gbozeman@popeflynn.com

*Counsel for Respondent City of Beaufort and
City of Beaufort Zoning Board of Appeals*

/s/ Bailey L. Pope
Bailey L. Pope
Assistant to W. Andrew Gowder, Jr.

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Apr 04 2025

SC Court of Appeals

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. 2021-CP-07-01639

West Street Farms, LLC and
Mix Farms, LLC,

Appellants,

v.

City of Beaufort, City of Beaufort Zoning
Board of Appeals, and 303 Associates, LLC

Respondents.

NOTICE OF APPEAL

West Street Farms, LLC and Mix Farms, LLC appeal the orders 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.

W. Andrew Gowder, Jr., (SC Bar No. 7895)

AUSTEN & GOWDER, LLC

Charleston, South Carolina 29405

Phone: (843) 727-2229

andy@austengowder.com

Counsel for Appellants

ROA114

Other Counsel of Record:

Benjamin E. Nicholson, V (SC Bar No. 10137)
Burr & Forman LLP
1221 Main St, Ste 1800
Columbia, SC 29201
(803)799-9800
nnicholson@burr.com

Counsel for Respondent 303 Associates, LLC

Alexis K. Lindsay (SC Bar No. 78049)
Lawrence E. Flynn, III (SC Bar No. 074931)
Virginia P. Bozeman (SC Bar No. 104939)
POPE FLYNN, LLC
1441 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4900
alindsay@popeflynn.com
lflynn@popeflynn.com
gbozeman@popeflynn.com

*Counsel for Respondent City of Beaufort and
City of Beaufort Board of Zoning Appeals*

RECEIVED

Apr 04 2025

SC Court of Appeals

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. 2021-CP-07-01639

West Street Farms, LLC and Mix
Farms, LLC

Appellants,

v.

City of Beaufort, City of Beaufort
Zoning Board of Appeals, 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:

Benjamin E. Nicholson, V (SC Bar No. 10137)
Burr & Forman LLP
1221 Main St, Ste 1800
Columbia, SC 29201
(803)799-9800
nnicholson@burr.com

Counsel for Respondent 303 Associates, LLC

Alexis K. Lindsay (SC Bar No. 78049)
Lawrence E. Flynn, III (SC Bar No. 074931)
Virginia P. Bozeman (SC Bar No. 104939)
POPE FLYNN, LLC
1441 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4900
alindsay@popeflynn.com
lflynn@popeflynn.com
gbozeman@popeflynn.com

*Counsel for Respondent City of Beaufort and
City of Beaufort Zoning Board of Appeals*

/s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.
Counsel for Appellants

September 10, 2021

Ms. Jerri Roseneau
Beaufort County Clerk of Court
102 Ribaut Road, Ste. 208
Beaufort, SC 29902

Re: West Street Farms, LLC. and Mix Farms, LLC. v. City of Beaufort, City of
Beaufort Zoning Board of Appeals, and 303 Associates, LLC.
Case No.: 2021-CP-07-01639

Dear Ms. Roseneau:

Enclosed please find the Transcript of Testimony of the August 9, 2021 meeting of the City of Beaufort Zoning Board of Appeals, along with Exhibits 1 and 2 which are the documents that were part of the meeting record, which I am filing as counsel for and on behalf of the City of Beaufort and City of Beaufort Zoning Board of Appeals, pursuant to S.C. Code Ann. 6-29-920, with regard to the above-referenced appeal.

Very truly yours,

HARVEY & BATTEY, P.A.

/s/William B. Harvey, III

William B. Harvey, III

WBH/kvm
Enclosure

CITY OF BEAUFORT ZONING BOARD OF APPEALS
08/09/2021 - ZBOA MEETING

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CITY OF BEAUFORT
STATE OF SOUTH CAROLINA

ZONING BOARD OF APPEALS
AUGUST 9, 2021

-----/

The following ZBOA transcript was
transcribed from an electronic
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CITY OF BEAUFORT ZONING BOARD OF APPEALS
08/09/2021 - ZBOA MEETING

2

1 I N D E X

2 APPEARANCES:

3 ZBA Members
4 Josh Gibson, Chairman / Board Member
Marc Sviland, Vice Chair / Board Member
5 Tim Wood, Secretary / Board Member
Kevin Blank, Board Member
6 Kenneth Hoffman, Board Member

7 STAFF
Dan Frazier, Planner
8 David Prichard

9 SPEAKERS FOR APPLICANT
Walter J. Nester III, Esquire

10 PUBLIC COMMENT SPEAKERS

11 Graham Trask
Peggy Simmer
12 Edward Simmer
Kim Poovey
13 Wallace Scarborough
Bill Sams
14 David Townsend
Carol Clark
15 Yancey O'Kelley
Jane McKinnon-Smith
16 Parker Moore
Lise Sundrla
17 Beth Grace
Wayne Vance
18 Terry Murray
Anne Heles
19 Unidentified Female Speaker (last public
speaker)

20

21

22

23

24 CERTIFICATE ----- 150

25 (NO EXHIBITS)



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CITY OF BEAUFORT ZONING BOARD OF APPEALS
08/09/2021 - ZBOA MEETING

3

1 (meeting called to order
2 at 5:30 p.m.)

3 MR. GIBSON: All right. So we're
4 going to officially call this meeting
5 to order. Sorry for the brief delay,
6 but we were just making sure that
7 everybody's looped in on their -- on
8 their -- on the different methods that
9 they have participating in now that
10 have changed in recent history.

11 So first, let's call this meeting
12 to order and start with the pledge of
13 allegiance like we always do.

14 (Pledge of allegiance.)

15 MR. GIBSON: Okay. A couple of
16 things, one, which stated from the
17 beginning, that we are operating under
18 the Freedom of Information Act
19 compliance. In fact, that's why we're
20 doing it tonight instead of another
21 night and the interest being extra sure
22 that everything was -- excuse me --
23 everything is on the up and up and in
24 compliance with everything that we need
25 it to be. What -- it would have been



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CITY OF BEAUFORT ZONING BOARD OF APPEALS
08/09/2021 - ZBOA MEETING

4

1 on our normal time but we moved it back
2 a couple of weeks just to make sure
3 that everything was safe.

4 The fourth item on the agenda is
5 the election of officers, which is some
6 administrative work that we have to do.

7 And I'm going to make a motion
8 right now that we move that to the end
9 of the meeting.

10 MR. SVILAND: I second that.

11 MR. GIBSON: Okay.

12 All in favor, say aye.

13 (All aye.)

14 MR. GIBSON: Opposed?

15 (No verbal response.)

16 MR. GIBSON: Okay. So we're going
17 to save you all the time of watching us
18 talk to each other for 45 minutes about
19 who's going to be the vice chairman,
20 the secretary. There are too many
21 lawyers involved getting to paid too
22 much right now to drag it out any more.

23 And the review of minutes, we can
24 do that pretty quickly. I think there
25 was not much from the last meeting.



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CITY OF BEAUFORT ZONING BOARD OF APPEALS
08/09/2021 - ZBOA MEETING

5

1 Does anybody -- has everybody had
2 the opportunity to review the minutes
3 from the last meeting? Does anybody
4 have any objections or changes that
5 they need to make from the minutes from
6 the last meeting?

7 (No verbal response.)

8 MR. GIBSON: Then I would move
9 that we make those the official minutes
10 from the last meeting.

11 MR. SVILAND: Second that.

12 MR. GIBSON: Okay. Second that.

13 All in favor, say aye.

14 (All aye.)

15 MR. GIBSON: Opposed?

16 (No verbal response.)

17 MR. GIBSON: Okay. So that's
18 passed as well, unanimously.

19 Okay. So down to the meat of
20 this. So here's the -- this is --
21 everybody is obviously very interested
22 tonight. This is a good crowd we have
23 tonight. So first of all, the two
24 things I want to say, I want to say
25 thank you for coming and participating



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CITY OF BEAUFORT ZONING BOARD OF APPEALS
08/09/2021 - ZBOA MEETING

6

1 in this as opposed to being the
2 citizens who sit on the sidelines and
3 don't participate and complain about it
4 later on when things didn't go their
5 way. I'm glad you're all here and
6 we're going to give all of y'all a
7 chance to talk about what you want to
8 talk about.

9 The second thing I want to thank
10 you for is complying with the ord --
11 with the mask situation. I know it's a
12 pain, it's annoying, it's not anybody's
13 first choice, but it is what it is.
14 And thanks for everybody for being so
15 generous to comply with all that
16 because I know it's a -- it's a small
17 burden for all of us, but it's
18 something that -- the City's decided
19 there's work for us to do so we can be
20 here like this instead of doing it
21 distantly from each other. So I'm glad
22 that we're all here together.

23 Okay. Having said all that, the
24 way this goes, for the people who
25 haven't been here before, is that we do



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1 the presentation, we have the
2 presentation from the City about
3 their -- but we only have one
4 application tonight. We have the
5 presentation that comes from the City
6 and they will give us their review of
7 the project, and we will have the
8 opportunity to ask the representative
9 of the City the questions about their
10 feelings about the application.

11 That will have about -- we usually
12 give them about five minutes to do
13 that, applicant -- that presentation
14 and then we -- it's a little bit open
15 ended on the question and answer part
16 of it because who knows how many
17 questions are going to come up.

18 And then the same thing applies
19 for the applicant. The applicant has
20 about five minutes to give their --
21 give their app -- their side of the
22 story, and then we have an open
23 question answer period for the board
24 here where we can ask them -- where we
25 can ask some questions about their



1 applications.

2 Then what happens is then -- then
3 when we're done with that, we'll open
4 the floor to public discussion and
5 anybody can come up, who wants to, to
6 say something. We're going to do it
7 one at a time. It's not a back and
8 forth conversation. We need to keep
9 this kind of like tight because that --
10 one thing that can happen frequently --
11 not frequently, rarely, but it can
12 happen, is that when the -- and because
13 there's so much on the table tonight, I
14 think that there's a likelihood that
15 there's -- you know, people are going
16 to want to go back and have a very
17 clear record about what was discussed
18 at the meeting tonight, if there were
19 to be a lawsuit or something that
20 followed this.

21 So we ask you to come to the
22 podium, state your name and address,
23 give us about three minutes, if you can
24 keep it to three minutes. I'll put a
25 little timer on my watch here so we can



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1 tighten it up as much as we possibly
2 can.

3 Say what -- because there's a lot
4 of people who want to be heard and we
5 want to make sure everybody gets a
6 chance to be heard. Say what you want
7 to say and then what happens after
8 that, after the public comment period
9 is done, then we will close the meeting
10 for public comment and we will discuss
11 it amongst ourselves as a board and
12 open -- and then we will eventually
13 have a chance to have promotions and
14 to -- to approve or deny or table or
15 modify the application as it's
16 submitted.

17 So that's where we are. So having
18 said all of that, let's start with the
19 City, if we can, and then hear their
20 presentation of the -- of their review
21 of the application.

22 MR. FRAZIER: Thank you, Josh.

23 MR. GIBSON: Thank you.

24 Also, can everybody hear me? Is
25 the audio okay? Go ahead.



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1 MR. FRAZIER: I'll start with the
2 applicants submittal, then I'll get to
3 the staff report, and then I have some
4 additional items that are added for
5 clarity.

6 MR. GIBSON: Sure.

7 MR. FRAZIER: This is 211 Charles
8 Street, it's District R120, Tax Map 4,
9 Parcel 909 --

10 MR. GIBSON: You know, can I
11 interrupt you really, quickly? I'm
12 sorry. I don't want to take away from
13 your time.

14 The other thing that I want to be
15 clear about tonight, this is the only
16 thing that we're talking about tonight,
17 is this one specific location. It's
18 what's on -- is it -- it's 212 -- 211
19 Charles Street. I know there are
20 other -- there are other things that
21 are in the -- in the ether out there
22 about other projects that are involved
23 simul -- that are considered, in some
24 ways, simultaneous to this or adjacent
25 to or in some way, tangential to it,



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1 this is the only one that we're here to
2 talk about tonight.

3 If you don't like the way -- if
4 there's a problem with the other --
5 with other things, we can talk about
6 that in those meetings, but this
7 meeting is just about this one project
8 for tonight. I just want to make that
9 clear to everybody. So thank you.

10 All right. Sorry, go ahead.
11 Sorry to interrupt.

12 MR. FRAZIER: That's fine. In
13 fact, that's what I'm getting to, the
14 applicant is requesting a special
15 exception per Section 4.5.10.B.5 to
16 allow a building with frontage in
17 excess of 100 feet on a property zoned
18 T5-D -- Downtown Core District, which
19 is T5-DC, in the Beaufort Historic
20 District overlay.

21 This is the applicants application
22 form and his responses to the criteria.
23 This is the architectural set that was
24 provided with the application. And I
25 can return to any of these at any time,



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1 if you'd like me to once I -- once I
2 present the staff report. This is
3 staff's review.

4 The location is at 211 Charles
5 Street. It is the southwest --
6 southeast corner of Port Republic
7 Street and Charles Street. The
8 applicant, Burr & Forman, LLP, Walter
9 J. Nester, he's here tonight for
10 property owner, 303 Associates, is
11 requesting a special exception to allow
12 a building with frontage in excess of
13 100 feet on a property zoned T5-DC.

14 The subject property is located on
15 the southeast corner of the
16 intersection Charles Street and Port
17 Republic -- I apologize for repeating
18 myself -- there is an existing
19 structure located on the subject
20 property, and research by staff finds
21 that this existing building includes
22 three separate structures that were
23 built at different times.

24 The northern portion was built
25 first around 1947. The structure is



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1 listed as noncontributing on the
2 National Register of Historic Places
3 list of noncontributing structures,
4 resources.

5 The owner is proposing demolition
6 of the entire existing building and
7 construction of a new 27,500 square
8 foot three story building to house
9 apartments, with some commercial space
10 on the first floor facing Charles
11 Street. The proposed building will
12 have a building width of 77 feet, 2
13 inches along the Charles Street
14 frontage and a building width of
15 132 feet, 9 inches along the Port
16 Republic Street frontage.

17 The footprint and frontage widths
18 of the proposed building are similar in
19 proportion to the existing structure.
20 Per Beaufort Code, Section 2.4.1.D.3
21 (footnote 9), any property zoned T5-DC
22 with a building width at front -- at
23 frontage exceeding 100 feet shall
24 comply with the large footprint
25 building standards in Section 4.5.10,



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1 see Attachment A. I'll get to the
2 attachments after going through the
3 staff report.

4 Per Section 4.5.10.B.5, in the
5 Historic District, except along
6 Boundary Street, these large footprint
7 buildings are permitted by special
8 exception only, see Attachment B.
9 Worth noting is that per Section
10 4.5.10.A, the description of a large
11 footprint building is a building that
12 has a footprint greater than
13 20,000 square feet. The proposed
14 building has a footprint of 9,311
15 square feet.

16 The status of the proposed
17 demolition and new development are as
18 follows: On February 10, 2021, the
19 Historic District Review Board granted
20 conceptual plan approval of the
21 proposed development subject to staff
22 conditions. Conceptual plan approval
23 is based on height, scale, mass, three
24 dimensional form of the building, and
25 general architectural direction.



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1 The HRB also approved a motion to
2 defer the request for demolition to the
3 next regularly scheduled meeting. That
4 meeting was March 10, 2021. The HRB
5 approved the demolition request on the
6 condition that the demolition permit
7 will not be issued until after a
8 building permit is issued for the
9 replacement building.

10 Then on July 14, 2021, Coast
11 Architects, representing the property
12 owners, submitted an HRB application
13 requesting final approval of the
14 proposed development. This application
15 is tentatively scheduled to be heard at
16 the August 11, 2021 HRB.

17 However, on July 26, 2021, per
18 property owner's request, the HRB
19 application requesting final approval
20 of the proposed development has been
21 rescheduled to the September 8, 2021
22 HRB meeting. So it's going to the HRB
23 meeting in September instead of just a
24 couple days from now, per the request
25 of the applicant.



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1 The applicant submittal includes a
2 set of architectural drawings prepared
3 by Coast Architects and a traffic
4 analysis memorandum prepared by SEPI
5 Engineering and Construction.

6 Facts. Property addresses is 211
7 Charles Street. This is case number
8 ZB21-08. The applicant is Walter J.
9 Nester, III, for the applicant, for the
10 owner. The type of request is a
11 special exception. The zoning is T5
12 downtown -- or T5-DC District, and the
13 current use on the property is
14 commercial.

15 District Development Standards for
16 T5-DC setbacks are, frontage is zero
17 minimum, prevailing setback on the
18 block as maximum. Rear setback, zero.
19 Side corner alley is zero minimum, 15
20 max. Inside interior is zero, so you
21 can go to the build-to line on the
22 property in all four directions.

23 Maximum lot coverage is 100
24 percent. Frontage build-out is 75
25 percent minimum. Building width at



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1 frontage, 100 percent maximum. That
2 has a footnote, and I'll show you when
3 I show you the Attachment A. And the
4 footnote reads, "Buildings exceeding
5 this maximum shall comply with the
6 large footprint building standards in
7 Section 4.5.10, see Attachment B.
8 These criteria that are listed here,
9 one through six, I'll be reading again
10 under staff assessment, so I'll just
11 jump straight to that.

12 The proposed use is compatible
13 with existing land uses in the
14 surrounding area. These are the
15 criteria that you have to take into
16 consideration for this request, and
17 these are staff's assessment and
18 responses. I repeat that, the proposed
19 use is compatible with existing land
20 uses in the surrounding area.

21 Yes, the proposed use is
22 compatible with the existing land uses
23 in the surrounding area. Architectural
24 renderings provided in the application
25 reflect the mixed-use corridor with an



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1 integrated streetscape that highlights
2 and supplements existing streetscape
3 investments.

4 Two, the harmony of the proposed
5 site plan, circulation plan, and
6 schematic architectural designs are in
7 character with the surrounding
8 community. Yes, the harmony of the
9 proposed plan is in character with the
10 surrounding community. The proposed
11 development has received conceptual
12 plan approval from the HRB based on
13 height, scale, mass, three dimensional
14 form of the building, and general
15 architectural direction.

16 In the T5-DC zone district,
17 apartment house, retail and restaurant,
18 and live/work units are all uses
19 allowed by right with the exclusion of
20 animal hospital, kennels.

21 It should also be noted that the
22 T5-DC zone district encompasses the
23 Downtown Core and provides for a zero
24 foot primary building setback along all
25 property lines. A streetscape



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1 comprised of structures built at zero
2 setback along the front and side yards
3 creates a corridor of physically
4 attached buildings that can exceed
5 100 feet in width, as evidenced along
6 much of the downtown Bay Street
7 corridor.

8 Number three, the impact on public
9 infrastructure, public services, and
10 the ability of existing infrastructure
11 and services to adequately service the
12 proposed use will not negatively impact
13 existing uses in the area and in the
14 City. Providing adequate services to
15 the proposed use will not negatively
16 impact existing uses in the area and in
17 the City. This is an infill
18 development in an area with existing
19 streets, infrastructure, and public
20 services that are currently adequate to
21 serve the proposed use without
22 detriment to existing uses.

23 The applicant's submittal includes
24 a traffic analysis memorandum
25 addressing trip generation, which is



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1 also the vehicle traffic that's
2 generated by the use. The memorandum
3 provides a trip generation comparison
4 following three development scenarios
5 including a scenario utilizing the
6 existing building that was referred to
7 as Alternate A or Alternate 1 in the
8 memorandum, and that is a 12,120 square
9 feet of retail, and a scenario where
10 the property is redeveloped, as
11 currently proposed, that was
12 Alternate 2, and that is with
13 approximately 2,000 square feet of
14 retail and 19 apartment units. The
15 comparison found that Alternative 1
16 would generate 458 daily trips and
17 Alternative 2 would generate 218 daily
18 trips.

19 MR. GIBSON: So, are we looking at
20 Alternative 1 or Alternative 2 right
21 now?

22 MR. FRAZIER: Alternative 2
23 closely mirrors what is being proposed.

24 MR. GIBSON: Thank you.

25 MR. FRAZIER: Number four, the



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1 proposed use and design conform with
2 the City's Civic Master Plan,
3 Comprehensive Plan, and any other plans
4 officially adopted by the City.

5 Yes, the proposed use conforms
6 with the recommendations included in
7 City Civic Master Plan, the proposed
8 development aligns well with the CMP,
9 Civic Master Plans Section 3.2 entitled
10 Redefining and Expanding Downtown.

11 Discussion, which recommends an
12 expansion of the vibrancy of the Bay
13 Street core to other parts of the City
14 to reimagine mixed-use corridors, and
15 that's -- see Attachment C.

16 And, in quotes, "The perception of
17 downtown Beaufort needs to expand
18 beyond its Bay Street core into a
19 continuous vibrancy that connects to
20 other parts of the City. Five streets
21 in the Sector 1 study area, that's
22 Boundary, Bladen, Charles, Carteret,
23 and Ribaut, are re-imagined in this
24 plan as mixed-use corridors that form
25 the broad and extensive foundation of a



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1 reinvigorated downtown district.

2 As key streetscape investments in
3 these corridors create a series of
4 places and experiences that attract
5 more residents and businesses, both
6 historic and new neighborhoods within
7 this corridor framework, will begin to
8 fill with new places to live, work, and
9 shop.

10 The extra slides, kind of build on
11 this Criteria No. 4, which has to do
12 with conforming with the Civic Master
13 Plan, Comprehensive Plan, and other
14 plans adopted by the City. And I'll
15 get to those in one second.

16 Number five, the proposed use will
17 not have a negative impact on public
18 health and safety. It is staff's
19 opinion that the proposed use will not
20 have a negative impact on public health
21 and safety.

22 Number six, the proposed use does
23 not have the potential to create noise,
24 lights, fumes, dust, smoke, vibration,
25 fire hazard, or other injurious or



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1 obnoxious impacts. It is staff's
2 opinion that there will be no injurious
3 or obnoxious impacts related to the
4 proposed use.

5 I'm hoping you can read it well on
6 screen. So this is 2.4, our district
7 development standards. This is -- this
8 is our Attachment A that was referred
9 to earlier. Tells us why we're here
10 tonight.

11 We are T5-DC. When you come down
12 to the building width at frontage,
13 highlighted here, it says 100 feet
14 maximum and it has a footnote that I
15 read earlier in here. This is
16 Section 4.5.10, it starts here, 4.5.10,
17 large footprint building. And B.5
18 says, "Location, in the Historic
19 District, except along Boundary Street.
20 These are permitted, these being large
21 footprint buildings are permitted by
22 special exception only, that's why this
23 is before you tonight.

24 This is the outtake of Section 3.2
25 of the Civic Master Plan. I read the



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1 highlighted area just a moment ago. We
2 also have a -- we have -- the Civic
3 Master Plan has a description of the
4 T5-DC Downtown Core District on page
5 204, that's right here. I'm going to
6 have to zoom in if I want to read that.
7 I don't know if you can read it on your
8 screens. Almost verbatim, is the same
9 language inside the Beaufort Code, and
10 that's on page 13 of the Beaufort Code
11 describing the Downtown Core District.
12 I'll go through these and I'll come
13 back and read this real quick.

14 Vision Beaufort 2009 Comprehensive
15 Plan, which is our current
16 Comprehensive Plan, has a section on
17 catalyst sites, and Catalyst Site No. 2
18 is entitled, Downtown infill and
19 Parking. There's a recommendation, CS
20 2.7, on page 215, and that is down here
21 and highlighted. I'll see if I can
22 zoom in and read that in one moment.

23 The same adopted document, the
24 2009 Comprehensive Plan, two pages
25 later shows a conceptual drawing of a



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1 mixed use infill development along Bay
2 Street that illustrates a three-story
3 mixed-use development with the rooftop
4 venue, and this is located at the
5 southeast corner of Bay Street and
6 Charles Street.

7 Currently, it's a three tenant,
8 single story retail building. That's
9 the Carriage Tours building, if you're
10 familiar with that. That's -- that's
11 the rendering of, conceptually, what
12 the Civic Master Plan envisions for
13 that area. This is the parking
14 requirements, and it's Section 5.7.4,
15 spells out the parking requirements.

16 What we have with this proposed
17 development is actually two building
18 types contained within one building.
19 This is how it was reviewed for the
20 conceptual drawing when it went to HRB.
21 What we have is the frontage on Charles
22 Street section contains retail on the
23 first floor, about 2,200 square feet of
24 retail, and above that on the 2nd and
25 3rd floor are two two-bedroom



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1 apartments each, for a total of
2 four-bedroom apartments sitting above
3 commercial.

4 So that frontage facing Charles
5 Street is a -- is a building type
6 called live/work mixed use. The
7 remainder of the proposed development
8 in the same building is apartment
9 house, and this is the section of it
10 that fronts on Port Republic Street,
11 and it contains a total of -- I believe
12 it's -- that's right, 15 two-bedroom
13 apartments. That's right, because
14 there's a different layout on the
15 bottom floor.

16 So 15 two-bedroom apartments are a
17 part of the apartment house. So when
18 you look at parking requirements, the
19 live/work mixed use is exempt from
20 parking requirements per Section
21 5.7.4.A and 575.A on here. I have
22 these highlighted. I'll zoom on them
23 in a minute.

24 And apartment house requirements,
25 the apartment house requires 1.75



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1 parking spaces per two-bedroom
2 apartment, so that calculates out to 27
3 parking spaces. And these spaces are
4 provided per Section 574.D, right here,
5 and I will get to that in one second.
6 I apologize for having to put -- hold
7 you off for a second, but I'll be right
8 back to both.

9 474.D has to do with providing
10 off-site parking within 400 feet as
11 measured along right of way line. And
12 what we have here is 200 feet and 160
13 feet -- 168 feet get you to the Port
14 Republic Square parking that is the
15 off-site parking being provided. Need
16 to provide 27 spaces in there. They
17 have more than the -- that amount of
18 spaces available, and that's what this
19 graphic is showing.

20 Now, let me go back and see if I
21 can successfully -- we already read
22 that, Downtown Core. This is in --
23 this is -- the description of Downtown
24 Core is T5-Downtown Core consists of
25 high -- higher density mixed-use



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1 buildings that can accommodate retail,
2 offices, and apartments located in the
3 historic downtown area.

4 And that is what the Civic Master
5 Plan reads, and almost verbatim. When
6 you look at the Beaufort Code
7 description of the same district, is
8 T5-Downtown Core District consists of
9 higher density mixed-use buildings that
10 accommodate retail, row houses,
11 offices, and apartments.

12 I'll zoom out. I'll move down
13 to -- this is Comprehensive Plan. Real
14 quick, I just want to zoom in. See, it
15 is Catalyst Site 2.7, it's on page 215.
16 When you get there, there's a
17 description. One of the things that it
18 calls out for this catalyst site is
19 encourage increased density of
20 development in the downtown.

21 Two pages later is the graphic
22 that I discussed earlier. And that's a
23 conceptual drawing, but keep in mind
24 it's showing a three-story building.
25 It's even showing a rooftop venue on



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1 top of it.

2 All right. The parking is per
3 Section 5.7.4, dwelling units located
4 within mixed-use buildings, no spaces
5 are required. That would be the four
6 units that are on the 2nd and 3rd floor
7 of the mixed-use building section that
8 fronts on Charles Street. Let me jump
9 down here, in the T5-DC District, all
10 nonresidential uses, except for motels,
11 hotels, extended stay guest
12 accommodations, shall be exempt from
13 the off-street parking requirements of
14 this section.

15 That means the commercial that's
16 provided that's fronted on Charles
17 Street has no park -- off-street
18 parking requirements. So that leaves
19 only the 27 spaces that are associated
20 with the apartment house. And this is
21 five -- Section 5.7.4, the off-site
22 parking, required parking may be
23 provided by off-site parking if the
24 following standards are met.

25 And it's, required parking may be



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1 provided in off-street parking
2 facilities on another property within
3 400 feet of the site proposed for the
4 development as measured along street
5 rights of way, and we did that and we
6 show that in the graphic.

7 In any transit based district,
8 required parking may not be located
9 along a major thoroughfare without
10 being screened. It is not along a
11 major thoroughfare. Pedestrian access
12 between the use or the site and the
13 off-premise parking area shall be via
14 sidewalks or walkways. Those are
15 present.

16 And number four, the owner shall
17 provide a written parking agreement
18 reflecting the arrangement with the
19 other site, and the owner -- the
20 applicant here is also the owner of the
21 other site.

22 And I -- I'll run this past you
23 again real quick. This is the existing
24 surface parking --

25 MR. GIBSON: Let's focus on the



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1 real quick. I just want to make sure
2 everybody gets a fair time.

3 MR. FRAZIER: Yes.

4 MR. GIBSON: Because we're going
5 to give the applicant the same amount
6 of time, so...

7 MR. FRAZIER: Okay. I'm -- that
8 ends the staff's --

9 MR. GIBSON: I didn't mean to cut
10 you off.

11 MR. FRAZIER: No, no, I'm done.

12 MR. GIBSON: Okay. All right.
13 Does the people -- any board members
14 have questions for the staff?

15 MR. WOOD: I have a question.

16 MR. GIBSON: Let's hear from Tim,
17 then.

18 MR. WOOD: One thing that I'm --
19 it's just a question to clarify my
20 thinking, when the building is allowed
21 to be built out 100 percent and the
22 only known address is on Charles
23 Street, the -- the elevation we're
24 talking about here tonight is on Port
25 Republic Street, and because you can



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1 build out 100 percent of the footprint
2 of the building, and Charles is the
3 main -- there's no other address, so I
4 think of that, Charles Street, is for
5 frontage even though I know there's
6 frontage on Port Republic, but it's not
7 the main frontage.

8 And what other options does the
9 developer have? I mean, if the
10 building footprint is allowed to be
11 built out 100 percent every square inch
12 and one side of the building happens to
13 be 180 -- 130 feet or whatever it is,
14 133 feet, 135 feet, what are their
15 options other than coming here for a
16 special exception?

17 MR. GIBSON: Let me. One option,
18 they could -- they could build two
19 compliant buildings.

20 MR. WOOD: What's that?

21 MR. GIBSON: They could build two
22 buildings that were compliant that were
23 next to each other.

24 MR. WOOD: But in essence,
25 that's -- well, that's for discussion,



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1 I guess.

2 Is that the only option, is that
3 they build two separate buildings?

4 MR. FRAZIER: I suppose they could
5 subdivide the property, but it's going
6 to remain in the same district with the
7 same zero --

8 MR. WOOD: Exactly. But they --

9 MR. FRAZIER: -- setbacks.

10 MR. WOOD: -- have to --

11 MR. GIBSON: It's effectively the
12 same. I mean, it's -- the property is
13 still going to get built up, but there
14 is a way to build a compliant structure
15 within this space.

16 MR. WOOD: But you'd have to
17 subdivide, so --

18 MR. GIBSON: Well, you wouldn't
19 have to subdivide it, you could build
20 two buildings on one piece of property.

21 MR. WOOD: Well, basically --

22 MR. GIBSON: It happens all the
23 time.

24 MR. WOOD: You know, but I've --
25 well, we'll save that for discussion.



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1 MR. GIBSON: Sure.

2 MR. WOOD: Are the parking --
3 another quick question, are the parking
4 spaces going to be assigned
5 specifically for that building?

6 MR. FRAZIER: I think I'll let the
7 applicant respond to that at --

8 MR. WOOD: Okay.

9 MR. FRAZIER: -- their time, if
10 you don't mind, but provided previously
11 was the amount of available parking
12 within that Port Republic Square
13 parking, and there's 101 free spaces
14 when you subtract out the existing
15 Beaufort Inn property.

16 MR. WOOD: Okay. Thank you.

17 MR. GIBSON: Thank you. What
18 about -- let's --

19 MR. HUFFMAN: I have a couple of
20 questions for staff.

21 In looking at the Code, it defines
22 a large footprint building. It's
23 generally one that has 20,000 square
24 feet. This building has a footprint of
25 approximately 9,000 square feet, so I



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1 guess if it were 99.9 feet long along
2 Port Republic, it wouldn't need a
3 special exception because it wouldn't
4 be considered a large footprint
5 building?

6 MR. FRAZIER: That's correct.

7 MR. HUFFMAN: Also, if I'm not
8 mistaken, currently, if nothing were
9 developed on the Port Republic parking
10 lot site that exists now, there are
11 currently, theoretically, enough spaces
12 that should the applicant choose or
13 should the City require, could be
14 assigned to the spaces required by the
15 Code; is that correct?

16 MR. FRAZIER: Yes, that's correct.

17 MR. HUFFMAN: Okay. Thank you.

18 MR. FRAZIER: With the existing
19 parking that's there now.

20 MR. GIBSON: Okay. Kevin, do you
21 got anything?

22 MR. BLANK: (Nods head.)

23 MR. GIBSON: Okay. Anything else?

24 All right. Okay. I think we're good
25 for now, then. I'm sure we'll come up



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1 with a question before this is over
2 with, but let's hear from the applicant
3 now, if we can, please.

4 And I think we've spent about 20
5 minutes on that, ish, so we'll give you
6 the same amount of time, if you want
7 all of it. But if you don't, we're
8 good with that too.

9 MR. NESTER: Thank you,
10 Mr. Chairman.

11 MR. GIBSON: Thank you.

12 MR. NESTER: I don't believe I'll
13 need all that time. Again, my name
14 is -- well, as Mr. Frazier noted, my
15 name is Walter Nester, I'm an attorney
16 with Burr & Forman, LLP. With me
17 tonight is Courtney Worrell, she's with
18 303 Associates, and Jonathan Sullivan,
19 who is with the Beaufort Inn, LLC. So
20 if there any questions, they're
21 available to answer them as well.

22 We very much appreciate the
23 consideration of the Zoning Board of
24 Appeals. We very much appreciate the
25 consideration and what I would



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1 characterize is very good work,
2 Mr. Frazier and his team, analyzing the
3 application. We concur with the
4 statements that were made in the staff
5 report.

6 The only thing that I would like
7 to add is really reflective of some of
8 the questions. Mr. Wood and
9 Mr. Huffman asked some questions, and
10 we believe it is confusing. We're not
11 a 20,000 square foot building, we are
12 over 9,000 square foot building, but
13 less than 10,000.

14 But I think it's important to note
15 what that section of the code that
16 Mr. Frazier pointed out, was that
17 buildings that have that 100 feet
18 maximum must comply with the large
19 footprint standards. Not that it's a
20 large footprint building, it has to
21 comply with the large footprint
22 standards. And as Mr. Frazier noted in
23 his report, the application does comply
24 with the large footprint requirements
25 of the Code.



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1 And so we very much appreciate
2 that and we very much ask and
3 respectfully request, actually, that
4 the Zoning Board of Appeals focus on
5 the requirements of the special
6 exception. Mr. -- they have been laid
7 out in the staff report. I think that
8 they've been well stated. I don't
9 believe it's a good use of your time or
10 anyone else's time for me to restate
11 them. We certainly concur and we're
12 glad to answer any questions that you
13 may have.

14 MR. GIBSON: Okay. All right.
15 Well, that was less than 20 minutes, so
16 thank you for that.

17 Does anybody want to -- have any
18 questions for the applicants? Get
19 started here. I do, I've got a couple
20 things on my mind.

21 One of which is how did we end up
22 here?

23 MR. NESTER: Well, I was involved
24 in --

25 MR. GIBSON: I mean, I don't need



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1 your history of how you got hired by
2 this, but we have the situation where
3 there was a -- the Code has not changed
4 since this project has begun. We are
5 dealing with the same section of the
6 Beaufort Code from the beginning of
7 this project until now.

8 So when this project was
9 conceived, it was designed as it was
10 outside of the Beaufort Code, so, was
11 there ever an intention or an
12 alternative that was explored by the
13 applicant to try and build a building
14 that complied with the Beaufort Code?

15 MR. NESTER: We contend that this
16 does comply with the Beaufort Code, and
17 what I was saying --

18 MR. GIBSON: Well, if it complied
19 with the Code, we wouldn't be here.

20 MR. NESTER: The Code requires
21 that a special exception is required if
22 the building, if the building is
23 proposed that's 100 -- that has
24 100 foot or more frontage and --

25 MR. GIBSON: I understand that.



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1 MR. NESTER: -- if that's
2 required, then we have to get a special
3 exception.

4 MR. GIBSON: Right.

5 MR. NESTER: So, we -- this
6 building was designed under the Code
7 and all of the approvals that we've
8 been seeking are under the Code.

9 MR. GIBSON: Right.

10 MR. NESTER: Perhaps,
11 Mr. Chairman, I'm not getting the
12 nuance in your question.

13 MR. GIBSON: Well, the question
14 I'm asking is that is -- it's designed
15 underneath -- under the Code with the
16 expectation that you're going to need a
17 special exception; correct?

18 MR. NESTER: And so long as you
19 meet the criteria, you should be
20 able -- you should be entitled to a
21 special exception.

22 MR. GIBSON: Well, no, actually,
23 you're not entitled to a special
24 exception. It says the Zoning Board of
25 Appeals may grant a special exception.



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1 It doesn't say shall, it says may.

2 MR. NESTER: I -- absolutely, I
3 agree with that, but -- but there is
4 criteria for --

5 MR. GIBSON: I know, and this
6 criteria, you could meet all of this
7 criteria and still not get your special
8 exception; correct? Legally speaking?

9 MR. NESTER: Yes, sir, that's a
10 true --

11 MR. GIBSON: That's what I was
12 meaning.

13 Okay. So was there ever an
14 intention to build a building on this
15 that met this without having to get a
16 special exception?

17 MR. NESTER: I'm not --

18 MR. GIBSON: That you're aware of?

19 MR. NESTER: I'm not -- I'm not
20 aware --

21 MR. GIBSON: I mean, you can
22 testify to the entire --

23 MR. NESTER: That's exactly right,
24 I'm not aware of it. But,
25 Mr. Chairman, if I could, building one



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1 building is less expensive than
2 building two buildings.

3 MR. GIBSON: I understand that,
4 yeah.

5 MR. NESTER: And I only say that
6 because -- because you could get around
7 the exception -- the special exception
8 required by building two buildings side
9 by side that you wouldn't require the
10 special exception from the Zoning Board
11 of Appeals.

12 MR. GIBSON: Right. I understand
13 that. And the other thing that I think
14 that I want -- that I hope that you
15 understand is that the one thing that
16 it specifically states in the Charter
17 of the Zoning Board of Appeals that
18 we're not allowed to consider, in terms
19 of what -- how we make our decision is
20 the financial impact on the applicant.

21 If you want to do something that
22 costs more money outside is -- outside
23 the way it's zoned, that is desirable.
24 I understand, from an applicant's
25 perspective. Look, I've been on both



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1 sides of this. I've been at that --
2 sitting right where you're sitting too
3 before, on both sides, but asking
4 for -- asking for an exception, so I'm
5 aware of it.

6 But the one thing that we're not
7 allowed to say is that because it's
8 going to cost a lot more money for the
9 applicant, that we need to give -- let
10 them have it. So that -- I mean, it's
11 the one thing that's specifically set
12 out in our Charter for the -- for the
13 ZBOA.

14 So aside from that, why was this
15 designed outside of the way it was --
16 the way it would have been in
17 compliance without us having to have
18 this meeting and be here tonight?

19 MR. NESTER: I don't know the
20 answer to that question, Mr. Chairman.

21 MR. GIBSON: Okay. That's a fair
22 answer.

23 All right. Okay. Anybody else
24 have anything for the applicant?

25 (No verbal response.)



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1 MR. GIBSON: No. Okay. All
2 right. Thanks for your time. I
3 appreciate it.

4 Oh, one more thing, the parking
5 thing. The -- there wasn't a parking
6 study, there was a traffic study done,
7 but not a parking study, that's
8 correct, right?

9 MR. NESTER: That's correct.

10 MR. GIBSON: Okay. And so the
11 parking study is dependent on the fact
12 that the parking will be there at the
13 existing parking lot that 303
14 Associates already owns that's nearby,
15 that's the future site, potentially, of
16 a parking garage someday? But it is a
17 parking lot now?

18 MR. NESTER: It's currently a
19 parking lot and it has it the requisite
20 --

21 MR. GIBSON: And it has the -- it
22 has the capacity?

23 MR. NESTER: It has -- it has the
24 capacity, that's correct.

25 MR. GIBSON: All right. Okay.



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1 Thank you.

2 MR. NESTER: Thank you.

3 MR. GIBSON: Okay. So if we're
4 done with that part of it, then, with
5 the applicant and the City, then we're
6 here for public discussion. So we've
7 got -- if you want to just come up to
8 the -- to the microphone and say what
9 you want to say. If we can keep it as
10 brief as and as tidy as we can, that
11 would be appreciated.

12 State your name and your address.
13 And also, I'm sure we're going to have
14 some people chiming in online, too, and
15 we can do those and whatever you want
16 to, it makes no difference to me.

17 MR. TRASK: Josh, I'm actually on.
18 Do you hear me?

19 MR. GIBSON: I can hear somebody
20 but I don't know who it is.

21 MR. TRASK: So would you allow me
22 to go first on -- it's Graham Trask.

23 MR. GIBSON: Okay. Thank you.

24 MR. TRASK: I own property on Port
25 Republic Street, which is one block



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1 away from 211 Charles and I'm the
2 largest property owner on what the
3 Chapter 3.2 of the Beaufort Civic
4 Master Plan labels Beaufort's emotional
5 core.

6 Beaufort's emotional core, per the
7 Civic Master Plan, is the three blocks
8 between Charles and Carteret along Bay
9 Street. It's precisely here that the
10 applicant is applying to put a
11 nonconforming building, and, therefore,
12 is having to go in front of the ZBOA.

13 They spent a lot of time on
14 parking and I think it's very
15 interesting because the Beaufort City
16 Code says that a building over 100
17 linear feet in the Historic District
18 must follow the large footprint
19 building code. Item 7 of the large
20 footprint building codes states
21 specifically about parking.

22 Parking locations specific to T4
23 and T5, a minimum of 75 percent of all
24 parking shall be located behind the
25 primary building or a liner building.



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1 It doesn't say if you're apartment
2 building or if you're retail, that you
3 get exempt from that, which is what the
4 applicant and his lawyers spent time --
5 and the City spent time justifying.

6 It is interesting that the City
7 did not breed out that parking
8 requirement in its assessment. It's
9 also of note, the City did not tell the
10 HRB that this building was
11 nonconforming when it did its proposal
12 to -- its assessment of the project to
13 the HRB. And I -- which is puzzling.

14 How could the City not tell the
15 HRB -- HDRB that this building was
16 nonconforming, and, therefore, needed a
17 special exception? I mean, these are
18 highly paid professionals. They even
19 have Charleston based consultants of
20 Meadors. It is -- it just is mind
21 boggling and it's either incompetence
22 or its complicity, in my assessment.
23 You guys might be able to come up with
24 something else.

25 Nevertheless, despite what the



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1 staff says about approving mass and
2 scale, the HDRB did not approve mass
3 and scale. They did not issue a
4 certificate of appropriateness for this
5 building. That -- a certificate of
6 appropriateness is what approves mass
7 and scale.

8 In fact, in what I believe is kind
9 of standard practice from the
10 applicant, the building now that is
11 before you has not been approved by the
12 HRD -- HDRB, it's a completely
13 different building. The one item that
14 the HDRB did conceptually like was the
15 Cannon building on the corner of
16 Charles and Port Republic.

17 Well, that building has completely
18 changed. It now has porches hung off
19 of it on Charles Street, and so the
20 fact that staff now says it's going
21 back for final approval to the HDRB
22 when, first of all, there's no
23 certificate of appropriateness issued
24 for the original building. And second
25 of all, the buildings completely



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1 changed.

2 You know, you, as the ZBOA, are an
3 independent body and you should act
4 independently based on the facts.

5 You're not here to do the City staff's
6 bidding nor to cover up the City's
7 incompetence or complicity. At a high
8 level -- and I hope you'll let me just
9 run over slightly, Josh, this is
10 important for me.

11 MR. GIBSON: Thank you, Mr. Trask.

12 MR. TRASK: This is tantamount to
13 a rezoning of downtown Beaufort. The
14 building front facade is greater than
15 100 linear feet. If the large
16 footprint building had been -- you have
17 to be over 27,000 square feet of a
18 footprint, well, presumably, the City
19 would have put that in there. It
20 didn't put that, it put 100 linear
21 feet.

22 Now to the Zoning Board of Appeals
23 special exception, and I quote, "The
24 ZBOA may approve a special exception
25 where it reasonably determines that



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1 there will be no significant negative
2 impact upon residents of surrounding
3 property" -- such as my property, which
4 is down the street, and I'd be looking
5 at this large footprint building -- "or
6 upon the general public."

7 As you guys must be aware, the
8 National Park Service has formally put
9 the City on notice of its concerns
10 about potential threats to the historic
11 character of the National -- Beaufort
12 National Historic Landmark District.
13 The potential threats are specifically
14 allowing such large buildings, such as
15 211 Charles, in the Downtown Historic
16 District.

17 Criteria, and I am being
18 repetitive, but for -- for -- you'll
19 see why. The harmony of the proposed
20 site plan, circulation plan, and
21 schematic architectural design fits
22 with the character of the surrounding
23 area. I'm sure you have the building
24 rendering there so you -- you'll have
25 to make your own decision, obviously,



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1 as to whether that fits with the
2 surrounding area.

3 The general conformity of the
4 proposed use and designs fit with the
5 City's Civic Master Plan, Comprehensive
6 Plan, and any other plans officially
7 adopted by the City, such as the
8 Beaufort City Code. The Beaufort City
9 Code is a regulatory document. This
10 building at 211 Charles Street is in
11 contravention of the Beaufort City
12 Code.

13 It needs a special exception, and
14 even if it were to get the special
15 exception, it can't meet the parking
16 that is dictated by the large footprint
17 building. The Beaufort City Code
18 dictates, for infill, protect and
19 enhance Beaufort's unique character,
20 support high quality streets and public
21 spaces, encourage architecture that
22 blends harmoniously with the natural
23 surroundings and neighboring
24 development, safeguard property values
25 and long term economic assets.



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1 So I ask you: How does a building
2 that is 133 feet long versus a maximum
3 of 100, and it will be the largest
4 building in downtown Beaufort, blend
5 harmoniously with, and I quote, the
6 natural surroundings and neighboring
7 development? Does it protect and
8 enhance Beaufort's unique character?
9 Does a building that belongs in the
10 suburbs and along Boundary Street or
11 Ribaut Road support high quality
12 streets and public spaces? What if
13 this building jeopardizes Beaufort's
14 National Historic Landmark District
15 status?

16 Finally, the Beaufort Civic Master
17 Plan is a guidance document, it's not a
18 regulatory document, but let's go
19 through it. The Beaufort City Master
20 Plan, in Chapter 2, again, defines
21 these three blocks as the emotional
22 core of downtown Beaufort. It talks
23 about corridors along Boundary Street,
24 Carteret, Charles. Those are corridors
25 down Charles, down Carteret. In fact,



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1 Carteret a specific exemption to this
2 large footprint requirement.

3 Chapter 3.1 of the Civic Master
4 Plan anticipates and encourages
5 sensitive infill. Again, I ask you, is
6 it sensitive to be issuing a special
7 exception for a large footprint
8 building in Beaufort's emotional core?
9 And then --

10 MR. HUFFMAN: I hate to interrupt
11 you, but I just wanted to make sure we
12 can keep this tight. Keep the meeting
13 on --

14 MR. TRASK: Give me -- give me
15 about 45 seconds, Josh, please.

16 MR. GIBSON: Thank you.

17 MR. TRASK: Chapter 3.3, there's
18 a -- there's a conceptual illustration
19 of Port Republic Street, which are all
20 two-story buildings, they're not 133
21 long apartment building with porches
22 hanging off its facade and it's three
23 stories high. Take a look at
24 Chapter 3.3.

25 And then finally, nowhere in the



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1 Beaufort City Code or the Civic Master
2 Plan or the Comprehensive Plan does it
3 say large footprint buildings should be
4 allowed in down -- in the Downtown
5 Historic District. And the four-story
6 building that Dan pointed to was at the
7 waterfront, which the City come -- was
8 completely shot down after a public
9 uprising several years ago, so I would
10 not give much merit to showing that as
11 the standard.

12 So, my hope, and is armed with
13 these facts, not necessarily what the
14 City might let -- the spin that the
15 City puts on it, it seems to me the
16 decision is quite clear and the fate of
17 downtown Beaufort is in your hands. No
18 large footprint buildings downtown and
19 no special exception for 211 Charles.
20 Thank you, Josh.

21 MR. GIBSON: Great. Thank you,
22 Mr. Trask. Thank you for your time.

23 All right. Who's next? Who wants
24 to go next?

25 THE CLERK: If you will, we have



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1 an Edward and Peggy Simmer via Zoom as
2 well.

3 MR. GIBSON: Sure.

4 MS. SIMMER: Josh, and fellow ZBOA
5 members, this is Peggy and Edwards
6 Simmer. We live at 915 Port Republic
7 Street and we are probably the most
8 directly impacted by the proposed
9 project because we live directly across
10 the street on Port Republic.

11 First, I'd like to say that we
12 appreciate 303 -- 303 Associate's
13 transparency and their willingness to
14 work with us regarding concerns we've
15 had about this project. And looking at
16 the documents the ZBOA provided, we do
17 not believe that the length of the
18 proposed building, which is 133 feet,
19 is an issue considering the frontage of
20 the current building on Port Republic
21 is actually 140 feet. And we actually
22 support the apartment building because
23 we think it's a good use of infill and
24 look forward to having neighbors.

25 With that being said, we do wish



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1 the massive scale were different,
2 especially the height. We are
3 concerned about having a three-story
4 structure in the downtown Historic
5 District directly across from us.
6 However, if you look at Beaufort Code,
7 Section 2.4.1, T5-DC does allow for a
8 three-story structure.

9 So in wrapping up, we already have
10 a large footprint building across from
11 us. We agree with the proposed
12 building use so we do not oppose the
13 special exemption for the building
14 being requested of ZBOA tonight. I
15 believe that's really what is on the
16 table.

17 And I'll see if my husband has
18 anything he'd like to add.

19 MR. SIMMER: Very briefly. This
20 is Ed Simmer. Thank you for the time
21 and paying attention to us, we
22 appreciate that.

23 As my wife said, there's probably
24 no one more impacted by this proposal
25 than our property. We feel that 303



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1 Associates has worked very well with us
2 to address concerns. We think
3 apartments across the street is an
4 excellent use. We think the balconies
5 that were just discussed add to the
6 building and we appreciate that.

7 And as my wife said, we have no
8 opposition to this proposal being
9 approved. Thank you.

10 MR. GIBSON: All right. Thank you
11 for your time.

12 Anybody else? Podium is right
13 there. Everybody's got something --
14 just walk -- just walk on up, you don't
15 have to do it in any order. Just walk
16 up and we'll recognize you when you get
17 to the podium.

18 MS. POOVEY: Hi, I'm Kim Poovey.
19 I live at 912 Scott Street. This is my
20 neighborhood so I do have a say-so in
21 it.

22 I just want to address a few
23 things. The most important being
24 the -- the National Park Service
25 threatening us. This particular



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1 approval or disapproval will impact
2 whether Beaufort survives as a historic
3 landmark. People come here because of
4 the historic landmark and because it's
5 a safe small town community.

6 If all of these structures start
7 popping up, let me tell you something,
8 your crime is going to go up. I grew
9 up in Atlanta, I know what happens.
10 All right? It said -- there was a
11 comment made that building one building
12 is cheaper than two. With all due
13 respect, I really don't care, that's
14 not our problem, we're not the one
15 asking. If I asked to build something
16 this monstrous on my piece of property,
17 it would be a resounding no because
18 it's not appropriate.

19 So when something is outside, and
20 I think that Mr. Trask stated it
21 beautifully, the City has looked the
22 other direction now and the HRB has
23 looked the other direction for two
24 years now, and we are in serious danger
25 of losing one of the most beautiful



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1 towns in the world.

2 Compatible with existing land use
3 in the area. Have you seen the other
4 buildings? That -- you can't see them
5 from the space station, you will see
6 this one from the space station. It's
7 huge, it's out of mass, it is -- it's
8 just -- it's wrong. It doesn't fit
9 down there.

10 Now, is it a beautiful building?
11 Yes. Do I think that this is an all or
12 nothing? No. I think that's the
13 problem, everyone's like, well, it's
14 either this or nothing. It's not. I
15 think what has to happen is that this
16 particular developer needs to work with
17 the codes. I'm not going to say the
18 City anymore because they're not paying
19 attention to codes or the Milner
20 Report.

21 But I think they need to work and
22 find something that does fit. Do I
23 think that hotels and more apartment
24 living downtown is a great idea? Yeah,
25 it has to blend. This does not blend.



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1 I don't think anyone would disagree
2 with that.

3 Harmony and character of the
4 surrounding community, no, walk around
5 our neighborhood, our neighborhood and
6 you look at our buildings and you look
7 at our structures, this is not
8 blending. I know for a fact that the
9 Milner Report even drew pictures, that
10 the mass cannot eclipse the buildings
11 around it. This particular structure
12 is going to make the Simmer's house
13 look like a little cottage and
14 everything else down the street.

15 And that Milner Report is very
16 specific about that. It also states
17 that you're not supposed to drastically
18 change our skyline, and this would do
19 just that. If you open the door to
20 this, the two other that is the
21 elephant in the room, the other -- two
22 other structures that are under
23 consideration right now will go forward
24 and so will everything else.

25 Let's see. Note, will not impact



1 services. Okay. You have people
2 parking a block away from where they
3 live and you think that there's not
4 going to be an increase in muggings or
5 attacks? I'll tell you something, as a
6 woman, I would not walk by myself at
7 night. And carrying groceries a block
8 in August heat here, I don't think
9 that's going to go over too well
10 either.

11 Needless to say, I don't know if
12 you guys are bound by the Milner Report
13 or not. This particular building
14 violates the Milner Report in so many
15 ways, it's not even funny. The
16 National Park Service thinks so, the
17 majority of the town thinks so, most of
18 the people sitting here in this
19 building tonight, I think, are
20 probably -- I recognize most of my
21 neighborhood. It's our neighborhood,
22 we have a right to say, and I'm telling
23 you right now, this is not going to
24 enhance us.

25 It would be a beautiful building



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1 if it were made smaller and fit within
2 those guidelines. I don't think
3 it's -- you know, I just -- you guys
4 hold the key to opening up whether we
5 lose our national status or not. So
6 thank you for listening.

7 MR. GIBSON: Thank you for your
8 time. Next.

9 MR. SCARBOROUGH: Hello,
10 Mr. Chairman, my name is Wallace
11 Scarborough. I live at 1207 Bay
12 Street. And you know, it's interesting
13 we are here, we're at the Zoning Board
14 of Appeals meeting. Had this project
15 been a proper size and scale, we
16 wouldn't be here.

17 And the question is: Can you
18 approve it? Certainly. Y'all can most
19 certainly, right now, approve this. We
20 don't have to argue about it, we can go
21 forward, y'all can grant the appeal.
22 Should you grant the appeal? You know,
23 it's interesting, when I grew up, my
24 mother always used to say, Wallace,
25 just because you can do something



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1 doesn't mean you should do something.

2 We need to think about that
3 tonight. Just because we can approve
4 an exemption and ruin, possibly, it
5 depends on who you talk to, ruin the
6 historic nature of downtown Beaufort.
7 Should we do that? My opinion would be
8 no, we should not.

9 Is it okay to replace a large
10 footprint building with another large
11 footprint building? No, it's not. If
12 you tear down an existing large
13 footprint building, it does not just
14 automatically give you the right to
15 build another large footprint building
16 on the site.

17 The plan was put in place so that
18 when you replace that building, they
19 wanted it to be replaced with something
20 of more size, scale, and
21 architecturally, soundness, that goes
22 along with the Historic District. This
23 is does not go along with Historic
24 District. This does not go along with
25 the size, scale, and scope of what



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1 needs to be done -- and I'm almost
2 finished.

3 Needs to be done in the Historic
4 District. It will negatively impact.
5 I'm also chairman of the Bluff
6 Neighborhood Association. Bluff
7 Neighborhood Association goes on record
8 as being against this and we believe
9 one of the criteria which you're
10 supposed to look at, does it negatively
11 impact the surrounding neighborhoods,
12 we believe the excess traffic that will
13 be placed on Boundary Street will
14 negatively impact our neighborhood.

15 So we are against it and I'm
16 against it. I think they need to scale
17 it down and make it more look like a
18 historic structure. Thank you,
19 Mr. Chairman, for your time.

20 MR. GIBSON: Thank you for your
21 time.

22 MR. SAMS: My name is Bill Sams.
23 I'm not nearly as eloquent as
24 Mr. Scarborough here. Longtime
25 Beaufort resident. My granddaddy was



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1 Charles Luther, Luther's Pharmacy. He
2 actually owned Mr. Scarborough's house
3 at one time.

4 You guys are -- keeps Beaufort,
5 Beaufort. People come from all over
6 the world to see a quaint little
7 historic town, and that's what --
8 that's y'all's job to keep us in that.
9 I live at 121 Elliott Street. I think
10 if somebody owns property, they ought
11 to be able to have permission to do
12 things on it.

13 At 121 Elliott Street, if the guy
14 next to me wants to cut down 100 year
15 old pine tree, he can do it. If the
16 guy on the other side wants to put up a
17 pig sty, he can. It's y'all's job to
18 distinguish between those two and keep
19 Beaufort a small, historic town. Thank
20 you.

21 MR. GIBSON: Thank you.

22 MR. TOWNSEND: Good Evening. My
23 name is David Townsend, I live at 1403
24 Church Street. I won't be long because
25 I'm a newcomer. I don't have the



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1 background as deep as many of these
2 folks. Four years ago, my wife and I
3 visited Beaufort. After an hour, we
4 were impressed with how charming
5 downtown Beaufort is.

6 I won't try to define charming
7 tonight, but I imagine I could get
8 judicial notice from everyone here that
9 it is charming, and, quite frankly,
10 this application is not. It just --
11 agreed, it just doesn't fit. Too much
12 effort, thought, and time has gone into
13 the area to enhance the charm. This
14 doesn't. Thank you.

15 MR. GIBSON: Thank you.

16 MS. CLARK: I don't live downtown
17 Beaufort, I live in Lady's Island. My
18 name is Carol Clark. I live in Royal
19 Pines, and we used to live on Craven
20 Street back in the '60s and I never
21 realized having two children and my
22 husband being in the Marines, that this
23 was so special.

24 This town is very special, and
25 I'll tell you this, whatever they're



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1 trying to build on Carteret Street, it
2 does not go with downtown Beaufort. It
3 just doesn't. And it's like -- I mean,
4 these folks that are -- that live close
5 to this area, I can see where they must
6 be very, very upset because I'm upset
7 and I don't even live downtown
8 Beaufort. So anyway, I just thought
9 I'd tell you.

10 MR. GIBSON: Thank you for telling
11 us.

12 MS. O'KELLY: Mr. Chairman.

13 MR. GIBSON: Ms. O'Kelley.

14 MS. O'KELLY: These are just --
15 Yancey O'Kelley, I live in 2007 North
16 Street, and these are just random
17 thoughts that I have. In the '70s,
18 there was a group of businessmen at the
19 end of Charles Street, and you've
20 already crossed Bay Street and the
21 water, I'm talking about on the
22 waterside, end of Charles Street, they
23 wanted to put up an inn.

24 You would have thought they were
25 going to put up a house of



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1 prostitution. There was such an outcry
2 about that inn, and it was small. And
3 probably, knowing the man who would go
4 do it, it was very tasteful.

5 Now, we come forward, it wasn't
6 that long ago that we had the part of
7 the waterfront park proposed to take a
8 part of it for some pier details for
9 people who were going to -- as I was in
10 this very chamber listening, fly in to
11 Beaufort. I've said to George, and
12 this doesn't sound nice, I'm not
13 remotely interested in those people.
14 What I am interested in is those of us
15 who live here who loved Beaufort.

16 When we moved here, George and I
17 argue, I say there were three
18 restaurants, he says there were five.
19 And there were certain things you just
20 couldn't buy here because they weren't
21 available. But yet when George got out
22 of the Marine Corps, we decided to live
23 here because we thought it was so
24 wonderful.

25 We live on North Street. We are



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1 down from this. But my thoughts are --
2 I listened to this City person, and I
3 know people get beat up here when they
4 come and represent the City so I
5 appreciate your courage. The word was
6 used, re-imagining. A word was used
7 for reinvigorating downtown.
8 Apparently, my definition of
9 re-imagining and reinvigorating is not
10 the same as I have heard from the City
11 professional and from the attorney here
12 a little bit.

13 I think the people that we -- we
14 have so many people who pass our house
15 and do short-term rentals. But they do
16 short-term rentals, and over and over
17 and over again, they say that Beaufort
18 is so lovely, is so special. And
19 moving, today I was in several
20 neighborhoods, and California, New
21 York, North Carolina, Wisconsin,
22 Florida, they weren't looking at the
23 neighborhoods, they were looking for
24 property. I am certain of that.

25 So I just ask that you, as a very



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1 concerned group, or you wouldn't be
2 here serving, that you truly think
3 about the footprint of this building.
4 The design of this building will
5 fundamentally change downtown. If you
6 say Charles Street, come to Carteret,
7 come back to Bay and back to Charles,
8 you can't put that genie back in the
9 bottle once it's spilled. So I ask you
10 to really consider that.

11 And then, as Mr. Trask pointed
12 out, the question is: Is the building
13 compatible with other buildings around
14 it with the downtown? It is not, in my
15 opinion. George has a building on Bay
16 Street and I love that he has a
17 building on Bay Street. Some say it's
18 the oldest building. Part of the
19 down -- downstairs part is tabby, and
20 it's been around a long time.

21 I could stay here for a long time.
22 George would say I've been too long
23 winded. But please, please consider
24 the fundamental change this building
25 would have. Appropriate, as somebody



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1 said, down Boundary Street out towards
2 Paris Island, but not in our Historic
3 District. Thank you.

4 MR. GIBSON: Thank you.

5 MS. MCKINNON-SMITH: Good evening.
6 My name is Jane Elizabeth
7 McKinnon-Smith. I live at 606
8 Carteret, and I am a renter, but I'm a
9 good renter. I want to live around
10 downtown, but I can't afford it. I'm a
11 widow that's raised 17 children. Yes,
12 I know that's record, but -- but I
13 worked with historic preservation in
14 the State of Georgia when they were
15 redoing downtown Macon and when they
16 were redoing downtown McDonough, and we
17 tried to do downtown Hampton, Georgia.
18 People that care about this, I --
19 can I ask you a question?

20 MR. GIBSON: You can ask me, I
21 don't know if I'm going to have the
22 answer.

23 MS. MCKINNON-SMITH: I'd like
24 there -- to be allowed to have a show
25 of hands who people are for this and



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1 who they're against it, because this
2 isn't about each of us, this is about
3 our community. And as a master level
4 social worker, this is a disaster for
5 this community, a disaster. And I've
6 done community planning, that was my
7 emphasis at the University of Georgia,
8 go Dawgs, and that was --

9 MR. GIBSON: I thought you were
10 trying to gain votes, not lose votes.

11 MS. MCKINNON-SMITH: Well, I live
12 here now. But, I mean --

13 MR. GIBSON: A lot of Clemson fans
14 in this room, just settle down.

15 MS. MCKINNON-SMITH: From my
16 experience and studying communities at
17 the University of Georgia, that was my
18 emphasis, not counseling, that the
19 places that went downhill, they did
20 what you're talking about. And we
21 don't want that to go here. Whether
22 I'm a renter or a homeowner, it doesn't
23 matter.

24 It's not about you and I, it's
25 about the community, and I think that's



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1 one thing that we're missing. It's not
2 an individual thing. The person that
3 proposes this, from what I know,
4 doesn't need any money, you know? So
5 who are we thinking about, the
6 community or the people that want to
7 make the money?

8 And I don't care if they have to
9 build two buildings. Go look at
10 Habersham, we've got a beautiful
11 community out there. They could have
12 built ugly buildings out there. But
13 we're talking about one downtown, and
14 thank you, Mr. Trask, for your
15 presentation because it made me a lot
16 more educated about it. That's my say.
17 Thank you very much.

18 MR. GIBSON: Thank you for your
19 time.

20 MS. MCKINNON-SMITH: Can I ask
21 who's for it, raise your hand?

22 MR. GIBSON: You can do whatever
23 you want to. Nobody up here is going
24 to show you how they're going to vote
25 before the --



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1 MS. MCKINNON-SMITH: Let me see
2 hands of people who don't -- there's
3 your community right there. That's all
4 I need to say. Thank you.

5 MR. GIBSON: Thank you for your
6 time.

7 All right. I don't want to feel
8 like we're cutting any -- here we go,
9 one more, at least.

10 MR. MOORE: Parker Moore, 310 New
11 Street. And want to thank you,
12 Mr. Chairman, for bringing up the most
13 important aspect of this proposal in
14 the Board's review, it's the standard
15 that applies.

16 This is described as a special
17 exception, and if you look at the
18 proposal, you look at the application
19 and you review the staff's report of
20 it, there's nothing exceptional about
21 this, and there certainly is nothing
22 especially exceptional about this.
23 This is a run of the mill apartment
24 building that's being proposed in an
25 area of incredible importance to the



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1 City, to this community, to this
2 downtown area, to the future of
3 Beaufort. And if this is allowed to go
4 through, it's going to severely
5 tarnish, if not destroyed that.

6 You know, the applicants'
7 representatives say -- says that this
8 will cost them a lot more money if they
9 need to design it in a way that would
10 meet the standard. So that's exactly
11 right because this standard is to
12 create a gold standard for what is
13 allowable as an exception to the Code,
14 and this doesn't meet it.

15 MR. GIBSON: Thank you for your
16 time.

17 MS. SUNDRLA: Good afternoon,
18 Mr. Chairman, and Board. My name is
19 Lise Sundrla and I'm with Historic
20 Beaufort Foundation. There have been a
21 number of eloquent speakers who have
22 stood up today and already shared a
23 good bit of information with you as
24 well as their personal emotional
25 feelings and concerns about this



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1 project.

2 Historic Beaufort Foundation took
3 a very educated look at this process,
4 recognizing that you have,
5 specifically, six criteria that need to
6 be addressed and answered favorably for
7 y'all to consider granting the special
8 exception.

9 We understand that right now, this
10 project is prohibited per the Beaufort
11 Code and that's why we're here today,
12 because they need a special exception
13 to even be considered for building this
14 project within the district. And it is
15 the onus, the burden is on that
16 applicant to be able to prove to you
17 that this project is unique and
18 extraordinary and worthy of that gold
19 standard, as was just shared, in order
20 to be granted that special exception.

21 And, Mr. Gibson, I think you're
22 exactly right in that this is a
23 privilege, this is not something where
24 somebody is entitled to get that
25 special exception. Important to note



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1 today, this project, as Mr. Trask had
2 said, is not the one that was viewed on
3 February 10th and approved by the
4 Historic District Review Board for
5 preliminary conceptual approval, it is
6 a totally different project.

7 And I was wondering do we have the
8 mechanism to be able to do an overhead,
9 because I'd like to show you --

10 MR. GIBSON: You'd have to ask
11 Mr. Frazier there, I think he knows the
12 technology here better than I do
13 about --

14 MS. SUNDRLA: Is there an overhead
15 connection with this?

16 MR. GIBSON: Of the
17 presentation -- of the -- can we pull
18 up that page of the application,
19 though, and put it on the screen so
20 that people can see it?

21 MS. SUNDRLA: That shows -- yeah,
22 those two. Okay. Great.

23 MR. GIBSON: Thank you.

24 MS. SUNDRLA: Because I think this
25 will illustrate what Graham spoke about



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1 as well as what several other people
2 have asked about as well, too. With
3 the project, the current project that
4 is before you today, you are seeing a
5 very entirely different project than
6 the Historic District Review Board
7 approved.

8 That one. That's it. All right.
9 So this is the project that is before
10 the review board today, and what is
11 very obvious with this project -- and
12 we're looking from the view of Charles
13 Street and Port Republic Street -- is a
14 very prominent projecting tower.
15 You've got the shed roof structures,
16 you've got porches added both on the
17 Charles Street side as well as second
18 story, third story as well, and under
19 the approval that the Historic District
20 Review Board, the original preliminary
21 approval that they gave, they said that
22 preliminary approval also looked at
23 three dimensional form of that
24 building. And so it was giving
25 conceptual approval to the height,



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1 mass, scale, and three dimensional
2 form.

3 Then will you show us the building
4 that they approved? No, but -- well,
5 you can't really see it. I need you to
6 pull up the big one of it.

7 MR. FRAZIER: Where it says
8 previous submittal, is that the one?

9 MS. SUNDRLA: If you could zoom
10 into the one at the top.

11 MR. FRAZIER: We'll see if I can.

12 MS. SUNDRLA: Because it is a
13 different building.

14 MR. GIBSON: That's a different
15 page, but --

16 MS. SUNDRLA: That's a different
17 page.

18 MR. FRAZIER: It is. Hold on one
19 second.

20 MR. GIBSON: That's fine.

21 MS. SUNDRLA: You're doing good.

22 MR. FRAZIER: This is --

23 MS. SUNDRLA: It's the one right
24 above there. There we go, that one.

25 MR. GIBSON: Okay?



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1 MS. SUNDRLA: Yeah. Can you --
2 can everybody see that?

3 MR. GIBSON: Yeah.

4 MS. SUNDRLA: So just as Mr. Trask
5 pointed out, the Charles Street side
6 has been completely altered and
7 changed. And by doing that, we contend
8 that the height, mass, and scale of
9 this project has been completely
10 changed. And, therefore, that calls
11 into question, the Historic District
12 Review Board's approval back on
13 February 10, 2021.

14 So we then also call into question
15 the ability for the ZBOA to review this
16 today because you're reviewing a
17 project that's totally different than
18 what the review board gave conceptual
19 approval to.

20 The other piece that I wanted to
21 point out as well is that the -- we've
22 got a number of folks that are going to
23 be coming up today behind me to kind of
24 address different issues and parts of
25 our criteria, but importantly to what I



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1 wanted to share with you, the Historic
2 District Review Board, in granting
3 their preliminary approval, one, did
4 not take into consideration 3.5 pages
5 of 13 different conditions that were
6 placed on the property and on the
7 project in order for it to have been
8 granted approval.

9 It was contingent -- that approval
10 is contingent on those 3.5 pages of
11 conditions to be addressed. And I
12 think it's important for y'all to be
13 aware of that and to understand that as
14 you're going into these discussions
15 today so -- because you're kind of
16 going into them blind, if you look at
17 it that way.

18 The other piece is that the staff
19 report that gave the preliminary
20 approval -- presented the preliminary
21 approval also noted to you that --

22 MR. HUFFMAN: Mr. Chairman?

23 MR. GIBSON: Yes.

24 MR. HUFFMAN: I don't know if it's
25 appropriate for this body to look at a



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1 question that another committee, board
2 of the City has addressed without that
3 question having been sent to this
4 committee by the -- to this board by
5 that board or by staff including it.

6 MR. GIBSON: I understand. I
7 think that that's a fair point to make
8 and I think that we can hear out the --
9 what the public comment is and then we
10 can choose to address the things that
11 are appropriate to address. I mean,
12 just because somebody says that at a
13 podium doesn't mean that that's
14 necessarily going to be taken into
15 consideration.

16 People that -- they've got their
17 little bit of time that they have to
18 say what they want to say, and -- I
19 mean, we all want to move this along.
20 I appreciate that.

21 MS. SUNDRLA: Yeah.

22 MR. GIBSON: So if we can just
23 tighten this up as best we can, that
24 would be appreciated.

25 MS. SUNDRLA: Yep, I'm happy --



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1 MR. GIBSON: And what the HRB does
2 is their business and their -- and it's
3 not necessarily -- not necessarily, but
4 not impossibly involve our discussion
5 as well.

6 MS. SUNDRLA: Yeah. I just think
7 it's important that you're aware and
8 have the fully informed information as
9 you make your decision.

10 MR. GIBSON: Thank you. Right.

11 MS. SUNDRLA: One thing to -- that
12 I'll end with, and then Grace is going
13 to come up to continue with our
14 discussion, is that within the staff
15 response to the six criteria that you
16 have, Mr. Frazier noted that the
17 preliminary conceptual approval had
18 been getting -- given, so therefore, it
19 met Criteria No. 2, and we actually
20 contend that it didn't and that y'all
21 don't need to accept that as support
22 for Criteria No. 2 because we feel that
23 it did not meet it as y'all are not
24 looking at the actual design that was
25 approved on February 10th.



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1 MR. GIBSON: Okay. Thank you for
2 your time.

3 MS. SUNDRLA: Thank you very much.

4 MR. GIBSON: I appreciate it.

5 MS. GRACE: Evening, I'm here to
6 put a little bit of meat on the bones
7 for what Lise was talking about and we
8 do want to keep it to the
9 technicalities.

10 MR. GIBSON: I'm sorry, can we
11 say -- I'm sorry, I know who you are so
12 I didn't think to ask you to state your
13 name and address, please.

14 MS. GRACE: Beth Grace, 509 North
15 Street.

16 MR. GIBSON: Thank you, Ms. Grace.

17 MS. GRACE: And I'm on the
18 Historic Beaufort Board. Sorry, I'm
19 losing my voice too.

20 But -- so we do want to keep our
21 comments to the technicalities that
22 you-all have to consider to approve
23 this, and one thing that, in my
24 reading, it said the ZBOA is tasked
25 with determining that there will be no



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1 significant impact upon residents or
2 businesses of the surrounding
3 properties or upon the general public.

4 And in this instance, it
5 encompasses a 304 acre historical
6 landmark district, which is very
7 unusual across America or one of the
8 very few. So it's extremely unique in
9 this district and we need to maintain
10 that so we can keep our landmark
11 district.

12 So in putting some of the meat on
13 the bones, we contend that there are
14 four of the six criteria that we have a
15 difference of opinion on. Criteria No.
16 2 is harmony of the proposed site plan,
17 circulation plan, and schematic
18 architectural designs with the
19 character of the surrounding area.

20 You've seen pictures, you can see,
21 but these are especially -- I wish we
22 had an overhead, but if you look at
23 what's existing now from Charles Street
24 and Port Republic Street, it's a lot
25 different in the existing area than



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1 you're even getting from this right
2 here because that shows greatly wide
3 boulevards. This is a little tiny one
4 way street.

5 So the reference -- first
6 reference is the Beaufort Preservation
7 Manual, page 41 and 46 in Chapter 3, is
8 new construction. New construction in
9 Beaufort must go beyond the aspect of
10 form follows function and blend
11 harmoniously with the historic fabric
12 of the town. All these references are
13 to the guidelines for the City.

14 The next one is Chapter 3 and the
15 Beaufort Preservation Manual, page 41
16 and 46, new construction. No building
17 is so insulated from its surroundings
18 as to avoid an impact on the town
19 scape.

20 Then the Beaufort Code contextual
21 design guidelines, 4.3.2.C, new
22 construction should complement the
23 massing of neighboring buildings by
24 utilizing roof forms, architectural
25 trim, differentiation of facade planes,



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1 and a relationship to facades, siding,
2 walls, voids such as windows or alleys
3 or door openings that are consistent
4 with the patterns established in the
5 neighboring buildings.

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

15 So our concerns with this one
16 right here are that there are two
17 significant historical properties
18 surrounding this. You've got the
19 Elliott House and you've got The
20 Cuthbert House. Both of these are
21 gorgeous old homes that have been
22 maintained over the years, and this
23 building is not in keeping in harmony
24 and compatibility with that historic
25 character.



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1 In section 4.5.10, the Beaufort
2 Code, large footprint building. In the
3 T4 and T5 transit zones, large
4 footprint buildings shall be integrated
5 into the streetscape. So it must -- I
6 mean, that's according to the
7 guidelines for the City.

8 4.3.2.B is rhythm and development
9 on the street. Monolithic massing that
10 disrupts the predominant building
11 pattern of the neighborhood and
12 corridor is strongly discouraged. At a
13 height of 40 feet, the proposed
14 building will tower above the adjacent
15 structures running Port Republic and
16 Bay Street. It'll be visible from Bay
17 Street, Charles Street, and Port
18 Republic Street. It will be the
19 dominant feature.

20 So this shows you, in the little
21 drawings which we've passed out to you
22 all so you all can follow if you need
23 to. So we don't think this building is
24 of an appropriate mass and scale.

25 Criteria No. 4, general conformity



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1 of the proposed use and designs with
2 the City's Civic Master Plan,
3 Comprehensive Plan, and many other
4 plans officially adopted by the City.
5 So that's a requirement, that they must
6 meet all those standards.

7 Beaufort Code 4.3.2.A, conformity
8 with the Civic Master Plan. The Civic
9 Master Plan provides site specific
10 guidance for many parcels within the
11 City. In instances where the Civic
12 Master Plan provides guidance for
13 building and site design standards on a
14 particular parcel, development
15 applications on the parcel should meet
16 the general intent of such guidance to
17 the extent practicable.

18 Page 51 of the Civic Master Plan,
19 Section 3.3 specifically deals with
20 Port Republic Street, so you all have
21 seen those drawings. The Civic Master
22 Plan proposes infill commercial
23 development along Port Republic Street
24 to extend the shop front environment of
25 Bay Street through town. The



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1 conceptual illustration shown above in
2 the Civic Master Plan envisions
3 intimate scale development that would
4 slow traffic speeds and better serve
5 the retail character. So that is in
6 the Civic Master Plan, it shows the
7 picture of what they'd like you to do.

8 Civic Master Plan, Section 3.2,
9 page 51. Any historic fabric can be
10 preserved and restored alongside
11 sensitive infill. And we know this
12 developer can do sensitive infill --
13 I'll give you these.

14 MR. GIBSON: Beth, we're getting
15 close, Sweetie.

16 MS. GRACE: Pardon me?

17 MR. GIBSON: I said are we getting
18 close here?

19 MS. GRACE: Getting close.

20 MR. GIBSON: Okay. All right.

21 MS. GRACE: Okay. So, the
22 conceptual illustration shown above is
23 not in -- sensitive infill. Section
24 3.2, Civic Master Plan, page 51. Any
25 historic fabric can be preserved and



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1 restored along sensitive infill and
2 redeveloped outmoded noncontributing
3 structures -- which we would even take
4 exception to the noncontributing
5 because it's a 75 year old building and
6 it could be recategorized -- but it
7 must fit the area's architectural
8 context. That's quote/unquote.

9 The applicant has shown that he
10 knows how to design and build, as I've
11 shown you those pictures. I have many
12 other references here so give me what I
13 do -- for, you know, the convenience of
14 time, your time and everybody else's,
15 is please look over these before you
16 make -- just do a run through because
17 there are -- it's one regulation after
18 another that's supposed to guide what
19 you are doing.

20 MR. GIBSON: Right.

21 MS. GRACE: So the proposed site
22 is directly adjacent to really
23 prominent historic buildings. The
24 whole core downtown is of an intimate
25 scale so that when you come to



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1 Beaufort, you know you're in Beaufort,
2 and nobody has moved here or stayed
3 here if they want modern, generic
4 looking apartment buildings or other
5 buildings, they want it scaled to the
6 context of Beaufort's unique character.

7 And so we're asking you today to
8 deny the special exception.

9 MR. GIBSON: Great. Thank you for
10 your time.

11 MR. VANCE: Hi, I'm Wayne Vance, I
12 live at 2209 Pigeon Point Road in
13 Beaufort and I'm the chairman of the
14 Board of Trustees for the Historic
15 Beaufort Foundation. I want to talk
16 just for a moment about parking and
17 about need for traffic analysis.

18 We know that the parking problem
19 in Beaufort has been going on for a
20 long time, decades. Someone I know,
21 they told me, we were here 40 or 50
22 years ago talking about the parking
23 problems that we have, and that's
24 resulted in the Beaufort Code and the
25 zoning rules having stringent



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1 requirements for parking spaces for
2 proposed residential and commercial
3 spaces.

4 For this three story, 19 apartment
5 building with commercial spaces on the
6 bottom floor, however, zero parking has
7 been provided. There's no provision
8 for parking. I believe the Code does
9 require parking on site for this
10 building. The applicant has said that
11 they will provide parking off-site,
12 down the road a bit at the Port
13 Republic parking lot.

14 That's already a parking lot. If
15 you move 27 parking spaces into that
16 parking lot, you lose 27 parking
17 spaces. That's a net loss of parking
18 spaces, not a gain of parking spaces to
19 be associated with this building.

20 Regarding the need for traffic
21 impact analysis, the applicant has
22 provided an estimate from an
23 engineering firm in Charlotte that's
24 based on the land -- land case use
25 formula -- land use case formula, and



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1 I've suggested that the traffic
2 generated by the proposed apartment
3 building at peak hours will be 30 trips
4 a day. That's below the 50 trip
5 threshold cited in the Beaufort Code
6 that would require formal traffic
7 impact analysis. I think that
8 prediction is insufficient on such an
9 important issue.

10 I think It's a firm rule that I've
11 learned from experiences working with
12 engineering firms and their reports and
13 their analyses, that the application of
14 a generic formula of the local
15 conditions is almost always wrong. And
16 I think the formulaic estimate from
17 Charlotte is wrong.

18 It doesn't capture what really
19 will be going on in our case. These
20 parking spaces that have been provided,
21 so called, are not on site, there will
22 be more trips than are in that little
23 formulaic presentation than the 30, I
24 think it said, daily trips during the
25 peak hours. Those cars are going to be



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1 moving back and forth in the streets of
2 Beaufort, back and forth to the
3 apartment building.

4 And finally, I know that things
5 that are going to be proposed -- or
6 things that have been proposed, parking
7 garage, hotel, are not a subject of
8 this hearing, but nonetheless, I think
9 in looking at whether you're going to
10 have a traffic analysis, a serious
11 traffic analysis, you've got to think
12 in the long view of what's going to be
13 going on here.

14 Should these things -- should
15 these other things be built, there are
16 going to be traffic movements in and
17 out of 496 spaces in the parking
18 garage. There's going to be traffic
19 movement between the parking garage and
20 the hotel, there's going to be traffic
21 movement possibly between the
22 apartments and the traffic in the
23 parking garage, and it's going to --
24 it's going to create a big traffic
25 backlogs.



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1 I can't imagine. I mean, think of
2 the traffic problems that are going to
3 be worsened by the garage and the
4 hotel, the things that may happen --

5 MR. GIBSON: I don't mean to cut
6 you off, but we're trying to keep this
7 tight. The garage and the hotel are
8 not on the agenda tonight.

9 MR. VANCE: I agree.

10 MR. GIBSON: Okay. So
11 just stay --

12 MR. VANCE: Let me -- let me just.

13 MR. GIBSON: -- focused on the
14 stuff --

15 MR. VANCE: I'm good with that.

16 MR. GIBSON: Great. Thank you.

17 MR. VANCE: Okay. Without saying
18 those in particular, I think we need to
19 think forward with what's going to
20 happen here. The congested traffic
21 moving on the narrow Craven and Port
22 Republic Streets and the even narrower
23 and one way West and Scott Streets is
24 going to be horrible. I think you need
25 to get ahead of it and look at -- look



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1 at it and a serious analysis.

2 There should be a provision for
3 parking in this proposed apartment
4 building and a formal traffic impact
5 analysis should be undertaken. The 50
6 trip threshold in the Charlotte
7 Engineering study doesn't preclude the
8 zoning boards from requiring a traffic
9 analysis, and the present and
10 foreseeable conditions are in --
11 (unintelligible) -- and depth.

12 I think this application must be
13 denied as a result of the parking
14 shortcomings and the traffic impact.
15 Thank you.

16 MR. GIBSON: Thank you for your
17 time, I appreciate it.

18 MS. MURRAY: Good evening.

19 MR. GIBSON: Good evening.

20 MS. MURRAY: My name is Terry
21 Murray and I live at 100 Grayson
22 Street, and you'll be very pleased to
23 hear that I am the last speaker
24 representing Historic Beaufort
25 Foundation and so I'll try to make this



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1 very brief.

2 These have been really hard acts
3 to follow with some great comments, but
4 I wanted to summarize five major points
5 that we think we will help you in your
6 decision making and your discussion and
7 in reaching the best decision.

8 First, I want to reiterate what
9 the chairman said, the zoning Code --
10 you didn't say this, I'm sorry. I'm
11 paraphrasing.

12 MR. GIBSON: I'll correct you.

13 MS. MURRAY: Okay. Thank you.
14 Thank you. I'm sure you will.

15 The zoning code prohibits the
16 building -- this building in the
17 Historic District because of its size
18 and I think that's very important.
19 Very important. The applicant does not
20 have a right to build it. The Code
21 allows a building of this size only
22 through special exception, and that is
23 because it should occur in the Historic
24 District only under very special
25 circumstances, and these situations



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1 should be few and far between and only
2 if there is no alternative site. And
3 we believe that we have shown that
4 there are alternative sites for this
5 kind of building.

6 Second, the project, regardless of
7 what you've been told, is not
8 compatible with the adopted Beaufort
9 Preservation Manual or the Civic Master
10 Plan. Beth went through, and in your
11 handout, you'll see many, many examples
12 of incompatibilities. But I want to
13 look again just at the Civic Master
14 Plan, the vision for Port Republic and
15 Charles Street.

16 This is in your document. This is
17 the illustration of the plan's vision
18 for that corner, that's what's being
19 proposed. I see a real big difference
20 between this vision in the master plan
21 and that. And what is important to me
22 about this is that the Civic Master
23 Plan was created after 18 months of
24 angst and angry debate and
25 participation and involvement.



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1 And at the end, many, many changes
2 were made and there was, I feel like, a
3 covenant between the City Council and
4 the public, that these kinds of
5 illustrations in the Civic Master Plan
6 were going to be the basis for future
7 decisions in the Historic District.

8 So like it or not, I think it's
9 fallen to you tonight to keep that
10 faith with the public, to let us know
11 that you are, in fact, going to use
12 this as the basis for decision making.
13 This is incompatible with that.

14 Another point I want to make, the
15 staff report cites a part of the Civic
16 Master Plan and says that it actually
17 pertains that -- it says it is
18 compatible, but that section actually
19 pertains to the encouragement of
20 commercial activities outside the core
21 district, it doesn't pertain to the
22 core at all.

23 In fact, that chapter, number
24 three, begins with what they say is the
25 guiding principle, and that is, quote,



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1 "To preserve and protect the historic
2 fabric of the community and the
3 character of the National Historic
4 Landmark District." That section was
5 taken very much out of context.

6 Number three, the parking
7 situation has not been adequately
8 addressed. I won't go into some of the
9 other details I had here because Wayne
10 went over that. But I wanted to point
11 out that under Criteria 3, you have the
12 right to require a real traffic impact
13 analysis. It's called a TIA. It's not
14 a trip generation report, which is what
15 you have, which, in fact, was very
16 flawed. And I think that it would be
17 very difficult for you to make a
18 decision on this project without
19 requesting that TIA.

20 Fourth, you are not bound by any
21 conceptual decision by the Historic
22 Review Board. You have the authority
23 and, in fact, the responsibility to
24 build -- to make your own decisions
25 based on those criteria.



1 And finally, we think that your
2 decision will be made easier tonight if
3 you simply focus on those six criteria.
4 If you apply them to the building and
5 ask yourself if the applicant has
6 satisfied each of those, we think we've
7 shown, through our presentations and
8 the written material, that the building
9 does not meet four of those criteria.

10 Number one, which is compatibility
11 with existing land uses. Number two,
12 harmony of the proposed site plan,
13 circulation plan, and schematic
14 architectural design, underlying
15 harmony. Three, the likely impact on
16 public infrastructure and services such
17 as parking. And four, conformity with
18 the City's adopted plans. And that's
19 the adopted plans of the Civic Master
20 Plan and the Beaufort Preservation
21 Manual.

22 I want to point out, in case
23 anyone has any question, the Beaufort
24 Preservation Manual has equal standing
25 to the Civic Master Plan, it's an



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1 adopted plan for guidance. So I thank
2 you for your attention, and as someone
3 else, I think Yancey or someone said,
4 now the future of the Historic Landmark
5 District is in your hands. Thank you.

6 MR. GIBSON: Thank you.

7 MS. HELES: My name is Anne Heles,
8 I'm a retired educator, Beaufort County
9 Schools. I live in Port Royal, but for
10 the last 11 years, I have had the honor
11 of working downtown Beaufort.

12 I had no idea the number of people
13 from all over the world and all over
14 the United States who visit Beaufort.
15 They visit Beaufort for its quaintness.
16 Some come as intended, they were
17 coming -- intended to come to Beaufort,
18 some find us coming from Charleston to
19 Savannah, and when they get here, they
20 are amazed and so happy to see a small
21 town that's very functional and has
22 lovely shops downtown to accommodate
23 their needs.

24 I just would like for us not to
25 become another Charleston. I have



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1 lived here three-fourths of my life and
2 I would like to continue to keep the
3 charm of Beaufort, especially the
4 downtown area. And if you don't think
5 there's a lot of traffic already in
6 Beaufort, then you come to Bay Street
7 at 3:30 any afternoon and you watch the
8 traffic coming down Bay, coming down
9 Carteret from Boundary. It is
10 astounding.

11 This building will add such an
12 additional burden with traffic. Thank
13 you for what you're doing and please
14 keep Beaufort small and charming and
15 not let us become another Charleston.

16 MR. GIBSON: Thank you.

17 MS. GRAY: Deborah Gray, 1300
18 Barnwell Bluff. One of the things
19 that's really struck me about this
20 building is how much it looks like the
21 dorms that 303 Associates built on
22 Boundary Street, and if you have any
23 trouble in terms of conceptualizing
24 what this will look like if it's built,
25 just park your car over in Newcastle



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1 Square and walk around that. Do we
2 want to be a cookie cutter place? I
3 see the entire majority here says no,
4 we don't want that sort of thing.

5 The second point that I want to
6 make is that even though we're only
7 addressing this building, technically,
8 today, it has to be looked in
9 conjunction with the other projects,
10 that downtown will be drastically
11 changed if this goes through. And what
12 we're facing is an issue in terms of
13 gentrification, in terms of increasing
14 economic disparities, in terms of
15 racial change.

16 If you talk to African Americans
17 who --

18 MR. GIBSON: Let me interrupt you
19 just real quickly.

20 MS. GRAY: Yes.

21 MR. GIBSON: Is everything okay
22 over there? Okay. I just want to make
23 sure that everybody is all right
24 because we've got people back here who
25 can help if anybody needs any help.



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1 You're good? Okay. All right.

2 I'm sorry. Go ahead.

3 MS. GRAY: Okay. If you talk to
4 African Americans who have grown up
5 here, they talk about relatives that
6 had thriving businesses downtown,
7 that's gone, you don't see that. There
8 are other people who have lived here a
9 good number of years who have closed
10 their business doors downtown because
11 they can't afford the rents.

12 And if you look at projects being
13 done on this scale, it's only going to
14 increase that particular direction. I
15 don't think that's the direction that
16 Beaufort wants to go into. As many
17 people have talked about, we came here
18 or we grew up here and we remained here
19 because we love the small town vibe.
20 My father was a banker. I come from
21 Massachusetts and I can remember him
22 getting frustrated in the town he grew
23 up in, saying people didn't want
24 progress.

25 Well, he ended up in Worcester,



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1 which is Massachusetts' second largest
2 city, and they came up with the idea of
3 building an interior indoor mall. And
4 this was seen as wonderful, it was
5 going to economically revitalize
6 Worcester. Well, what happened in
7 order to do it, they destroyed a viable
8 African American community.

9 Then people flocked to the mall.
10 You know, so nice in Massachusetts in
11 the middle of winter, you don't have to
12 be out in those icy snowy streets to
13 shop, and downtown died. One business
14 after another went under. So the
15 vision was great.

16 MR. GIBSON: I want everybody --

17 MS. GRAY: I'm wrapping up right
18 now.

19 MR. GIBSON: I just want everybody
20 to be able to hear you on this. We're
21 just making sure that everybody's okay
22 down here. I just want to make sure
23 that if somebody needs some help here,
24 I just don't want it to be a
25 distraction. Frankly, I'm --



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1 MS. GRAY: Okay. Anyhow, a vision
2 can be great. I don't make Dick
3 Stewart into a bad guy because of his
4 vision, but no one individual should be
5 able to transform a town in the way
6 that this is being projected.

7 And just remember that visions
8 don't always turn out the way you think
9 they will. Thank you.

10 MR. GIBSON: Great. Thank you.

11 Let's just pause for a second to
12 make sure that everybody's okay here.
13 Do we need to do anything -- need to
14 get some assistance? Okay. Do you
15 need anything? Do you need some water
16 or anything?

17 UNKNOWN MALE SPEAKER: I'm fine.

18 MR. GIBSON: Okay. All right. We
19 can wait a minute. We've waited
20 several so far. I just don't want it
21 to -- thank you for your patience,
22 everybody.

23 Would you like to proceed or would
24 you like -- we've got people here who
25 can help you if you'd like to have some



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1 assistance to get to your car.

2 UNKNOWN MALE SPEAKER: I'm fine.

3 MR. GIBSON: Are you sure? Okay.

4 I don't want to run you off, I just
5 want to make sure that you're in good
6 shape. Okay. Okay. Back on track.

7 UNIDENTIFIED FEMALE SPEAKER: I
8 promise I'll be brief. If I didn't say
9 anything, then I think would be upset
10 so I'm going to just be very brief.

11 MR. GIBSON: Thank you.

12 UNIDENTIFIED FEMALE SPEAKER: But
13 my husband and I found Beaufort five
14 years ago by mistake, we accidentally
15 ended up here. We went to Hilton Head
16 to look at that and we decided that it
17 was not the place for us and when we
18 drove into Beaufort, we just knew right
19 away, this is where we wanted to live.

20 And I had no idea at that time
21 that my family had actually lived here
22 300 years ago. But I feel like I've
23 come full circle and this is my home
24 and I just wanted to say it's so
25 special here. I mean, I've lived all



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1 over the country, as many of these
2 people have, and it is very, very
3 special here and we're happy, happy to
4 be living here.

5 I just -- I needed to say that.
6 We love it the way it is, but I know
7 progress is important, but this isn't
8 the way to do it, just, in my opinion.

9 MR. GIBSON: Thank you for coming
10 and sharing your opinion.

11 Okay. Anybody else?

12 (No verbal response.)

13 MR. GIBSON: Okay. Well, at this
14 point, if that's the end of the public
15 discussion, then I think that we
16 should -- will open it up for
17 discussion amongst the board.

18 I do want to say one thing. I
19 kind of stuck my foot in my mouth
20 earlier and I'm a little embarrassed
21 about it earlier. I have a good --
22 I've known Beth Gray for a long time in
23 my life, and at a certain moment when I
24 was asking her to wrap it up, I
25 referred to her as Sweetie, which is



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1 probably an inappropriate thing to say
2 in a public meeting. But I slipped
3 back into about third grade, and I
4 apologize for that. That's probably --
5 that's probably not the right
6 terminology to use when somebody's
7 addressing a city board. So I
8 apologize for that, Ms. Gray.

9 So moving forward. Okay. So
10 we've heard the City, we've heard the
11 applicants, and we've heard the public
12 discussion. So, well, where -- how do
13 we want to start this discussion?

14 Tim, do you have thoughts on that
15 end?

16 MR. WOOD: I just feel that the
17 public has very good valid points, and
18 I am leaning towards their assessment
19 of the condition.

20 MR. GIBSON: And what would those
21 conditions be, do you mean?

22 MR. WOOD: Well, I do think that
23 the --

24 MR. GIBSON: Can you turn your
25 microphone toward yourself?



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1 MR. WOOD: I do -- I do feel that
2 it's the building mass, I don't -- the
3 problem I have is that even though I
4 agree with the conditions met that was
5 presented by the public, I still have a
6 problem that the item before us is
7 simply the elevation on Port Republic
8 Street.

9 So I am just going to stick with
10 the fact that I have, I -- I am more in
11 alignment with what the public
12 presented with, especially what the
13 Historic Board put forth about the
14 special -- the conditions for special
15 exception.

16 MR. GIBSON: Marc? We'll just go
17 across.

18 MR. SVILAND: Right. I think the
19 gist of what we're hearing is the
20 height and scale of the building,
21 because this current where the proposed
22 building takes up no more of a
23 footprint than the current building.

24 MR. GIBSON: Right.

25 MR. SVILAND: But nothing there



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1 has changed at all, and it's just the
2 height and scale of the building that
3 the public is worried about, and
4 that's -- that's kind of where I'm at.
5 The parking, the parking concerns me.
6 I think 400 feet away, walking, is --

7 MR. GIBSON: Yeah, I have a --

8 MR. SVILAND: -- not a huge deal,
9 but I -- you know, when I first went
10 through everything, one of my first
11 thoughts was, there is -- doesn't seem
12 like there's good parking provided.

13 MR. GIBSON: Well, and --

14 MR. SVILAND: There's a parking
15 lot --

16 MR. GIBSON: And I think that's
17 something that came into my mind too.
18 I think that there is that -- I mean,
19 my instinct was to -- today, okay, so
20 you build an apartment building with --
21 between 15 and 19, I can't remember
22 what the final number is. So 27
23 parking spaces, I think is what the --

24 MR. SVILAND: Correct.

25 MR. GIBSON: -- they're looking



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1 at, and I look at -- and knowing that
2 area fairly well, you know, I know
3 what's going to happen every night, is
4 that the people who get a chance to
5 park when they come home from work
6 close to the house in a parking metered
7 space where the meter is not active, is
8 going to take that space instead of
9 parking in their official space that's
10 400 feet away.

11 Plus they're going to be unloading
12 groceries or doing whatever, just
13 don't -- quite frankly, just don't want
14 to deal with walking that far if they
15 don't have to. So it is going to have
16 an impact on the public parking in that
17 area overnight in that area where we --
18 where the restaurants and other retail
19 businesses.

20 Restaurants and bars rely on
21 people being able to park downtown.
22 It's going to be taking up spaces
23 just -- you know, you can do all the
24 traffic studies you want to, I can tell
25 you, people are going to park closer



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1 than -- closer than -- as close as they
2 can. So I think -- I think that it
3 would have an impact. It seems like it
4 would have an impact on the parking,
5 you know, whether intended or not.

6 So anyway, keep going down here.
7 Kevin?

8 MR. BLANK: Sure. Thank you all
9 for everyone's comments, the -- what
10 I'd like to say is, you know, the
11 Zoning Board is here to uphold, you
12 know, the City Code, and I think we're
13 discussing yet another project that
14 doesn't have final plans in place. So
15 that's what I'd like to discuss, as a
16 Board, is we truly don't know what's
17 going there so it's harder for us to
18 make a decision.

19 MR. GIBSON: Right. Well, it
20 has -- I mean, it does have preliminary
21 approval from the HRB, right, but
22 changes have been made. But I think
23 that, also, that that is part of --
24 part of the process of -- that's why
25 the HRB has more than one meeting, you



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1 know, so that at preliminary approval,
2 so it's like, okay, big picture, we
3 think we're okay with it, but we've got
4 some changes you need to make, and then
5 you make the changes and you come back
6 to them.

7 With the -- just procedurally, I
8 think that's generally how it's worked
9 in the past. If Mr. Frazier thinks
10 that for -- the City thinks that that
11 feels any -- I mean, that is generally
12 how the HRB typically works; is that
13 correct?

14 Or let me ask you this. Can I ask
15 you a direct question?

16 MR. FRAZIER: Sure.

17 MR. GIBSON: The. This -- the
18 original plan, the previous was what
19 were -- the pictures -- the images
20 we've seen, the renderings from
21 previous submittal, that was the
22 original submission that went before
23 the HRB and I -- you can -- I don't
24 know this, so I'm asking this question.

25 So -- and then it got -- so the



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1 first thing, we want you to make these
2 changes?

3 MR. FRAZIER: Right.

4 MR. GIBSON: And so what we're
5 looking at now is their response to the
6 HRB saying we want you to make these
7 changes? The --

8 MR. FRAZIER: I believe the
9 renderings that have been presented to
10 us, anyway.

11 MR. GIBSON: The applicant seems
12 to have -- seems to have some knowledge
13 about this as well so I'd be interested
14 to hear on -- from either of you, if
15 you -- one at a time.

16 MR. NESTER: Thank you,
17 Mr. Chairman, Walter Nester, again, for
18 the applicant. And the changes were
19 specifically in response to the HRB
20 comments.

21 MR. GIBSON: I assumed as much. I
22 just wanted to clarify that.

23 MR. NESTER: So the allegation
24 that -- what's in your application is
25 different than what's on the screen.



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1 It's a true -- it's true, what's in --

2 MR. GIBSON: Right.

3 MR. NESTER: -- the application is
4 different, but it's different because
5 the HRB gave comments to the --

6 MR. GIBSON: Right. That's what I
7 was trying to get out there to --

8 MR. NESTER: -- applicant and the
9 applicant responded.

10 MR. GIBSON: -- the idea that
11 they're not just changing it
12 willy-nilly, they are in the midst of
13 going through the process with the HRB,
14 which they are still in the middle
15 of --

16 MR. NESTER: Yes, sir.

17 MR. GIBSON: -- right now that
18 they're the -- and the reason that they
19 don't have a letter -- a letter of
20 compliance is because the process is
21 not over with yet?

22 MR. NESTER: Yes, sir.

23 MR. GIBSON: They still have to
24 get final approval and then a letter of
25 compliance after that, after the final



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1 approval?

2 MR. NESTER: Right.

3 MR. GIBSON: So the reason --

4 MR. TRASK: I'm sorry to inter --

5 I'm sorry to interject. But you're
6 telling me that the HRB specifically
7 asked for their porches to be hung off
8 on Charles Street? It's been asserted
9 that the HRB --

10 MR. SVILAND: Excuse me, who's
11 talking, please?

12 MR. TRASK: Graham Trask.

13 MR. SVILAND: Okay. Thank you.

14 MR. TRASK: I just wanted to make
15 sure that we got this straight, you're
16 telling me that the HRB specifically
17 asked for porches to be hung off the
18 Cannon Building on Charles Street?
19 That's what's being asserted by the
20 applicant.

21 MR. GIBSON: I don't know that
22 that's -- the answer -- Mr Trask, I
23 don't know the answer to that question,
24 but we can certainly review that -- we
25 had -- you know, anybody can go review



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1 the minutes from that HRB meeting and
2 see what the design decisions that were
3 suggested and not suggested where.

4 I don't know what they did or did
5 not suggest, I was just imply -- I was
6 just trying to get to the idea that the
7 fact that we're looking at two
8 different things does not mean that
9 they are that -- that it has been
10 approved by the HRB, it means they've
11 given preliminary approval and -- and
12 I'm sure that there were some
13 preliminary suggestions to say these
14 are some changes we would like to make.

15 Now, I don't know if they said we
16 want porches or don't want porches,
17 they may have said, we want to break up
18 the front of these buildings in
19 different ways and show more -- show
20 more different -- more things to it or
21 not. But I don't know, I wasn't party
22 to that meeting, I wasn't there. And
23 it's, quite frankly, not what's in
24 front of us tonight.

25 But it's not unusual that there



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1 are changes from one HRB meeting to the
2 next, which --

3 MR. TRASK: Right.

4 MR. GIBSON: -- is why there are
5 two meetings.

6 MR. TRASK: Okay. My assertion is
7 that what is in front of you, the
8 change, is not reflective of what the
9 HRB requested the changes to be. So
10 I'm --

11 MR. GIBSON: Okay. All right.

12 MR. FRAZIER: Let me make a couple
13 of quick points, if I may.

14 MR. GIBSON: Yes, please.

15 MR. FRAZIER: We -- it went for
16 conceptual approval. It received
17 conceptual approval subject to
18 conditions.

19 MR. GIBSON: Right.

20 MR. FRAZIER: What we do is we
21 provided -- we provide a letter to the
22 applicants saying, here, you receive
23 conceptual approval, here's the
24 conditions that you need to meet when
25 you come back for preliminary or



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1 preliminary final. We don't issue a
2 certificate of appropriateness for
3 conceptual approval. There's only one
4 issued and it's at the end of the
5 process with final approval.

6 MR. GIBSON: Right. Right.

7 MR. FRAZIER: I can't answer for
8 whether the changes that are made in
9 this are all a result of --

10 MR. GIBSON: Right.

11 MR. FRAZIER: -- responding to
12 those conditions.

13 MR. GIBSON: Right.

14 MR. FRAZIER: So -- so that's
15 where we stand right now.

16 MR. GIBSON: Okay. All right.
17 Thank you.

18 Who's next? Ken, question,
19 thoughts?

20 MR. HUFFMAN: The only issue
21 before this board tonight is whether
22 the applicant has met the six
23 conditions required to grant the
24 special exception. Anything else is
25 not before this board properly, and any



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1 action of any other board cannot be
2 taken into consideration, in my view,
3 in making our determination.

4 So when you look at the six
5 conditions, I could go through all six,
6 but in my opinion, looking at the
7 Milner Report, looking at the
8 submission of HBF, listening to the
9 comments of people on Facebook, the
10 people here, looking at both site
11 plans, it appears that the applicant
12 has met the six conditions.

13 Now, either through an artful
14 drafting of the Code or otherwise, this
15 is really not a large scale building.
16 It is not a Publix like the original
17 Publix on Lady's Island that was 27,000
18 square feet, this has a footprint of
19 9,100 square feet.

20 As I said, if it weren't for the
21 31 feet, it wouldn't even be here. It
22 is compatible with the existing
23 buildings in the area. Under the
24 Milner Report, the building that is
25 there now was not considered



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1 historically significant, so you're not
2 replacing a historically significant
3 building with an in -- with a
4 insignificant building, you're
5 replacing an insignificant building
6 with another structure.

7 I disagree that it's not in
8 harmony with the site plan with the
9 surrounding area. If you look at the
10 surrounding area, if you take into
11 consideration the properties from
12 Charles Street to Carteret Street,
13 building, while it may be larger than
14 some of them, it certainly is
15 aesthetically more pleasing than a lot
16 of them.

17 And I understand that that's --
18 aesthetic is in the eye of the
19 beholder. The impact on public
20 infrastructure, roads, parking
21 facilities, you're talking about 19
22 apartments. More than likely, the
23 people will be working, you're not --
24 hopefully not talking about 19
25 apartments that are going to be rented



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1 on a nightly basis.

2 There is a desperate need for park
3 for apartments in the central Beaufort
4 core. The occupancy rate of apartments
5 in Beaufort is well over 90 percent.
6 The average rents are well over \$1,000.
7 The effect on fire and police
8 protection for the commercial and the
9 apartments, to me, is going to be
10 minimal. Solid waste collection, I
11 hope they do a better job than they do
12 in my yard, but that's a different
13 story.

14 The conformity of the proposed use
15 and designs within the City's Master
16 Plan, well, if you look at the Master
17 Plan, the Master Plan specifically said
18 it has continued -- it is intended to
19 continue the economically positive
20 influence of historic preservation,
21 conservation, and revitalization of
22 contributing structures.

23 It's also to consider the careful
24 encouragement of infill of vacant sites
25 and redevelopment of noncontributing



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1 properties in a matter consistent with
2 its scale and character, which this
3 applicant does. The impact on public
4 and safety should be minimal. The
5 potential creation of noise, light,
6 fumes, dust, smoke, vibration, fire
7 hazard, or other injurious or obnoxious
8 impacts will be less than a -- than the
9 water festival is in ten days. And if
10 you live within a mile of waterfront
11 park, you know what I mean when the
12 concerts run at night.

13 So as I see it, this applicant has
14 met the burden for the special
15 exception.

16 MR. GIBSON: Okay. So the
17 contrary argument, for the sake of
18 being contrary, would be to ask, what
19 is it that the applicant is working
20 around other than the Code here? What
21 is it that is specific to this piece of
22 property that makes it different than
23 any other piece of property in downtown
24 Beaufort?

25 It's not like they're trying to



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1 save a grand, you know, oak tree or
2 there's a previous existing condition
3 where somebody else built too far back
4 in the setbacks and they need to get
5 into the setbacks. There's nothing
6 here that the applicant has brought to
7 it that says, this is a specific
8 special problem that we have here
9 because of things that we didn't do --
10 have anything to do with.

11 We're trying to deal with fixing a
12 problem of an existing piece of
13 property in designing it that they
14 could not have designed around and made
15 it compliant with the Code to start
16 with.

17 MR. HUFFMAN: Perhaps.

18 MR. GIBSON: I haven't heard -- I
19 haven't heard anything from the
20 applicant.

21 MR. HUFFMAN: While they're here.

22 MR. GIBSON: -- that says we're
23 stuck, we've got -- we need an
24 exception because of this. All I've
25 heard is, we need an exception because



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1 we want.

2 MR. HUFFMAN: The existing
3 building has these dimensions. He's
4 not building a bigger building than
5 what's there now.

6 MR. GIBSON: Well, it is bigger.

7 MR. HUFFMAN: It's not bigger in
8 terms of width on Port Republic.

9 MR. GIBSON: Yeah, I know the
10 footprint is the same. I mean, this
11 footprint --

12 MR. HUFFMAN: Footprints's the
13 same.

14 MR. GIBSON: -- zero setbacks on
15 it, so it can't be any bigger than it
16 is right now.

17 MR. HUFFMAN: Right.

18 MR. GIBSON: No building could be
19 bigger than the one that's on the
20 footprint.

21 MR. HUFFMAN: And according to the
22 Code, it has to have zero setbacks.

23 MR. GIBSON: Right. So -- but
24 what is it -- what is it that we're
25 working around here? I mean, normally



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1 when we have something that comes here,
2 it says, hey, we would really like to
3 build, you know, a house here, but if
4 we're going to build a house that's
5 going to have two bedrooms in it, we're
6 going to have to cut down this
7 beautiful oak tree or we're going to
8 have to deal with some existing
9 condition or we're right, you know, we
10 can't get far enough away from the
11 driveway because there's not enough
12 space because the other neighbors from
13 this existing house make the turn to
14 tight or blocks the -- whatever.

15 There's always something
16 previously there that we are -- that we
17 are resolving to say, you got stuck
18 with this situation and so you deserve
19 an exception because what you're doing
20 is with the spirit of trying to do the
21 right thing but there is this thing
22 there that's keeping you from doing.

23 And I can't figure out what the
24 thing is here that's keeping the --
25 keeping them from just designing a



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1 building that's compliant with the Code
2 other than the fact that they don't
3 want to.

4 MR. HUFFMAN: I'm certainly not
5 going to make an argument for the
6 developer. I'm not saying -- I mean,
7 if you look at the exception, these are
8 the six exceptions.

9 Now, arguably, this is
10 discretionary with the board. The
11 board can say yay or no --

12 MR. GIBSON: Actually, inarguably,
13 it's the decision, yeah.

14 MR. HUFFMAN: Inarguably, it's --
15 as per the Code. So I guess we have a
16 difference of opinion.

17 MR. GIBSON: Which is fine.
18 That's why they have five of us, not
19 one of us.

20 MR. HUFFMAN: And let's be clear,
21 I have lived in Beaufort for 25 years.
22 My wife's family came here in 1915, so
23 we're not talking -- I'm not somebody
24 that is not enamored of Beaufort. I
25 love Beaufort. But I also believe that



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1 the circumstances are that we have to
2 live with today.

3 If we -- if we were thinking, we
4 would have told Pat Conroy, don't write
5 a novel, and we would have told
6 Southern Living and Travel and Leisure
7 and all these other places, don't write
8 about Beaufort. Unfortunately, the
9 things that we love are the things that
10 are being -- bringing people here and I
11 just don't think that this is the kind
12 of project that's going to destroy what
13 we love so much. But that's my
14 opinion.

15 MR. GIBSON: Right. I appreciate
16 your opinion. I mean, I think that the
17 thing that we have to keep in mind is
18 what we're charged with doing here.
19 You know, about -- like, I could -- I
20 could go on and on about, you know --
21 about, you know, the places that I've
22 seen, like, Bluffton and Mt. Pleasant
23 that were adorable and charming in my
24 childhood and are not particularly
25 adorable and charming anymore.



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1 And I would hate to have -- but
2 having said that, that's not why I
3 would vote for this or against this.
4 That -- I mean, that is an aesthetic
5 concern of my own personal taste. The
6 thing that I can't get my head around
7 about this, from the beginning of it,
8 is what it -- I mean, why can't they
9 just make the building smaller? Can it
10 be 30 feet smaller and be compliant and
11 none of us have to deal with this
12 tonight?

13 I mean -- I mean, there is nothing
14 that -- there's no, like, obstacle
15 that's been put in the -- in front of
16 the developer to say you've got -- I
17 mean, it's not an exception, it's a
18 special exception. There has to be
19 something special in there that says
20 there's a problem here that you didn't
21 have anything to do with.

22 There's a -- there's a water main
23 that runs underneath the building and
24 you can't engineer your way around it
25 so we're going to let you do this



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1 because you got stuck with the
2 situation that you didn't ask for.

3 This is, we're going to knock
4 everything down, we're going to build
5 it the way we want to, we're going
6 to -- we're going to start with a blank
7 slate and we want to do it differently
8 than what the Code says we should do
9 with no explanation of why it needs to
10 be done other than we could make more
11 money by doing it this way or it would
12 be more profitable by doing it this way
13 or would be larger.

14 That's it. There's no
15 impelling -- or that I've heard, to me,
16 there's nothing that says, we're trying
17 to solve a problem here and we're
18 trying to work around it, it just says,
19 we want to do it because we own the
20 land and we just want to do it.

21 MR. HUFFMAN: Well, the reason
22 they're here is because the Code
23 requires they be here.

24 MR. GIBSON: Well, because they're
25 outside of the Code.



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1 MR. HUFFMAN: No. The Code says
2 if you build a building and it's more
3 than 100 feet long --

4 MR. GIBSON: Right.

5 MR. HUFFMAN: -- then you have to
6 meet the requirements, you have to get
7 a special exception --

8 MR. GIBSON: Sure. Right.

9 MR. HUFFMAN: -- if you're in the
10 Historic District.

11 MR. GIBSON: Right. So they could
12 build it 100 feet long, they could
13 be --

14 MR. HUFFMAN: I wish we had --

15 MR. GIBSON: -- compliant with
16 the, you know --

17 MR. HUFFMAN: I wish we had the
18 benefit that Congress does where they
19 have -- they have all the committee
20 reports when they draft the thing. You
21 have the history of it.

22 MR. GIBSON: Right.

23 MR. HUFFMAN: Unfortunately, we
24 don't have that.

25 MR. GIBSON: Right. Well, I mean,



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1 I haven't -- I haven't seen any
2 evidence of the -- of an attempt to
3 comply with the Code that then says
4 we -- these were the obstacles that we
5 came up against and that's -- and this
6 is how we've resolved it. It's just,
7 we want to build it 130 feet long so
8 we're going to build it. So that's
9 what -- that's our only ask, you know?

10 So I feel like we have some -- the
11 City wants to say something,
12 Mr. Frazier wants to say something.

13 MR. FRAZIER: All I want to do,
14 and this is just for clarity, and I
15 know you've chaired the board for a
16 long time, I know I'm saying something
17 to you that you already know.

18 But just a reminder, two types of
19 cases come before the ZBOA, a request
20 for variance or request for special
21 exception.

22 MR. GIBSON: Right.

23 MR. FRAZIER: When you're looking
24 at the criteria for variances, it's, a
25 variance may be granted by the ZBOA if



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1 it concludes that the strict
2 enforcement of any design and
3 performance standards set forth in this
4 Code would result in unnecessary
5 hardship to the applicant and by -- and
6 that by granting the variance, the
7 spirit of this Code will be observed,
8 public welfare and safety will not be
9 diminished, and substantial justice
10 will be done. That's a variance.

11 MR. GIBSON: Right.

12 MR. FRAZIER: And then you have a
13 different set of criteria for a special
14 exception.

15 MR. GIBSON: Right.

16 MR. FRAZIER: And it's described
17 as, the ZBOA may approve an application
18 for a special exception where it
19 reasonably determines that there will
20 be no significant negative impact upon
21 residents of surrounding properties or
22 upon the general public.

23 The ZBOA shall consider the
24 following criteria in its review.

25 MR. GIBSON: Right.



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1 MR. FRAZIER: And then it lists
2 out the six that we've already went
3 over.

4 MR. GIBSON: Right.

5 MR. FRAZIER: Okay.

6 MR. GIBSON: Okay. Thank you. I
7 feel like the applicant had something
8 they wanted to add to this discussion.

9 MR. NESTER: Yes. Thank you,
10 Mr. Chairman.

11 MR. GIBSON: Sure.

12 MR. NESTER: In building two
13 buildings, I was jumping on your
14 example of building two buildings.
15 We're talking about 33 -- talking about
16 33 feet.

17 MR. GIBSON: Right.

18 MR. NESTER: The applicant has
19 significantly revised the building many
20 times so I don't want you to think that
21 we're disingenuous standing here before
22 you asking for a special exception. We
23 believe that the building --

24 MR. GIBSON: I think you really
25 want one. I think you're being



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1 disingenuous.

2 MR. NESTER: Right. Well, right,
3 because all we have is the Code. I
4 mean, really --

5 MR. GIBSON: Right.

6 MR. NESTER: -- that's all we have
7 is the Code. So we have to look at the
8 Code and try to design a building,
9 design a project based on what's set
10 forth in the Code. And when we're --
11 and is it a better design to have a 133
12 feet building that replaces an existing
13 building that meets -- the meets the
14 character of the neighborhood and does
15 not harm the neighborhood? That's what
16 we believe that we put forward.

17 And if 33 feet makes a difference,
18 it puts us here, but we still think
19 that a building that's 133 feet long
20 works, and works in this kind of an
21 environment. And that's why we're
22 here.

23 And I'm trying to respond to your
24 statements, Mr. Chairman, about, I
25 haven't heard anything about why they



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1 want a building. We believe it's a
2 better design. We believe a building
3 like that does fulfill a need and we
4 believe that it's a better design.

5 MR. GIBSON: Did you have a -- did
6 you have a building design that
7 complied that you think this is better
8 than?

9 MR. NESTER: I don't know the
10 answer to that question.

11 MR. GIBSON: Do you think the
12 applicant knows the answer to that
13 question? Sorry. Take your time.

14 MS. WORRELL: It is designed to
15 look like two buildings now. It could,
16 technically, be constructed as two
17 buildings. You can see the
18 different -- the different forms, as
19 Mr. Frazier said in his staff report.
20 It was -- you know, the parking is
21 calculated under two different building
22 forms. So it is being constructed as
23 one building, but built to look like
24 two buildings. So could we put a
25 firewall down the middle? We could,



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1 and then it doesn't address the -- then
2 it addresses the length issue.

3 MR. GIBSON: And so then it
4 wouldn't -- it would be compliant with
5 the Code.

6 MS. WORRELL: Just add a firewall
7 down the middle.

8 MR. GIBSON: And why don't you do
9 that?

10 MS. WORRELL: Because we were
11 trying to work with the process that
12 was given to us. The firewall would
13 not change this form before you right
14 now.

15 MR. GIBSON: But it would solve
16 the problem of not needing -- I mean,
17 it would be compliant. What -- why
18 would you -- if you have the choice of
19 building something that's within the
20 Code and without the Code -- out of the
21 Code, what's the motivation for doing
22 it without -- outside the Code, that
23 you need a special exception for work
24 instead of doing it within the Code?

25 MS. WORRELL: We are trying to



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1 work within the Code and so --

2 MR. GIBSON: Well, if you were
3 working within the Code, we wouldn't be
4 here.

5 MR. WOOD: Josh, I'd like to
6 interject something. If there's more
7 than one building, one building becomes
8 an accessory building --

9 MR. GIBSON: Right.

10 MR. WOOD: -- and those are
11 restricted to two levels. That's one
12 of the answers to that. So I go back
13 to, you know, it's an interpretation.
14 At this point, it's an interpretation
15 of the conditions met and we either
16 accept what the City put forth as the
17 conditions or we don't.

18 MR. GIBSON: Right.

19 MR. WOOD: So let's move on.

20 MR. GIBSON: Okay.

21 MR. WOOD: You know?

22 MR. GIBSON: I mean, I just -- I
23 just don't want -- didn't want to cut
24 anybody off if anybody has -- anybody
25 else had any thoughts on here, on the



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1 board and wanted to talk about it
2 anymore or ask more questions.

3 MR. HUFFMAN: Quick question for
4 the applicant, what is the expected
5 cost for these apartments per month?

6 MR. SULLIVAN: That's a great
7 question, we don't know. As we get
8 through this process and after going
9 through the formal HRB process and get
10 the building approved, as you've seen
11 tonight, then we'll be able to go out
12 and actually get a real cost to build
13 it, which will determine what we will
14 need to seek for economic return.

15 Council Member Wood or Committee
16 Member, I apologize, I think the point
17 that you're making is the one that
18 we're trying to articulate, and that
19 this is based on the six conditions
20 being met. This is not a variance.
21 We're not asking for variance. We've
22 worked within the Code. We've worked
23 with an existing building.

24 Unfortunately, when the Code was
25 written, and it was written by very



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1 articulate individuals who are much
2 smarter than I am, and I think Yancey
3 said earlier, that in 2009, there was a
4 great debate. But unfortunately, the
5 one thing that could have perhaps been
6 overlooked, what did it -- it did not
7 contemplate existing structures such as
8 this one.

9 What happens if one of our
10 churches downtown gets knocked over in
11 a hurricane or catches on fire?
12 They're going to come to you and ask
13 for the same conditions to be met that
14 we're asking for tonight because they
15 have an existing structure which are
16 much larger than our buildings and in
17 the same exact district, so think about
18 that.

19 The Code just didn't contemplate
20 that. We're not asking for a variance,
21 Mr. Chairman, we are simply asking for
22 you to apply the six conditions which
23 we feel we have met. And it sounds
24 like we have met, and City staff
25 supports that and we support that



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1 recommendation. Thank you.

2 MR. GIBSON: Thank you. Okay.

3 Everybody got all their questions
4 answered? Anything they want to ask?

5 If nobody else wants to make a
6 motion, I'll make one and then we can
7 vote on that and then somebody can make
8 another motion after that.

9 I'd make a motion that the
10 application be denied as submitted.

11 All in favor of that, say aye.

12 Tim and me.

13 Okay. Did you get that record,
14 Josh Gibson and Tim?

15 Okay. All right. So that's where
16 we are right now, so what next?

17 MR. HUFFMAN: I make a motion the
18 application be approved.

19 MR. GIBSON: As submitted?

20 MR. HUFFMAN: As submitted.

21 MR. GIBSON: Okay. All right.

22 MR. BLANK: I second it.

23 MR. GIBSON: Okay. All in favor
24 of that. One, two, three. Okay. All
25 right. That resolves that.



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1 The application is passed as
2 submitted. Thank you.

3 Okay. We're going to do the
4 boring part?

5 MR. WOOD: Can we defer that?

6 MR. GIBSON: You want to defer it
7 again?

8 MR. WOOD: Are we allowed to?

9 (Discussion off the record.)

10 MR. GIBSON: What do want -- about
11 the -- can we talk about the
12 definition -- I think that the Chairman
13 and the Vice Chairman thing are not
14 that big of a deal. I know that with
15 the HRB, there were a lot of challenges
16 in figuring out what the roles of the
17 secretary were going to be and how we
18 were going to define that role.

19 How did they -- how did they end
20 up working that out? Do you -- can you
21 speak to that, please?

22 MR. PRICHARD: They decided that
23 one of the members would be the
24 secretary. The duties for keeping the
25 minutes and creating the agenda, staff



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1 will still do all that.

2 MR. GIBSON: Right.

3 MR. PRICHARD: But during the
4 meeting, one of the board members will
5 then keep the motion to -- you know,
6 record the motions and the votes and
7 then give that to staff to then write
8 up the minutes.

9 MR. GIBSON: Then it's just a
10 matter of record -- basically recording
11 the votes on a piece of paper, and
12 we'll keep a -- some sort of a printout
13 and we can record yes, yay, and nays on
14 that and just hand it over to
15 the staff, right?

16 MR. PRICHARD: Correct.

17 MR. WOOD: I thought that was
18 already the Chairmen's responsibility?
19 Isn't there a --

20 MR. PRICHARD: No, the --

21 MR. GIBSON: Not that's shown up.

22 MR. PRICHARD: The Chairman, it's
23 his responsibility to repeat the motion
24 and -- that's to be voted on after it's
25 been seconded.



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1 MR. WOOD: I just remember when I
2 was acting Chairman, before Josh,
3 that --

4 MR. GIBSON: No, we used to get --

5 MR. WOOD: -- we had to make out
6 those forms.

7 MR. GIBSON: Yeah, I know, we used
8 to get those. I know.

9 MR. PRICHARD: Yeah, I follow you.
10 Yeah, well, normally, it's the
11 secretary, but, I mean, any board can
12 decide how their officers are and what
13 their officers do.

14 MR. WOOD: I think it should still
15 be the Chairman's responsibility.

16 MR. GIBSON: Can one person hold
17 two offices, if that's all it -- I'm
18 serious. I mean, can you technically
19 be both the Chairman and the Secretary
20 or can we just say that we're going to
21 have a secretary in name only and that
22 will be the Chairman's responsibility?

23 MR. PRICHARD: Yeah, you could
24 just -- yeah, you could say the
25 Chairman is going to be responsible for



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1 recording the motions and --

2 MR. WOOD: I'm just teasing.

3 What's the big deal to -- you know, if
4 no one wants to be the secretary, I'll
5 be the secretary.

6 MR. GIBSON: Okay. Great. Who
7 wants to be Vice Chairman, then?

8 MR. SVILAND: I would like --

9 MR. GIBSON: I'll make a motion
10 for myself to be Chairman, for you to
11 be --

12 MR. SVILAND: Marc Sviland to be
13 Vice Chairman.

14 MR. GIBSON: -- for Marc to be
15 Vice Chairman and for Tim to be the
16 secretary.

17 MR. SVILAND: I'll second that
18 vote.

19 MR. GIBSON: Can I get a vote on
20 that motion, then? All in favor, say
21 aye.

22 (All aye.)

23 MR. GIBSON: Opposed?

24 (No verbal response.)

25 MR. GIBSON: Okay. Yeah, that was



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1 passed unanimously. The minutes,
2 election of officers, review of few
3 minutes, we did all that. I think
4 we're done with this meeting, then,
5 right? It needs a vote to adjourn --
6 so we're going to adjourn this meeting,
7 then, right now. Okay.

8 MR. SVILAND: Second that motion.

9 MR. GIBSON: Second that motion.

10 All in favor o adjournment, say
11 aye.

12 (All aye.)

13 MR. GIBSON: Everybody wants to go
14 home and have dinner with their family,
15 do that.

16 (Whereupon, the meeting
17 Was adjourned at
18 approximately 7:55 p.m.)

19

20

21

22

23

24

25



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C E R T I F I C A T E

STATE OF GEORGIA:

CHATHAM COUNTY:

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I further certify that I am not of counsel to
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Kyle J. Saniga, CCR
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ROA287

CITY OF BEAUFORT ZONING BOARD OF APPEALS

08/09/2021 - ZBOA MEETING

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Fax : (843) 800 8533

August 06, 2021

BY ELECTRONIC MAIL ONLY

William B. Harvey, III
City Attorney, City of Beaufort
Harvey & Battey, P.A.
P.O. Drawer 1107
Beaufort, S.C. 29901

Re: Zoning Board of Appeals Meeting, August 9, 2021: OBJECTION to 211 Charles Street application for a Special Exception

Dear Bill,

I am writing on behalf of my clients, West Street Farms, LLC, and Mix Farms, LLC to state their objection to the application to the Zoning Board of Appeals for a Special Exception per Section 4.5.10.B.5 to allow a building frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5-DC) in the Beaufort Historic District (HD) Overlay and located at 211 Charles Street, identified as District R120, Tax Map 4, Parcel 909.

The proposed building at 211 Charles has a front façade of over 132 feet which is 30% more than is allowed by right in the downtown historic district. The proposed building is 3 stories tall and, if approved, would replace a 1 story building currently located on the property. It would also become the single, largest building in downtown historic Beaufort at over 27,000 square feet.

In the T5-DC Transect zoning district, buildings are restricted to 100 feet building width at the frontage. (Beaufort Code 2.4.1(D)(3) adopted June 27, 2017). Infill buildings which have front facades (street facades) of longer than 100 linear feet must follow the Large Footprint building standards located in section 4.5.10 of the Beaufort City Code. These standards require that a special exception be granted by the Zoning Board of Appeals and that 75% of all parking must be accommodated on site.

The Beaufort City Code, the City's regulatory code, dictates in section 4.1.1 the Purpose of Building Design and Infill Standards to:

- A) Protect and enhance Beaufort's unique aesthetic character.
- B) Support high quality streets and public spaces
- C) Encourage architecture that blends harmoniously with the natural surroundings and neighboring development
- D) Safeguard property values and long-term economic assets

- E) Carefully preserve the character of Beaufort's National Historic Landmark District while permitting appropriate growth

The building at 211 Charles given its large size and its architecture that is incongruous with its neighbors, would not protect and enhance Beaufort's unique aesthetic character; it would not blend harmoniously with the natural surroundings and neighboring development; and it would potentially jeopardize Beaufort's National Historic Landmark District designation.

As you are aware, The National Parks Service in a May 10, 2021, email to the City of Beaufort expressed concerns about "potential threats to the historic character of the Beaufort National Historic Landmark District" over which the National Parks Service is the primary steward. The "potential threats" to which the National Parks Service is referring includes the large footprint building at 211 Charles Street.

Other potential threats are two additional large footprint buildings which 303 Associates is applying to the City to approve for downtown Beaufort. Granting a special exception on 211 Charles Street sets a dangerous precedent for the approval of these additional buildings. These additional buildings are:

- a) A 50,000 square foot 68+ room hotel on Port Republic Street on the Bay Street block between West and Scott Streets. A Publix grocery store is smaller in square footage terms than the proposed hotel. The front façade of the hotel is over 170 linear feet or 70% more than The Beaufort Code allows.
- b) A 150,000 square foot, 400+ car garage located one block off Bay Street between Charles and West Street. In square footage terms, the parking garage approaches the size of a Walmart. The garage has a 300 linear foot front façade which is 3 times more than The Beaufort Code allows.

Although 211 Charles has been to the former Historic District Review Board (HDRB), the City never informed the HDRB of 211 Charles' zoning issue nor its Large Footprint status. Additionally, City process dictates that all zoning items be addressed prior to submission to the HDRB. Nevertheless, the HDRB did provide conceptual approval of the then submitted architectural plans of 211 Charles. The HDRB, however, did not issue a certificate of appropriateness for 211 Charles. The certificate of appropriateness approves mass, scale, and height. Furthermore, since the original submission, the applicant has completely changed the architecture of 211 Charles and eliminated the clean lines of the Canon Building by hanging porches along its Charles Street façade.

The Beaufort Code outlines that "The ZBOA may approve an application for a Special Exception where it reasonably determines that there will be no significant negative impact upon residents of surrounding property or upon the general public. The ZBOA shall consider criteria such as:

- A) The harmony of the proposed site plan, circulation plan, and schematic architectural design fits with the character of the surrounding area.

- B) The general conformity of the proposed use and designs fits with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City (such as The Beaufort City Code).

Given its non-conforming front façade length requiring it to follow the Large Footprint Building standards combined with its 3-story height, 211 Charles clearly does not harmoniously fit with the character of the surrounding area. Nor does its schematic architectural design fit with the neighboring buildings. Furthermore, this building will become the single largest building in the downtown historic district.

The City's Civic Master Plan adopted in March 2014, dictated in chapter 3.1 "this plan anticipates and encourages sensitive infill, renovation, and restoration in a manner that is consistent with the Beaufort Preservation Manual, the Historic Preservation Plan, the Northwest Quadrant Design Principles and other relevant documents". The Civic Master Plan goes on to say that "the careful encouragement of infill of vacant sites and the redevelopment of non-contributing properties in a manner consistent with its scale and character." 211 Charles is in no way consistent with the scale and character in downtown historic Beaufort. The mere fact of requesting for a Special Exception to the 100' foot front façade limit is a testament to this fact.

Chapter 3.2 of the Civic Master Plan states that "the emotional core of Beaufort has long been the three blocks of Bay Street between Charles and Carteret Streets." It is exactly in this "emotional core" that the applicant is petitioning to build a large footprint building which itself is incongruous with the "emotional core".

In chapter 3.3, the Civic Master Plan provides a conceptual illustration of Port Republic Street bordered by appropriate 2- story, modest front façade length buildings as infill development along Port Republic Street. It does not show a building such as 211 Charles which is 130' long, 3 stories tall, and at 27,000 square feet the largest building in downtown Beaufort!

The City Staff's support of a Special Exception remains puzzling. You as the Zoning Board of Appeals are the last bulwark against a complete "gutting" of The Beaufort Code as it applies in the T5-Historic Core district. I urge you to protect the emotional core of the City of Beaufort and the owners of surrounding property, including my clients' property rights, by upholding The Beaufort Code and the Civic Master Plan and vote NO to this Special Exception Application.

I request that you send a copy of this letter to all the members of the Zoning Board of Appeals and the City Planning staff in advance of the Monday, 9th, hearing and include this letter in the minutes.

Yours Sincerely,

AUSTEN & GOWDER, LLC



s/ W. Andrew Gowder, Jr.

W. Andrew Gowder, Jr.



CITY OF BEAUFORT
ZONING BOARD OF APPEALS
1911 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902
(843) 525-7011

AGENDA

City of Beaufort
ZONING BOARD OF APPEALS
Monday, August 9, 2021, 5:30 P.M.
City Hall, Council Chambers, 2nd Floor – 1911 Boundary Street, Beaufort, SC

STATEMENT OF MEDIA NOTIFICATION: “In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.”

I. Call to Order

II. Pledge of Allegiance

III. *FREEDOM OF INFORMATION ACT COMPLIANCE*

Public Notification of the Zoning Board of Appeals meeting has been published in compliance with the *Freedom of Information Act* requirements.

IV. Election of Officers

V. Review of Minutes

A. Minutes of the May 24, 2021 Meeting

VI. Review of Projects

A. 211 Charles Street, identified as District R120, Tax Map 4, Parcel 909, Special Exception

Applicant: Burr & Forman LLP c/o Walter J. Nester, for property owner 303 Associates, LLC (ZB21-08)

The applicant is requesting a Special Exception per Section 4.5.10.B.5, to allow a building with frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5-DC) in the Beaufort Historic District (HD) Overlay.

ZBOA Agenda
August 9, 2021
Page 2 of 2

VII. Discussion

VIII. Adjournment

Note: A project will not be reviewed if the applicant or a representative is not present at the meeting.



Zoning Board of Appeals

Meeting Minutes – May 24, 2021

1 CALL TO ORDER

0:08

A meeting of the Zoning Board of Appeals was held via Zoom on Monday, March 24, 2021 at 5:30 pm.

2 ATTENDEES

Members in attendance: Josh Gibson (Chairman), Kevin Blank and Marc Sviland.

Member absent: Tim Wood

3 ELECTION OF OFFICERS

0:98

Motion: Mr. Gibson made a motion to table the Election of Officers to the next meeting; seconded by Mr. Sviland. The motion passed unanimously.

4 APPROVAL OF MINUTES

2:04

Mr. Gibson made a motion to approve the March 22, 2021 minutes as submitted; seconded by Mr. Sviland. The motion passed unanimously.

All Zoning Board of Appeal Meeting minutes are recorded, and can be found on the City's website at <http://www.cityofbeaufort.org/AgendaCenter>. Audio recordings are available upon request by contacting the City Clerk, Traci Guldner at 843-525-7024 or by email at tguldner@cityofbeaufort.org

5 REVIEW OF PROJECTS

2:85

A. 1106 Duke Street, identified as District R120, Tax Map 4, Parcel 498, Variances

Applicant: Labinor Kryezaiu, LK Advantage Property Solutions, LLC (ZB21-07)

The applicant is requesting a variance to four sections of the Beaufort Code to subdivide Parcel ID R120 004 000 0498 0000. The subject property currently contains two homes addressed as 1106 Duke Street and 1108 Duke Street, and the applicant proposes subdividing the parcel into two lots, each containing a single existing home.

The chairman, Josh Gibson, invited the public comment.

Motion: Mr. Gibson made a motion to grant approval of requested variance #1 as submitted, seconded by Mr. Sviland. The motion passed unanimously.

Motion: Mr. Gibson made a motion to grant approval of requested variances #2-4 as submitted with the condition that the applicant must close on the property, seconded by Mr. Sviland. The motion passed unanimously.

6 ADJOURNMENT

31:35

Mr. Gibson made a motion to adjourn the meeting; seconded by Mr. Sviland. The motion passed unanimously. The meeting ended at 6:12 p.m.

Chair

Date of approval

APPLICANT'S SUBMITTAL

211 Charles Street

District R120, Tax Map 4, Parcel 909

Special Exception

Applicant: Burr & Forman LLP c/o Walter J. Nester, for property owner
303 Associates, LLC (ZB21-08)

The applicant is requesting a Special Exception per Section 4.5.10.B.5, to allow a building with frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5-DC) in the Beaufort Historic District (HD) Overlay.



SPECIAL EXCEPTION APPLICATION

Community & Economic Development Department
1911 Boundary Street, Beaufort, South Carolina, 29902
p. (843) 525-7011 / f. (843) 986-5606
www.cityofbeaufort.org

PAID
6/28/21

Application Fees: \$300

Receipt # 146510

ZB21-08

OFFICE USE ONLY: Date Filed: 6/28 Application #: 22229 Zoning District: T5-DC

Submittal Instructions: Entries must be printed or typewritten. If the application is on behalf of the property owner(s), all owner(s) must sign. If the applicant is not the owner, the owner(s) must sign the Designation of Agent (below).

Submittal Requirements: 1. A legal survey of the property. 2. An accurate, legible site plan showing the north arrow, dimensions and locations of all existing and proposed structures and any improvements relevant to the appeal such as trees, fences, power lines, etc. 3. Photograph(s) of the site.

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, Owner and Property Information

Applicant Name: Burr & Forman LLP c/o Walter J. Nester, III

Applicant Address: 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928

Applicant E-mail: wnester@burr.com Applicant Phone Number: 843-785-2171

Owner (if other than the Applicant): 303 Associates, LLC

Owner Address: 2015 Boundary Street, Suite 300, Beaufort, SC 29902

Owner E-mail: ctw@303associates.com Owner Phone Number: 843-521-9000

Property Address: 211 Charles Street, Beaufort

Property Identification Number (Tax Map & Parcel Number): R120 004 000 0909 0000

DESIGNATION OF AGENT [complete only if owner is not applicant]

I (we) here by appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date: 6/28/21 Owner's Signature: [Signature]

I (We) certify that the following information in this application is correct.

Date: 6-28-2021 Applicant's Signature: [Signature]



SPECIAL EXCEPTION APPLICATION

Community & Economic Development Department 1911 Boundary Street,
Beaufort, South Carolina, 29902
p. (843) 525-7011 / f. (843) 986-5606
www.cityofbeaufort.org

Required Project Information

Applicant hereby appeals the Zoning Board of Appeals for a special exception for (ex. Type 2 Home Occupation)
See Attached

On property described on Page 1, which is permitted by special exception under the district regulation in Section _____
_____ of the Beaufort Code. _____

1. Applicant will meet the standards in Section _____ of the Beaufort Code which are applicable to the proposed
special exception in the following manner:

a. There proposed use is compatible with existing land uses in the surrounding area as follows:

b. The proposed site plan, circulation plan, and schematic architectural designs are harmonious with the
character of the surrounding area in that: _____

c. The likely impact on public infrastructure such as roads, parking facilities, and water and sewer systems,
and on public services such as police and fire protection and solid waste collection, and the ability of
existing infrastructure services to adequately service the proposed use without negatively impacting
existing uses in the area and in the City, are as follows: _____

d. The proposed use(s) and designs are in general conformity with the City's Comprehensive Plan and any
other plans officially adopted by the City in that: _____

e. The likely impact on public health and safety is as follows: _____

f. Potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or
obnoxious impacts is as follows: _____

9.13.F - Special Exception Review Criteria: The ZBOA may approve an application for a Special Exception where it reasonably determines that there will be no significant negative impact upon residents of surrounding property or upon the general public. The ZBOA shall consider the following criteria in its review:

- 1. The proposed uses compatibility with existing land uses in the surrounding area**

The proposed uses are allowed by right and therefore compatible with existing land uses as a matter of law.

- 2. The harmony of the proposed site plan, circulation plan, and schematic architectural designs with the character of the surrounding area**

The Historic Review Board (HRB) is specifically charged with ensuring that projects within the Historic District are in harmony with the existing context. The project contemplated in this application has received Conceptual Approval from the HRB. The next review by the HRB depends on the date of the review of this application.

- 3. The likely impact on public infrastructure – such as roads, parking facilities, and water and sewer systems – and on public services – such as police and fire protection and solid waste collection – and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City (a traffic impact analysis shall be required per Section 7.3.2.)**

The provided traffic analysis (attached) projects a 54% decrease in demand compared to reuse of the existing building as retail. Additionally, there is an existing structure on site that has utilized all referenced services. The proposed building will replace that building's demands on infrastructure. Additionally, as part of new construction, traffic, water and sewer, and fire impact fees are paid to offset any additional demands. Will serve letters from the applicable utility and service providers have been obtained and each reports that ample service is available.

- 4. The general conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City;**

The current Beaufort Code was derived from the Civic Master Plan. This project meets the requirements of the Beaufort Code.

5. The likely impact on health and safety

This will be a new structure that complies with all applicable current building codes, including those intended to mitigate damage from fire, hurricanes, earthquakes, etc. Additionally, this project decreases the impervious footprint and provides more greenspace and landscaping than the existing structures.

6. The potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts

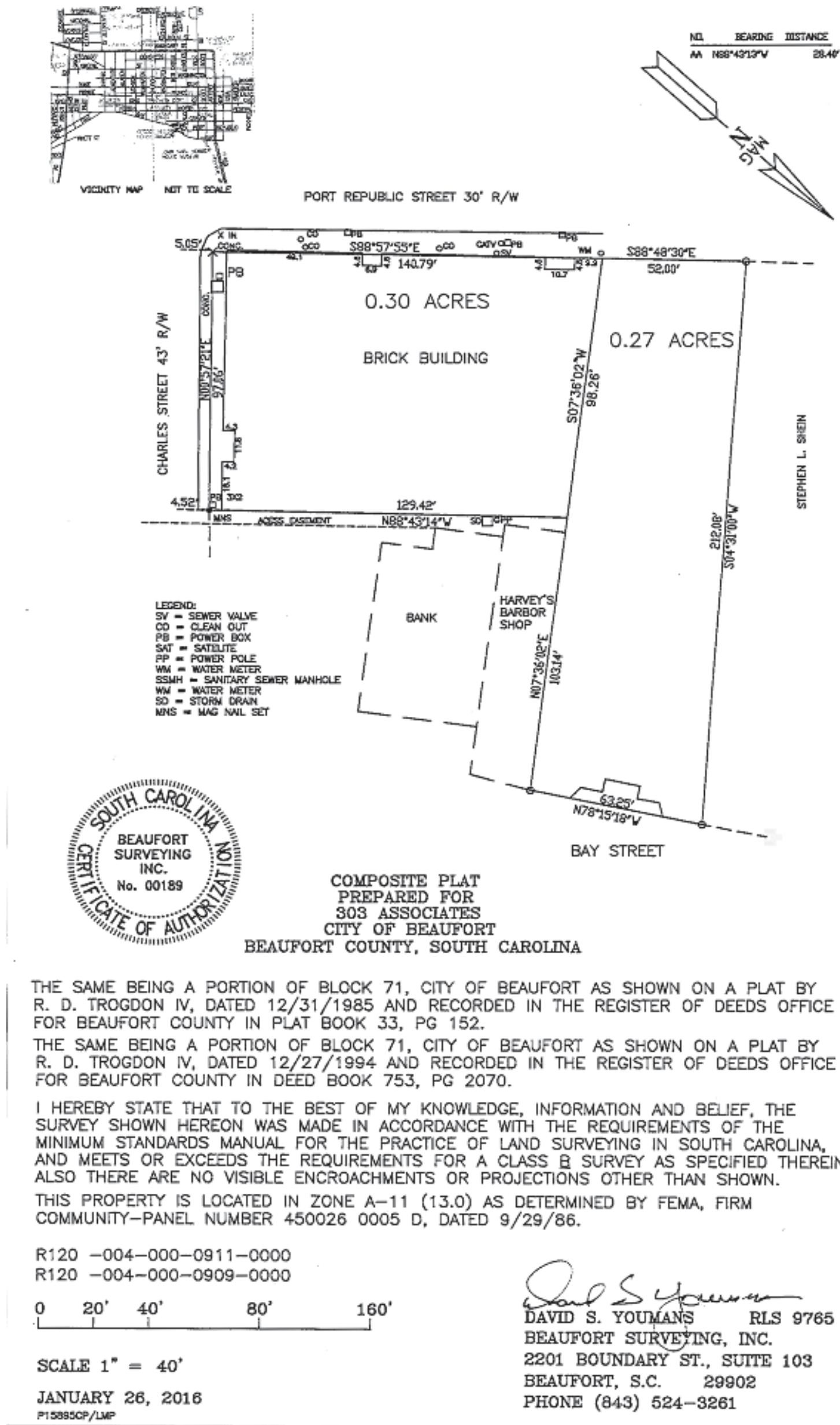
Neither the use nor the structure create such impacts.

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
F.E.C.	FIRE EXTINGUISHER CABINET (WALL BRACKET)
FLR.	FIRE EXTINGUISHER CABINET (SEM-RECESSED WALL CAB.)
FRT.	FLOOR
F.D.	FIRE RETARDANT TREATED
FLOOR DRAIN	FLOOR DRAIN
GALV.	GALVANIZED
GA.	GAUGE
GYP.BD.	GYP SUM 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



PLAT



THE CANNON BUILDING

211 CHARLES STREET BEAUFORT, SOUTH CAROLINA

OWNER

303 ASSOCIATES
2015 BOUNDARY STREET
SUITE 300
BEAUFORT, SC 29902
843.521.9000

ARCHITECTS

COAST ARCHITECTS, INC.
671 SAINT ANDREWS BLVD.
CHARELSTON, SC 29407
843.763.7064

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A204 EXTERIOR PERSPECTIVE
A205 EXTERIOR PERSPECTIVE
A206 EXTERIOR PERSPECTIVE

coast
architects
671 St. Andrews Blvd., Charleston, SC 29407
Phone: 843.763.7064 Fax: 843.763.7061
www.coastarchitects.net

01.08.2021

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

Revisions	
Rev. No.	Rev. Date

DRAWN BY: FAM
CHECKED BY: FAM
DATE: 01.08.2021

COAST PROJECT NO.: 2015.00

TITLE SHEET &
DRAWING INDEX

G001

HRB SUBMITTAL

A

B

C

D
2:04:13 PM

E

F

G

H



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 ACCROSS PORT REPUBLIC STREET FROM SITE

HRB SUBMITTAL

CONTEXT
PHOTOGRAPHS

COAST PROJECT NO: 2015.00

DRAWN BY: Author
CHECKED BY: Designer
DATE: 01.08.2021

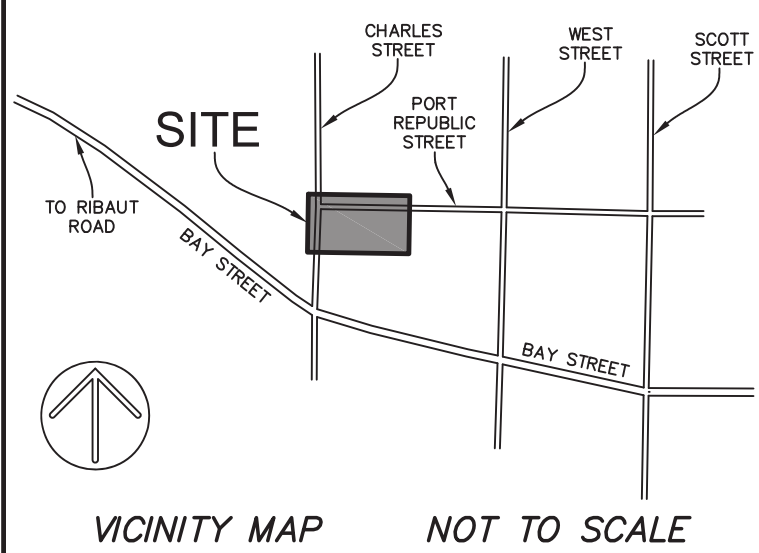
Revisions	
Rev. No.	Rev. Date

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

01.08.2021

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G002



- LEGEND
- SCRIED X FOUND
 - NAIL FOUND
 - IRON REBAR FOUND
 - ⊕ ELECTRIC METER
 - ⊕ ELECTRIC MANHOLE
 - ⊕ JUNCTION BOX
 - ⊕ FIRE HYDRANT
 - ⊕ HANDICAP PARKING
 - ⊕ STORM DRAIN MANHOLE
 - ⊕ SPOT ELEVATION
 - ⊕ SIGN
 - ⊕ GRATE INLET
 - ⊕ PARKING METER
 - ⊕ POWER POLE
 - ⊕ WATER METER
 - ⊕ LIGHT POLE
 - ⊕ TELEPHONE JUNCTION BOX
 - ⊕ TELEPHONE MANHOLE
 - ⊕ SANITARY SEWER CLEAN OUT
 - ⊕ SANITARY SEWER VALVE
 - ⊕ IRRIGATION CONTROL VALVE
 - ⊕ CEDAR
 - ⊕ LIVE OAK
 - ⊕ PALMETTO
 - ⊕ FINISHED FLOOR ELEVATION
 - ⊕ STOP BAR
 - ⊕ SINGLE WHITE LINE
 - ⊕ DOUBLE YELLOW LINE
 - ⊕ PIPE DIRECTION
 - UNDERGROUND DRAINAGE LINE
 - UNDERGROUND SEWER LINE
 - CONTOUR LINE
 - CONCRETE
 - EDGE OF PAVEMENT

- NOTES
- THIS PARCEL APPEARS TO LIE IN FLOOD ZONE A11 ELEVATION 13', FIRM PANEL 0005-D COMMUNITY 450025.
 - CONTOURS ARE IN ONE FOOT INTERVALS. TREE SIZES SHOWN ARE IN INCHES OF DIAMETER.
 - VERTICAL DATUM IS NGVD 29.
 - HORIZONTAL DATUM IS SOUTH CAROLINA STATE PLANE GRID (NAD 83).
 - BOUNDARY SURVEY WAS NOT PERFORMED AT THE TIME OF FIELD WORK WAS DONE. PROPERTY LINES ARE FOR REFERENCE ONLY.
 - PER EMAIL TO CITY OF BEAUFORT ZONING DEPARTMENT ON MARCH 18TH, 2021, THIS PARCEL IS ZONED T5-DC, NO SETBACKS REQUIRED, AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.

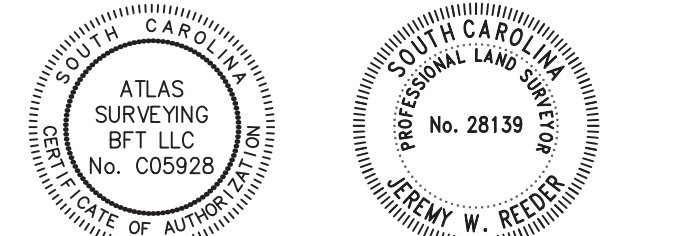
- REFERENCES
- | | |
|-------------|----------|
| 1. DB: 769 | PG: 2341 |
| 2. DB: 3458 | PG: 1598 |
| 3. DB: 3706 | PG: 2787 |
| 4. PB: 63 | PG: 163 |
| 5. DB: 1102 | PG: 958 |

PREPARED FOR:
303 ASSOCIATES, LLC.
AN AS-BUILT, TREE AND TOPOGRAPHIC SURVEY OF
#209 CHARLES STREET
TAX PARCEL No. R120 004 000 0909 0000

THE CITY OF BEAUFORT
BEAUFORT COUNTY, SOUTH CAROLINA
FIELD WORK: CMW
FIELD CHECK: JMS
DRAWN BY: TOJ
DATE: 03-18-2021
SCALE: 1"=20'
PROJECT No.: BFT-20383
FILE: BFT-20383 AT1.DWG

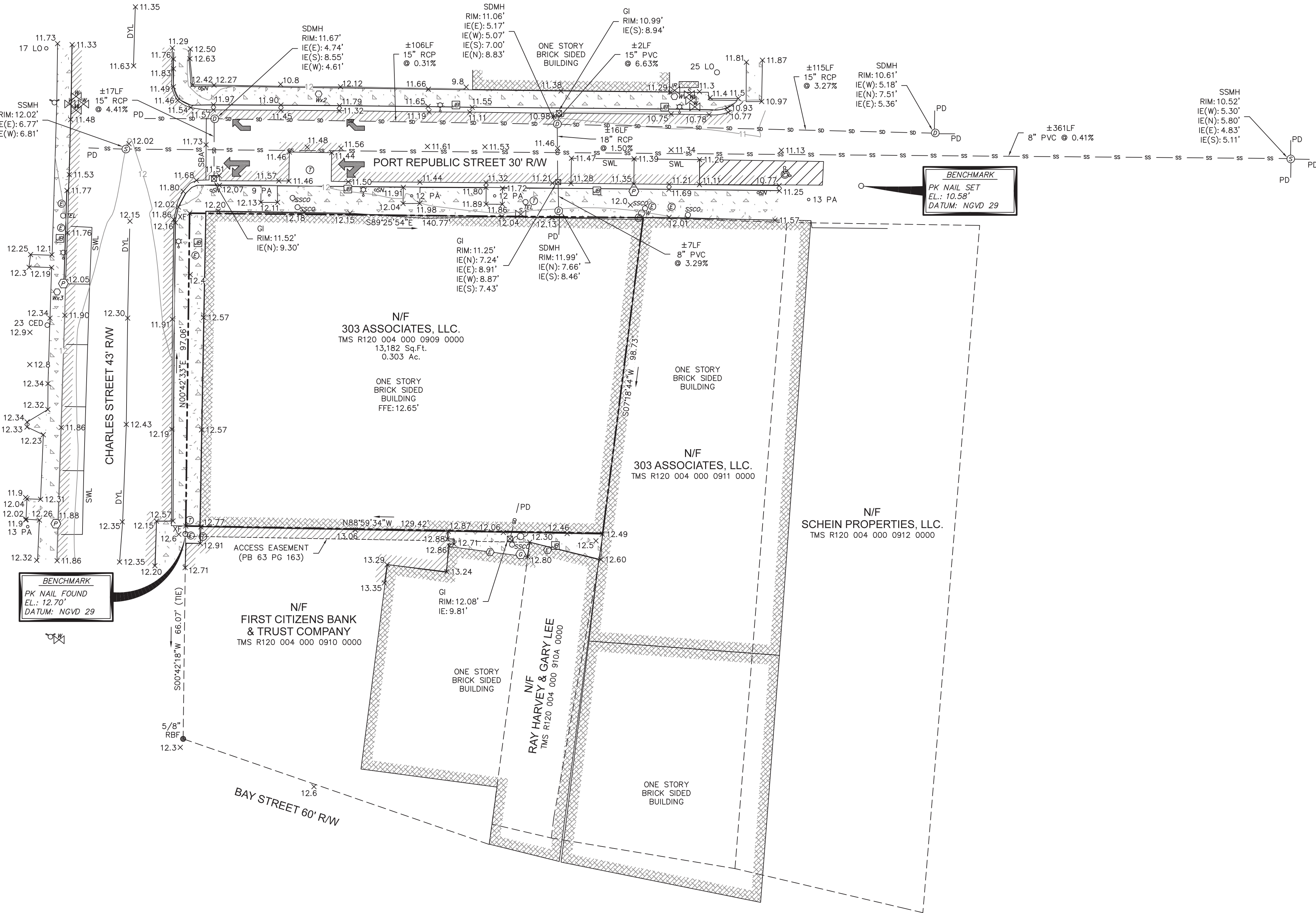
ATLAS
SURVEYING, INC.

49 BROWN'S COVE ROAD, SUITE #5
RIDGELAND, SC 29936
PHONE: (843) 645-9277
WEBSITE: WWW.ATLASSURVEYING.COM

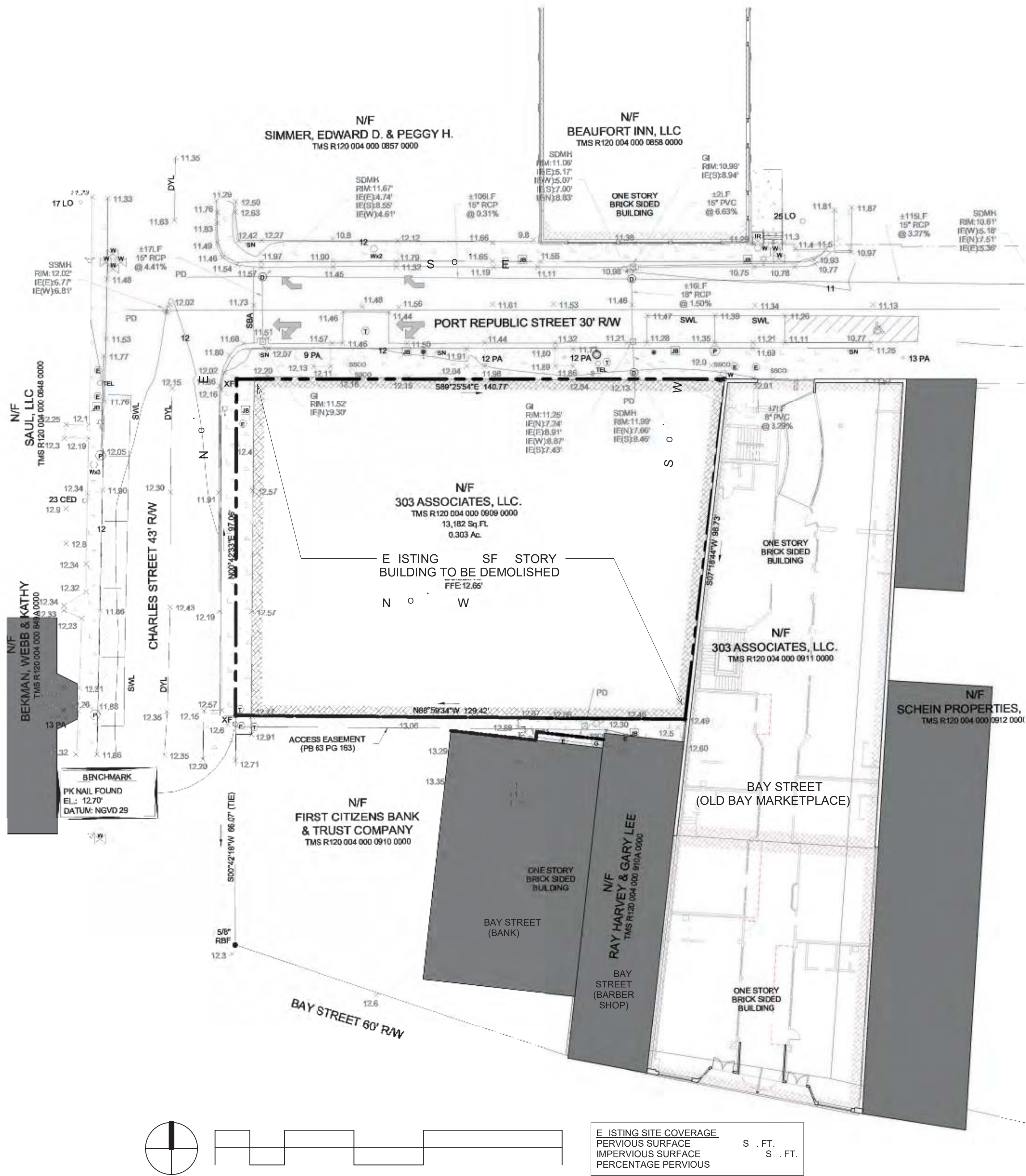


I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

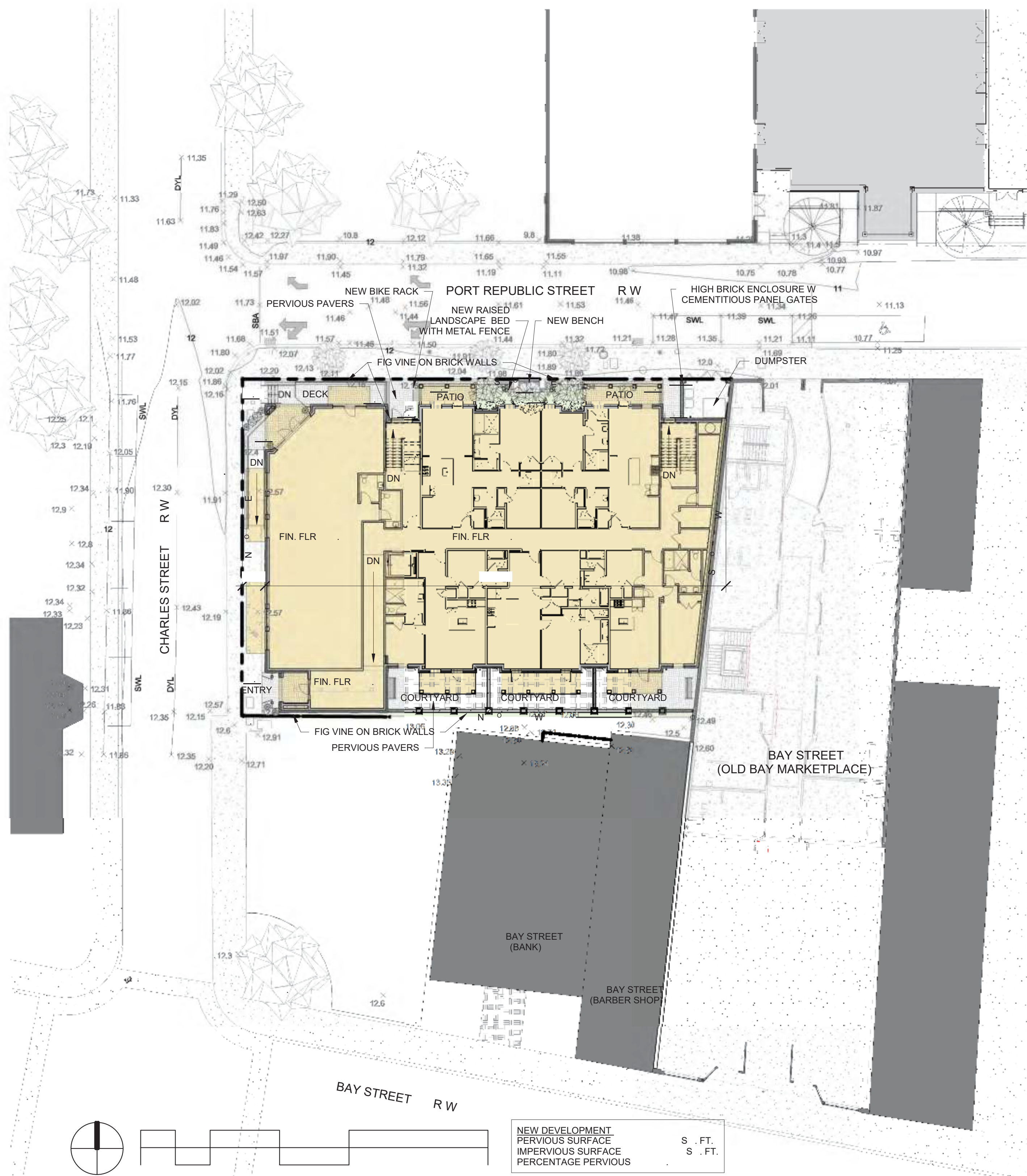
JEREMY W. REEDER
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DEMOLITION SITE PLAN
SCALE



PROPOSED SITE PLAN
SCALE

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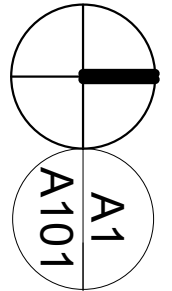
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DATE: 0 .15.2021

COAST PROJECT NO. 2015.00

SITE DEMOLITION
PROPOSED SITE
PLAN

C101

HRB PRELIMINAR SUBMITTAL

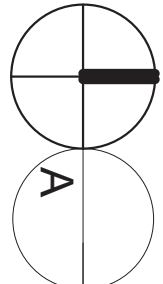


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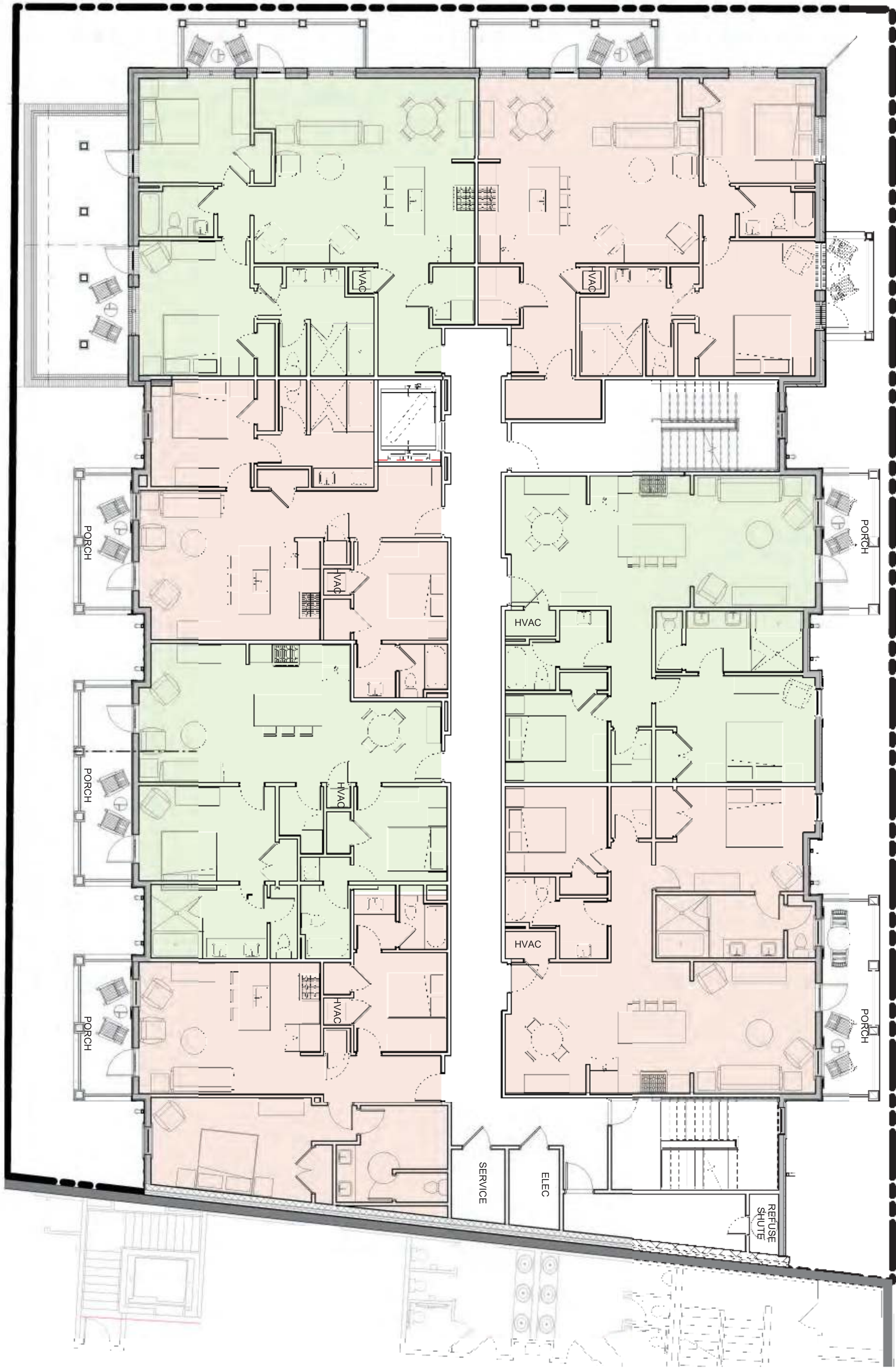
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CHECKED BY:
DATE: 06.15.2021
COAST PROJECT NO.: 2015.00



SECOND THIRD FLOOR PLANS
SCALE



HRB PRELIMINAR SUBMITTAL

A102

SECOND THIRD
FLOOR PLANS

COAST PROJECT NO: 2015.00

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DATE: 0.15.2021

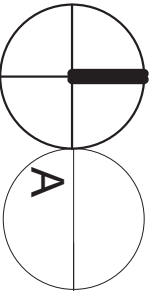
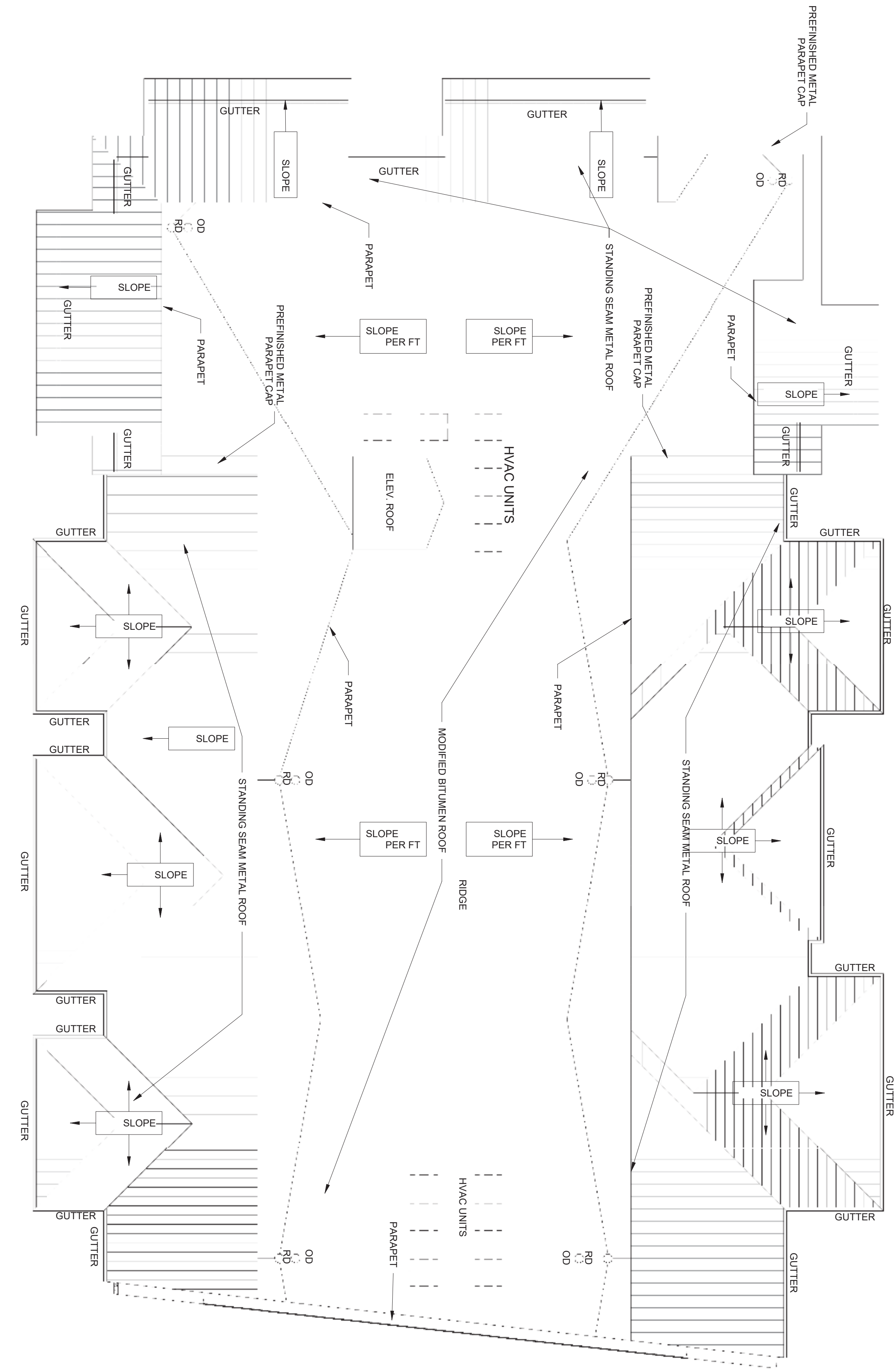
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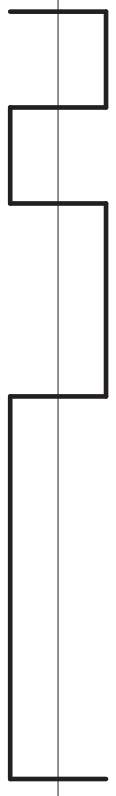
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ROOF PLAN
SCALE



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A103

ROOF PLAN

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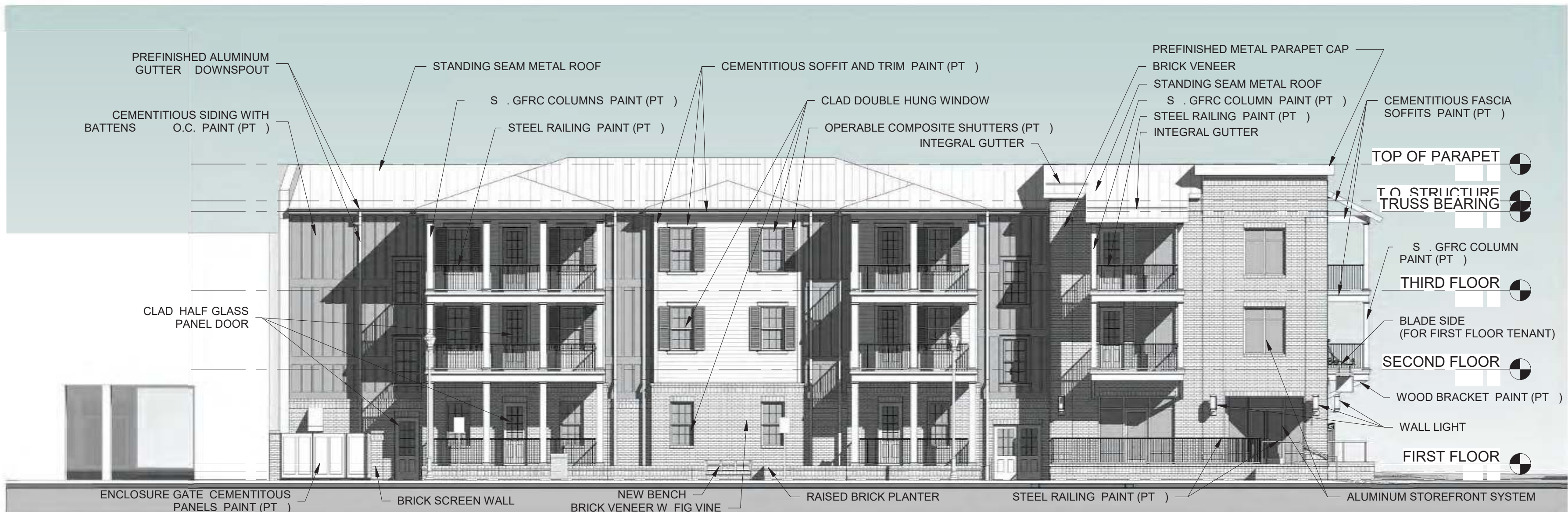
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NORTH ELEVATION (PORT REPUBLIC STREET)
SCALE

0 .15.2021

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COAST PROJECT NO. 2015.00

NORTH EXTERIOR
ELEVATION

A201

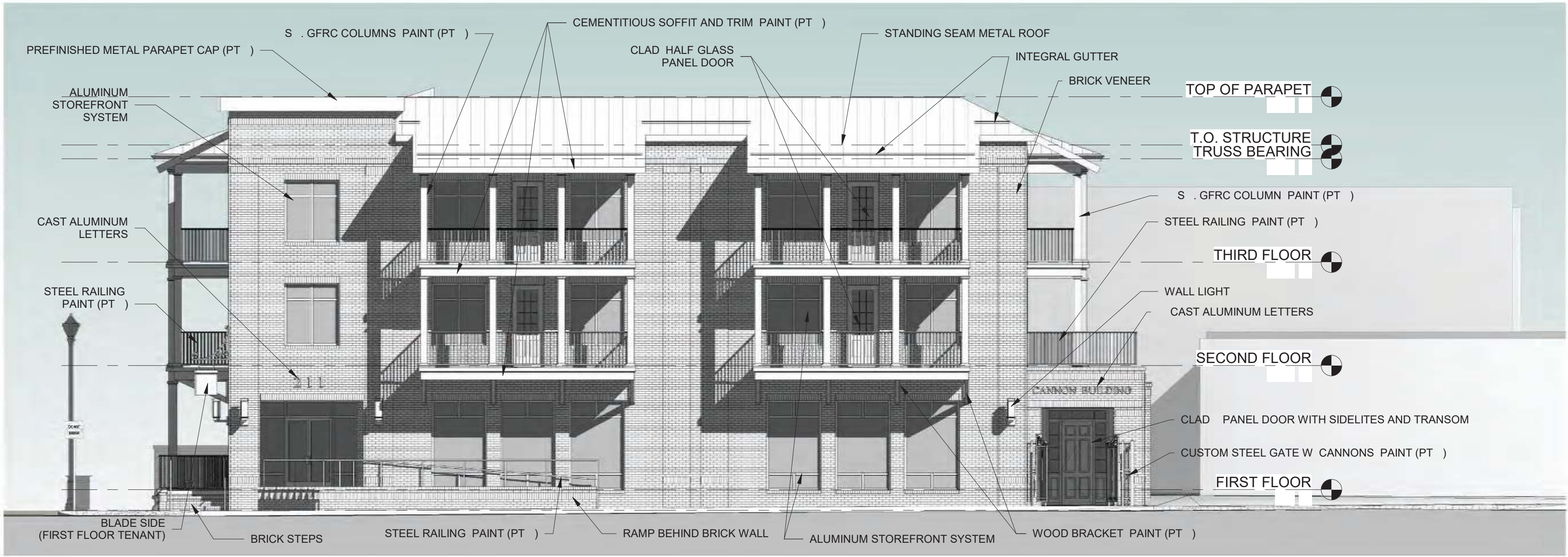
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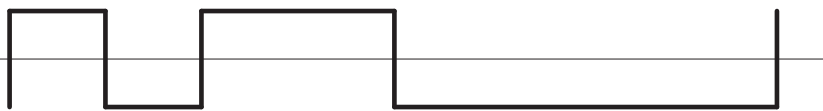
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WEST ELEVATION
SCALE



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BEAUFORT, SOUTH CAROLINA

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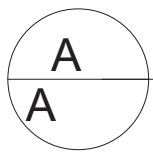
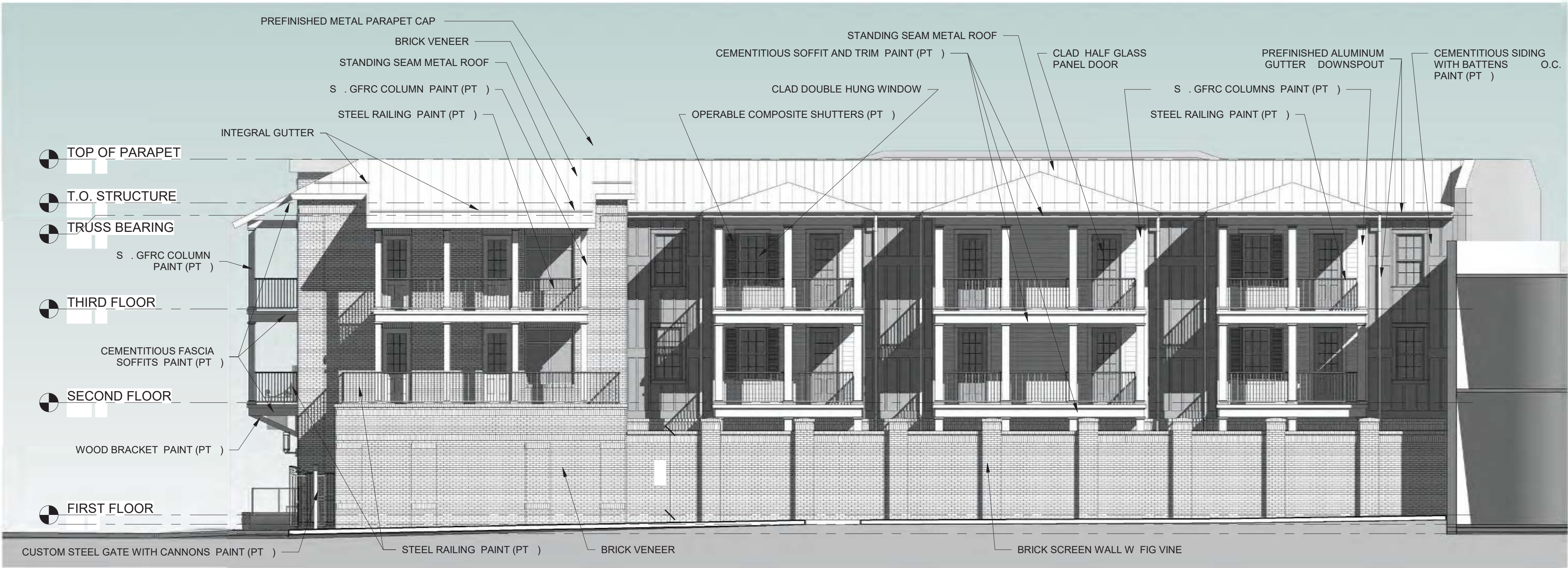
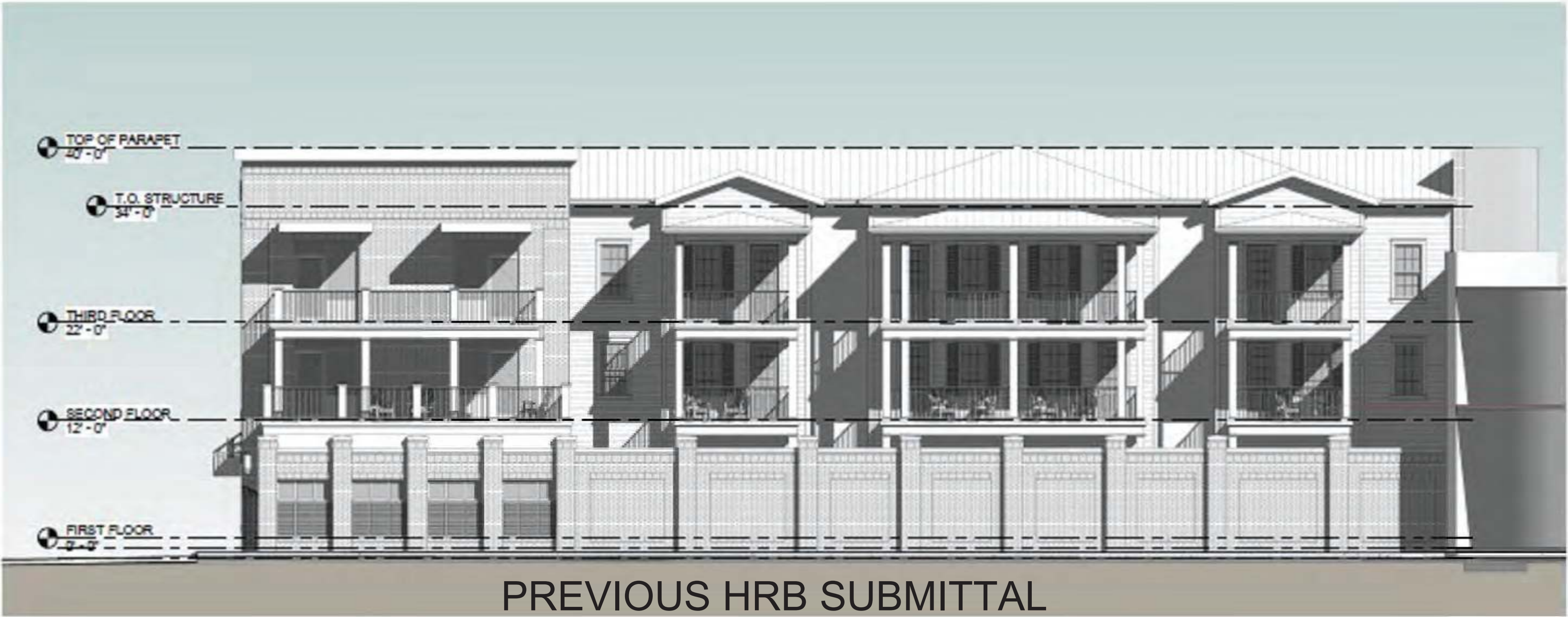
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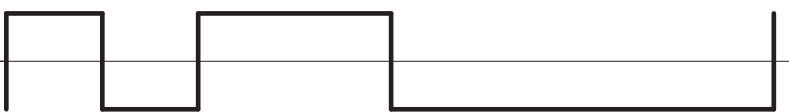
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SOUTH ELEVATION
SCALE



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SOUTH EXTERIOR
ELE ATION

A203

HRB PRELIMINAR SUBMITTAL

PREVIOUS SUBMITTAL



VIEW FROM PORT REPUBLIC STREET LOOKING SOUTHWEST

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EXTERIOR
PERSPECTI E

A204

PREVIOUS SUBMITTAL



VIEW FROM CORNER OF CHARLES AND PORT REPUBLIC STREETS LOOKING SOUTHEAST

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EXTERIOR
PERSPECTIVE

A205

PREVIOUS SUBMITTAL



VIEW FROM CHARLES STREET LOOKING NORTHEAST

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COAST PROJECT NO: 2015.00

EXTERIOR
PERSPECTI E

A20

PREVIOUS SUBMITTAL



OVERALL VIEW OF PROPOSED DEVELOPMENT FROM THE CORNER OF CHARLES AND BAY STREETS LOOKING NORTHEAST

HRB PRELIMINAR SUBMITTAL

THE CANNON BUILDING
211 CHARLES STREET
BEAUFORT, SOUTH CAROLINA

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PERSPECTIVE

A20

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CHARLOTTE: 11020 David Taylor Drive, Suite 300, Charlotte, NC 28262
OFFICE: 704.714.4880 / **FAX:** 704.714.4885 / **WWW.SEPINC.COM**

May 14, 2021

Dick Stewart
303 Associates
2015 Boundary Street, Ste. 300
Beaufort, SC 29902
843-521-9000
rob@303associates.com

**Re: The Cannon Building
Beaufort, SC
Traffic Analysis**

Dear Mr. Stewart:

The purpose of this memorandum is to provide a trip generation overview for various development scenarios for the property located at 209 Charles Street in Beaufort, South Carolina. Based on our understanding of the project, there is an existing building on the property approximately 12,120 square feet (s.f.) in size, currently zoned for retail use. The trip generation comparison will consider the following three development scenarios for the property:

Alternative 1

- Utilize current building for retail uses
- 12,120 s.f. Retail

Alternative 2

- Redevelop property with a single building consisting of a mix of retail and apartment uses
- 2,083 s.f. Retail
- 19 Apartments

Alternative 3

- Redevelop property with two separate buildings consisting of a mix of retail and apartment uses
- 2,083 s.f. Retail
- 15 Apartments

Site generated trip projections were developed for each development scenario based on methodologies of the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (10th Edition). The ITE Trip Generation Manual is an industry standard for forecasting trip generation for a wide range of residential, retail, and commercial land uses. Trip generation data within the Trip Generation Manual is based on observation of similar land uses for developments located across the United States.

For purposes of this trip generation comparison, site generated trips were calculated for a typical weekday, AM peak hour, and PM peak hour for each alternative. The following ITE land uses were utilized in these calculations:

- Retail – Land Use Code 820 (Shopping Center). This land use code is used to represent general retail development if the exact retail use is unknown.



- Apartments – Land Use Code 220 (Low-Rise Multifamily Housing). This land use code can include apartments, townhouses, or condominiums located within the same building with at least three other dwelling units and may have one or two levels.

Total site trips for the retail use were generated based on the total square footage of the retail space. Trips for the apartment use were generated based on the total number of dwelling units. A summary of the site trip generation for each development alternative is provided in Table 1 below.

ITE Land Use Code	Proposed Land Use	Size	Unit	Total Generated Trips							Peak Hour Type	Data Source
				Daily Trips	AM Peak Hour			PM Peak Hour				
					In	Out	Total	In	Out	Total		
Alternative 1												
820	Retail	12,120	s.f.	458	7	4	11	22	24	46	Adj. Street	ITE Rate
Total Trips Alternative 1				458	7	4	11	22	24	46	-	-
Alternative 2												
820	Retail	2,083	s.f.	79	1	1	2	4	4	8	Adj. Street	ITE Rate
220	Apartments	19	units	139	2	7	9	7	4	11	Adj. Street	ITE Rate
Total Trips Alternative 2				218	3	8	11	11	8	19	-	-
Alternative 3												
820	Retail	2,083	s.f.	79	1	1	2	4	4	8	Adj. Street	ITE Rate
220	Apartments	15	units	110	2	5	7	5	3	8	Adj. Street	ITE Rate
Total Trips Alternative 3				189	3	6	9	9	7	16	-	-

Table 1: Site Trip Generation Comparison

As shown in Table 1, if the existing building is utilized for retail use (Alternative 1), approximately 458 daily trips are expected, with 11 trips occurring during the AM peak hour and 46 trips during the PM peak hour. In comparison, if the property is developed with a single building consisting of 2,083 s.f. of retail space and 19 apartments (Alternative 2), approximately 218 daily trips are expected, with 11 trips occurring during the AM peak hour and 19 trips occurring during the PM peak hour. Finally, Alternative 3 considers the development of two separate buildings consisting of 2,083 s.f. of retail space and 15 apartments, and is expected to generate 189 daily trips, with 9 trips occurring during the AM peak hour and 16 trips occurring during the PM peak hour.

Trip generation analysis of each development scenario indicates that re-utilization of the existing 12,120 s.f. building as retail space will yield the highest total anticipated daily and peak hour site traffic.

Respectfully Submitted,
SEPI Engineering & Construction, Inc.

Jacob Carpenter, PE
Charlotte Traffic Operations Manager

STAFF'S REVIEW

ELECTRONICALLY FILED - 2021 Oct 08 3:07 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701639



ROA319



Zoning Board of Appeals Meeting Staff Report

From the Department of Community and Economic Development
9 August 2021 (Rescheduled from 26 July 2021)

1 SUMMARY OF REQUEST

The applicant, Burr & Forman LLP c/o Walter J. Nester III, for property owner 303 Associates, LLC, is requesting a Special Exception to allow a building with frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5-DC) in the Beaufort Historic District (HD) Overlay. The subject property is located at 211 Charles Street (R120 004 000 0909 0000).

Background:

The subject property is located on the southeast corner of the intersection of Charles Street and Port Republic Street. There is an existing structure located on the subject property and research by Staff finds that this existing building includes three separate structures that were built at different times. The northern portion was built first, around 1947. This structure is listed as Non-contributing on the National Register of Historic Places List of Noncontributing Resources.

The owner is proposing demolition of the entire existing building and construction of a new 27,500 square foot, 3-story building to house apartments with some commercial space on the first floor facing Charles Street. The proposed building will have a building width of 77'-2" along the Charles Street frontage and a building width of 132' – 9" along the Port Republic Street frontage. The footprint and frontage widths of the proposed building are similar in proportion to the existing structure.

Per Beaufort Code Section 2.4.1.D.3. (footnote 9), any property zoned T5-DC with a building width at frontage exceeding 100 feet "shall comply with the Large Footprint Building standards in Section 4.5.10" (see Attachment A). Per Section 4.5.10.B.5, "In the Historic District, except along Boundary Street, these (Large Footprint Buildings) are permitted by special exception only" (see Attachment B). Worth noting is that per Section 4.5.10.A., the description of a Large Footprint Building "is a building that has a footprint greater than 20,000 square feet". The proposed building has a footprint of 9,311 square feet.

The status of the proposed demolition and new development are as follows:

February 10, 2021 – The Historic District Review Board (HRB) granted Conceptual Plan approval of the proposed development subject to staff conditions. Conceptual Plan approval is based on "height, scale, mass, 3-dimensional form of the building and general architectural direction". The HRB also approved a motion to defer the request for demolition to the next regularly scheduled meeting.

March 10, 2021 – The HRB approved the demolition request on the condition that "the demolition permit will not be issued until after a building permit is issued for the replacement building".

July 14, 2021 – Coast Architects, representing the property owner, have submitted an HRB application requesting final approval of the proposed development. This application is tentatively scheduled to be heard at the August 11, 2021 HRB meeting.

The applicant's submittal includes a set of architectural drawings prepared by Coast Architects and a Traffic Analysis Memorandum prepared by SEPI Engineering & Construction, Inc.

2 FACTS

Property Address:	211 Charles Street
Parcel ID:	R120 004 000 0909 000
Case Number:	ZB21-08
Applicant:	Walter J. Nester, III
Type of Request:	Special Exception
Zoning:	T5-DC
Current Use:	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.
- **Building Width at Frontage:** 100 ft max.*

* Buildings exceeding this maximum shall comply with the Large Footprint Building standards in Section 4.5.10. (see Attachment B)

Special Exception [§9.13.2 F]:

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

1. The proposed use's compatibility with existing land uses in the surrounding area.
2. The harmony of the proposed site plan, circulation plan, and schematic architectural designs with the character of the surrounding area.
3. The likely impact on public infrastructure — such as roads, parking facilities, and water and sewer systems — and on public services — such as police and fire protection and solid waste collection— and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City.
4. The general conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City.
5. The likely impact on public health and safety.
6. The potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts.

3 STAFF ASSESSMENT

1. The proposed use is compatible with existing land uses in the surrounding area.

Yes, the proposed use is compatible with the existing land uses in the surrounding area. Architectural renderings provided in the application reflect a mixed-use corridor with an integrated streetscape that highlights and supplements existing streetscape investments.

2. The harmony of the proposed site plan, circulation plan, and schematic architectural designs are in character with the surrounding community.

Yes, the harmony of the proposed plan is in character with the surrounding community. The proposed development has received Conceptual Plan approval from the HRB based on "height, scale, mass, 3-dimensional form of the building and general architectural direction". In the T5-DC zone district, apartment house, retail & restaurants, and live/work units are all uses allowed by right (with the exclusion of animal hospitals/kennels).

It should also be noted that the T5-DC zone district encompasses the "downtown core" and provides for a 0' primary building setback along all property lines. A streetscape comprised of structures built at 0' setbacks along the front and side yards creates a corridor of physically attached buildings that can exceed 100' in width as evidenced along much of the downtown Bay Street corridor.

3. The impact on public infrastructure, public services, and the ability of existing infrastructure and services to adequately service the proposed use will not negatively impact existing uses in the area and in the City.

Providing adequate services to the proposed use will not negatively impact existing uses in the area and in the City. This is an infill development in an area with existing streets, infrastructure, and public services that are currently adequate to serve the proposed use without detriment to existing uses.

The applicant's submittal includes a Traffic Analysis Memorandum addressing trip (vehicle traffic) generation. The memorandum provides a trip generation comparison following three development scenarios, including a scenario utilizing the existing building (Alternative 1 – 12,120 s.f. of retail), and a scenario where the property is redeveloped as currently proposed (Alternate 2 - approximately 2,000 s.f. of retail and 19 apartment units). The comparison found that Alternative 1 would generate 458 daily trips and Alternative 2 would generate 218 daily trips.

4. The proposed use and design conform with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City.

Yes, the proposed use conforms with recommendations included in the city's Civic Master Plan (CMP). The proposed development aligns well with the CMP's Section 3.2 (Redefining & Expanding "Downtown") discussion, which recommends an expansion of the vibrancy of the Bay Street core to other parts of the city through reimagined mixed-use corridors (see Attachment C):

"The perception of downtown Beaufort needs to expand beyond its Bay Street core and into a continuous vibrancy that connects to other parts of the city. Five streets in the Sector 1 study area (Boundary, Bladen, Charles, Carteret and Ribaut) are re-imagined in this plan as mixed-use corridors that form the broad and extensive foundation of a reinvigorated downtown district. As key streetscape investments in these corridors create a series of places and experiences that attract more residents and businesses, both historic and new neighborhoods within this corridor framework will begin to fill with new places to live, work, and shop."

5. The proposed use will not have a negative impact on public health and safety.

It is Staff's opinion that the proposed use will not have a negative impact on public health and safety.

6. The proposed use does not have the potential to create noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts.

It is Staff's opinion that there will be no injurious or obnoxious impacts related to the proposed use.

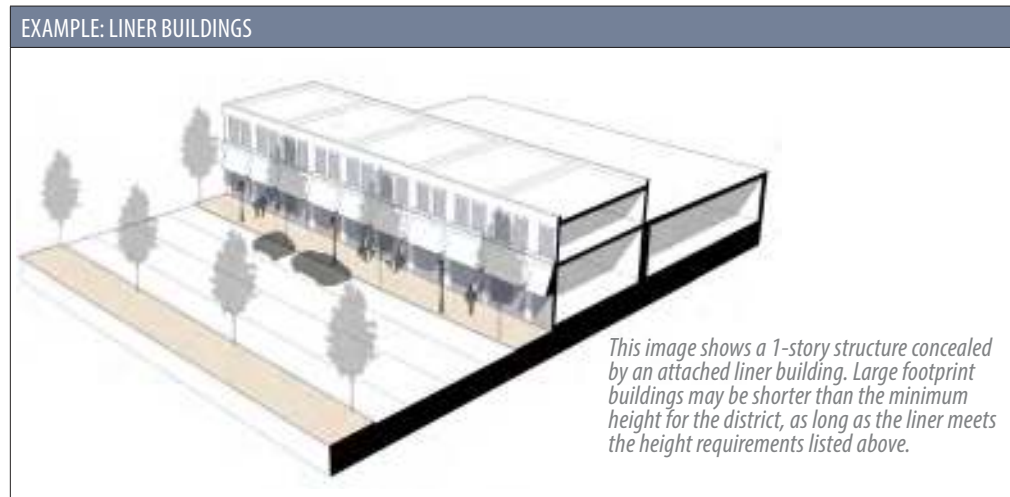
2.4: DISTRICT DEVELOPMENT STANDARDS

2.4.1 TRANSECT-BASED DISTRICT STANDARDS

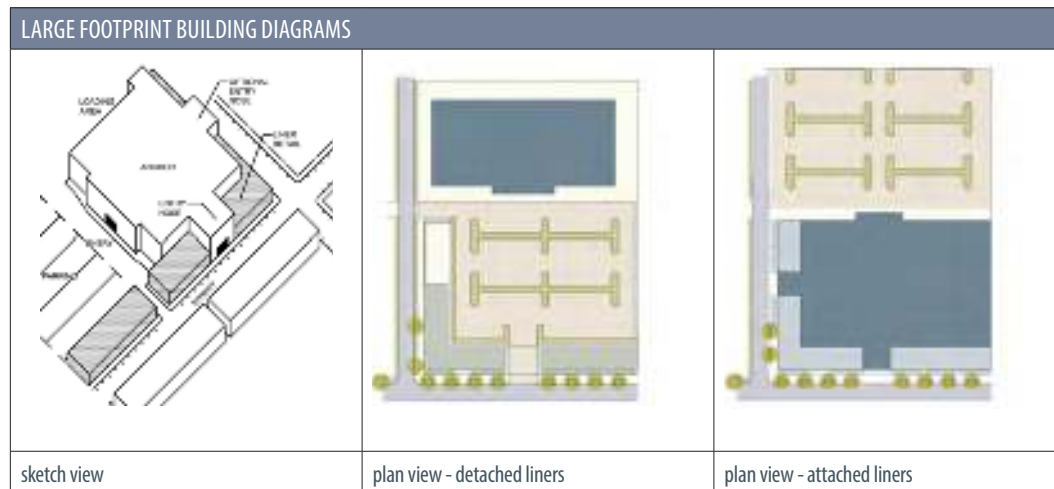
DISTRICT	T3-S	T3-N	T4-HN	T4-N	T5-DC	T5-UC
A. LOT CONFIGURATION						
1. Lot Width at Front Setback	75 ft min; for waterfront lots see Section 2.5.4	40 ft min, 60 ft min in the Hundred Pines neighborhood	40 ft min, 60 ft min in The Point	n/a	n/a	n/a
2. Lot Size	9,000 sf min; for waterfront lots see Section 2.5.4	4,000 sf min; 3,000 sf min for alley-served lots	4,000 sf min; 6,000 sf min in The Point	n/a	n/a	n/a
3. Maximum Lot Coverage ¹	30% of lot area	45% of lot area	55% of lot area	70% of lot area	100%	100%
4. Frontage Build-Out ²	n/a	n/a	75% max	60% min; 85% max	75% min	60% min
¹ This percentage indicates maximum lot coverage by roofs; total impervious coverage may be an additional 10%. Parcels may also be subject to Section 8.3 (Stormwater).						
² See Section 2.5.1.B for additional frontage build-out standards.						
B. PRIMARY BUILDING PLACEMENT						
1. Front Setback; <i>for infill lots also see Section 2.5.2</i>	20 ft min	15 ft min	average Prevailing Setback on block	0 ft min	0 ft min	0 ft min
	No max	30 ft max ³		15 ft max	max. Prevailing Setback on block	15 ft max
2. Side Setback - Corner /Alley	15 ft min	6 ft min	5 ft min	0 ft min	0 ft min	0 ft min
	No max	No max	No max	10 ft max	15 ft max	15 ft max
3. Side Setback - Interior	10 ft min	6 ft min	6 ft min, 10 ft min in The Point	5 ft min, or 0 ft if attached	0 ft min	0 ft min
4. Rear Setback ⁴	15 ft min	15 ft min	15 ft min	10 ft min	0 ft min	5 ft min
5. Rear Setback from Alley ⁴	n/a	0 ft	0 ft	0 ft	0 ft	0 ft
6. Attached Garage/Carport Setback (from front facade) ^{5, 6}	5 ft min	5 ft min	attached garages shall only be accessed via an alley; garage doors shall not face the street			
C. ACCESSORY BUILDING PLACEMENT - see section 3.11 for additional requirements						
1. Front Setback	accessory structures shall be located behind the front facade of the primary structure, except as provided for in Section 2.5.4 (Waterfront Lots) and Section 4.5.3 (Carriage House); see item 6 below for setback for detached garage doors					
2. Side Setback - Corner / Alley ⁵	5 ft min	5 ft min	5 ft min	3 ft min	0 ft min	0 ft min
3. Side Setback - Interior	5 ft min	5 ft min	5 ft min	5 ft min	0 ft min	0 ft min
4. Rear Setback ⁴	5 ft min	5 ft min	5 ft min	5 ft min	0 ft min	0 ft min
5. Rear Setback from Alley ⁴	3 ft min	3 ft min	3 ft min	3 ft min	3 ft min	3 ft min
6. Detached Garage Door/Carport Setback (from front facade) ⁵	5 ft min	20 ft min	20 ft min	20 ft min	shall be located behind primary building and accessed via alley or side street ⁷	
³ When lot width is 75 ft or greater, there is no maximum front setback.						
⁴ Garage doors shall be 15 ft min from alley centerline.						
⁵ In addition to the setback requirements listed above, garage doors/carports which face a public right-of-way, except for rear alleys, shall be set back a minimum of 20 ft from that right-of-way.						
⁶ The Battery Shores and Islands of Beaufort neighborhoods are exempt from this standard when garage doors do not face a public right-of-way. In the Jericho Woods neighborhood, carports are exempt from this standard.						
⁷ Also see Section 2.5.7(Street Access Standards).						
D. BUILDING FORM						
1. Primary Building Height - see Section 2.6	No min	No min	No min	2 stories min ⁸	2 stories min	2 stories min ⁸
	2.5 stories max	2.5 stories max	3 stories max	4 stories max; 3.5 stories max in & fronting Historic District & interior lots along Allison Rd.	3 stories max at property line, see 2.6.1.G	5 stories max; 3.5 stories max in & fronting Historic District
2. Accessory Building Height	2 stories or 30 ft max	2 stories or 30 ft max	2 stories or 30 ft max	2 stories or 30 ft max	2 stories max	2 stories max
3. Building Width at Frontage	n/a	n/a	n/a	100 ft max	100 ft max ⁹	160 ft max ⁹
⁸ 2 stories are only required at significant intersections, in accordance with Section 2.6.3 and the Street Hierarchy Diagram in Appendix C.3						
⁹ Buildings exceeding this maximum shall comply with the Large Footprint Building standards in Section 4.5.10.						
E. PARKING PAD LOCATION- there are no interior side setbacks for parking unless buffers are required per Section 5.5. See Section 2.5.8 for additional provisions						
1. Front Setback	there are no parking setbacks, however, driveways shall be located to the side of the lot/primary structure except on waterfront lots meeting the conditions stated in 2.5.4.		40 ft min	40 ft min	40 ft min	40 ft min
2. Side Setback - Corner			5 ft min	15 ft min	5 ft min	5 ft min
3. Rear Setback			5 ft min	5 ft min	0 ft min	0 ft min

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

3.2 Redefining & Expanding “Downtown”

Sector: 1

Project Type: Public | Private

Civic Investment Required: Streetscaping

See Also: 5.6; 10.2

The emotional core of Beaufort has long been the three blocks of Bay Street between Charles and Carteret Streets. Even with all of its amenities, this area is too geographically constrained to fully serve the greater community with the range of goods and services normally expected in a vibrant and robust downtown. In the last few decades, this area has emerged as a primarily entertainment- and tourist-oriented destination with small shops, art galleries, and restaurants but has struggled with providing more neighborhood-oriented services. Additionally, the commercially zoned corridors of Boundary (east of Ribaut Road), Carteret, Charles and Bladen Streets have struggled to flourish in a manner that is complimentary to the Bay Street core.

An economic study by the city’s finance office in 2012 demonstrated that while the historic core generated approximately \$16,710 per acre (net of operating expenses), the other commercial corridors

(Boundary, Carteret, Charles and Bladen) yielded only \$2,888 per acre. Therefore, there are two appropriate ways to grow these areas - encourage more development to expand the potential tax base and/or better maximize the existing building stock for better performing economic activity.

Clearly the greatest potential for real physical growth is in the secondary corridors in the downtown area - Carteret, Charles, Bladen, and Boundary Streets. These areas also represent the greatest opportunity for providing services for the surrounding neighborhoods. With less historic fabric to serve as a precedent, these corridors would include variations on traditional design that reflect contemporary building practices. Any historic fabric can be preserved and restored alongside sensitive infill and redevelopment to replace outmoded, non-contributing structures with buildings that are modern in their programming, but that fit the area’s architectural context.

The perception of downtown Beaufort needs to expand beyond its Bay Street core and into a continuous vibrancy that connects to other parts of the city. Five streets in the Sector 1 study area (Boundary, Bladen, Charles, Carteret and Ribaut) are re-imagined in this plan as mixed-use corridors that form the broad and extensive foundation of a reinvigorated downtown district. As key streetscape investments in these corridors create a series of places and experiences that attract more residents and businesses, both historic and new neighborhoods within this corridor framework will begin to fill with new places to live, work, and shop.

On the surface, this expansion of downtown would be only a change in perceived boundaries. More profoundly, this expansion would mean a greater variety of businesses and institutions, and a diversity of residents (from young children to university students to the elderly) that downtown could serve. It would also mean a shift in the modes of travel available, streets that would remain active and populated for a longer period each day, and an increased breadth of basic needs and services that could be accomplished by residents within walking distance to their homes.



▲ EXISTING COMMERCIAL CORRIDORS



Zoning Board of Appeals

Meeting Minutes – August 9, 2021

1 CALL TO ORDER

3:01

A meeting of the Zoning Board of Appeals was held in person on Monday, August 9, 2021 at 5:33 pm.

2 ATTENDEES

Members in attendance: Josh Gibson (Chairman), Kevin Blank, Kenneth Hoffman, Marc Sviland, and Tim Wood.

3 ELECTION OF OFFICERS

3:56

Motion: Mr. Gibson made a motion to move this agenda item to the end of the meeting; seconded by Mr. Sviland. The motion passed unanimously.

4 APPROVAL OF MINUTES

4:75

Motion: Mr. Gibson made a motion to approve the May 24, 2021 minutes as submitted; seconded by Mr. Mr. Sviland. The motion passed unanimously.

All Zoning Board of Appeal Meeting minutes are recorded, and can be found on the City's website at <http://www.cityofbeaufort.org/AgendaCenter>. Audio recordings are available upon request by contacting the City Clerk, Traci Guldner at 843-525-7024 or by email at tguldner@cityofbeaufort.org

5 REVIEW OF PROJECTS

4:86

A. 211 Charles Street, identified as District R120, Tax Map 4, Parcel 909, Special Exception

Applicant: Walter J. Nester, III, Burr & Forman LLP (ZB21-08)

The applicant is requesting a Special Exception per Section 4.5.10.B.5, to allow a building with frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5-DC) in the Beaufort Historic District (HD) Overlay.

The chairman, Josh Gibson, invited the public comment.

Motion: Mr. Gibson made a motion that the application be denied as submitted; seconded by Mr. Wood. The vote was 2:3 with Mr. Hoffman, Mr. Sviland, Mr. Blank being opposed.

Motion: Mr. Hoffman made a motion that the Special Exception application be approved as submitted; seconded by Mr. Blank. The motion carried with a vote of 3:2 with Mr. Gibson and Mr. Blank being opposed.

6 ELECTION OF OFFICERS

1:12:76

Mr. Gibson made a motion for himself to be the Chairman; for Mr. Sviland to be Vice-Chair; and for Mr. Wood to be Secretary; seconded by Mr. Sviland. The motion passed unanimously.

7 ADJOURNMENT

2:25:06

Mr. Gibson made a motion to adjourn the meeting; seconded by Mr. Sviland. The motion passed unanimously. The meeting ended at 7:55 p.m.

Chair

Date of approval



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

APPROVAL LETTER

August 19, 2021

VIA CERTIFIED MAIL

Barr & Forman, LP
c/o Walter J. Nester, III
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

**RE: Application No. ZB21-08 – 211 Charles Street
District 120, Tax Map 4, Parcel 909**

Dear Mr. Nester:

On August 9, 2021, the City of Beaufort Zoning Board of Appeals reviewed your application for a special exception to allow a building with frontage in excess of 100 feet on a property zoned T5-Downtown Core District (T5-DC) in the Beaufort Historic District (HD) Overlay. The property is located at 211 Charles Street, further described as District 120, Tax Map 4, Parcel 909. The Board voted to grant the Special Exception application as submitted.

Be advised that the special exception will expire within 24 months of the date of this letter as per Section 9.1.4 of The Beaufort Code unless a complete building permit application has been submitted to the City of Beaufort Building Codes Office.

Please note that per Section 9.13.2.H of the Beaufort Code, any party aggrieved by the decisions of the ZBOA may appeal to the circuit court within 30 days of the decision.

Please remove the Notice of Application sign that was placed on your property.

If you have any questions, feel free to call the Planning Department at (843) 525-7011 or email me at jbachety@cityofbeaufort.org. Thank you for your patience and cooperation during the review process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Josh Gibson", is written over a horizontal line.

Josh Gibson, Chairman
Zoning Board of Appeals

cc: 303 Associates, LLC
file copy

ROA330



MEMORANDUM

DATE: August 9, 2021

TO: Mr. Josh Gibson, Chairman
Members, Zoning Board of Appeals
FR: Historic Beaufort Foundation
RE: 211 Charles Street, Request for Special Exception

Historic Beaufort Foundation (HBF) appreciates the opportunity to comment on the application presented by Burr & Forman, LLP, representing 303 Associates, requesting Special Exception per section 4.5.10.b.5, to allow a building with frontage in excess of 130 feet on a property zoned T5-Downtown Core District (T-5DC) in the Beaufort Historic District Overlay.

The objective of Historic Beaufort Foundation as always is to encourage and promote progress that is compatible with neighboring buildings and the streetscape while respecting the significant existing architectural character of the historic district. This application, if approved today, will forever alter our city and set precedent for future inappropriate development in our National Historic Landmark District and specifically in our small 19th century core.

The proposed building is prohibited under the current Zoning Code. The reason that we are here today is that the building requires a Special Exception. As such, the burden is on the applicant to prove that there are unique circumstances specific to this project sufficient to warrant making an exception to the Zoning Code. The City Council included the requirement for Special Exception to protect the National Historic Landmark District. The public participated in an 18-month public process to develop the City's Civic Master Plan and the pertinent ordinances. The result was a special covenant with the public which must not be breached except in the most extraordinary circumstances.

You have been told in the staff report that the Historic Review Board (HRB) has reviewed this project and given preliminary conceptual approval and that you should in essence accept its decision as your own. That is not the case.

In fact, the design given preliminary conceptual approval by the HRB on February 10, 2021 differs greatly from the one you are viewing today. And, most importantly, the Beaufort Code gives the Zoning Board the authority and responsibility to decide if this plan meets the required criteria to grant a Special Exception.

We ask for your consideration as we address why this proposal should not be granted Special Exception



View looking southeast from Charles Street at intersection of Charles and Port Republic Street. Current submittal to ZBOA, August 9, 2021. Design has been altered from HRB submission, February 2021.

Firstly, the proposed designs that are being considered today are not the same designs that were submitted to the HRB and granted preliminary conceptual approval on February 10, 2021.



View looking southeast from Charles Street at intersection of Charles and Port Republic Street. Submittal to HRB for February 10 meeting as granted preliminary approval.

The designs and ultimately the massing and 3-Dimensional form of the structure before you today have been significantly altered by the addition of balconies, shed roofing, porches and the addition of a prominent projecting tower.

Secondly, the minutes of the February 10, 2021 HRB meeting granting approval for preliminary conceptual approval failed to include or recognize 3.5 pages of conditions – 13 different conditions introduced by staff as requiring attention in order for approval to be granted.

I may be your understanding that the ZBOA does not need to be concerned with the design aspects of the proposed project. However, per your own criteria – #2 Harmony of the “schematic architectural design with the character of the surrounding area” and #4 – General conformity of the proposed uses and designs with the City’s Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City,” including the Beaufort Code and Beaufort Preservation Manual; you **must** take design into consideration.

Conclusion. The project that you are reviewing today is not the same project reviewed and granted preliminary conceptual approval by the HRB on February 10, 2021. The massing and 3-dimensional form of the structure have been significantly altered putting the HRB preliminary approval into question. **ZBOA must deny this project.** and reconsider the decision granted on February 10, 2021 before the proposed project can be fairly reviewed by the ZBOA

Thirdly, in keeping with the *Beaufort Preservation Manual*, page 44, *New Construction* - no development or large-scale construction should be permitted which is predicated upon demolition of historic buildings for its implementation.



Concern. Construction of this building requires the demolition of a property built in 1947 for the A&P Grocery. The City has recently commissioned an update to the Above Ground Historic Resources listing. We reached out to the consultants to ask if they had reviewed this property among other structures not previously listed on the City’s Contributing List. They reported today that they have indeed reviewed it and will be recommending that it be added to the Contributing List.

Conclusion. Removal of this property is no longer in keeping with the City Code and Preservation Manual. Therefore, the project should be denied.

Special Exception Review Criteria.

We understand that the ZBOA, in keeping with section 9.13.2.F of the Beaufort Code, Special Exception Review Criteria, must reasonably determine that there will be no significant negative impact upon residents of surrounding property or upon the general public. In doing so, the ZBOA shall consider the following criteria:

- 1) Compatibility with existing land uses in the surrounding area.
- 2) Harmony of proposed site plan, circulation plan and schematic architectural designs with the character of the surrounding area.
- 3) Likely impact on public infrastructure – such as roads, parking facilities, and water and sewer systems – and on public services – such as police and fire protection and solid waste collection – and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City.
- 4) General conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the city.
- 5) Likely impact on public health and safety.
- 6) Potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazards, or other injurious or obnoxious impacts.

We will be addressing four of the six listed criteria as they relate to the proposed project at 211 Charles St.

ZBOA CRITERIA #2. Harmony of proposed site plan, circulation plan and schematic architectural designs with the character of the surrounding area.



Reference: The Beaufort Preservation Manual, page 41, 46, Chapter 3. New Construction

"...new construction in Beaufort must go beyond the aspect of "form follows function." And "blend harmoniously with the historic fabric of the town."

Reference: The Beaufort Preservation Manual, page 41, 46, Chapter 3. New Construction
 No building is so insulated from its surroundings as to avoid an impact on the townscape."

Reference. 4.3.2.C. Beaufort Code, Contextual Design Guidelines. Massing and Articulation. "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."





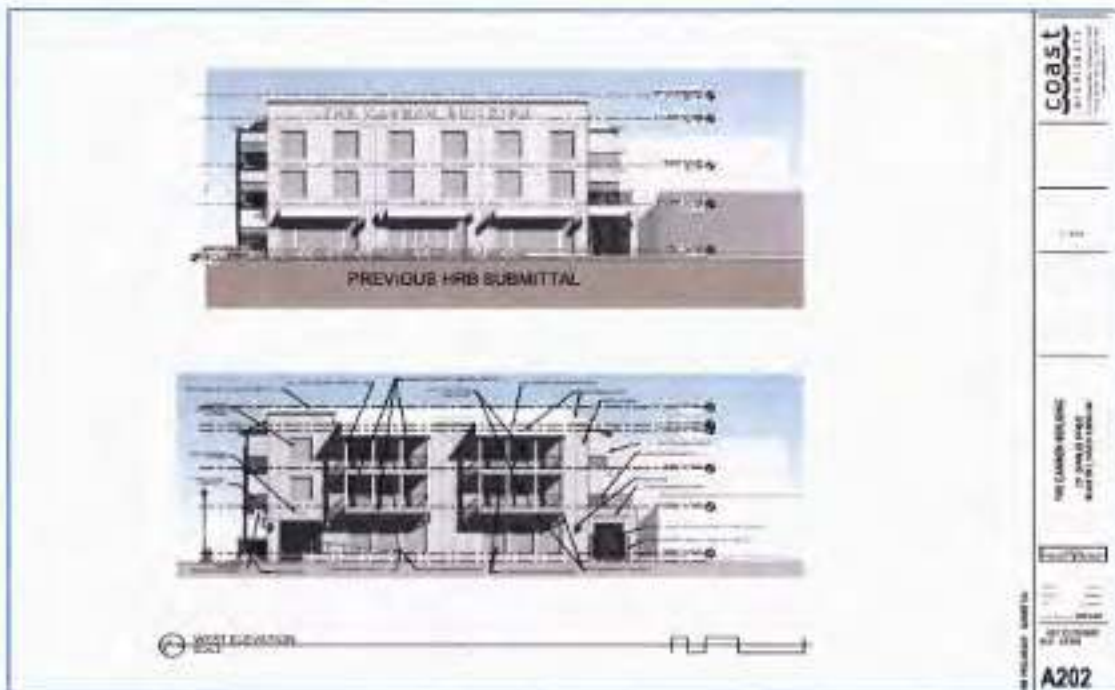
Concern: The proposed project at 211 Charles Street is directly across from two significant historic properties following the architectural form of the Beaufort Style – The Elliott House at Bay and Charles; and the Lucius Cuthbert House at Port Republic and Charles. The proposed building is 2.5 times longer and a story taller than the surrounding buildings therefore violates the criteria for contextual “harmony and compatibility” (ZBOA Criteria 1&2). This proximity requires a sensitive infill that “blends harmoniously” with the adjacent historic fabric. A building of this height, mass and scale is inappropriate for this site.

Reference. Section 4.5.10. The Beaufort Code. Large Footprint Building.

In the T-4 and T-5 Transect Zones, Large footprint buildings “shall be integrated into the



Reference. Beaufort Code. 4.3.2.B. Rhythm and Development on the Street. Monolithic massing that disrupts the predominant building pattern of the neighborhood and corridor is strongly discouraged.



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



Conclusion. The proposed building is of a mass and scale that is not compatible or harmonious with adjacent historic residential and commercial structures. Therefore it violates ZBOA criteria 18c2.

ZBOA CRITERIA #4. General conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the city.



Reference. Beaufort Code. 4.3.2.A. Conformity with Civic Master Plan. The Civic Master 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”.

Reference. City of Beaufort Civic Master Plan, page 51, Section 3.3 Port Republic Street. The Civic Master Plan “proposes infill commercial development along Port Republic Street to extend the shopfront environment of Bay Street through downtown”. The conceptual illustration shown above in the Civic Master Plan envisions “intimate scale” development that would “slow traffic speeds and better serve the retail character of the area.”

Reference. Section 3.2, Civic Master Plan, pg. 51.

“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.**” The applicant has shown that he knows how to design and build appropriate and sensitive infill through his work on the Cottages on Craven. HBF recognised the Craven Street project with a preservation award for sensitively designed infill.

Reference. *The Beaufort Preservation Manual, page 41, Chapter 3. New Construction and Signage* states that "... new construction in Beaufort must go beyond the aspect of "form follows function." And "blend harmoniously with the historic fabric of the town."

Concern: 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.

Conclusion. Therefore, it does not meet the ZBOA Criteria for "Conformity of proposed use and designs with the City's Civic Master Plan" (ZBOA criteria 2 & 4) and "Harmony with the character of the surrounding area."

Reference. *Beaufort Preservation Manual, page 44, New Construction.*

To minimize negative impacts – Large-scale structures along period commercial streetscape should be strongly discouraged. If, however, the situation is unavoidable, the upper stories of the facade should be stepped back. From a pedestrians view on the street the façade should thus appear consistent in height and proportions with neighboring buildings. The lower most two to three stories should follow the building line of the street and should not create a setback, or gap in the continuity of the commercial structures.

Reference. *Beaufort Preservation Manual, page 16, New Construction, High Density/Large-scale construction.*

Large-scale structures should be set back from every street on which they have frontage, including the rear... to avoid becoming the dominant element of a vista or streetscape.

Concern: The site is a prominent street corner at Charles and Port Republic Street and is directly visible from Bay Street. The proposed project will be the **dominant** element of the vista and streetscape, diminishing the importance of the surrounding historic structures and district.

Concern: The upper stories of the façade are not stepped back as per the Beaufort Preservation Manual. Additionally, the lower most stories do not follow the building line of the street. Placement of a service entrance between the new structure and old Bay Marketplace creates a first-floor gap in the continuity of the commercial structures on the Port Republic Street frontage. The addition of a prominent projecting tower at the corner of Charles and Port Republic disrupts and dominates the streetscape and vista of the surrounding area and neighboring buildings.

Conclusion: Therefore, ZBOA criteria #4 and #2 have not been met.



Reference. *Beaufort Preservation Manual*, page 15, *New Construction, High Density/Large-scale construction*. If alternative sites are not available, seek locations within the Historic Beaufort Overlay district which best accommodate larger scale structure, such as areas previously intruded upon by modern construction, large lots which can be easily screened, areas with few of no historic structures, or areas which can best accommodate parking facilities.

Reference. Per the *Beaufort Preservation Manual*, page 44, *New Construction*, "To minimize negative impacts – Large-scale structures along period commercial streetscape should be strongly discouraged."

"Prior to admitting such (Large Scale) construction within the district, the review board and city administration should require that an effort be made to seek acceptable alternative sites beyond the boundaries of the district."

Concern. Was the applicant encouraged to seek alternative locations for the development as required?

The proposed site is directly adjacent to or across from historic structures including The George Parsons Elliott House, ca. 1844 at Charles and Bay Street; The Lucius Cuthbert House, ca.1810s; Edwards Department Store (now Old Bay Marketplace), ca. 1954;and the current First Citizens Bank building, ca.1965. There are more appropriate sites along Boundary Street or Ribaut Road some of which are owned by the applicant.

Conclusion. Therefore, the applicant has not met ZBOA criteria #4.

ZBOA CRITERIA #3. Likely impact on public infrastructure – such as roads, parking facilities, and water and sewer systems – and on public services – such as police and fire protection and solid waste collection – and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City.

Comments.

1. A Major issue for the city of Beaufort is storm water run-off. The city is having to invest massive amounts to address this in neighborhoods and in the commercial districts. While the footprint will be essentially the same as the current footprint the increase in demand of 50 commodes being flushed multiple times a day is not the same as a retail shop or office building. Laundry.
2. Taking into account that 5 large-scale structures are in the planning or approval stages for the Port Republic Street Corridor, the question that needs to be asked is has the full-scale impact of all projects if realized, been studied? Has the City Planning Dept or applicant contracted to have a study done for the impact of this proposed development. The primary desire for this transition area is to be a successful neighborhood commercial district.

Reference. Beaufort Preservation Manual. Page 44.

No project is so insulated as not to have an impact on the surrounding area.

3. The parking structure that is purported service the new infill projects along Port republic Street Corridor is currently the subject of three separate and independent court actions. It is anticipated that the appeals will not be heard for at least 90 days.

Reference. In keeping with Section 2.4.1 and Section 4.5.10 of the Beaufort Code, Large Footprint Buildings; specific to T4 and T5: a minimum of 75% of all parking shall be located to the side or rear of the building, or behind a liner building."

Concern. Parking is NOT addressed in applicant's submission indicating that the requirement has not been met. If the applicant intends to utilize parking in the proposed parking garage, it should be noted that the project is the subject of two separate and individual appeals and a lawsuit, none of which will be heard by the courts for at least 90 days.

Conclusion. The applicant has not met the requirements of ZBOA Criteria #3 and #4.

Reference. Section 9.13.2.F of the Beaufort Code. Special Exception Review Criteria, Item 3. States that "a traffic impact analysis shall be required per section 7.3.2" of the Code." While, the applicant's submission includes a trip generation report that indicates that there will be no significant impact, it is important to also note the significant increase in land use intensity that will occur with this project.

Increase in Land Use Intensity. Section 1.3.2.3 of the Beaufort Code, states that "an increase in the intensity of land use, such as an increase in the number or size of nonresidential or residential uses in a structure or on land or in the number of parking spaces..." are subject to the provisions and standards of the Beaufort Code.

Concern. The proposed project would replace a one-story structure underutilized since vacated by Alcoa's offices in the early 2000s. If realized, this three-story, 27,000 square foot mixed-use building 19 residential units and 4000 square feet of retail/commercial space, would generate an intensity of use that is five times what the site has seen in more than 20 years.

The trip generation report does not take into consideration the planned expansion of Tabby Place; the addition of roughly 100 hotel rooms, and the proposed 494-space parking garage all within the same two block area as the project under review today.

Conclusion. A Traffic Impact Analysis must be required because of the following contingencies:

- Pedestrian and automobile traffic leading to garage, tabby place convention space, hotels and retail spaces all within a two-block area
- Service Vehicular Traffic
- Narrow one-way street
- Intensification of uses on a narrow one-way street within a two-block area.
- Intensification of the need for more loading and unloading, moving vans, garbage pick-up, and servicing.

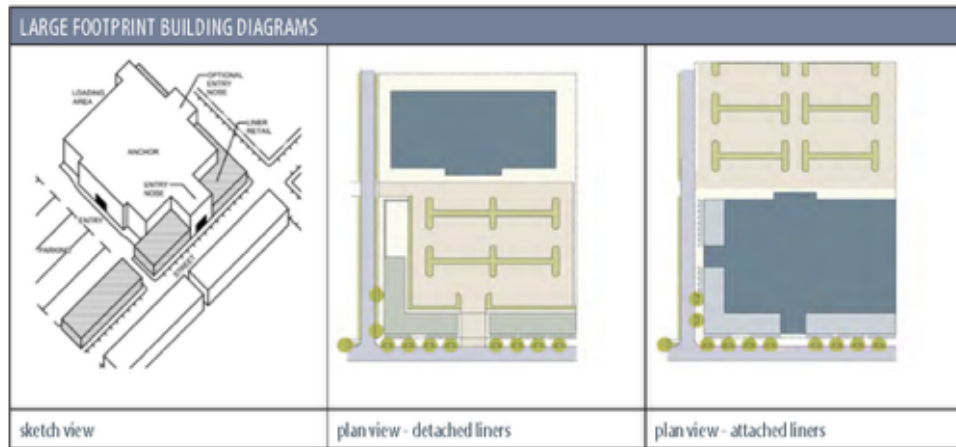
GROUND FOR DENIAL OF SPECIAL EXCEPTION FOR 211 CHARLES STREET

1. Proposed Building does not meet four of the six the ZBOA Criteria to grant approval for Special Exception # 1) Compatibility with existing land-uses in the surrounding area; #2) Harmony of proposed site plan, circulation plan and schematic architectural designs with the character of the surrounding area; #3) Likely impact on public infrastructure – such as roads, parking facilities and on public services such as police and fire protection and solid waste collection and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City; and #4) General conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the city.
2. Parking question must be resolved. If parking is not on site then the applicant needs to provide a detailed report of all his parking requirements for the multiple businesses as they will place significant pressure on all other downtown businesses and merchants. The City of Beaufort has invested 5 decades into the parking issues downtown – it is imperative that this be addressed.
3. The intensity of use for this and the cumulative projects require a full traffic and circulation analysis and infrastructure master plan.
4. Parking Garage is subject of 3 independent AND separate court actions and will not be resolved in the near future.
5. Numerous Significant Procedural Questions.
6. Alteration of building design puts HRB Preliminary Approval of Height, Mass & Scale into question.

In our presentation today, we have provided more than 20 compelling grounds to deny this project per your governing criteria.

We ask for your consideration .

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.

9.10: - CERTIFICATE OF APPROPRIATENESS

9.10.1 - APPLICABILITY

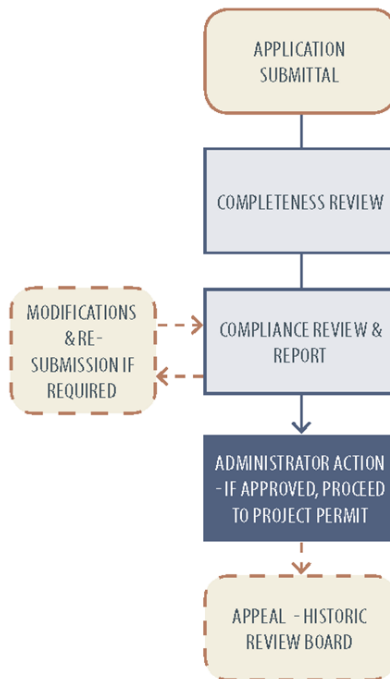
- A. A Certificate of Appropriateness shall be required for any construction activity in any historic district, including:
 1. New structures.
 2. Modification to, or expansion of, existing structures, including those that apply for the Bailey Bill Special Tax Assessment for Rehabilitated Historic Properties.
 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.

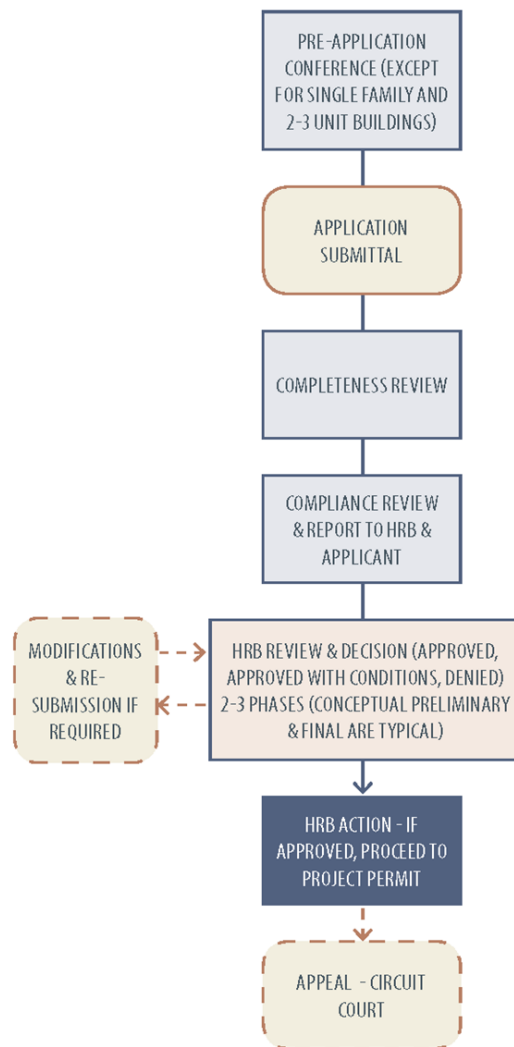
- b. New construction and building modifications to include construction of non-habitable accessory buildings in the Beaufort Preservation Neighborhood.



- 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 surrounding properties and the development permitted by the zoning of the surrounding properties to 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

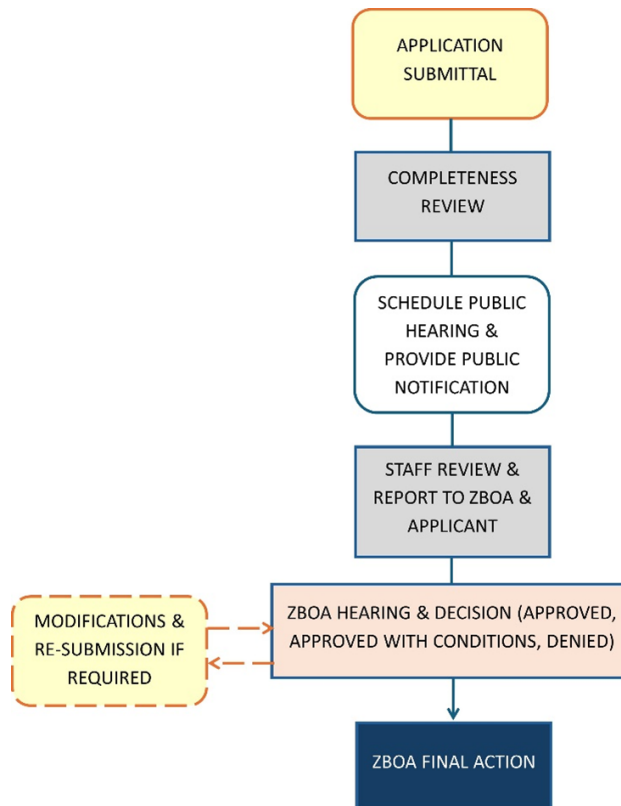
and resubmit. The applicant may not resubmit the same proposal, without modifying it based on HRB comments, for 12 months from the date of the original submission. Reconsideration of an application for demolition that has been denied by the HRB may not be heard until 12 months from the date of the original 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)

9.13: - ZBOA SPECIAL EXCEPTION

9.13.1 - APPLICABILITY



ZBOA Special Exceptions may be made for situations in which proposed land uses are generally compatible with the land uses permitted by-right in a district (per Section 3.2 Table of Permitted Uses) but require individual review of their location, design, and configuration to evaluate the potential for adverse impacts on adjacent property and uses. The ZBOA Special Exception process ensures the appropriateness of the use at a particular location within a given District.

(Ord. No. 2025/14, Exh. A, 8-19-2025)

9.13.2 - PROCESS AND APPROVAL

- A. **Process Type:** Discretionary.
- B. **Required Application Information:** All applicable forms as determined by the Administrator, along with such accompanying material as is required to ensure compliance with the criteria listed in Section 9.12.2.E.
- C. **Public Notification:** See Section 9.1.5 for specific Public Notification requirements.
- D. **Staff Review and Report:** The Administrator shall prepare a staff report that reviews the proposed development in light of the Comprehensive Plan, Civic Master Plan, the review criteria listed below, and the requirements of this Code. A copy of the report shall be provided to the Zoning Board of Appeals (ZBOA) and the applicant before the scheduled hearing.
- E. **ZBOA Hearing:**
 - 1. The ZBOA shall hold a public hearing on the Special Exception application.
 - 2. After review of the application and the public hearing, the ZBOA shall make a written finding and approve, approve with modifications or conditions, or disapprove the request.
 - 3. If approval, or approval with modifications or conditions, is granted, the decision shall be communicated in writing within 15 days to the applicant, and the applicant shall then be authorized to submit a development permit application consistent with this Code.
- F. **ZBOA Special Exception Review Criteria:** The ZBOA may approve an application for a Special Exception where it reasonably determines that there will be no significant negative impact upon residents of surrounding property/-ies or upon the general public. The ZBOA shall consider the following criteria in its review:
 - 1. The proposed use/-s is/are compatible with existing land uses in the surrounding area.
 - 2. The harmony of the proposed site plan, circulation plan, and schematic architectural designs with the character of the surrounding area.
 - 3. The likely impact on public infrastructure — such as roads, parking facilities, and water and sewer systems — and on public services — such as police and fire protection and solid waste collection — and the ability of existing infrastructure and services to adequately service the proposed use without negatively impacting existing uses in the area and in the City (a traffic impact analysis shall be required per Section 7.3.2).
 - 4. The general conformity of the proposed use and designs with the city's Civic Master Plan, Comprehensive Plan, and any other plans officially adopted by the City.
 - 5. The likely impact on public health and safety.
 - 6. The potential creation of noise, lights, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts.
- G. **Conditions:** The ZBOA may impose such conditions and restrictions upon the application as may be necessary to minimize or mitigate any potential adverse impacts of the proposed use.

10.3: - ZONING BOARD OF APPEALS

10.3.1 - POWERS AND DUTIES

- A. **Authority:** The Zoning Board of Appeals (ZBOA) is hereby established, pursuant to the authority of S.C. Code § 6-29-780 et seq., as amended, and shall hereafter be referred to as the Board.
- B. **Territorial Jurisdiction:**
 - 1. The ZBOA shall have jurisdiction over all lands within the City.
 - 2. The City Council may expand the jurisdiction of the ZBOA by ordinance and/or intergovernmental agreement, in accordance with the provisions of S.C. Code § 6-29-330.
- C. **Powers and Duties:**
 - 1. **Appeals:** The ZBOA shall hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an Administrative Official in the enforcement of this Code.
 - 2. **Variances:**
 - a. The ZBOA shall hear and decide requests for Variance from the requirements of this Code when strict application of the provisions of the Ordinance would result in unnecessary hardship.
 - b. The ZBOA shall hear and decide requests for Variance from the requirements of Chapter 4 of the City of Beaufort Code of Ordinances's "Flood Damage Prevention Ordinance."
 - 3. **Special Exception:** The ZBOA shall permit uses by Special Exception subject to the terms and conditions set forth for such uses in this Ordinance.

10.3.2 - MEMBERSHIP, TERMS, AND COMPENSATION

- A. **Number:** The ZBOA shall consist of 5 members, appointed by the City Council. None of the members of the ZBOA shall hold any other public office or position in the city.
- B. **Terms, Appointment:** All members shall be appointed by the City Council for overlapping terms of 3 years. All members shall be residents of the city, own property in the city, or own or operate a business in the city. All terms shall end on June 30 of the applicable year, and members must continue to serve until their successors are appointed.
- C. **Term Limits:** No member may serve for more than 2 successive terms, except for extraordinary circumstances where the City Council believes it to be in the best interest of the community to have a particular member continue for a specific period of time. This limitation shall not prevent any person from being appointed to the ZBOA after an absence of 1 year. Service for a partial term of less than 1½ years shall not constitute a term of service for purposes of this section.
- D. **Vacancies:** Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

- E. **Removal:** The City Council may remove any member of the ZBOA for cause.
- F. **Compensation:** Members shall serve without pay. Members may be reimbursed for actual expenses incurred in the performance of their duties from available funds approved in advance by the Administrator.

10.3.3 - OFFICERS, MEETINGS, AND QUORUM

- A. **Officers:** The ZBOA shall elect a chairperson and a vice-chairperson from its members who shall serve for 1 year or until reelected, or until a successor is elected. The board shall appoint a secretary, who may be an employee of the City.
- B. **Meetings:** Meetings of the ZBOA shall be held at the call of the chairperson and at such other times as the ZBOA may determine. All meetings of the ZBOA shall be open to the public.
- C. **Quorum:** At least 3 of the members of the ZBOA must be present to constitute a quorum.
- D. **Notice of Meetings:** Public notice of all meetings of the ZBOA shall be provided at least 15 days in advance by publication in a newspaper of general circulation in the city. In cases involving Variances or Special Exceptions, conspicuous notice shall also be posted on or adjacent to the property affected, with at least 1 such notice being visible from each public thoroughfare that abuts the property. Such notice shall be posted continuously for at least 15 days in advance of the meeting at which the Variance or Special Exception request will be heard.
- E. **Witnesses:** The chairperson, or in his or her absence, the vice-chairperson, may administer oaths and compel the attendance of witnesses by subpoena.
- F. **Rules of Proceeding:**
 - 1. The ZBOA shall adopt and adhere to rules of procedure for the conduct of business.
 - 2. An abstention from voting shall be considered a vote to deny the motion.
- G. **Decisions:** The concurring vote of 3 members of the ZBOA shall be necessary to: reverse any order, requirement, decision, or determination of the Administrator or building official, or to decide in favor of an applicant on any matter upon which it is required to pass judgement, or to affect any variation of this Code. On all appeals, applications and matters brought before the ZBOA, the ZBOA shall inform in writing all the parties involved of its decisions and the reasons therefore.
- H. **Contempt Penalty:** In case of contempt by a party, witness, or other person before the ZBOA, it may certify this fact to the circuit court, and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.
- I. **Minutes:** The ZBOA shall keep minutes of its proceedings, showing the vote of each member upon each question, or indicating absence or failure to vote. The Board shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the ZBOA and shall be a public record.
- J. **Staff:** The ZBOA shall use the staff of the Department of Community and Economic Development and the building official of the city.

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.

RECEIVED

Dec 03 2025

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. 2025-000623

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

v.

City of Beaufort, City of Beaufort Zoning Board of Appeals,
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.

s/ W. Andrew Gowder, Jr.

W. Andrew Gowder, Jr. (SC Bar No. 7895)

Austen & Gowder, LLC

1629 Meeting Street, Suite A

Charleston, South Carolina, 29405

(843)727-2229

andy@austengowder.com

Counsel for Appellants