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SC Court of Appeals

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Saluda Property, LLC,

Appellant,

v.

City of Columbia Board of Zoning Appeals,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2025-CP-40-07937

ORDER**PROCEDURAL HISTORY AND BACKGROUND FACTS**

This matter came before the Court on May 22, 2026, for a hearing on South Saluda Property, LLC's ("Appellant") appeal of a decision of the City of Columbia Board of Zoning Appeals (the "Board"). The Court has considered the arguments made at the hearing, the record on appeal, and the briefs and materials submitted by the parties.¹ Upon consideration of this matter, the Court hereby AFFIRMS the Board's decision for the following reasons.

Appellant owns real property on S. Gregg Street in a zoning district designated as RSF-3 (Residential Single Family – Small Lot District). Appellant's property contains 24 dwelling units, laid out as 6 buildings containing 4 dwelling units each. The current use of the real property for multifamily dwellings is a nonconforming use.

Appellant applied for a zoning/building permit after a stop work order had been issued on August 13, 2025, for ongoing construction to the apartment buildings. The stop work order was issued because Appellant had begun work on modifications to the dwelling units without first

¹ The Hollywood Rose Hill Neighborhood Association, Inc., moved for leave to appear as amicus curiae. Without objection, this Court granted leave and has considered the brief filed on behalf of the neighborhood association.

obtaining any permits. The permit application filed after the stop work order stated Appellant proposed to “modify existing floor to add bathroom and bedroom as outlined in plans.” A contract attached to the plans further stated that Appellant proposed to “[r]enovate and/or create 24 bathrooms and bedrooms.”

In context, Appellant was attempting to add a bedroom and a bathroom to all 24 of the existing 2-bedroom dwelling units. Each of the 24 dwelling units originally contained 2 bedrooms and one bathroom (i.e., a total of 48 bedrooms and 24 bathrooms). Thus, if the renovations had proceeded for all dwelling units, the entire project would have consisted of 72 bedrooms and 48 bathrooms. In the application for the zoning appeal, Appellant instead requested “that its permit to be issued [sic] allowing for the conversion of the eight (8) units from 2 bedroom 1 bath units to 3 bedroom 2 bath units.” If granted the relief requested from the Board, eight units would have been converted to a 3/2 configuration, and sixteen units would have been converted to a 2/2 configuration for a total of 56 bedrooms and 48 bathrooms.²

The original floor plan for the dwelling units was simple; a living area, a kitchen, and two bedrooms separated by a shared full bathroom. The new floor plan for the three-bedroom units contemplated turning half of the kitchen into a third bedroom with an adjoining full bathroom. The new bathroom would be constructed in what was a common stairwell at the rear of the building.

The Zoning Administrator (the “ZA”) denied Appellant’s request for a zoning permit. As a basis for the denial, the ZA determined the additional bedrooms and bathrooms constituted an intensification of the nonconforming use of the property. The ZA stated, “There are more bedrooms, more bathrooms, and more square footage for each dwelling unit – all in a zoning district that does not permit multifamily dwellings.”

² The actual plans were a moving target. On September 23, 2025, Appellant stated it planned to convert 12 units to a 3/2 configuration and 12 units to a 2/2 configuration.

Appellant appealed the ZA's determination to the Board. Appellant contended the proposed additions and modifications did not constitute an intensification of the use of the property because the configuration of the dwelling units before and after the additions allowed for the occupancy of no more than 72 unrelated persons.

The Board heard the matter on October 2, 2025. The ZA explained at the hearing that the stairwell "space was not arranged for th[e] use [as a bathroom] to begin with." In other words, the planned additional bathroom would have gone outside of the original footprint of the dwelling unit into a common, shared area. Appellant stated the addition of the bathroom would be accomplished by the removal of the rear stairway.

Numerous nearby residents of the surrounding single family residential zoning district appeared and testified at the hearing before the Board. The testimony provided by the residents concentrated on the type of tenants currently occupying the apartments. Overwhelmingly, the apartments are occupied by students from the nearby university. There was testimony that the portion of S. Gregg Street next to the apartments and the adjoining park has at times turned into a one-lane passage because of the number of vehicles parked on the street. A witness testified that she observed cars parking on the street to visit the apartments. The number of parking spaces at the apartments are tied to the number of dwelling units. An increase in the number of parking spaces will not be required even if the number of bedrooms and bathrooms is increased. A person who lived in the apartments until March 2025 stated the parking was barely adequate for the current number of residents.

Guy Jones previously lived in the apartments for seventeen years. He now resides nearby at 103 S. Edisto Avenue and is the president of the Hollywood-Rose Hill Neighborhood Association. Mr. Jones provided a current photo of a game of beer pong being played by college

students in the yard of the apartments. There were at least 12 students in the photo, along with piles of trash and furniture.³

The Board issued its written decision on October 29, 2025, finding the ZA “did not err in his determination that the addition of a third bedroom and second bath to each unit constitutes an intensification of a nonconforming use.” This appeal followed.

STANDARD OF REVIEW

Findings of fact made by the Board must be treated in the same manner as findings of fact by a jury. *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). Findings of fact will not be disturbed if there is any evidence to support them and if they are not influenced by an error of law. *Id.*

Courts should review zoning ordinances to give them a “practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers.” *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 897 (Ct. App. 2000). A 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 reasons 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).

Pursuant to the City of Columbia’s Unified Development Ordinance (“UDO”) the Board was required to affirm the ZA’s determination unless the Board found, based on clear and substantial evidence in the record, that: (1) the ZA made an error in determining whether a standard was met; (2) the ZA made the decision based on a standard not contained in the UDO or other

³ Amicus curiae also provided a photo of a beer pong game set up in the courtyard of the apartments and a photo of a vehicle parked on the grass with the front of the vehicle protruding into the street.

appropriate City ordinances, regulations, or State law; or (3) the ZA made an error in applying a standard. UDO § 17-2.5(u)(4).⁴

APPLICABLE LAW AND ORDINANCES

It is a violation of the UDO to “[c]reate, expand, replace, or change any nonconformity except in compliance with [the UDO]” or to “[i]ncrease the intensity or density of development, except in accordance with the standards of [the UDO].” UDO § 17-8.3(b)m. and o. Specifically, as to a nonconforming use, it

shall not be enlarged, expanded in area occupied, or intensified, except a nonconforming use may be enlarged into any area of the same structure in which it is located which was manifestly arranged or designed for such use prior to the date the use became a nonconformity, provided the use shall not be extended to occupy land outside the structure.

UDO § 17-7.2(d)(1) (the “Intensification Ordinance”).

The UDO also defines examples of activities constituting development. “Development” is “[a]ny change in the intensity of the use of a structure or land, such as an increase in: 1. The number of businesses, establishments, offices, dwelling units, or lodging units comprising the use; 2. The number of parking spaces or amount of impervious cover; 3. The number of products or services provided by the use[.]” UDO § 17-1.4(b)c.

“[T]he intention of all zoning laws, as regards a nonconforming use of property, is to restrict and gradually eliminate the nonconforming use.” *Christy v. Harleston*, 266 S.C. 439, 443, 223 S.E.2d 861, 863 (1976); *see also Bailey v. Rutledge*, 291 S.C. 512, 514, 354 S.E.2d 408, 410 (Ct. App. 1987) (“In general, the policy of the law is to look with disfavor on the continuation of nonconforming uses.”). The UDO permits nonconformities to continue but only under the limited

⁴ The parties provided this Court with relevant portions of the UDO.

circumstances outlined in the UDO. UDO § 17-7.1(a)(2). The UDO is “designed to curtail substantial investment in nonconformities to preserve the integrity of [the UDO].” *Id.*

In general, like all zoning ordinances, the UDO is intended to guide development in accordance with the City’s comprehensive plan in order to protect, promote, and improve the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare. UDO § 17-1.3. Among other things, the UDO is designed to prevent the overcrowding of land, to avoid undue concentration of population, to lessen congestion in the streets, and to facilitate the creation of a convenient, attractive, and harmonious community. *Id.* Further, the UDO is intended to facilitate harmonious, orderly, and progressive development of land that maintains strong neighborhoods and protects their character. *Id.*; *see also* S.C. Code Ann. § 6-29-710 (listing purposes of zoning ordinances); *Bob Jones Univ. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963) (stating zoning laws are for the purpose of promoting health, safety, morals, and the general welfare of the community).

All terms in the UDO must be interpreted in accordance with the purposes of the UDO. UDO § 17-9.1(a). For terms not specifically defined in the UDO, the ZA is authorized to interpret such terms in accordance with section 17-2.5(w), and the ZA’s interpretation must be based on other accepted sources such as those published by the American Planning Association, as well as generally accepted dictionaries. UDO § 17-9.1(k).

ANALYSIS

Appellant argues that its modification of the apartments is not an intensification because it does not involve an enlargement of the structure or an increase in the number of dwelling units. Appellant essentially argues that intensity can be equated to density and that the density (the number of dwelling units per unit of area) of the nonconforming use is not being increased. This

Court disagrees. The Board did not err in its determination that the modification of the apartments constitutes an intensification of the nonconforming use. Intensity is not the same as density.

The UDO's restriction on intensification is designed so that persons will not pour substantial money into a project such as this one. UDO § 17-7.1(a)(2). Anything that intensifies the **use** of a nonconforming use runs counter to restricting and eliminating that use.

The Intensification Ordinance contains three categories of prohibited activities for nonconforming uses. First, the area occupied by a nonconforming use may not be enlarged, unless it is enlarged only into an area of the structure which was manifestly arranged or designed for such use prior to becoming a nonconformity. Second, the area occupied by a nonconforming use may not be expanded in area occupied. Finally, a nonconforming use shall not be intensified.

The term "intensified" is not defined in the UDO. However, it can be assumed that the term "intensify" means something different than the terms "enlarge" and "expand". *See State v. Ramsey*, 311 S.C. 555, 430 S.E.2d 511 (1993) (stating "or" ordinarily is a disjunctive particle denoting an alternative).

Appellant's overriding argument is that density and intensity are the same and that the density of the nonconforming use is not being increased. However, intensity does not mean the same thing as density. For example, the UDO, in discussing requirements of site plans for development, distinguishes between density and intensity. *See* UDO § 17-2.5(i)(2)c.2. (stating internal construction that does not increase the density or intensity of use is exempted from site plan requirements). Density is generally used to describe the number of dwelling units per area. *See* UDO § 17-9.2(a)(5) (stating that density is expressed as dwelling units per acre). For example, the density of the zoning district in which this property is located is envisioned to "accommodate primarily single-family detached dwellings at moderate densities." UDO § 17-3.2(g). The

applicable zoning district's density is governed by meeting minimum lot size requirements. For example, increasing the number of dwelling units per acre, i.e., increasing the density, would result in an intensification of the nonconforming use, but it would not be the only way to intensify the use. As the ZA correctly stated, "density is one measure of intensity, but is far from the only measure of intensity."

In denying the permit, the ZA pointed out the distinction between density and intensity and stated that the use would be intensified because it would be more likely that three unrelated persons or larger families would occupy 3 bed/2 bath units instead of unrelated persons sharing bedrooms or instead of family members sharing bedrooms at the current configuration. The Board heard competent evidence supporting the ZA's position. A real estate professional who manages rental properties informed the Board that he owned 28 2-bedroom units in the City of Columbia. Out of those 28 units, only 2 units had more than 2 tenants. Based on this evidence alone, it is entirely rational to believe, as the Board did, that the use of the property would be intensified with the addition of a bedroom to the units. As one witness stated, three-bedroom units will all but guarantee 3 tenants per unit where there has previously been only 2 tenants per unit. It was reasonable for the Board to make a judgment based on this evidence that more bedrooms and more bathrooms would equate to more tenants and an intensification of the nonconforming use. *See Restaurant Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (stating a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision); *see also Avalon Home and Land Owners Ass'n v. Borough of Avalon*, 543 A.2d 950 (N.J. 1988) (noting that proposed reconstruction of hotel would "increase its capacity to accommodate overnight guests, constituting an intensification, and hence a further expansion, of a nonconforming use").

Appellant contends that the UDO regulates nonconformities at the level of dwelling-unit count and structural footprint, not at the level of interior room arrangement. The Board did not hear evidence only about “interior room arrangement.” The Board heard evidence about an increase in the number of bedrooms and bathrooms for the nonconforming use that changes the intensity of the use of the structure and the land. The addition of bedrooms and bathrooms is not simply an “interior room arrangement.” And, as explained above, the UDO regulates nonconforming uses not just at dwelling unit count and structural footprint. The UDO also regulates the intensification, enlargement, or expansion of nonconforming uses.

At the hearing on this matter, Appellant argued that intensification could mean anything and provided too much discretion to the Board. This Court disagrees. The evidence presented to the Board demonstrated an increase in activity on the property consistent with accepted definitions of the term.

The Board’s interpretation of intensification is consistent with that of the American Planning Association. For terms not specifically defined in the UDO, the Board is permitted and authorized to interpret such terms based upon definitions found in accepted sources published by the American Planning Association (the “APA”). UDO § 17-9.1(k). As cited previously by the ZA, an “intensification of use”, according to the APA, can be a “change in the operating characteristics of a use (e.g., increase in the number of days or hours of operation), which generates more activity on site.” *A Planner’s Dictionary* 233 (Michael Davidson & Fay Dolnick eds., American Planning Assoc. 2004). Another definition offered by the APA, and consistent with the ZA’s interpretation, is the “alter[ation of] the character of a use to the extent that the use generates new or different impacts on the health, safety, or welfare of the surrounding neighborhood, including but not limited to the level or amount of traffic, noise, light, smoke, odor, vibration, outside storage, or other

similar conditions associated with the use.” *Id.* The Board heard evidence that the change in the operating characteristics of the nonconforming use (more bedrooms and bathrooms) would generate more activity on the site. The evidence presented to the Board demonstrated that 2-bedroom units predominantly housed only two persons. Three-bedroom units would intensify the use by generating more tenants and more activity on the site, especially in the form of traffic, parking, and student use.

The evidence presented to the Board focused on the issue of student occupancy of the apartments. It was pointed out that to the Board that a “for rent” sign mimicked the University of South Carolina’s logo to attract students. Mr. Jones testified to the former mix of tenants when he resided at the apartments as opposed to its current use as student housing. It is reasonable to infer that an increase in the number of bedrooms and bathrooms in the dwelling units will generate an increase in the number of student tenants and the number of vehicles on the site and in the surrounding areas. Columbia is a university campus city. This Court can “consider the [UDO] in the context of the surrounding area, including the fact that the City is home to several colleges and universities.” *McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 508, 719 S.E.2d 660, 664 (2011), *citing Ames Rental Prop. Ass’n v. City of Ames*, 736 N.W.2d 255 (Iowa 2007) (stating “it cannot be ignored that Ames is a university campus city and therefore, experiences typical secondary effects of mass student congestion”). At the hearing on this matter, Appellant did not dispute that there was evidence of increased student activity at the property. A measure of intensity – a change that generates more activity on the site – is met in this instance.

Appellant also contends that its change in the use of the property does not constitute an increase in the “intensity of the use of a structure or land” pursuant to section 17-1.4(b)c. of the UDO. This section, stating that “development” is “[a]ny change in the intensity of the use of a

structure or land,” contains a non-exclusive list of examples of changes in intensity. The list provides examples of things that, upon increase, would be a change in the intensity of use, “such as” (1) the number of businesses, establishments, offices, dwelling units, or lodging units comprising the use; (2) the number of parking spaces; or (3) the number of products or services provided by the use. Appellant contends that none of these considerations apply to Appellant. Even if this was true, because this list is non-exclusive, this list does not mean Appellant’s proposed use cannot be an intensification of the nonconforming use. Moreover, this list concerns “development” and does not necessarily apply to whether a nonconforming use is being intensified. The Intensification Ordinance applies specifically to the intensification of nonconforming uses.

At the hearing, Appellant pointed the Court’s attention to *Coastal Prot. All. Inc. v. Airbnb, Inc.*, 313 Cal. Rptr. 3d. 262 (Cal. Ct. App. 2023), for the proposition that an interpretation of intensification should be rejected if it focuses on “internal floorplan design” rather than “external land-use impacts.” In *Coastal*, the plaintiff claimed that marketing residential properties on Airbnb in coastal areas constituted “development” because it would increase the density or intensity of use of land. The court reasoned that the plaintiff’s argument would result in a finding of “development” “any time there is an increase in the number of occupants at a residence.” *Id.* at 269. However, the case did not involve any allegation of an increase in the number of bedrooms for any particular parcel of property and the Board’s decision here did not rely only on a finding of an increase in the number of occupants. In *Coastal*, the plaintiff’s argument concerning an increase in the number of occupants, and therefore an increase in the intensity of use, was not tethered to any corresponding increase in, for instance, the number of bedrooms or the number of dwelling units on a parcel. More importantly, the court in *Coastal* was not interpreting zoning ordinances to determine whether a nonconforming use was being intensified. The court was called

upon to determine whether coastal dwelling unit owners should have been required to obtain permits for the “development” of their properties. This Court finds that *Coastal* is not instructive on whether Appellant’s proposed modifications are an intensification of a nonconforming use.

It has been held that “[a] prior nonconforming use is ordinarily restricted to its character and scope at the time the ordinance making it a nonconforming use was enacted.” *Bonaventure Int’l, Inc. v. Borough of Spring Lake*, 795 A.2d 895, 902 (N.J. Sup. Ct. App. Div. 2002). In *Bonaventure*, a nonconforming restaurant in a residential district had significantly changed its operation over the years, transforming from an operation supporting a small hotel (similar to a bed-and-breakfast) to a 96-seat restaurant with banquet and catering services. *Id.* at 899. The restaurant had not enlarged the building in which it operated but had expanded its operation within the footprint of the building. *Id.* Thus, in examining whether there had been an illegal extension of a nonconforming use, the court specifically found an “intensification” of the nonconforming use. *Id.* at 903. In the same manner, here the Board found the use was intensified by its generation of more activity on the site.

In conclusion, maintaining the density status quo does not mean the nonconforming use of the property cannot be intensified. The Board correctly interpreted and applied the UDO in finding that the Appellant’s proposed plans would be an impermissible intensification of a nonconforming use.

In addition, as an additional sustaining ground, this Court finds that Appellant’s proposed use also violates the UDO’s prohibition on the enlargement of a nonconforming use.⁵ See UDO § 17-7.2(d)(1) (stating a nonconforming use shall not be enlarged, except a nonconforming use may

⁵ See *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (stating a respondent “may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless whether those reasons have been presented to or ruled on by the lower court”).

be enlarged into any area of the same structure in which it is located which was manifestly arranged or designed for such use prior to the date the use became a nonconformity). This is not a simple reconfiguration of space, as Appellant contends. Instead, the proposed use is an enlargement of the square footage of the apartments into area that is used as a common stairwell.

The work proposed by Appellant appears to be a significant investment, one that Appellant would not soon abandon. Without a means to regulate intensification of nonconforming uses, Appellant's use might be prolonged, in direct contravention of the law's policy to gradually eliminate nonconforming uses.

Therefore, for the reasons stated herein, the Court hereby AFFIRMS the decision of the Board.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE ON NEXT PAGE]



Richland Common Pleas

Case Caption: South Saluda Property Llc VS City Of Columbia Board Of Zoning Appeals
Case Number: 2025CP4007937
Type: Order/Other

So Ordered

s/ Thomas W. McGee III, Judge Code 2786