20475

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Judge W. Jeffrey Young, Lexington County

Case No. 2012-212228

Tobacco Merchant, **Appellant**

v.

City of Columbia Zoning Administrator, Board of Zoning Appeals and City of Columbia **Respondent**

RECORD ON APPEAL

Darryl D. Smalls, Attorney at Law
Darryl D. Smalls
P.O. Box 212724
Columbia, SC 29221
(803) 727-6288
Attorney for Appellant

Other Counsel of Record
Peter Balthazor
P.O. Box 667
Columbia, S.C. 29202
Attorney for City of Columbia

RECEIVED
MAY 03 2013
SC Court of Appeals

Index

1. Decision of the Zoning Board 1

2. Circuit Court Order.....3

3. Circuit Court Hearing Transcript.....19

4. Records Submitted to Circuit Court.....46

5. Minutes of City of Columbia Board Zoning Appeals.....184

6. Respondents' Memorandum of Law 2/3/12.....200

7. Respondents' Supplemental Memorandum.....209

8. DVDs of Hearings of City of Columbia Zoning Board Jan.12, 2010
February 9, 2010

COLUMBIA

Everybody Counts - Everybody Contributes - Everybody Benefits

February 24, 2010

Darryl Smalls
Attorney at Law
6326 St. Andrews Road Suite 207
Columbia, SC 29212

RE: FINAL DECISION OF THE BOARD OF ZONING APPEALS IN CASE NO. 09-087-AA, 1220 BOWER PARKWAY, SUITE E-4, TMS#002797-01-055, HEARD JANUARY AND FEBRUARY 9, 2010.

In accordance with § 17-113(b) of the Zoning Ordinance of the City of Columbia, South Carolina, the Board of Zoning Appeals herein renders its final decision.

The subject property is commonly referred to as 1220 Bower Parkway, Suite E-4, more specifically, by the Lexington County Tax Map Sheet Number 002797-01-055. The subject property is located within the C-3, General Commercial District.

Based upon your application, submitted documents, and testimony considered by the Board of Zoning Appeals at the January and February 9, 2010 public hearing, and in accordance with § 17-113(a) of the Zoning Ordinance, the Board of Zoning Appeals failed to approve your Application for Administrative Appeal. On February 9, 2010, upon a motion to overturn the Zoning Administrator's decision of the classification of this business, the Board voted 3 in favor (Cromartie, Hubbard and Thompson) and 3 against (McMeekin, Webber-Akre and Young). A subsequent motion was made to uphold the Zoning Administrator's decision and the Board voted 3 in favor (McMeekin, Webber-Akre and Young) and 3 against (Cromartie, Hubbard and Thompson). Under the Rules of Procedure Section V.1 for the Board of Zoning Appeals, in the event of a tie vote, an alternative motion may be made. If no affirmative action on a motion is taken by the board, it will be determined that the appeal did not receive the requested relief from the board, and therefore the appeal is denied. Therefore, the decision of the Zoning Administrator to classify your business use as a drinking establishment is upheld.

Please be advised that § 17-114 of the Zoning Ordinance provides that any person who may have a substantial interest in any decision of the Board of Zoning Appeals, or any officer or bureau of the city having authority, may appeal from any decision of the Board to circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the final decision of the Board is mailed.

CONTINUED UPON NEXT PAGE

Elizabeth Webber-Akre, Chair of the Board of Zoning Appeals

2.24.10

Date

Cc: Brenda J. Kyzer, Business License Administrator

T:\DEVELOPMENTSERVICES\ZONING\BOZA\2010\FEBRUARY\BOWERPARKWAY_1220\BOWERPARKWAY_1220_UPHELD_LETTER.DOC

ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C/A NO.: 2010-CP-32-01368
Tobacco Merchant Appellant vs. City of Columbia Zoning Administrator, Board of Zoning Appeals and City of Columbia Respondents,	ORDER

PPB

This zoning matter comes before the Court in its appellate capacity. Appellant seeks to have the Court reverse or remand the decision of the City of Columbia Board of Zoning Appeals ("BOZA") upholding the Zoning Administrator's finding that the Appellant's business was operating as a drinking establishment without a special exception. This appeal was heard by the Court on February 13, 2012. Arguing for the Petitioner was Darryl Smalls, Esquire. BOZA was represented by Peter M. Balthazor, Esquire. All counsel argued ably and competently in favor of their respective client's position. As further discussed below, the Court affirms the decision of BOZA finding that the Appellant's business is operating as a drinking establishment.

I. Procedural/Factual Background

On April 22, 2009, the Appellant sought approvals from the City of Columbia to open a business in the City. Upon submission of a Business License Clearance Form, the Zoning Division approved the use of a "cigar store/stand" in a C-3 zoning district. The Zoning Division characterized the business with the use code of "5993" as found in its

Table of Permitted Uses at section 17-258 of the City Code. (BOZA000011; BOZA000120) This use code signifies businesses with the principal use of "cigar store and stands." City Code, §17-258. According to the Table of Permitted Uses, cigar stores and stands are permitted in a C-3 district. A Zoning Permit was issued on this same date with a description of the business as a "Tobacco stand." (BOZA000048)

On September 3, 2009, the Zoning Division received a complaint that the Tobacco Merchant was operating as a drinking place. A "drinking place" is defined as an "establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises." City Code, § 17-55. The Zoning Division inspected the location and met with the business owner and his counsel regarding the complaint and the Zoning Division's view that the business was being operated as a drinking place without a special exception. (BOZA000012) A drinking place is permitted only by special exception in a C-3 district. City Code, § 17-258.

The Zoning Division issued a Written Notice of Violation on September 16, 2009. (BOZA000023) The notice stated that the location was being operated as a drinking establishment without obtaining a special exception. The notice invited the Appellant to submit an application for a special exception. Id.

However, rather than apply for a special exception to operate as a drinking establishment, the Appellant appealed the Zoning Administrator's determination to BOZA. (BOZA000021) The Appellant asserted that the Zoning Administrator was in error because "The Tobacco Merchant legally operates as a tobacco retail establishment which has incidental sales [of alcohol] pursuant to the City of Columbia ordinances." Id.

BOZA first heard this matter on January 12, 2010. The Zoning Administrator stated his position that the business was being classified as a drinking place based upon the sale of alcohol and the amount of area in the building attributed to drinking. The Zoning Administrator also stated that the sale of alcohol did not meet the definition of accessory use found in the Zoning Ordinance. This determination was based on the amount of area that is allocated to opportunities for drinking and the size of the bar, as well as advertisements for drinking located outside of the store. At the time of this hearing there was no data available regarding sales. BOZA remanded the matter to the Zoning Division in order to gather additional facts concerning sales figures, square footage, and customers' utilization of the business. (BOZA 000139 – BOZA 000147)

BOZA next heard the matter on February 9, 2010. (BOZA 000148 – BOZA 000154) The Zoning Administrator provided evidence that approximately 27% of the area of the business could be attributed to retail sales of tobacco only whereas approximately 58% of the floor space constituted areas where alcohol could be consumed. The Zoning staff also provided a floor plan showing the areas separated for drinking and for retail tobacco sales. (BOZA000009) The owner provided sales figures suggesting that approximately 10% of sales came from alcohol with the other 90% coming from tobacco products. The Zoning Administrator reminded BOZA of the owner's previous admission that sales figures and customer usage would change depending on the time of day. The owner had previously asserted that during the daylight hours the business was predominantly tobacco sales and use but as the evening progressed alcohol sales would increase. In the ensuing discussion about the use of the business the owner acknowledged that a person could enter the establishment to drink

and not smoke. The owner also acknowledged that nothing would prohibit a patron from bringing his own cigarettes and purchasing a drink from the bar. (BOZA 000150)

At the two BOZA hearings, the issue was framed as whether the sale of alcohol at the establishment was an accessory use. The Zoning Administrator took the position that the sale of alcohol failed the definition of accessory use found in the Zoning Ordinance. (BOZA 000149) The Appellant argued that the sale of alcohol was an accessory use and that tobacco retail was the principal use of the location. Id.

At the conclusion of the second hearing, a motion was made to reverse the Zoning Administrator's decision and find that the alcohol consumption and sales was an accessory use. This motion failed upon a 3-3 vote. An alternative motion was made to uphold the Zoning Administrator's decision. This motion also failed upon a 3-3 vote. Therefore, pursuant to BOZA's written regulations, the Zoning Administrator's decision classifying the business use of the Appellant's property as a drinking establishment was upheld. (BOZA000007).

II. Standard of Review

"Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances." Clear Channel Outdoor v. City of Myrtle Beach, 360 S.C. 459, 465, 602 S.E.2d 76, 79 (Ct. App. 2004), *aff'd*, 372 S.C. 230, 642 S.E.2d 565 (2007). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

III. Law/Analysis

A. The Respondents did not err in concluding that the sale of alcohol at the Tobacco Merchant did not constitute an accessory use.

The Appellant argues that BOZA erred in ruling that the Tobacco Merchant operates as a drinking establishment. The Appellant states that the sale of alcohol is subordinate to the principal use of the sale of tobacco products.

The Zoning Administrator determined that the sale and consumption of alcohol at the location did not constitute an accessory use. An "accessory use" is:

> (1) subordinate to and serves a principal building or principal use; (2) subordinate in area, extent or purpose to the principal building or principal use served; (3) designed for the comfort, convenience or necessity of occupants of the principal use served; and (4) located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served. Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

City Code, §17-55, Definitions. "Accessory uses are those which are customarily incident to the principal use." Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 579, 524 S.E.2d 404, 410 (1999). "An accessory use must be one 'so necessary or commonly to be expected that it cannot be supposed that the ordinance was intended to prevent it.'" Id. (quoting Borough of Northvale v. Blundo, 203 A.2d 721, 723 (N.J. Super. Ct. App. Div. 1964)); see also 8 McQuillin Mun. Corp. § 25:151 (3d ed. 2010) (stating an accessory use is one which is dependent on or pertains to the principal use and which may be considered an integral part of the primary use).

In Whaley, our Supreme Court found that parking the cab of an 18-wheeler at a residence was not an accessory use because such use is not "customarily incident" to a residential zone. Whaley, 337 S.C. at 579, 524 S.E.2d at 410; see also Lerner v.

Bloomfield Tp., 308 N.W.2d 701 (Mich. Ct. App. 1981) (holding that home-based psychotherapy and marriage counseling did not qualify as an accessory use because such services were not customarily incident to residential use).

The following facts were presented to BOZA and reasonably support the Respondents' decision to find that the Appellant's sale of alcohol did not constitute an accessory use and that the business was required to obtain a special exception to serve alcohol:

- Area of business devoted to products - only 27% of the business was devoted exclusively to tobacco sales, whereas beer and wine could be consumed in approximately 58% of the area (BOZA000009, BOZA000148);
- the size of the bar area and the number of seats allocated to the bar area (19 seats) (BOZA000009);
- the business advertised the sale of beer on a store-front sign (BOZA000032);
- the business does not require a customer to purchase tobacco in order to purchase alcohol (BOZA 000150);
- the business does not restrict the use of tobacco products to those purchased in-house (BOZA 000150);
- the sales figures may not accurately describe the character of the business at different times of the day (BOZA000142, BOZA000144);
- the nature of the business changes from day to night (BOZA000144);
- the sale of tobacco started before the business installed a bar and began serving alcohol (BOZA 000142-3); and
- the bar was installed without obtaining a building permit (BOZA000080).

These facts demonstrate that the sale of alcohol is not subordinate to the sale of tobacco. They also demonstrate that the sale of alcohol is not designed for the comfort, convenience or necessity of the occupants. Rather, the sale of alcohol was designed and intended to bring in outside persons for a drink. The sale and consumption of alcohol at a tobacco retail store is a luxury, not a necessity.

The Appellant points to the sales percentage of alcohol as compared to tobacco products as evidence that the former is incidental to the latter. The Court finds that the sales figures are of limited value in determining whether alcohol sales are an accessory use. Zoning determinations are made based on the use of land; sales figures may not truly reflect how an area is being used. For example, a general retail establishment may sell diamonds, among many other items. Just a few diamond sales from behind a small counter space may yield a high percentage of gross sales but may not be an adequate measure of the general use of the land. A narrow approach relying too much on alcohol sales may not adequately take into account the definitional approach of determining an accessory use and whether one use is "customarily incident" to another.

The Appellant also asserts that its business has "incidental" sales of alcohol pursuant to the City of Columbia smoking ordinance. The Appellant cites to sections 8-217, 8-816 [sic], and 8-818 [sic] of the City of Columbia Code of Ordinances.[1] The smoking ordinances are not relevant to the present dispute and should not be considered. The Respondents are not seeking to enforce any provision of the smoking ordinances. The Respondents do not have jurisdiction to hear and decide issues related to any

[1] The Court understands the Appellant to be citing to sections 8-216 ("Definitions"), and 8-218 ("Exceptions") of the City's smoking ordinance. However, the Appellant did not enter into evidence the subject ordinance sections. Courts will not take judicial notice of municipal ordinances. See Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000) (declining to take judicial notice of a zoning ordinance regarding zoning appeals which was not included in the record on appeal).

ordinances other than zoning ordinances. See S.C. Code § 6-29-800(A)(1) (Supp. 2011) (stating the board of zoning appeals has the power to hear and decide appeals concerning decisions made by the zoning administrator in the enforcement of the zoning ordinance).

In any event, the record reasonably supports the conclusion that sale of alcohol is not "incidental" to the sale of tobacco products. The fact that the sale of alcohol may be in some fashion "common" or "accepted" in other jurisdictions, as Appellant asserts, does not support the conclusion that it is incidental.

An incidental use in the zoning context means that it is a use which is dependent on or pertains to the principal use. See 2 Rathkopf's The Law of Zoning and Planning § 33.3 (4th ed.); see also Black's Law Dictionary 1540 (7th ed. 1999) (defining "incidental use" in the zoning context as a "land use that is dependent on or affiliated with the land's primary use").

There is no evidence in this matter that alcohol sales are dependent on the primary use of the business as a retail tobacco store. As convenient as it may be for a customer to buy a cigar and have a drink, it does not follow that such a luxury is dependent on tobacco sales. Pipes, cigar cutters, cigarette papers and the like are incidental to tobacco sales. Alcohol sales are not incidental simply for the reason that some persons may like to drink when they smoke, or vice versa.

The Appellant's sale of alcohol did not meet the definition of accessory use in the Zoning Ordinance. The evidence in this matter clearly depicts that the Tobacco Merchant operates as a drinking establishment. It is of no avail that the Tobacco Merchant also sells tobacco. Moreover, there is no evidence that the sale of alcohol is customarily incident to the sale of tobacco.

This Court finds that the use of the Tobacco Merchant for alcohol sales and consumption did not constitute an accessory use. Therefore, in order to serve alcohol the Tobacco Merchant is required to seek and obtain a special exception.

B. BOZA's written decision was sufficient.

Appellant asserts BOZA's written decision was not properly issued in writing as required by section 6-29-800(F). In relevant part, the written decision stated that

> Based upon the application, submitted documents, and testimony considered by the Board of Zoning Appeals at the January [12, 2010] and February 9, 2010 public hearing, and in accordance with § 17-113(a) of the Zoning Ordinance, the Board of Zoning Appeals failed to approve your Application for Administrative Appeal.

(BOZA000007). Petitioner contends this does not satisfy the statutory requirement that a decision be in writing with findings of fact and conclusions of law separately stated.

"Though the statue does not specify the form the writing must take, it is well-settled that courts reviewing the decisions of zoning boards . . . may look to written documents as well as records of proceedings as sufficient formats for final decisions." Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 34, 606 S.E.2d 209, 212 (Ct. App. 2004). The underlying substance of the decision is of more importance than the form of the written decision. See Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) (stating "the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case.").

As in Austin, the evidence considered by BOZA is "clearly laid out in the transcript of the hearing" and in the written materials submitted to BOZA and made part

of the record. Austin, 362 S.C. at 35, 606 S.E.2d at 212. The written materials, taken together with the record of the public hearing, including the minutes, "provides sufficient basis for a reviewing court to determine whether the decision was supported by the facts of the case." Id. For example, in addition to the minutes and the video of the proceedings, the Zoning Administrator set forth detailed written evidence concerning its basis for concluding that the classification of the business as a drinking place did not constitute an accessory use. (BOZA000011 – BOZA000014; BOZA000080 – BOZA000081).

Therefore, the Court finds that the Appellant did not meet its burden to show that the BOZA decision does not comply with state law or City ordinances.

C. The Respondents are not estopped from ruling that the sale of alcohol was not an accessory use such that a special exception would be required to operate a drinking establishment at the location.

The Appellant argues that the City of Columbia should be estopped from requiring the Tobacco Merchant to obtain a special exception for drinking since the City approved the business license. The Appellant asserts that it sought approval from the Zoning ***and*** Business License Divisions to sell tobacco products and "incidental sales" of beer and wine. The Appellant also claims that the City approved the "license" as a "Cigar Lounge."

Based on a review of the record, there is no evidence that the Zoning Division approved a "license" for incidental alcohol sales. As the record demonstrates, the Zoning Division issued a Zoning Permit for the use of the business as a "cigar store/stand." The Zoning Division did not approve a license in any form for a "Cigar Lounge." The Zoning

Permit issued to the Appellant did not permit the sale of alcohol (except as an accessory use).

"As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy." Greenville County v. Kenwood Enters., Inc., 353 S.C. 157, 171, 577 S.E.2d 428 (2003). The public cannot be estopped by the unauthorized or erroneous conduct of its agents or through mistaken statements of law. Id.; DeStefano v. City of Charleston, 304 S.C. 250, 403 S.E.2d 648 (1991). "If estoppel is applicable against a government agency, a relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Quail Hill, LLC v. County of Richland, 387 S.C. 223, 236-7, 692 S.E.2d 499, 506 (2010).

In Quail Hill, the Supreme Court held that the county could not be estopped where the landowner received erroneous zoning information from an unauthorized employee. Here, there is no evidence that the Appellant received erroneous information from the Zoning Division. To the extent that the Appellant now relies on the Business License Division's characterization of the business to estop a zoning determination, Quail Hill makes it clear that a party cannot justifiably rely on assertions from unauthorized individuals. The Business License Division's characterization of the use of the property is not applicable to the Zoning Division and cannot be relied upon by the Appellant. The Appellant did not lack knowledge of the Zoning Division's classification of the use of the business. The Zoning Permit clearly states that the business is classified as a "Tobacco stand." (BOZA000048). Moreover, there is no evidence that the Appellant consulted the

Zoning Division about its alleged plans to sell alcohol or sought clarification from the Zoning Division about permitted uses on the property. See Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229 (2001) (holding City, which had issued erroneous building permits, was not estopped from enforcing zoning ordinance where building owner could have easily ascertained flood limitations on his building by reviewing the zoning/flood ordinance).

There has also been no prejudicial change in position by the Appellant. The Appellant purchased the tobacco retail store business in 2009, after the location had been in operation without alcohol sales for thirteen years. The Appellant initially operated the business as a retail tobacco store and only later added a bar to serve alcohol. The Appellant did not obtain a building permit for this work. (BOZA000080). In other words, the Appellant purchased and operated a retail tobacco store. The Appellant cannot now complain of a prejudicial change in position about its unauthorized actions.

D. The Respondent's decision did not violate the Appellant's equal protection or due process rights.

Next, the Appellant argues that BOZA's decision violated its rights to equal protection and due process. "In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." Denene, Inc. v. City of Charleston, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004). "The standard for reviewing all substantive due process challenges to . . . municipal ordinances, including economic and social welfare legislation, is whether the ordinance bears a reasonable relationship to any legitimate interest of government." Id.

The "requirements of equal protection are satisfied if (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." Doe v. Am. Red Cross Blood Servs., 297 S.C. 430, 437, 377 S.E.2d 323, 327 (1989).

In support of its argument that the Appellant was denied equal protection and due process rights, the Appellant simply asserts that its business was treated differently than other similarly situated businesses. The Appellant makes no attempt to explain, first of all, that it is a member of a class. The Appellant also makes no attempt to prove that any classification was not reasonably related to a legitimate government interest. See State v. White, 348 S.C. 532, 560 S.E.2d 420 (2002) (holding the challenging party has the initial burden "to show that the ordinance is arbitrary and has no reasonable relation to a lawful purpose").[2] It is assumed for purposes of this order that the Appellant claims it is a member of a class of retail tobacco stores. The Appellant goes on to claim that its equal protection rights are being violated because other members of the class are not being pursued for violations.

This Court finds that the Appellant is mischaracterizing the issue of code enforcement with one of equal protection. The fact that the City of Columbia has enforced its zoning ordinances against the Appellant does not prove a violation of equal protection. The Zoning Division received a complaint and acted on it. Enforcement of

[2] The Appellant's argument concerning due process and equal protection is so short and conclusory that it is deemed abandoned. See South Carolina Dep't of Probation, Parole & Pardon Servs. v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000) (stating that appellate court will decline to consider an argument where it is so conclusory as to be an abandonment of the issue).

the zoning ordinance against the Appellant is not conditioned upon every other similarly situated business, if any, being cited at the same time.

Finally, in terms of due process, the fact that the City's zoning ordinances may create some situations where the Appellant does not have unlimited free use of their property does not automatically equate to constitutional infirmity. See Bear Enters. v. County of Greenville, 319 S.C. 137, 141, 459 S.E.2d 883, 886 (Ct. App. 1995) ("A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property."). The Appellant has not been deprived of its property or precluded from obtaining beneficial use of the property. There has been no due process violation.

E. The Respondents' actions did not constitute a taking without just compensation.

The Appellant claims it has been subjected to a taking without just compensation because the Respondents' actions denied the Appellant an economically viable use of its property. The Appellant cites Agins v. City of Tiburon, 447 U.S. 255 (1980), for this proposition. Agins has been overruled for at least one of its holdings and is not the proper precedent under which to analyze regulatory takings cases. See Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005).

Regulatory takings challenges are analyzed under the standards set forth in Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978). The Appellant has made no attempt to establish that the Respondents have violated any of the Penn Central factors. The Appellant has not set forth any facts to apply to the Penn Central factors. The Appellant has not been precluded from obtaining beneficial use of the property. The use

of the property as a tobacco retail store can continue, just as it was in the 13 years prior to the Appellant's acquisition of the business.

Moreover, the Appellant's takings claim is not ripe. The Appellant has not been deprived of an economically viable use of its property. Drinking establishments are permitted at the Appellant's location pursuant to a special exception. The Respondents alerted the Appellant that it was operating a drinking establishment without a special exception and invited the Appellant to seek a special exception. (BOZA 000023; 000141) The Appellant has not sought, nor been deprived of, a special exception to operate a drinking establishment.

Therefore, the Appellant has not established that it has been subjected to a taking without just compensation.

F. The Board's tie vote did not violate the Appellant's due process rights.

The Appellant asserts that the BOZA decision should be reversed or remanded because BOZA's vote resulted in a tie.[3] This Court disagrees.

All that is required for BOZA to conduct business is the presence of a quorum. City Code, § 17-111. In some instances a quorum may consist of only six members. Therefore, the Board has enacted a rule of procedure to address such a scenario. See City Code, § 17-111(b)(1) (authorizing the board to establish rules of procedure); S.C. Code Ann. § 6-29-800(B) (Supp. 2011) (acknowledging the board's use of its own rules to set and determine appeals). The rule states that if no affirmative action is taken by the board, it will be determined that the appeal did not receive the requested relief, and its effect is to deny the appeal. (BOZA 000007)

[3] The Appellant's treatment of this issue is also so short and conclusory that it should be deemed abandoned. The Appellant did not cite any authority for its position.

IV. Conclusion

For the reasons stated herein, BOZA's decision finding that the Appellant's business is operating as a drinking establishment is AFFIRMED.

IT IS SO ORDERED.

The Honorable W. Jeffrey Young
Circuit Court Judge

4 April, 2012
Sumter, South Carolina

State of South Carolina)
) In the Court
County of Lexington) Of Common Pleas

Docket No. 2010-CP-32-01368

Tobacco Merchant,)
Plaintiff,)
)
VS.) TRANSCRIPT OF RECORD
)
City of Columbia Zoning)
Administrator,)
Defendant.)

February 13, 2012
Lexington, South Carolina

B E F O R E:

The Honorable W. Jeffrey Young, Judge.

A P P E A R A N C E S:

Darryl D. Smalls, Esquire
Attorney for the Plaintiff

Peter M. Balthazor, Esquire
Attorney for the Defendant

INDEX

	Page
Motion Hearing.....	3
Certificate of Reporter.....	30

EXHIBITS

NO.	DESCRIPTION	PAGE

(REPORTER'S NOTE: There were no exhibits entered during this hearing.)

THE COURT: This is Tobacco Merchant?

MR. SMALLS: Yes, sir.

LAW CLERK: Good morning, Judge.

THE COURT: Good morning, Sam. You're on board. We're getting ready to start hearing this is number --

What number is this on the docket?

The CLERK: Fifty-eight.

THE COURT: Fifty-eight on the docket, Tobacco Merchant versus City of Columbia, under Docket No. 2009-87.

Is that correct?

THE CLERK: 1368.

THE COURT: Okay. 32-1368 is the actual docket number.

All right. Mr. Smalls, I believe you're the moving attorney on this.

MR. SMALLS: Yes, sir, Your Honor.

THE COURT: All right.

MR. SMALLS: We have some housekeeping --

THE COURT: This is -- he had an appeal?

MR. SMALLS: Yes, sir, it's an appeal. We have certain documents that we want to --

MR. BALTHAZOR: And I've already talked about this with Mr. Smalls if we could just -- few

housekeeping matters right here in the beginning.

THE COURT: All right.

MR. BALTHAZOR: I have already submitted to the Court as the record in this matter, documents from the Board of Zoning Appeals and they are bates stamped. Right now what's in the record is -- yes, sir, there's a DVD of some BOZA hearings and the records -- or the documents in the file right now are BOZA 1 through 138.

THE COURT: I got that.

MR. BALTHAZOR: And --

THE COURT: I see that.

MR. BALTHAZOR: And with Mr. Smalls' consent, and I've given him a copy of this, we would like to supplement the record to include the official minutes of -- of BOZA from those two dates, January 12th and February 9th, 2010. For the record, it's marked BOZA 139 through BOZA 154. So I'll hand that up.

THE COURT: All right.

MR. SMALLS: No objection, Your Honor.

THE COURT: All right. Without objection.

MR. BALTHAZOR: And I've got a memo prepared also. I'll go ahead and hand you a copy of that if I could.

THE COURT: Do you have any memos, Mr. Smalls?

MR. SMALLS: Your Honor, I requested and Counsel's agreed, I will submit my memo.

THE COURT: Okay. I'll give you ten days to submit it.

MR. SMALLS: Ten days?

THE COURT: Ten days.

MR. SMALLS: Thank you, Your Honor.

THE COURT: All right. You may proceed.

MR. SMALLS: Thank you. Your Honor, I'm Darryl Smalls. I'm representing the Tobacco Merchant. The Tobacco Merchant is a tobacco retail store located on Bower Parkway in Harbison in Lexington County. This store has been opened for about fifteen years, Your Honor.

And just to give you some background on this case, in 2008, the City of Columbia and other local municipalities passed a smoking ban and all of them are pretty much similar. And in those -- that smoking ban, there is an exception that provides that tobacco retail establishments can continue to have smoking. That ordinance also says that a tobacco retail establishment can have incidental sales, such as soft drinks and other

things. In fact, the Tobacco Merchant, under new management, received a license, a cigar lounge -- a smoking, cigar lounge license from the City of Columbia after the smoking ban and requested and was given authority to have beer and wine sales.

All that's admitted in the record, Your Honor. All the certificates that were completed by zoning, the certificates for business license, all those were signed by the city.

So subsequent to that, the Tobacco Merchant under the new management started selling beer and wine in conjunction with tobacco sales. There is no question and no argument, and I think Counsel will not argue with me that the tobacco sales exceeded the sales of beer and wine. Almost ninety -- ninety percent tobacco products versus ten -- around ten percent for beer and wine sales.

At some point, the City of Columbia received a complaint from surrounding business, we're not exactly sure. That information, who made the complaint, was not presented to my client by the zoning board. After that complaint was made, the zoning administrator issued a letter to my client in essence requesting that they cease selling beer and wine.

Now, this was after they had already received all approval for necessary paperwork to sell beer and wine. We appealed that decision of the zoning administrator to the Zoning Board of the City of Columbia. At that point, the zoning board was only made up of six members. It normally has seven members. As you read through all the minutes and all the -- the video tapes of all the hearings they have been submitting, Your Honor, there are only six members on that board. And we believe that is part of the reason we have a problem here today. There were only six members on that board. As a result, there was a tie vote. Six members of the board felt that Tobacco Merchant was a drinking establishment, six members said they were not -- I mean three, excuse me. Three said they were, three said they weren't. So we had a tie. Based upon the regulations that the board has, they go back and use the decision of the administrator as a tie breaker when it's only six members on the board.

We feel that's unconstitutional, Your Honor, that -- in my twenty plus years of practicing, I've never seen an appellate panel use the decision of the person making the original

order. No court does that. You always decide that based upon the panel's decision. We -- that was one of the issues we brought up as far as his appeal.

And I want to bring forth all the issues. I want to state them on the record as the -- as the basis for our appeal.

THE COURT: Yes, sir.

MR. SMALLS: Your Honor, number one, the board erred in ruling that the Tobacco Merchant should be ruled a drinking establishment since the city ordinance and state law provide for a specific -- specifically for the sale of beer and wine subordinate to the principle used incidental to the sell of tobacco products.

Number two, that the boar erred in that the final decision by making no specific findings of fact and ruling of law as required by city ordinance and state law.

Number three, that the board erred by not making a decision at all as a result of a tied vote and relying on the zoning administrator's decision that the ruling, based on a tie is unconstitutional, illegal, and effectively no appellate decision.

Number four, that the board erred in ruling that the Tobacco Merchant is a drinking establishment since the city was estopped from requiring a special exception for drinking since the city approved the original business license and appellate relied upon the city establishing their license to continue with their business.

Number five, that the board erred in ruling that the Tobacco Merchant was a drinking establishment since the ruling violated the appellate's equal protection and due process rights.

Number six, that the board erred in ruling that the Tobacco Merchant is a drinking establishment since the ruling was effectively a taking without compensation.

Your Honor, I will more fully go through those in my brief, but briefly I want to point out the fact that the sale of beer and wine is subordinate to the principle use of the sale of tobacco products. The city ordinance specifically says that you can have an incidental use, which is subordinate to your principle to use. That is part of the city's ordinance. It is our position that the sale of beer and wine has always been

incidental and subordinate to sale of tobacco products.

In fact, as we go back and I talk about the fact that the board never really did order it at all, they sent a letter out. Just a letter saying that based upon our rules, we're going to have to continue to rule with the zoning administrator. So there was no ruling for me to actually sit before you today and say, Well, this is what they ruled on because there is no ruling. There is nothing, Your Honor. Again, the board made no final -- no findings of facts, rulings of law, which we could appeal upon.

And I want to point out one other thing, Your Honor. When we're talking about subordinating use, the Tobacco Merchant is probably -- or is the largest retail cigar and tobacco store in South Carolina. And the size of the store is principally a humidor, which I'm sure that all those pictures had been submitted in the record, Your Honor. And the humidor is substantially the length of the store.

So when we talk about principal use, we're talking about the principal use of that store is tobacco use. There is a bar and I'm sure Counsel

will bring that up. There is a bar that runs the length of the right side of the store; however, that was put in primarily because that's the way they can fit more people into the establishment. And on -- at that bar is the only place where there is beer and wine sold, is at that bar. But clearly, the principal use of this business was the sale of tobacco, Your Honor. And if you -- if you go through the record completely, and the record is long and extensive with all the diagrams that they've submitted and also we submitted, it shows the various places that you could smoke. You could smoke and drink throughout the entire establishment, but the principal use of it is tobacco. Thank you.

THE COURT: Thank you.

Yes, sir.

MR. BALTHAZOR: Thank you, Your Honor. Mr. Smalls, I think towards the end of his argument was correct. And I agree. I think that the main issue, the issue to be decided here today and what BOZA took up was whether or not the sale of beer and wine at this establishment was an accessory use. If it was an -- or was or is an accessory use, then that -- that activity can be continued

at -- at the business. But if it does not meet the definition of accessory use --

THE COURT: Do y'all agree that it's a ninety, ten ratio between the sale of tobacco products versus the sale of alcohol?

MR. BALTHAZOR: Yes, we do. We don't have any -- we don't have any, certainly, any evidence to dispute that. I do think that sales figures -- I think it's dangerous to rely too completely on sales figures such as that based on --

THE COURT: How else would you have a common denominator when you're talking cigars and cigarettes versus drinks? How would you have a common denominator other than the revenue?

MR. BALTHAZOR: Well, I think in this instance since this is a zoning case and in a zoning case, I believe we're dealing with what -- just the use of land, not necessarily the raw numbers of what -- what sales may be. And that's what -- there are some competing ordinances as Mr. Smalls recognized. There's the smoking ban ordinance which the city did enact in probably 2008, but that is not under the jurisdiction of the the zoning administrators. That's not something that BOZA deals with.

Here we're just dealing with the zoning ordinances of the City of Columbia, which deals with, like I say, use of land. And I think so, under that, if we're just looking at sales figures may not be an adequate or an accurate describer of what the use of land is. I think there's other things in the record which the zoning administrator looked at and some -- and three of the members of BOZA may have latched on to --

THE COURT: But three went the other way, too.

MR. BALTHAZOR: Three went the other way; that's correct. And I will get into that in a minute, but I think there's evidence to support the zoning administrator's decision and in turn to support BOZA, I guess having a tie vote on this issue.

First of all --

THE COURT: Tell me why there were only six people voting on it. Is that your normal --

MR. BALTHAZOR: Well, I --

THE COURT: -- or was someone absent?

MR. BALTHAZOR: I'm not sure if someone was absent or if there was an open space on the board at that time. The board is set to be -- the board

is set to be seven persons --

THE COURT: So normally you would take the --

MR. BALTHAZOR: Yes, but the board -- I mean, if -- if somebody doesn't show up, all that's needed to conduct business is a quorum. So all they would need is four people on any -- any given -- given date. So you could have a two to two vote if something came forward. And I will -- we'll address that. The -- right now, the rules of -- the board has enacted rules of procedure, five -- I'm sorry 6-29-790 of the code sets forth the authority for the board to establish its own rules of procedure. The board has done that and I think one of those rules is referenced in -- on page seven of the record. It's Rules of Procedure, Section Roman Numeral five point one, which states that if no affirmative action on a motion is taken by the board -- well, let me back up.

First it says, If there is a -- that a motion must receive a majority vote to carry. If there's a tie vote, an alternative motion may be made. That happened here. And then, if no affirmative action on a motion is taken, it will

be determined that the appeal did not receive the request to relieve from the board and therefore the appeal is denied. So that -- that's what happened here in -- in conformance with the board's rules of procedure.

Kind of going back to your question, Your Honor, about how we look at this. I guess what -- you know, what factors if we're not going to use sales. I think the evidence in the record -- and I've set forth some of this evidence in my memo which are all the things brought up to the board, relied on by the zoning administrator was, first of all, some of the area of the business. What was being conducted in the business. And there's a -- there's a good layout of the floor space on page nine of the record, which shows that only 27 percent of the business was devoted only exclusively to tobacco sales, the rest of the business was alcohol or tobacco. I mean, you could -- you could go anywhere you wanted with, I guess tobacco or a drink.

THE COURT: Wouldn't it be because of the nature of what is being sold, it takes less space to sell tobacco products than it would to sell alcohol.

MR. BALTHAZOR: I mean -- yes.

THE COURT: With alcohol, you have to have a bottle there where as tobacco is a cigar or something. I mean it's just the volume of what's being sold is much less.

MR. BALTHAZOR: Right. And I think that's part of what's troublesome to me and maybe to the zoning administrator also.

THE COURT: Okay.

MR. BALTHAZOR: And this may be a far fetched example, but you never know what someone might do. I think the danger is someone coming in to apply for a license as a retail tobacco store, they get their license as a retail tobacco store, get their license as a retail tobacco store, smoking can be allowed there and then they start selling beer and alcohol, install a bar. Like you say, it doesn't take much space to sell tobacco. Maybe all they've got is a table top humidor and now they're just basically a full-fledged bar.

THE COURT: Yeah, well that may -- that could be balanced out with the revenue. I mean, if they're only making 10 percent on the tobacco and then 90 percent is the alcohol then it's obvious what they're doing.

MR. BALTHAZOR: Maybe, but that's where I don't know where that cutoff point is with the revenue and that's why I think -- that's why I think our zoning administrator of BOZA was reluctant to just look at that. They looked at the area of the business, what was going on, how many seats were allocated to the bar area, the business was advertising beer out in --

THE COURT: Again, let me ask you --

MR. BALTHAZOR: -- front of the business.

THE COURT: Wouldn't the idea be that you would buy a cigar, go buy you a drink and then have a seat in the bar area. I mean, wouldn't that be a feasible expectation of the use.

MR. BALTHAZOR: Well, I'm sure that's what the business owner expects and wants people to do, but the facts show that you don't have to buy a cigar there, you don't have to buy any tobacco products there to come in and have a beer. You can just come in off the street if you want, sit down and have a beer, you don't have to smoke. Or you can bring your own pack of Marlboro lights or whatever it is you want and you can sit there at the bar and smoke there too. That's why I think what our zoning administrator looked at, what BOZA

looked at the nature of this.

When you look at the pictures, see the big bar that was installed, see the cooler, see the TVs that are up in there. This business is in the nature of a bar and it doesn't meet the definition of accessory use under the ordinance for those reasons. Even the owner of the bar admitted that the nature of the business would change as you went from the day time into night time. Certainly, nine to five hours, you got people just walking in, buying some cigars, tobacco box, whatever it is. Come night time, the whole nature of this thing changes over. You got people -- you don't have people just coming in and out, you've got people lounging, sitting around, it turns into a bar at that point, in common bar lands.

I don't -- I want to touch on the argument made that the approvals were given from the city to sell beer and wine from the get-go of this. I don't agree with that. I don't think the record necessarily supports that either. On page 11 and 24 -- I'm sorry, not 11. I know page 24 of the record, there is a business license clearance form. And I'm trying to find -- and also on page 48 of the record is a zoning permit that was

issued. The zoning permit, which was issued on April 22nd, 2009, down -- about halfway down -- a little more than halfway down the page describes the business as a tobacco stand. There's no indication from the zoning permit issued that there was going -- going to be any -- any sale of alcohol.

On page 24 of the record, it's my understanding that this form when someone comes into the city to start a business, they've got to go around and get approvals from different -- different divisions. One of those is the zoning division. They've got to provide -- they have to provide some information to the zoning division. Here on page 24, you can see that the description of this business was going to be a cigar store slash stand. Which -- and that's the term used in the zoning ordinance's table of permitted uses. And we've got a -- the city has a separate term for drinking establishments in the table of permitted uses.

So I would not agree that there was approvals given from -- certainly from the zoning division, which we're dealing with today, that there was any alcohol or that there was any beer

or alcohol being approved to be sold from the -- from the get-go.

I want to -- I want to touch on, too, and I guess I'll just touch on real quick the form of the order and -- and as we kind of discussed from the get-go. I mean there's this three to -- three to -- three to three thing. I think the rules of procedure take care of that.

Mr. Smalls has alleged as one of his grounds of appeal that the board didn't make findings of fact and conclusions of law in its written order. I think -- and I've cited some of this law in my -- in my memorandum. I think the law is clear on that, that if there is a complete record from below that shows all of the evidence heard, all of the evidence provided to BOZA that even if the order does not set forth in that specific form all the findings of fact, it's not -- certainly not fatal to the order that the -- that the Court can review those facts that if all the facts are in the record and make a determination.

I just beg your indulgence on what -- I'm seeing if there's anything else I need to cover.

THE COURT: Well, and what I'll do is once

he prepares his memorandum, if you want to do a short reply memorandum, I'll allow that.

MR. BALTHAZOR: I would appreciate that.

THE COURT: Five days later.

MR. BALTHAZOR: Sure. I will just finish up by saying, Mr. Smalls acknowledged that this business had been opened for about fifteen years and I think the ownership changed or I think Mr. Smalls represents the new owners that came in in 2009 to start this business. Prior to that, there was no sale of alcohol at this business. And the record demonstrates, I think on page 80 of the record, that the initial opening of the business by Mr. Smalls clients did not include alcohol sales. They later installed this bar -- installed the bar without getting a building permit and then started serving beer and alcohol and that's when a complaint came in.

The record doesn't indicate who made the complaint, probably one of the other bars or restaurants right there in the area --

THE COURT: The competition's always the first to say something.

MR. BALTHAZOR: The -- certainly. But it's understandable --

THE COURT: Sure.

MR. BALTHAZOR: You know, they can't -- since they're a restaurant, the smoking ordinance prohibits them from allowing someone to come sit down and have a drink, so it may be taking away business from them.

But otherwise, Your Honor, I will just rest on my brief at this point.

THE COURT: All right. Thank you.

MR. BALTHAZOR: Thank you, Your Honor.

THE COURT: Mr. Smalls?

MR. SMALLS: Thank you, Your Honor.

THE COURT: Briefly.

MR. SMALLS: In reply, I want to point out a few things. The document -- the clearance form the City of Columbia --

THE COURT: That's No. 48, I believe.

MR. SMALLS: I think it's 24.

THE COURT: Twenty-four.

MR. SMALLS: Yeah, 24. This form is very important, Your Honor, with regard to my client. My client -- he's right, they bought the business and then added the beer and wine. And part of their procedure in doing that was completing this form. Both William and Jackie Slicer, who are the

owners of Tobacco Merchant, are -- just for the facts, Richland County deputies and I think retired at this point.

They did not complete this form. This form was completed by the City of Columbia. They had to bring it and get each -- the zoning to sign off -- you look at step one, zoning has approved it. Step two, business license approved it. Step three, building inspection approved. Step four, fire department.

And if you look at the top of the form it says, type of business, cigar bar. My client didn't put that, they informed them --

THE COURT: Cigar bar slash shop.

MR. SMALLS: They informed them from the beginning that we wanted to have beer and wine there. They couldn't have beer and wine there when they initially bought it because they didn't have --

THE COURT: Well, I mean bar is a -- kind of a generic word. I mean --

MR. SMALLS: Yeah.

THE COURT: You can have an ice cream bar and it doesn't mean you're going to have liquor and beer.

MR. SMALLS: Right. But they -- if you look at the complete record from the beginning, we've had multiple hearings, we've always contended. My client even testified under oath that they have always told the City of Columbia what they were going to do. This was not some back-handed way to come in and put beer and wine because they didn't -- they wasted -- they would have wasted thousands of dollars and that's part of our argument here is, we came to you and said this is what we want to do. We want to spend hundreds and thousands and dollars to renovate, add TVs, add these type of items that will attract people into our business and actually add a physical bar; and now, after you get a complaint, you want to come back and say, Well, you can't do that. Well, you should have said that when we first got the license. You can't come back now and say, Well you couldn't do it.

And the second part, Your Honor, is clearly, as Counsel says, they don't disagree with the percentages. Nobody can just open a bar and have a domino effect in the City of Columbia. I want to open a bar -- or open a tobacco shop, set up a humidor, and now I call myself a tobacco shop

and I sell mostly beer and wine. In fact, the Tobacco Merchant can't sell any liquor drinks, they can only sell beer and wine. So as the competition -- there are at least four other restaurants in walking distance that sell beer, wine, and liquor. So if somebody just wants to go and have a drink, that's where you go. If you don't like smoke, you're definitely not going to a tobacco shop, that's not going to happen.

And we clearly disagree with Counsel's representation that the business changes at night. The record will show that my client testified at the hearing that more people may buy beer and wine at night, but the primary purpose, as always and will continue to be the sell of tobacco.

THE COURT: But that would be understandable. I mean, people --

MR. SMALLS: Yeah.

THE COURT: -- people wouldn't drink during the day when they're working, when they would go by and buy some cigars during the day.

MR. SMALLS: We hope that's true.

THE COURT: We certainly do. Especially those who are in transportation.

MR. SMALLS: Well, I hope that's true too,

but I think he's right, more people will buy beer and wine at night, Your Honor. And we clearly think that based upon our notice of appeal and our upcoming brief on these issues that this case should be reversed and at a minimum remanded to have a full board make a decision. It was one vacant seat.

Of course, we want it reversed. But at a minimum, it should be remanded because I think the board now has seven members, so at least they can make a decision based upon a full board at this point.

Thank you, Your Honor.

THE COURT: Thank you. I -- one word.

MR. BALTHAZOR: Yeah. I'll reply in brief. I do -- there was one other thing I wanted to -- to put into the record.

THE COURT: Yes, sir.

MR. BALTHAZOR: And this is just a -- I guess a quirk of municipal law, I've come across this that the Court cannot take judicial notice of city ordinances. I don't know why that would be, but I have -- a copy -- a certified copy of the City of Columbia's zoning ordinance, relevant portions, and I -- I don't have a copy for you,

but I'm -- it's just most of the zoning ordinances dealing with some of the definitions here that I would like to hand that up and put that in the record.

MR. SMALLS: I don't have any objection as long as I get a copy of what the Court has.

THE COURT: Why don't you make a copy for him and submit it with your reply brief.

MR. BALTHAZOR: That works.

THE COURT: That way we'll have it.

MR. BALTHAZOR: That works. Thank you, your Honor.

THE COURT: Thank you, gentlemen.

MR. SMALLS: Thank you, Your Honor.

THE COURT: Ten days, Mr. Smalls.

MR. SMALLS: Thank you, Your Honor.

THE COURT: And five days after, Mr. Balthazor.

MR. BALTHAZOR: Okay. Thanks.

* * * * * * * END OF TRANSCRIPT * * * * * * *

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF COMMON PLEAS

Tobacco Merchant, Appellant, vs. City of Columbia Zoning Administrator, Board of Zoning Appeals and City of Columbia Respondents,	)	NOTICE OF INTENT TO APPEAL Civil Action No.:

The Appellant Tobacco Merchant hereby appeals the decision of the Board of Zoning Appeals and Zoning Administrator dated February 24, 2010.

The Appellant appeals on the grounds that the Board erred:

1) That the Board erred in ruling that the Tobacco Merchant should be ruled a drinking establishment since the city ordinance and state law provide specifically that the sale of beer and wine is subordinate to the principal use and incidental to the sale of tobacco products.

2) That the Board erred in their final decision by making no specific Findings of Fact and Ruling of Law as required by city ordinance and state law.

3) That the Board erred by not making a decision at all as a result of a tie vote and relying on the zoning administrator decision. That the ruling based on a tie vote is unconstitutional and illegal and effectively no decision.

4) That the Board erred in ruling that the Tobacco Merchant is a drinking establishment since the city was estopped from requiring a special exception for drinking since the city approved the original business license and appellant relied upon the city license to establish their business.

5) That the Board erred in ruling that the tobacco merchant was a drinking establishment since the ruling violated the appellant's equal protection and due process rights.

6) That the Board erred in ruling that the Tobacco Merchant is a drinking establishment since the ruling was effectively a taking without compensation.

Darryl D. Smalls
455 St. Andrews Rd.
Bldg E Suite 2
Columbia, S.C. 29210
803-727-6288
Attorney for Appellant Tobacco Merchant

Date: 3/29, 2010

CERTIFICATE OF SERVICE

I, the undersigned attorney for employer/carrier, do hereby certify that I have on March 30th, 2010 served the claimant in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleadings:

Notice of Appeal

Counsel Served:

Elizabeth Webber-Akre, Chair of the Board of Zoning Appeals
P.O. Box 147
Coulmbia, SC 29217

Marc Mylott, City of Columbia, Zoning Administrator
P.O. Box 147
Columbia, S.C. 29217

Erica Salley
Clerk City of Columbia
P.O. Box 147
Columbia, S.C. 29217

Darryl D. Smalls

3/30, 2010

an Out-of-County Action
(660)
Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 3/29/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolo Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Darryl Smalls
4555 Andrews Rd
Bldg E Suite 2
Columbia, S.C 29210

COLUMBIA SC 290
01 APR 2010 PM 3 L

Marc Mylott
P.O. Box 147
Columbia S.C. 29217

BOZA000005

SU

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Darryl Smalls
Attorney at Law
6326 St. Andrews Road, Ste 207
Columbia. SC 29212

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Address

B. Received by (Printed Name) Darry [illegible] C. Date of Deliv

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

[illegible] POSTAL SERVICE MAR 16 2010 COLUMBIA, S.C. 29210

3. Service Type
☒ Certified Mail ☐ [illegible]s Mail
☐ Registered ☒ Retur[illegible]eceipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

MC

7006 3450 0003 4383 3100

1220 Bowe Pkwy, Ste E-

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

POSTAL SERVICE MAR 11 2010 COLUMBIA, SC 29210 Postmark Here

MC

Sent To Darryl Smalls
Street, Apt. No.; or PO Box No. 6326 St Andrews Ste 207
City, State, ZIP+4 Columbia SC 29212

7006 3450 0003 4383 3100

PS Form 3800, August 2006 See Reverse for Instructions

COLUMBIA

Everybody Counts - Everybody Contributes - Everybody Benefits

February 24, 2010

Darryl Smalls
Attorney at Law
6326 St. Andrews Road Suite 207
Columbia, SC 29212

RE: FINAL DECISION OF THE BOARD OF ZONING APPEALS IN CASE NO. 09-087-AA, 1220 BOWER PARKWAY, SUITE E-4, TMS#002797-01-055, HEARD JANUARY AND FEBRUARY 9, 2010.

In accordance with § 17-113(b) of the Zoning Ordinance of the City of Columbia, South Carolina, the Board of Zoning Appeals herein renders its final decision.

The subject property is commonly referred to as 1220 Bower Parkway, Suite E-4, more specifically, by the Lexington County Tax Map Sheet Number 002797-01-055. The subject property is located within the C-3, General Commercial District.

Based upon your application, submitted documents, and testimony considered by the Board of Zoning Appeals at the January and February 9, 2010 public hearing, and in accordance with § 17-113(a) of the Zoning Ordinance, the Board of Zoning Appeals failed to approve your Application for Administrative Appeal. On February 9, 2010, upon a motion to overturn the Zoning Administrator's decision of the classification of this business, the Board voted 3 in favor (Cromartie, Hubbard and Thompson) and 3 against (McMeekin, Webber-Akre and Young). A subsequent motion was made to uphold the Zoning Administrator's decision and the Board voted 3 in favor (McMeekin, Webber-Akre and Young) and 3 against (Cromartie, Hubbard and Thompson). Under the Rules of Procedure Section V.1 for the Board of Zoning Appeals, in the event of a tie vote, an alternative motion may be made. If no affirmative action on a motion is taken by the board, it will be determined that the appeal did not receive the requested relief from the board, and therefore the appeal is denied. Therefore, the decision of the Zoning Administrator to classify your business use as a drinking establishment is upheld.

Please be advised that § 17-114 of the Zoning Ordinance provides that any person who may have a substantial interest in any decision of the Board of Zoning Appeals, or any officer or bureau of the city having authority, may appeal from any decision of the Board to circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the final decision of the Board is mailed.

CONTINUED UPON NEXT PAGE

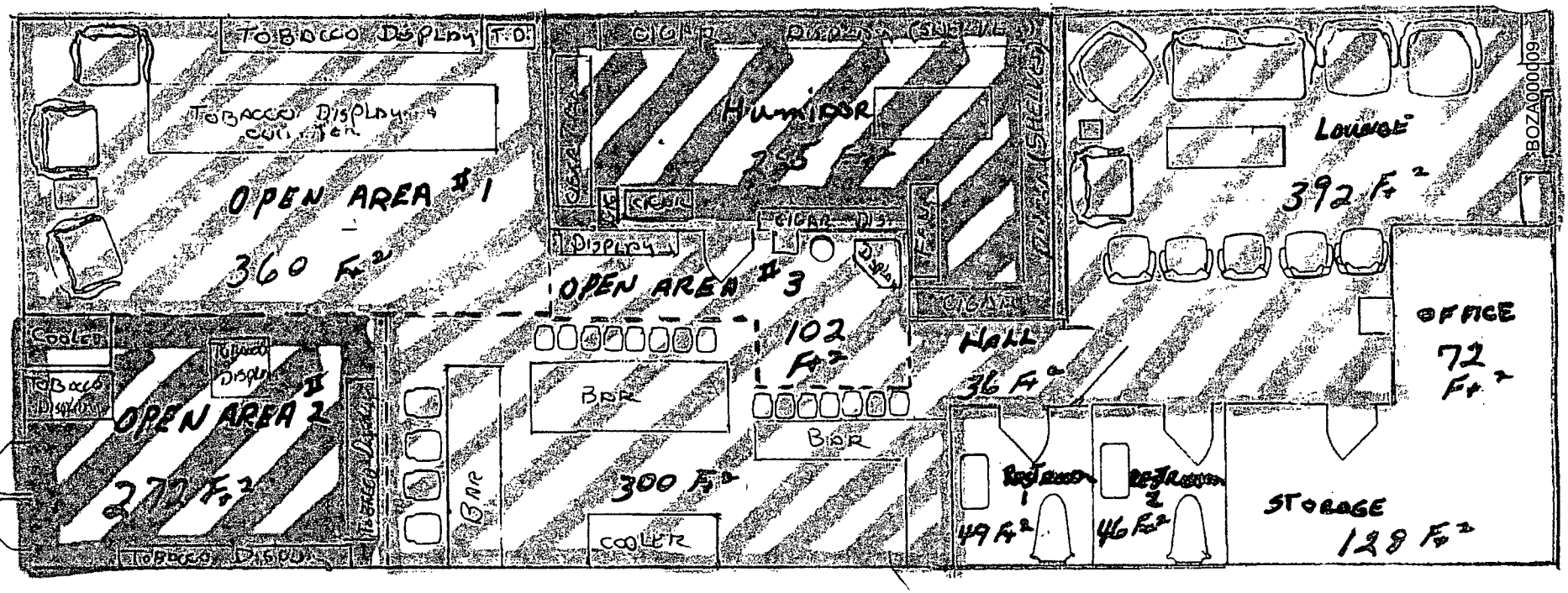
Elizabeth Webber-Akre, Chair of the Board of Zoning Appeals

2.24.10

Date

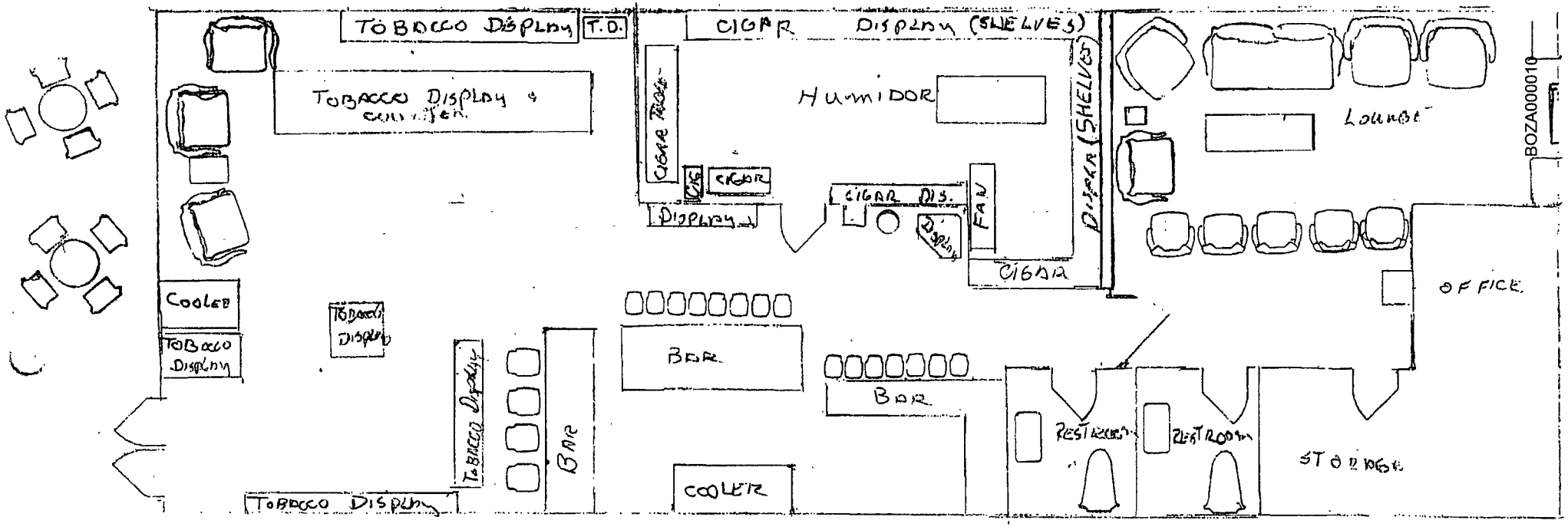
Cc: Brenda J. Kyzer, Business License Administrator

T:\DEVELOPMENTSERVICES\ZONING\BOZA\2010\FEBRUARY\BOWERPARKWAY_1220\BOWERPARKWAY_1220_UPHELD_LETTER.DOC



OPEN AREA # 1	360 Ft²
[illegible]	[illegible]
OPEN AREA # 3	102 Ft²
[illegible]	[illegible]
HALL	36 Ft²
BAR AREA	300 Ft²
RESTROOM # 1	49 Ft²
RESTROOM # 2	46 Ft²
LOUNGE	392 Ft²
OFFICE	72 Ft²
STORAGE	128 Ft²

TOTAL Ft²	2,042 Sq.Ft
[illegible]	[illegible]
Area Available for Drinking	1,190 Sq.Ft


TOBACCO DISPLAY
T.D.
CIGAR DISPLAY (SHELVES)
TOBACCO DISPLAY
HUMIDOR
LOUNGE
CIGAR
CIGAR DIS.
FAN
DISPLAY (SHELVES)
CIGAR
OFFICE
COOLER
TOBACCO DISPLAY
BAR
BAR
BAR
RESTROOM
RESTROOM
STORAGE
COOLER
TOBACCO DISPLAY
BOZA000010

BOARD OF ZONING APPEALS
CASE SUMMARY FOR

APPLICATION FOR ADMINISTRATIVE APPEAL
1220 BOWER PARKWAY, SUITE E-4
TOBACCO MERCHANT

February 09, 2010 at 10:00 a.m.
City Council Chambers, 3rd Floor, City Hall, 1737 Main Street
Columbia, South Carolina

Case Number:	09-087-AA, Agenda Item #1
Subject Property:	1220 Bower Parkway, Suite E-4, TMS#002797-01-055.
Zoning District:	C-3, General Commercial District.
Applicant:	Darryl D. Smalls, Attorney.
Property Owner:	Developers Diversified Realty Corporation.
Council District:	1
Summary Prepared:	2/3/09

Requested Action: Administrative Appeal of the Zoning Administrator's decision to classify the use as a drinking establishment (Tobacco Merchant).

Applicable Sections of Zoning Ordinance:

§17-112(1) The Board of Zoning Appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article.

§17-55 Drinking place is defined as an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises.

Accessory building or use. An accessory building or use is:

(1) Subordinate to and serves a principal building or principal use;
(2) Subordinate in area, extent or purpose to the principal building or principal use served;
(3) Designed for the comfort, convenience or necessity of occupants of the principal use served; and
(4) Located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served.

Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

Case History:

4/22/09 Our office approved a Business License Clearance Form for the change in ownership and the establishment of a cigar store/stand (§17-258, 5399) at this location.

9/3/09 Our office received a complaint that the above referenced location was operating as a drinking establishment.

9/9/09	Onsite inspection was conducted of the property.
9/14/09	Our office and Business License staff met with the business owner and his counsel regarding the complaints, operation of the drinking place without a special exception, and the enforcement of City Codes.
9/16/09	An additional onsite inspection was conducted to obtain pictures of business.
9/30/09	Written Notice of Violation was given to the business owner stating that the business in question was operating as a drinking place without a Special Exception and operation of the drinking place must cease immediately.
10/5/09	Administrative Appeal filed.
11/10/09	Applicant was granted a deferral by the Board.
12/8/09	Applicant was granted a deferral by the Board.
1/12/10	Board remanded the case back to staff for additional information.

New Staff Comments:

On January 12, 2010 the Board remanded the case back to staff to gain additional information regarding the operation of the business. Specifically, the Board requested that staff obtain a floor plan along with the square footage of the business and financial information regarding the revenue received from the sale of tobacco products and beer and wine.

On January 21, 2010 the zoning inspectors visited the business to obtain the floor plan that is included in the Board's packet. Based upon the floor plan, the business is 2,042 sq. ft. The humidor is 285 sq. ft. and the other area attributed to the sale of tobacco products is 272 sq. ft. (open area #2). Both of the areas total 557 sq. ft. or 27% of the square footage of the business. On the contrary, 1,190 sq. ft. or 58 % of floor area is attributed to areas in which someone could consume beer and wine (area noted on floor plan).

On January 15, 2010 representatives from Zoning, Business License, and the City Attorney's Office met with the business owner and his legal counsel to obtain financial information regarding the revenue received from the sale of tobacco products and alcohol. The appellant has provided information which – after it is annualized -- suggests that approximately 90% of the revenue received is from tobacco products and 10% is from the sale of beer and wine. Please note that the appellant took ownership of the business in April 2009 but began to sale beer and wine in June 2009.

Lastly, staff reviewed the video recording of the January 12, 2010 Board meeting to gain clarity of the Board's direction regarding the additional information that staff was to provide. During that review, staff was reminded of appellant's testimony regarding the operation of the business as it relates to the time of day in which patrons visit the businesses. During Board discussion about the activity that patrons participated in while at the establishment, the appellant stated that "the problem will be literally what time of day...probably up until 5pm in the afternoon 98% of it is solely tobacco usage where then the ratio will change as the night goes on later obviously". This suggests that during the day the business is a retail tobacco store but, in the evening, the nature of the business more so becomes a drinking place. Unfortunately, staff has neither the personnel nor time necessary to provide the Board with reliable data about this shifting emphasis.

Staff maintains its position that this business is operating as both a retail store and a drinking place based upon the amount of area attributed to the on-premise consumption of beer and wine and the appellant's testimony that the nature of the business changes "as the night goes on later ...". We also maintain that the nature of the drinking fails the definition of an accessory use. We respectfully remind the Board that there is no fundamental relationship between drinking and smoking. In other words, one must not have one without the other. Lastly, notwithstanding the "area, extent, and purpose" argument aforementioned herein, we submit that a narrow consideration of percent of gross sales does not, in and of itself, make an accessory use – especially when one factors how those percents likely shift during the course of a day. Beyond that, we wonder whether any business would consider the loss of 10% of sales as incidental? As such and in conclusion, we request that the Board uphold the determination of the Zoning Administrator.

Staff Comments 1/12/10: On December 8, 2009 the Board granted a deferral due to the applicant's attorney being required to appear in an out of town court.

On November 10, 2009 the applicant's attorney requested a deferral after the Board's discussion regarding the possibility of the applicant pursuing a Special Exception for a drinking establishment at this location. To date, the applicant has not submitted an application for a Special Exception.

Staff Comments: On September 3, 2009 our office received a complaint that the above-referenced location was operating as a drinking place. After researching our records, we found that the business in question was approved on April 22, 2009 as cigar store/stand (§17-258, 5399).

On September 9, 2009 an onsite inspection was conducted. At the time of inspection, the business appeared to be a drinking establishment. Next, we contacted the applicant to discuss what we found during the inspection. At that time, the applicant indicated that he had recently purchased the business. He also indicated that they recently began selling beer and wine shortly after they installed the bar. We informed him that we would re-inspect the property to take pictures and make a determination regarding the classification of the business.

On September 16, 2009 a re-inspection was conducted and at that time I determined that the business was operating as a drinking place. On September 30, 2009 a written notice of violation was given to the business owner stating that the business in question was operating as a drinking establishment without a Special Exception and operation of the drinking place must cease immediately.

On October 5, 2009 our office received the Administrative Appeal Application that is before the Board. The appellant states that "the Tobacco Merchant legally operates as a tobacco retail establishment which has incidental sales [beer and wine] pursuant to the City of Columbia Ordinances." Staff's position is that the amount of seating and area attributed to the on-premise consumption of beer and wine is significant and not incidental sales. Regardless, the definition of a drinking place is an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises. Lastly, the appellant reinforces this position by displaying signage advertising "Cold Beer".

In closing, staff feels that it is clear that this business is operating as a drinking place based upon the amount of seating and area attributed to the on-premise consumption of beer and wine based upon the floor plan created by staff is significant and not incidental

sales. We humbly request that the Board uphold the determination of the Zoning Administrator.

Persons expressing support or concern about this application submitted the documents outlined below to staff. All documents are attached hereto and made a part of the record of the public hearing.

None.

Zoning Map

1220 Bower Parkway, Suite E-4
Tobacco Merchant

Department of Planning & Development Services

Legend

- INTERSTATES
- RAILROADS
- STREETS
- PARCELS
- CITY LIMITS

ZONING
Zoning Districts

D-1	C-1
RS-1	C-2
RS-1A	C-3
RS-1B	C-3A
RS-2	C-4
RS-3	C-5
RD	M-1
RG-1	M-2
RG-1A	PUD-C
RG-2	PUD-LS
RG-3	PUD-R
UTD	PUD-LS-R
MX-1	PUD-LS-E
	Out of City

0 175 350 700 Feet

ORIGINAL PREPARATION/DATE:
This map was prepared by:

C Michael Conley
November 30, 2009

DISCLAIMER:
The City of Columbia Department of Planning and Development Services' data represented on this map or plan is the product of compilation, as produced by others. It is provided for informational purposes only and the City of Columbia makes no representation as to its accuracy. Its use without field verification is at the sole risk of the user.

CITY of COLUMBIA, S.C.
JUSTITIA VIRTUTUM REGINA

** DATA SOURCE - CITY OF COLUMBIA, GIS DIVISION

BOZA000015

6

Average Scale: 1 inch = 163.5 feet

Copyright ©2007 Pictometry International Corp.

19

Average Scale: 1 inch = 111.2 feet

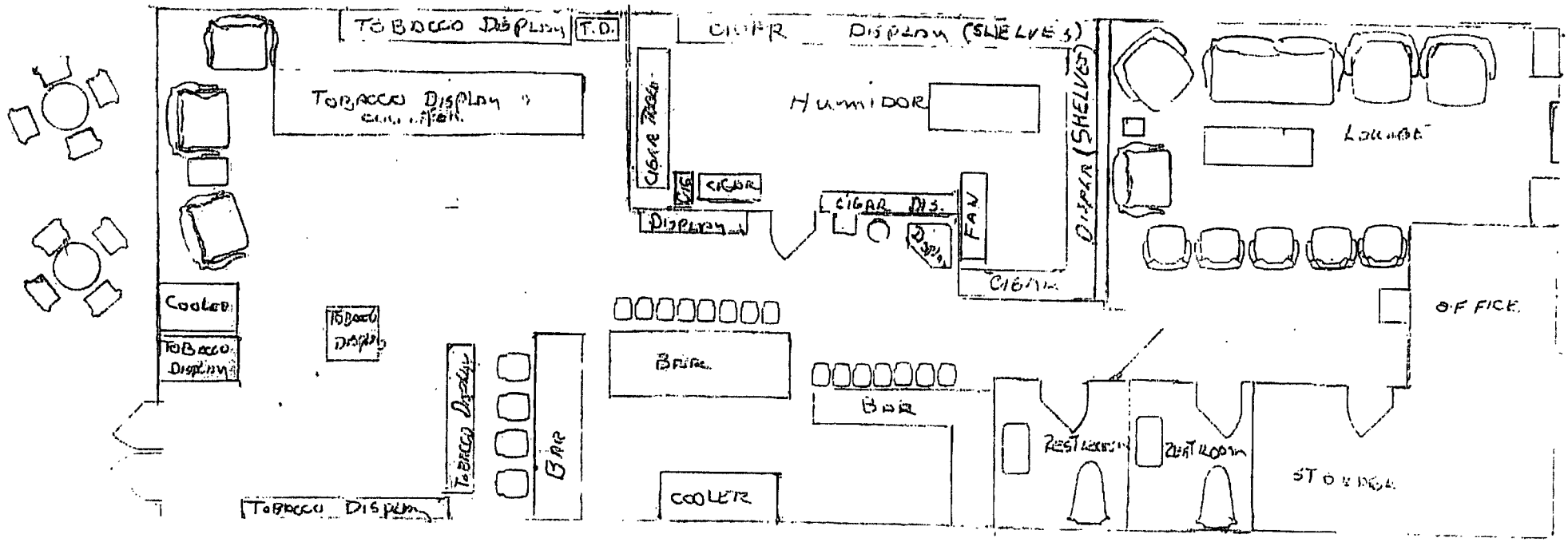
Copyright ©2007 Pictometry International Corp.

BOZA000017

62

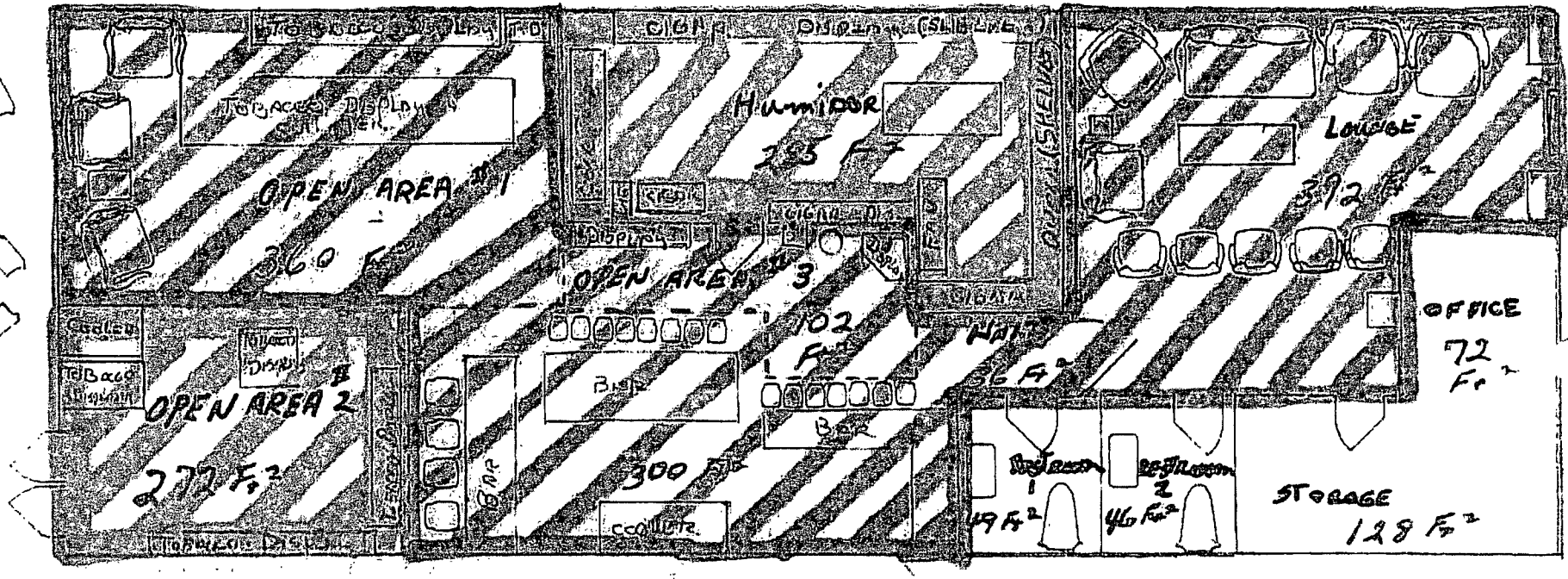
Average Scale: 1 inch = 55.6 feet

Copyright ©2007 Pictometry International Corp.



BOZA0000195

47



OPEN AREA #1	360 Ft²
OPEN AREA #2	272 Ft²
OPEN AREA #3	102 Ft²
HUMIDOR	255 Ft²
BAR AREA	300 Ft²
RESTROOM #1	49 Ft²
RESTROOM #2	46 Ft²
OFFICE	72 Ft²
STORAGE	128 Ft²

TOTAL Ft²	2,042 Sq. Ft

BOZA000020

Receipt # _____

Appeal # _____

CITY OF COLUMBIA
ZONING BOARD OF ADJUSTMENT
APPEAL FOR ADMINISTRATIVE REVIEW

OCT
RECEIVED
DEVELOPMENT SERVICES

1. Location of affected property: 1220 Bower Parkway, Suite E-4

TMS# Page: 06279701 SS Block: _____ Lot: _____

2. I (we) allege that the Zoning Administrator did err by ( ) granting ( ) denying an application ( ) to use ( ) to occupy ( ) to alter ( ) to erect ( ) to add to ( ) to move ( ) to demolish ( ) for a temporary compliance certificate ( ) for a compliance certificate - nonconformity ( ) for a compliance certificate (✓) other finding that Tobacco Merchant is in violation of the Drinking Places ordinance affecting the above listed property.

3. The Zoning Administrator's decisions and reasons therefore were:

Improper the Tobacco Merchant is a Tobacco Retail Establishment

4. I (we) contend that the Zoning Administrator was in error in that: The Tobacco Merchant legally operates as a Tobacco Retail establishment which has incidental sales pursuant to the City of Columbia ordinances

5. I (we) have been aggrieved by this decision or are affected by it in that: The Zoning Administrator seeks to require the Tobacco Merchant to obtain a special exception and become a Drinking establishment. At this point the Tobacco Merchants does not seek to become a Drinking Place.

Tobacco Merchant
Appellant

6226 St. Andrews Rd Suite 207 Columbia SC 29212
Appellant's Address

803-551-0285
Telephone Number

Appellant's Signature

Attorney At Law
Representing Tobacco Merchant

BOZA000021 66

Darryl Smalls

Attorney and Counselor at Law
6326 St. Andrews Road Suite 207 Columbia, SC 29212
Tel: 803.551.0985 Fax: 803.551.0986

Darryl D. Smalls
Tel: 803.551.0985
darryl.smallslaw@live.com

OCT
RECEIVED
DEVELOPMENT
SERVICES

October 1, 2009

Johnathan E. Chambers
Deputy Zoning Administrator
1136 Washington Street
Columbia, SC 29201

RE: Tobacco Merchant

Dear Mr. Chambers:

I have been retained to represent the Tobacco Merchant in the above referenced zoning matter. Pursuant to Section 17-111 of the City of Columbia Zoning Ordinance, the Tobacco Merchant hereby appeals the written notice of violation dated September 16, 2009.

The notice of violation improperly asserts that the Tobacco Merchant is in violation of section 17-258, drinking places. The Tobacco Merchant operates as a Tobacco Retail establishment which has incidental sales pursuant to the City of Columbia ordinances.

The Tobacco Merchant respectfully requests an appeal before the Board of Zoning Appeals.

With kind regards, I remain

Very truly yours,

Darryl D. Smalls

DDS
Enclosures

cc: William Sheer

WRITTEN NOTICE OF VIOLATION

DATE & TIME VIOLATION OBSERVED: September 16, 2009

DATE & TIME NOTICE SERVED: 9/30/09 9:30 (AM)

PERSON SERVED:
William Slicer
122 Lake Elizabeth Drive
Columbia, SC 29203
(803) 463-4393

REGARDING THE FOLLOWING PROPERTY: TOBACCO MERCHANT

Street Address: 1220 Bower Parkway, Suite E-4

TMS#: 002797-01-55

Zoned: C-3 (General Commercial)

Dear Mr. Slicer,

Your attention is called to the operation of a drinking establishment (SIC 5813) without obtaining a Special Exception from Board of Zoning Appeals at the above-referenced property. As such, in accordance with § 17-90 of the City of the Zoning Ordinance of the City of Columbia, South Carolina (hereinafter referred to as "the Zoning Ordinance"), you are in violation of §17-258 Table of Permitted Uses, 5813 Drinking Places (copy enclosed).

You are hereby ordered to correct this violation by ceasing the on-premise consumption of beer, wine, and alcoholic beverages at this location immediately. Please note that a City representative from the Zoning Division will revisit the premises to confirm compliance with the Zoning Ordinance (3) three days after the receipt of this letter.

For your convenience, I have enclosed a Board of Zoning Appeals Application for Special Exception, Letter of Agency, Site Plan Checklist, Fee Schedule, and Board of Zoning Appeals 2009 Calendar for your review. Should you have any questions regarding the Board of Zoning Appeals Special Exception process, please feel free to contact me.

Please be advised that § 17-111 of the Zoning Ordinance allows that any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the Board of Zoning Appeals by filing a written appeal within 30 days of the date of the decision. Section 17-112 of the Zoning Ordinance charges the Board of Zoning Appeals with hearing appeals "... when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article ...". If you choose to appeal, your appeal must be filed in writing in the office of the Zoning Division, 1136 Washington Street, Columbia, SC 29201 within 30 days of the date of this letter.

Lastly, thank you in advance for your prompt attention to this matter. Please contact me at the telephone number below if you have any questions or comments.

Signature of Issuing Officer: _____ **Title: Deputy Zoning Administrator**
PRINT NAME: Johnathan E. Chambers **Telephone: (803) 545-3333**

CITY OF COLUMBIA
BUSINESS LICENSE
CLEARANCE FORM

14054

PURPOSE STATEMENT: Clearance forms are required for all businesses located in the City limits of Columbia, SC. Any new business, change of ownership or location for an existing business must complete this form. Approvals needed are dependent upon the physical location and nature of your business. Upon completion, mail to City of Columbia Business License Division, P.O. Box 147, Columbia, SC 29217 or bring to 1339 Main St. 1st Floor, Business License Division. If you have any questions, please call 803-545-3345.

DATE: 4-22-09
NAME OF BUSINESS: The Tobacco Merchant
NAME OF OWNER(S): William & Jackie Slicer
BUSINESS ADDRESS: 1220 Bower Pkwy Ste E-4
TELEPHONE: (BUS) 803-463-4393 (CELL) _____ (FAX) _____
TYPE OF BUSINESS: Cigar Bar/Shop
EMAIL ADDRESS: _____
TYPE OF BUILDING: ( ) RESIDENCE (✓) STORE ( ) OFFICE BUILDING ( ) WAREHOUSE ( ) OTHER
SIC CODE: 5771 35999 NAICS CODE: _____

STEP 1 – ZONING DIVISION (803) 545-3333

PAID MAY 2 5 2009

IS THIS A SEXUALLY ORIENTED BUSINESS? _____ (YES) ✓ (NO) _____ (INITIALS)

TMS#: 2717 - 01 - 55 ZONING DISTRICT: C-3
ORDINANCE SECTION 17-258 5993 DESCRIPTION: Cigar Store/Retail
(✓) APPROVED _____ ( ) DENIED _____
ZONING ANALYST SIGNATURE: _____ DATE: 4/22/09
ZONING ANALYST NAME (PRINT): Michael Lizarb

STEP 2 – BUSINESS LICENSE (803) 545-3345

BUSINESS LICENSE SIGNATURE: Lisa N Cole DATE: 4-22-09

THE FOLLOWING DEPARTMENTS SHALL NOT INSPECT AND/OR GRANT APPROVAL PRIOR TO THE COMPLETION OF STEPS 1 AND 2 ABOVE

STEP 3 – BUILDING INSPECTIONS (803) 545-3420

(✓) APPROVED _____ ( ) DENIED _____
BUILDING INSPECTOR SIGNATURE: Brent Harkins (kos) DATE: 5-22-09

STEP 4 – FIRE DEPARTMENT (803) 545-3701

(✓) APPROVED _____ ( ) DENIED _____
FIRE MARSHALL SIGNATURE: Ken O. Scott DATE: 5-22-09

~~**STEP 5 – RICHLAND COUNTY HEALTH DEPARTMENT (803) 576-2910**~~
~~**LEXINGTON COUNTY HEALTH DEPARTMENT (803) 785-8113**~~

~~( ) APPROVED _____ ( ) DENIED _____~~
~~AGENCY SIGNATURE: _____ DATE: _____~~

DIVISION 1. GENERALLY

Sec. 17-55. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building or use. An accessory building or use is:

(1) Subordinate to and serves a principal building or principal use;

(2) Subordinate in area, extent or purpose to the principal building or principal use served;

(3) Designed for the comfort, convenience or necessity of occupants of the principal use served; and

(4) Located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served.

Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

Drinking place means an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises.

Drive-through facility means any use, either principal or accessory, that provides goods or services to a person without requiring the person to leave his or her vehicle. Examples of drive-through facilities include, but are not limited to, drive-through automated teller machines, automated car washes, and drive-through windows at restaurants, financial institutions, dry-cleaning establishments, and retail establishments such as liquor stores and pharmacies. Drive-in motion picture theaters, automotive service facilities (except automated car washes), automotive repair facilities, and fuel pumps and like service islands at gasoline service stations are not considered drive-through facilities.

Principal structure means a structure or building having significant or primary use and justifying its own utilization (such as a dwelling or office building) as contrasted to accessory structures which are incidental or subordinate to primary structures and do not alone justify their utilization (such as a tool shed or auto garage used in conjunction with a dwelling). Certain structures may be either principal or accessory, depending upon utilization, such as a parking garage as an accessory structure to a high-rise apartment or as a principal structure when operated commercially in a business area.

Principal use means the significant or primary activity carried out within a structure or upon land (such as retail sales within a store or occupancy of a dwelling unit as a residence) as contrasted to accessory uses which are incidental or subordinate to primary uses (such as sale of soft drinks at an automobile service station). Certain uses may be either principal or accessory, depending upon their relationship with other uses, as for

example a newsstand as an accessory use within a hotel lobby or as a principal usewithin a separate structure.

Restaurant means a place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on or off the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, fast-food restaurant, eating and drinking establishment or other similar business. ~~, but shall not include a fast food restaurant. In a restaurant, any facilities for carryout shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises.~~

~~*Restaurant, fast food* means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it exhibits any of the following characteristics:~~
~~(1) There is space or facilities allocated and used for carryout service, or for carryout and customer self service for on-premises consumption combined;~~
~~(2) Most food items are already prepared or packaged before the customer places an order; and~~
~~(3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.~~
This definition does not include ~~an establishment~~ establishments that sell food or beverages as an accessory use or for off-premises preparation or consumption, such as ~~known as~~ a retail grocery store, convenience store, or delicatessen ~~or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption~~.

Structure means anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground, including mobile homes, travel trailers, signs, mobile signs, tubs, swimming pools or other bathing facilities, portable signs and antennas, but excluding from definition as structures the following: minor landscaping features such as ornamental pools, planting boxes, birdbaths, paved surfaces, walkways, driveways, recreational equipment, flagpoles and mailboxes.

(Code 1979, § 6-3012; Ord. No. 96-25, 11-6-96; Ord. No. 2002-050, § 1, 6-5-02)
Cross references: Definitions generally, § 1-2.
Secs. 17-56--17-80. Reserved.

Sec. 17-258. Table of permitted uses.

Uses permitted in the general zoning districts shall be as set forth in table 1 and as modified by special provisions, exceptions and conditions contained elsewhere in this article.

(1) Symbols used in table 1 are as follows:
   a. "x" means that the indicated use is permitted in the indicated district.
   b. "e" means that the indicated use is permitted in the indicated district, subject to the granting of a special exception by the board of zoning appeals.
   c. "a" means that the indicated use is permitted as an accessory use in the indicated districts.
   d. "a/e" means that the indicated use is permitted as an accessory use in indicated districts, but is also permitted in those districts as a principal use if approved by the board of zoning appeals as a special exception.
   e. "n.e.c." means "not elsewhere covered" in the Standard Industrial Classification Coding Manual.
   f. "n.r." means "no requirement."

(2) Any use not permitted in a district is expressly prohibited.

(3) In residential districts, the following uses are prohibited:
   a. Storage in connection with a trade;
   b. Storage or long term parking of commercial vehicles or industrial storage in excess of one day; and
   c. Storage of building materials except in connection with active construction.

(4) A section number following the use category means that the use is allowed but must meet the conditions and requirements set forth in the referenced section.

(5) The zoning administrator may utilize the Standard Industrial Classification Manual to determine the appropriate classification of land use.

(6) Any drive-through facility shall require review and approval by the Board of Zoning Appeals as a special exception.

TABLE 1. TABLE OF PERMITTED USES

LEGEND
x = permitted use in the district; e = special exception by Board of Zoning Appeals; a = permitted accessory use; a/e = permitted as an accessory use or as a principal use by special exception; and nr = no requirements.

Principal Uses				Zoning Districts																
				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	Off-Street Parking Requirements
DIVISION A. AGRICULTURE, FORESTRY AND FISHING																				
1	Agricultural production–Crops																				
	18	Horticultural specialties		x																	No requirement
		181	Ornamental floriculture and nursery products	x																	
		189	Horticultural specialties not elsewhere classified	x																	
	19	General farms, primarily crop		x																	
2	Agricultural production–Livestock			x																	
7	Agricultural services																				
	74	Veterinary services (section 17-256)																			3 for each 1,000 square feet of gross floor area
		741	With indoor kennels								e	e	x	x	x			x			
		742	With outdoor kennels								e	e	x	a	x			x			

72

TABLE 1. TABLE OF PERMITTED USES

LEGEND:
x = permitted use in the district; o = special exception by Board of Zoning Appeals; a = permitted accessory use; a/e = permitted as an accessory use or as a principal use by special exception; and n.r. = no requirements.

Principal Uses				Zoning Districts																Off-Street Parking Requirements
				O-1	RS-1, RS-1A, RS-1B, RS-2, RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	
	554	Gasoline service stations										o	o	x	o	o	o	x	x		gross floor area
	555	Boat dealers										o	o					x			3.5 for each 1,000 square feet of gross floor area
	556	Recreational and utility trailer dealers										o	o					x			
56	Apparel and accessory stores										o	x	x	x	x	x	x	x			3 for each 1,000 square feet of gross floor area
57	Furniture, home furnishings and equipment stores										o	x	x	x	x	x	x	x			
58	Eating and drinking places																				8 for each 1,000 square feet of gross floor area
	581	Eating and drinking places																			
		5812	Eating places (except fast food)								o	x	x	x	x	x	x	x			
		5813	Drinking places (alcoholic beverages) (section 17-266)								o	o	o	o	a/e	a/e	o	x			12 for each 1,000 square feet of gross floor area
		5814	Fast food eating places										o	o	o	o	o	o			
59	Miscellaneous retail																				
	591	Drugstores and proprietary stores									o	x	x	x	x	x	x	x			3.5 for each 1,000 square feet of gross floor area
	592	Liquor stores										o	x	o	x	x	x	x			
	593	Used merchandise stores											o	o	o	o	o	o	o		
	594	Miscellaneous shopping goods stores										x	x	x	x	x	x	x			
	596	Non-store retailers																			3 for each 1,000 square feet of gross floor area
		5961	Mail order house									x	x	x	x	x	x	x			
		5962	Automatic merchandising machine operators										x	x				x			3 for each 1,000 square feet of gross floor area
	598	Fuel and ice dealers																			
		5982	Fuel and ice dealers; except fuel oil dealers and bottled gas dealers									x	x		x			x			3.5 for each 1,000 square feet of gross floor area
		5983	Fuel oil dealers										o					x	x		1.7 for each 1,000 square feet of gross floor area
		5984	Liquified petroleum gas (bottled gas) dealers										o					x	x		
	599	Retail stores, not elsewhere classified																			3.5 for each 1,000 square feet of gross floor area
		5992	Florist								o	x	x	x	x	x	x	x			
		5993	Cigar store and stands								o	x	x	x	x	x	x	x			
		5994	News dealers and newsstands								o	x	x	x	x	x	x	x			
		5999	Miscellaneous retail stores, not elsewhere classified								o	x	x	x	x	x	x	x			

communications), or by any combination of radio and wire, pursuant to authority granted by the Federal Communications Commission, the state public service commission, or either of them.

Radiotelephone communications facilities and *telephone communications facilities* mean any facilities used in the provision of radiotelephone communications or telephone communications services, including towers, antennas, electronic equipment, wires, cables, substations, equipment shelters, buildings and other facilities necessary to, or approved or required by the Federal Communications Commission, the state public service commission or either of them for use in or the provision of, radiotelephone communications services or telephone communications services.

Regulatory flood protection elevation means the elevation of the regulatory flood at any point, which may vary from place to place depending on topography, anticipated hydraulic conveyance capacity, encroachment into areas subject to flood, and other factors.

Restaurant means a place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on or off the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, fast-food restaurant, eating and drinking establishment or other similar business. This definition does not include establishments that sell food or beverages as an accessory use or for off-premises preparation or consumption, such as a retail grocery store, convenience store, or delicatessen.

Restaurant, fast food means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it exhibits any of the following characteristics:

(1) There is space or facilities allocated and used for carryout service, or for carryout and customer self-service for on-premises consumption combined;

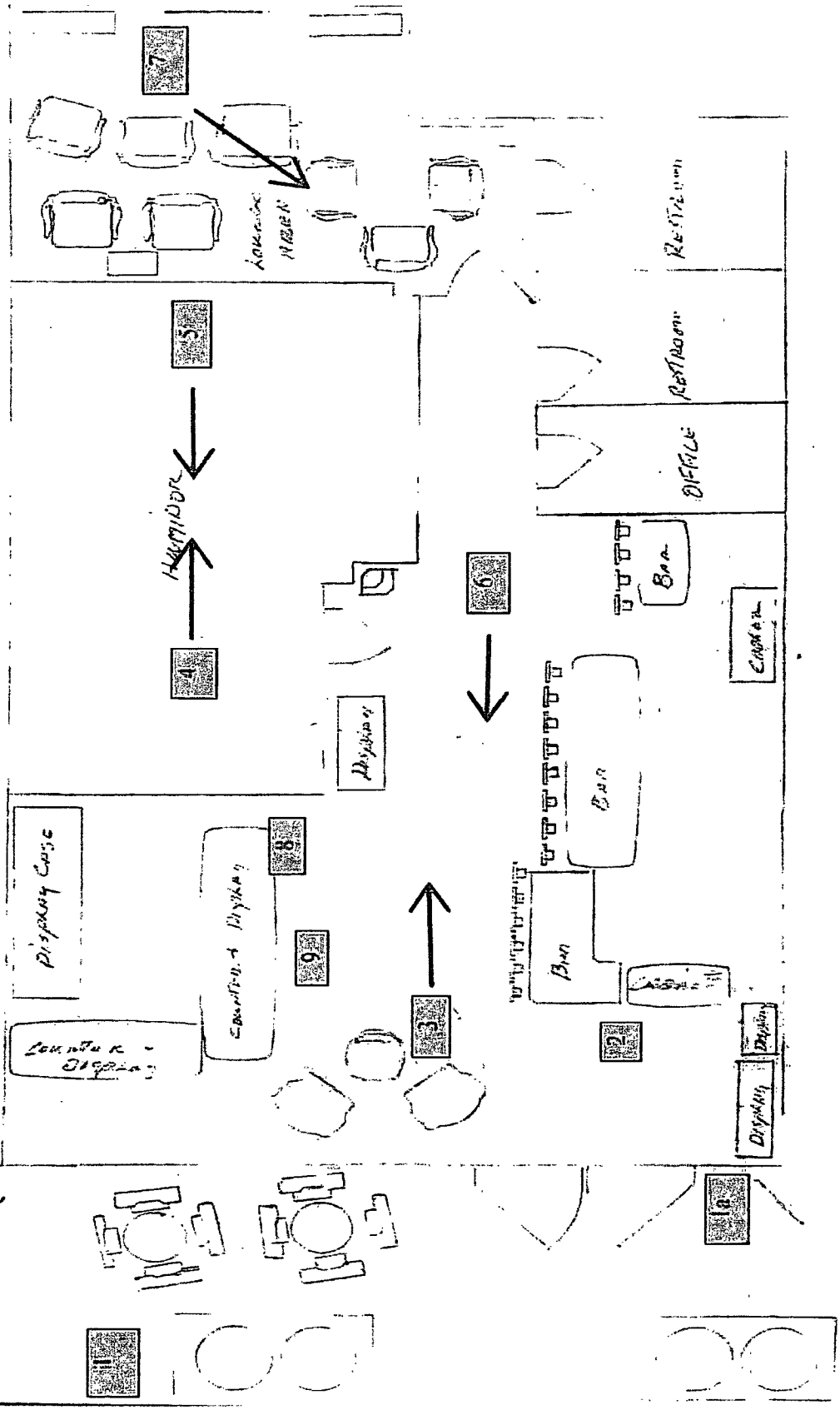
(2) Most food items are already prepared or packaged before the customer places an order; and

(3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

This definition does not include an establishment known as a retail grocery store, convenience store or delicatessen or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption.

Roominghouse and *boardinghouse* mean any dwelling, other than a hotel or motel, in which more than three persons who are not members of the owner's or operator's family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which such accommodations are offered in ten or more rooms shall be considered to be a hotel or motel.

Screening. A visual shield against a higher impact land use created in a buffer transition yard with plantings, walls, fencing, etc.



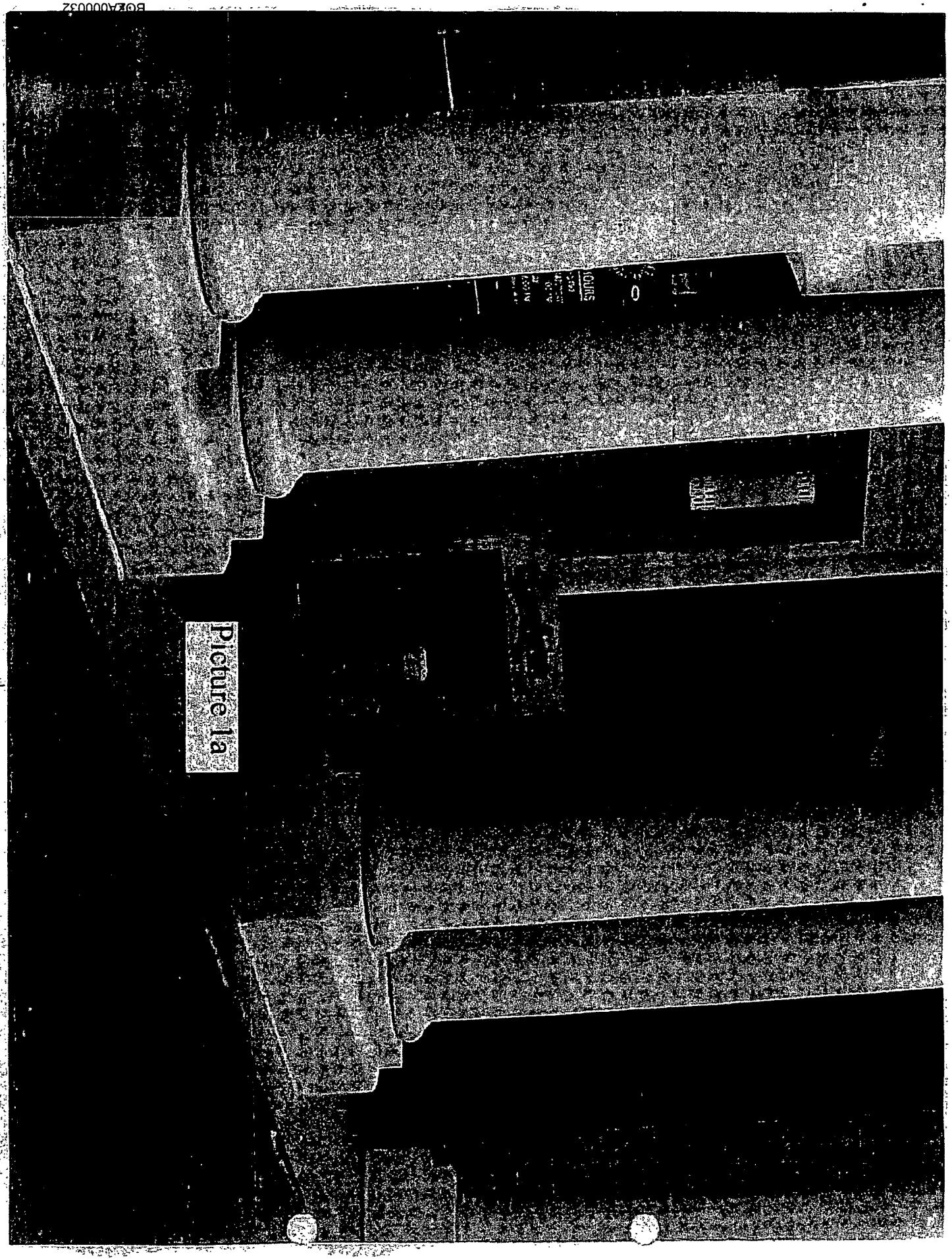
EAWING FOR SITE
IT + FROM PICTURES.
OT TO SCALE

Picture 1

BOZA000031

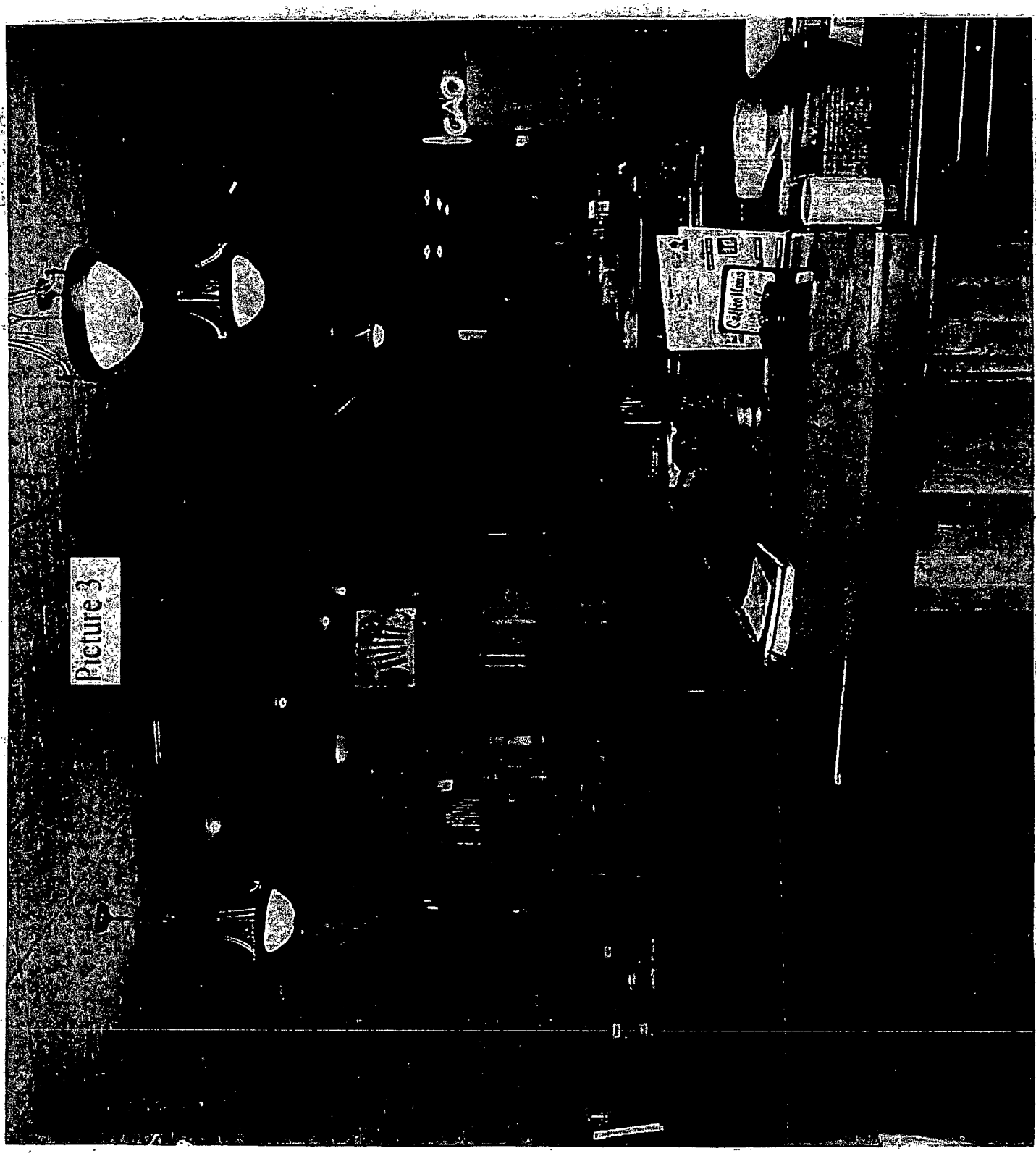
76

LL



Picture 1a

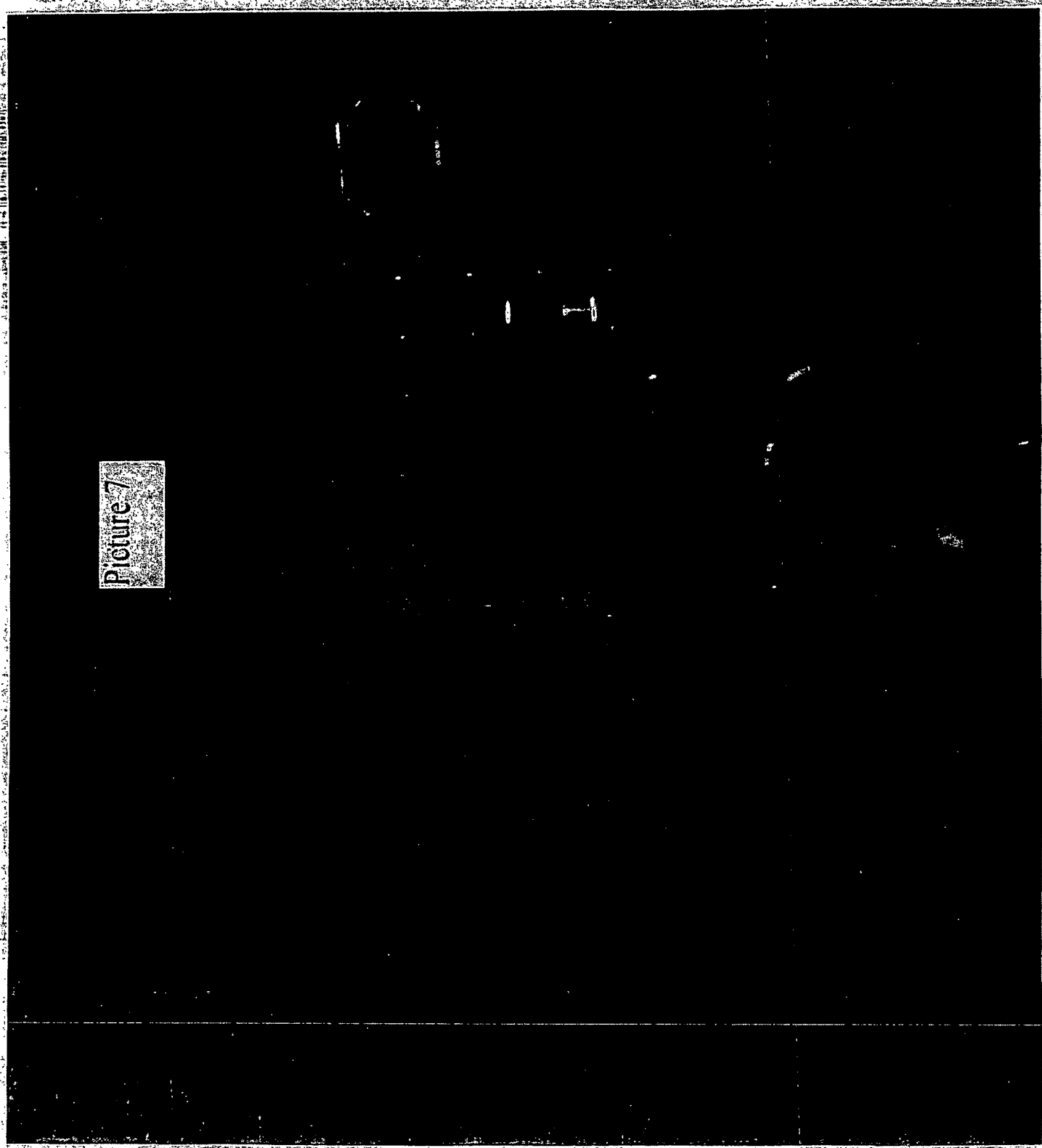
Picture 2


Picture 3

Picture 4

Picture 5

Picture 6


Picture 7

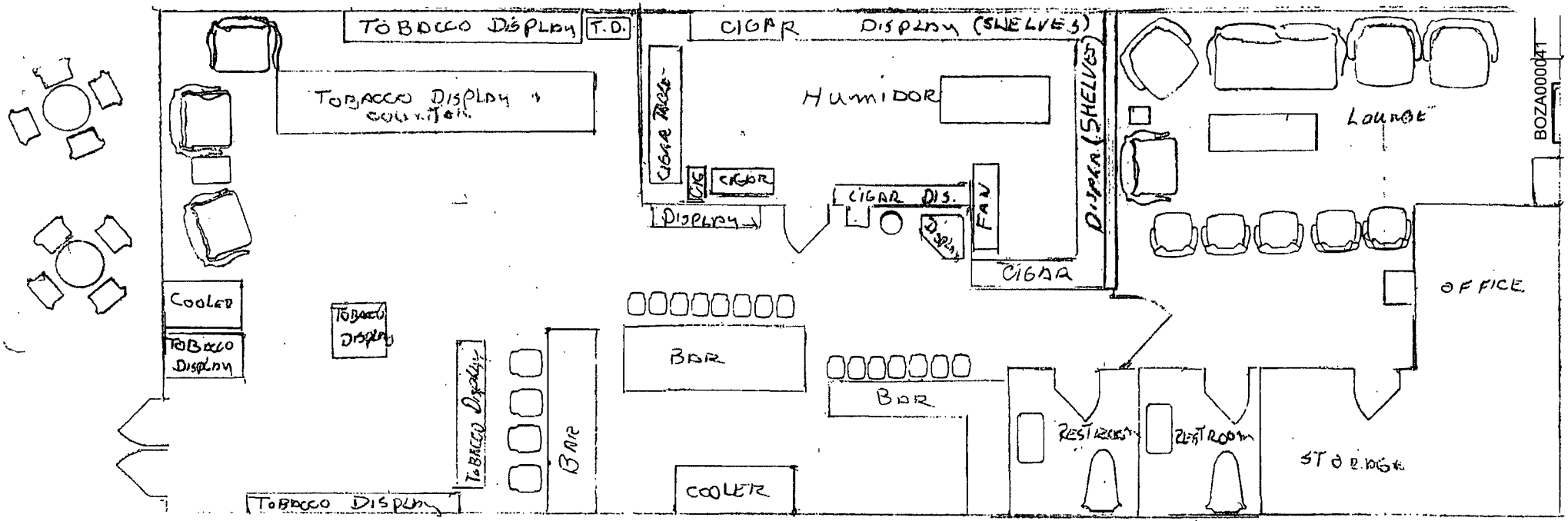
Picture 8

h8

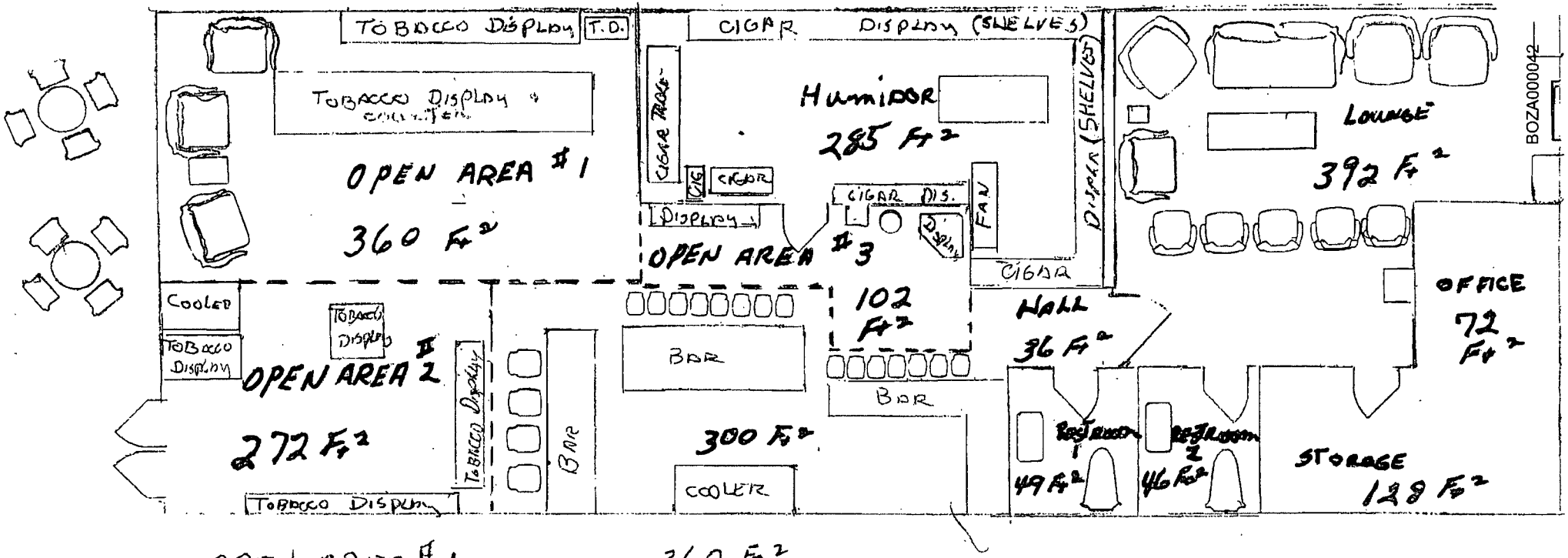
Picture 9

BOZA000040

25

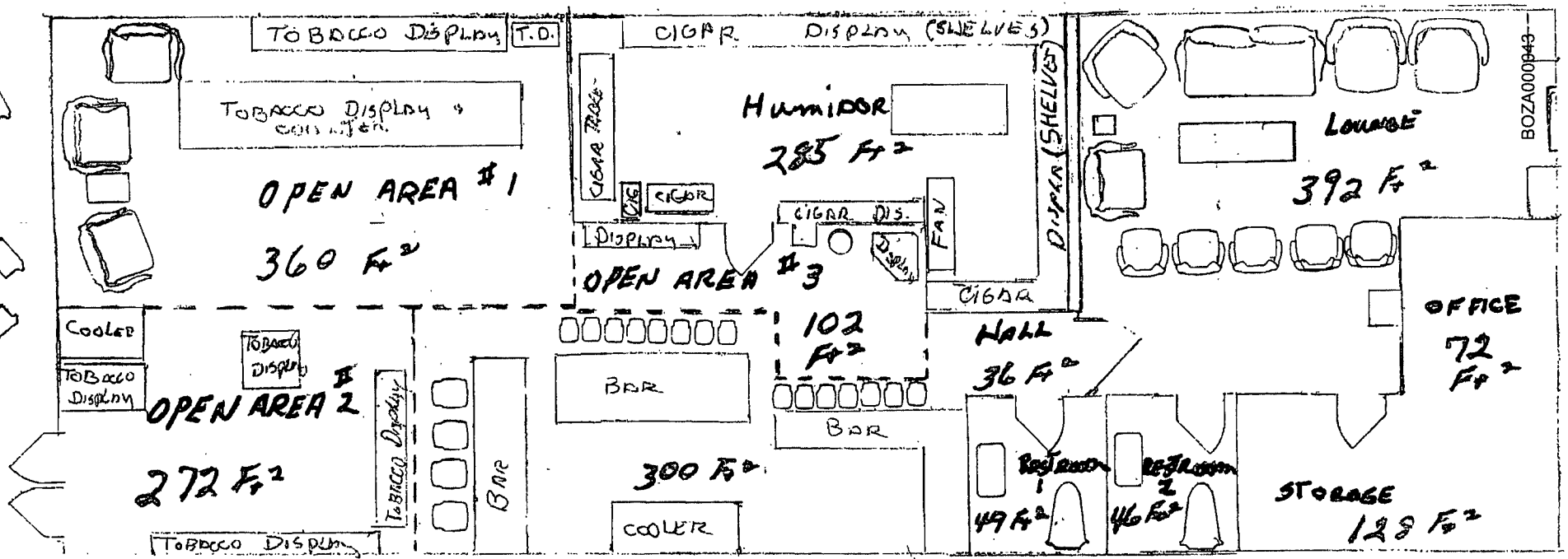

TOBACCO DISPLAY
T.D.
CIGAR DISPLAY (SHELVES)
TOBACCO DISPLAY
HUMIDOR
LOUNGE
CIGAR
CIGAR DIS.
DISPLAY
FAV
CIGAR
COOLER
TOBACCO DISPLAY
TOBACCO DISPLAY
BAR
BAR
BAR
OFFICE
RESTROOM
RESTROOM
STORAGE
TOBACCO DISPLAY
COOLER
TOBACCO DISPLAY

BOZA000041



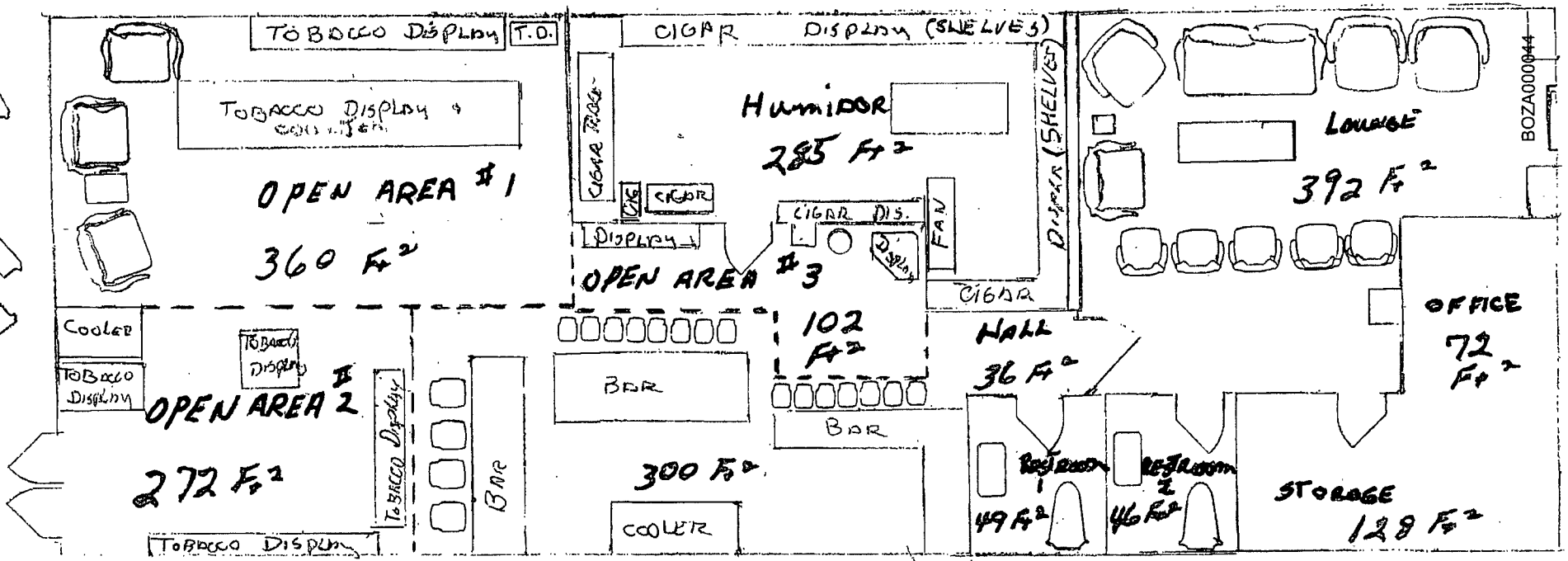
OPEN AREA #1	360 Ft²
OPEN AREA #2	272 Ft²
OPEN AREA #3	102 Ft²
HUMIDOR	285 Ft²
HALL	36 Ft²
BAR AREA	300 Ft²
RESTROOM #1	49 Ft²
RESTROOM #2	46 Ft²
LOUNGE	392 Ft²
OFFICE	72 Ft²
STORAGE	128 Ft²

TOTAL Ft² 2,042



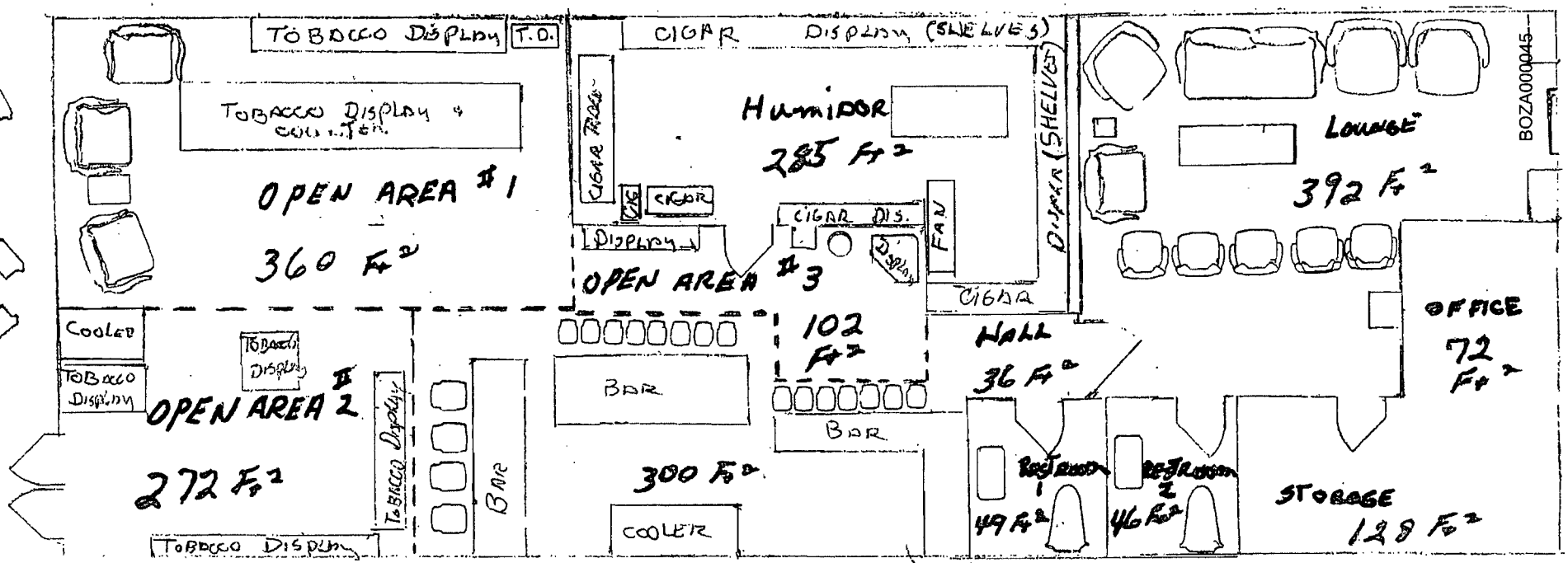
OPEN AREA #1	360 Ft²
OPEN AREA #2	272 Ft²
OPEN AREA #3	102 Ft²
HUMIDOR	285 Ft²
HALL	36 Ft²
BAR AREA	300 Ft²
RESTROOM #1	49 Ft²
RESTROOM #2	46 Ft²
LOUNGE	392 Ft²
OFFICE	72 Ft²
STORAGE	128 Ft²

TOTAL Ft² 2,042



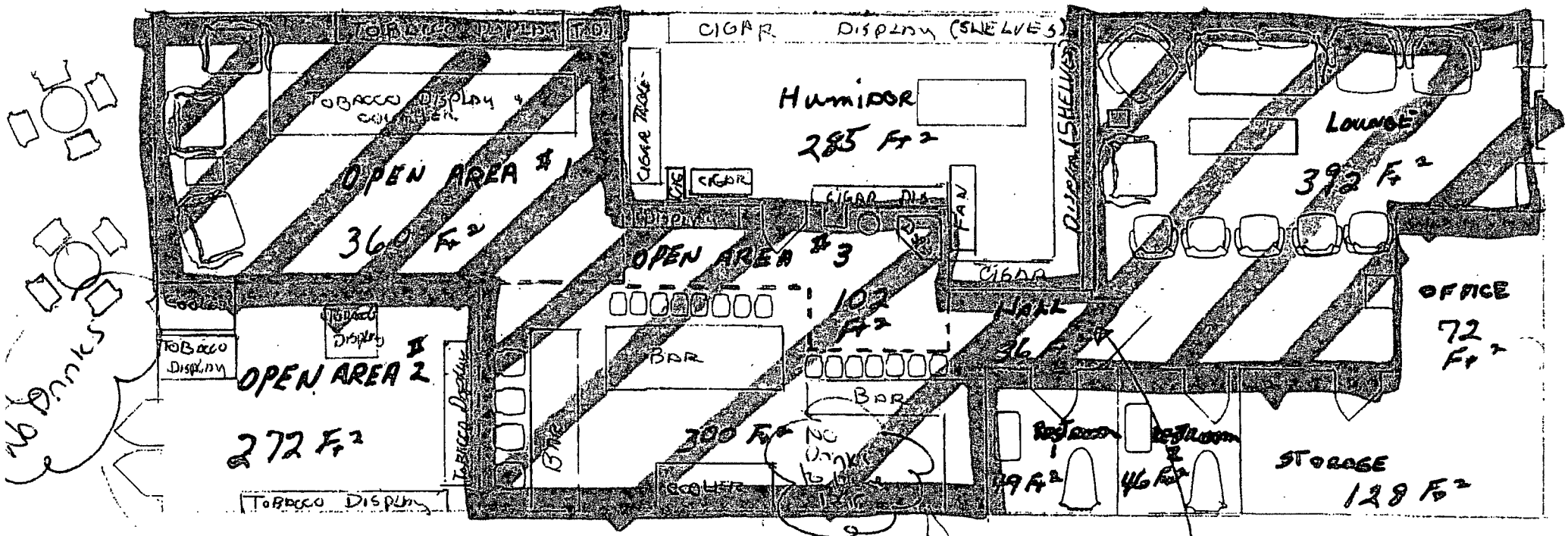
OPEN AREA #1	360 Ft²
OPEN AREA #2	272 Ft²
OPEN AREA #3	102 Ft²
HUMIDOR	285 Ft²
HALL	36 Ft²
BAR AREA	300 Ft²
RESTROOM #1	49 Ft²
RESTROOM #2	46 Ft²
LOUNGE	392 Ft²
OFFICE	72 Ft²
STORAGE	128 Ft²

TOTAL Ft² 2,042



OPEN AREA #1	360 Ft²
OPEN AREA #2	272 Ft²
OPEN AREA #3	102 Ft²
HUMIDOR	285 Ft²
HALL	36 Ft²
BAR AREA	300 Ft²
RESTROOM #1	49 Ft²
RESTROOM #2	46 Ft²
LOUNGE	392 Ft²
OFFICE	72 Ft²
STORAGE	128 Ft²

TOTAL Ft² 2,042



OPEN AREA #1	360 Ft²
OPEN AREA #2	272 Ft²
OPEN AREA #3	102 Ft²
HUMIDOR	285 Ft²
HALL	36 Ft²
BAR AREA	300 Ft²
RESTROOM #1	49 Ft²
RESTROOM #2	46 Ft²
LOUNGE	392 Ft²
OFFICE	72 Ft²
STORAGE	128 Ft²

TOTAL Ft² 2,042

No Drinks Beyond this area.

600

1/2 hour FA calculated for closing

BOZA000046

91

Bi... Slick Donald
Johnson Bkgr Tobacco Merchant
1/15/10 Ron Bkgr
Ellsley

- Frank will call meet, take measurements & floor men, target fit 2 next week.

- have 6-min projects

- Bkgr - gone as applicable

- Bkgr's Pbrnds... will provide #s by end of week.
  - send straight to JC. Transfer to #s...

ZB09-00834

CITY OF COLUMBIA

P.O. Box 147
Columbia, SC 29217
803.545.3333
www.columbiadevelopmentservices.net

BUSINESS LICENSE
ZONING PERMIT

ISSUED DATE: Apr 22 2009

APPLICANT INFORMATION

NAME: William and Jackie Slicer

ADDRESS: 122 Lake Elizabeth Dr
Columbia, SC 29203

PHONE: 803 463 4393 Mobile

PROPERTY INFORMATION

ADDRESS: 1220 Bower Pkwy Spc E-4

ZONING DISTRICT: C-3 (General Commercial)

TMS#: 02797-01-55

OVERLAY:

USE INFORMATION

USE

DESCRIPTION
Tobacco stand

CONDITIONS

SIGNATURE OF APPLICANT

TODAYS DATE

PRINT NAME

City of Columbia
1136 Washington Street (P.O. Box 147)
Columbia, SC 29201

Phone: (803) 545-3420
Fax: (803) 733-8699

Paid Invoice

DATE	INVOICE #
4/22/2009	09-02809
PAID DATE	4/22/2009

ACCOUNT:

William and Jackie Slicer
122 Lake Elizabeth Dr
Columbia SC 29203

Phone: 803 463 4393

PERMIT NUMBER	ZB09-00834

1220 Bower Pkwy
Spc E-4
Columbia, SC

Date	Status	Payment	Amount
4/22/2009	Original Due		10.00
4/22/2009	Paid	CreditCard VISA	(-) 10.00

Total Paid 10.00

Save Time & Money with Online Permits and Inspections. Go To: www.buildingdepartment.cc

CITY OF COLUMBIA
ZONING PERMIT

PRMTZT024662MAY1303 0305 INQ

PRMTZ
ZONING PERMIT

PERMIT NUMBER Z 03 005871 APPROVED BY: TKM

INQUIRY NO. Z03005871
MSTR PERMIT #
ISSUED DATE 5132003
RECEIPT NO.
RECEIPT DATE
PERMIT FEE 10.00

APPLICANT: NAME MASHBURN CONSTRUCTION
PHONE 400-1000

LOCATION STREET NO 1220 & SUFFIX E-3
DIRECTION STREET NAME BOWER & TYPE PKWY

TMS # : PAGE 2797 BLOCK 1 LOT 5 P ZONING DIST. : PUD-C

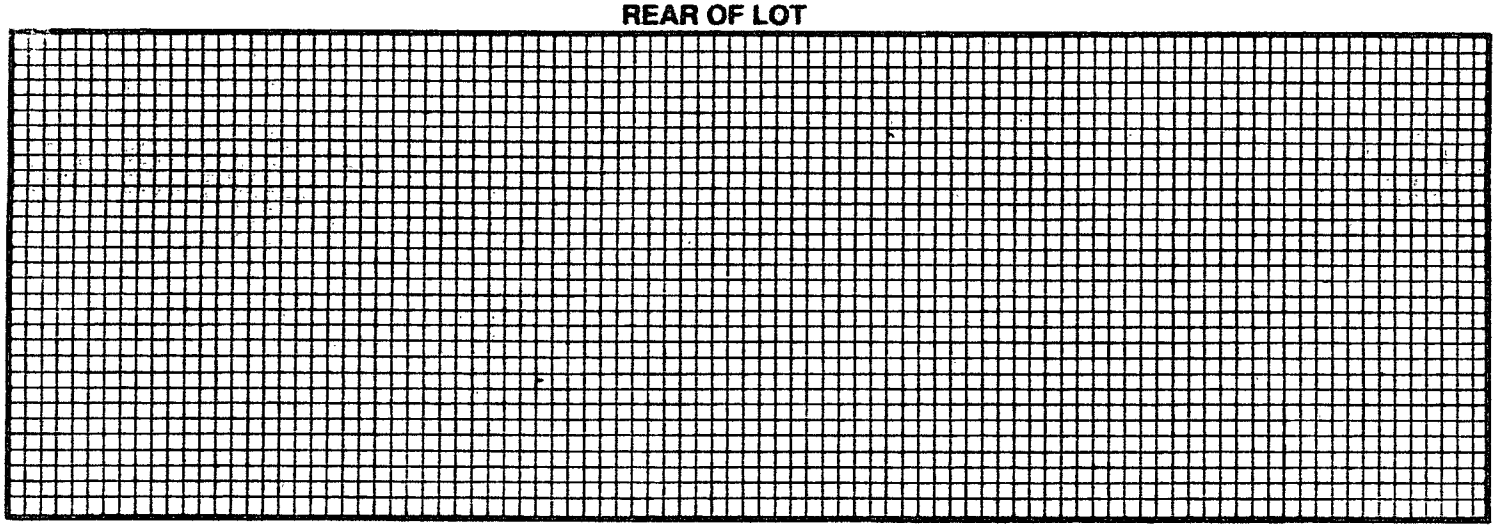
MIN YARD REQUIREMENT : PRIMARY - FRONT FT REAR FT SIDE FT
SECONDARY - FRONT FT IN SIDE FT SIDE FT

PRESENT USE: VACANT PROPOSED USE: TOBACCO MERCHANT

NATURE OF WORK: INTERIOR UPFIT

CONDITIONS: NO OTHER WORK AT THIS TIME

REAR OF LOT



FRONT OF LOT

BLOCK = _____

SIGNATURE OF APPLICANT

5-13-03
DATE

APPROVED

BOZA000050

95

CITY OF COLUMBIA
ZONING PERMIT

PRMTZT033411JUL1503 0307 INQ

PRMTZ
ZONING PERMIT

PERMIT NUMBER Z 03 006367 APPROVED BY: SG

INQUIRY NO. Z03006367
MSTR PERMIT #
ISSUED DATE 7152003
RECEIPT NO.
RECEIPT DATE
PERMIT FEE 11.00

APPLICANT: NAME MASTER CONST
PHONE 749-8841

LOCATION
STREET NO 1220 & SUFFIX
DIRECTION STREET NAME BOWERS PARKWAY & TYPE DR

TMS # PAGE 1941 BLOCK 1 LOT 10 ZONING DIST.: PUD-C

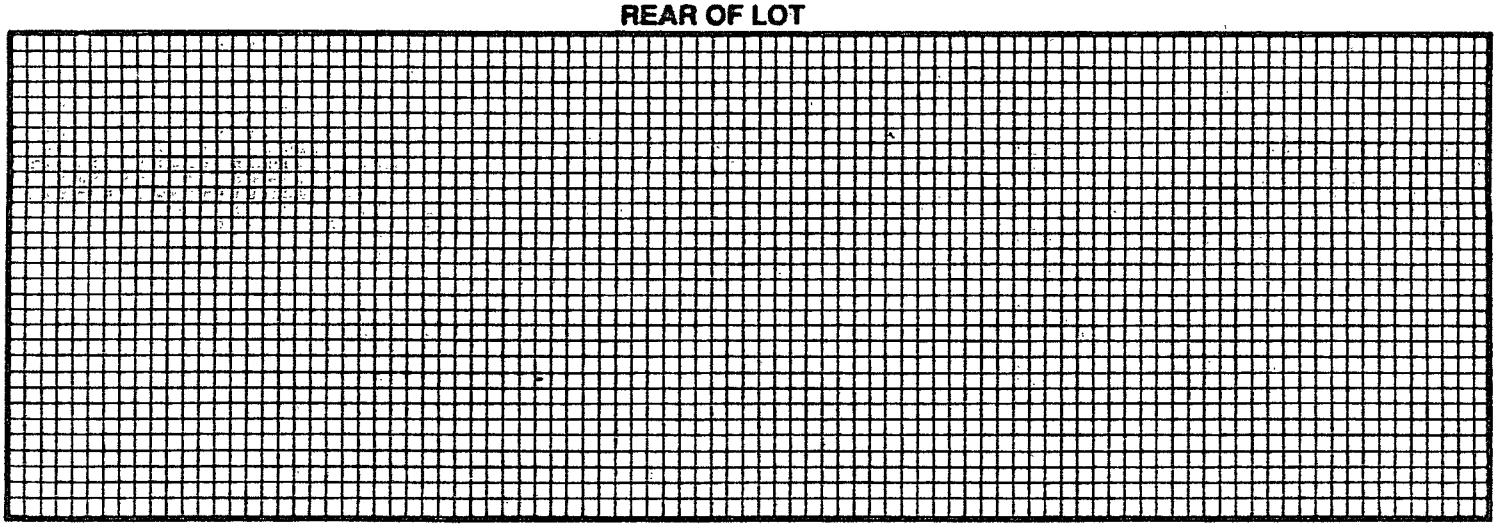
MIN YARD REQUIREMENT: PRIMARY - FRONT FT REAR FT SIDE FT
SECONDARY - FRONT FT IN SIDE FT SIDE FT

PRESENT USE: VAC PROPOSED USE: TOBACCO MERCHANT

NATURE OF WORK: UPFIT INTERIOR,
SUITE E-3

CONDITIONS: NO EXTERIOR WORK

REAR OF LOT



FRONT OF LOT

BLOCK = _____

Douglas Warren
SIGNATURE OF APPLICANT

7725 St. Andrews Rd.
Irmo S.C. 29063
ADDRESS

7/15/03
DATE

BOZA000051

96

?RMTZT035497JUL3103] [0307] [INQ] NEXT SCREEN [?RMTZ]
?ECORD IS ADDED ZONIN? ?ERMIT
Inq Num [Z03006484]

?ermit Number [Z] - ^03] - ^006484] Approved By : [JEC] Mstr Permit#
Issued Date ^ 7312003]

?PLICANT : Name [FLAGSHIP SIGNS] Receipt No.
Phone [796-2003] Receipt No.
Permit Fee ^ 10.00]

)CATION : Street No ^ 1220] & Suffix [ ] Charge# [ ]
Direction [ ] Street Name [BOWERS PARKWAY] & Type [ ]

IS # : Page ^ 2799] Block ^ 1] Lot ^ 5] [ ] Zoning Dist. : [C-3]

.n Yard Requirement : Primary - front ^25]ft rear ^10]ft side ^ 3]ft
Secondary - front ^]ft^]in side ^]ft side ^]ft

:esent Use : [VACANT] Proposed use : [TOBACCO MERCHANT]

:ture of Work : [ERECT WALL SIGN FOR TOBACCO MERCHANT]
[ ]
[ ]

)nditions : [CANNOT EXCEED TOTAL SIGNAGE OF 300 SQ. FT.]
[NO OTHER WORK AT THIS TIME - MUST COMPLY WITH]
[PLANS SUBMITTED A COPY OF WHICH IS ATTACHED] [@]

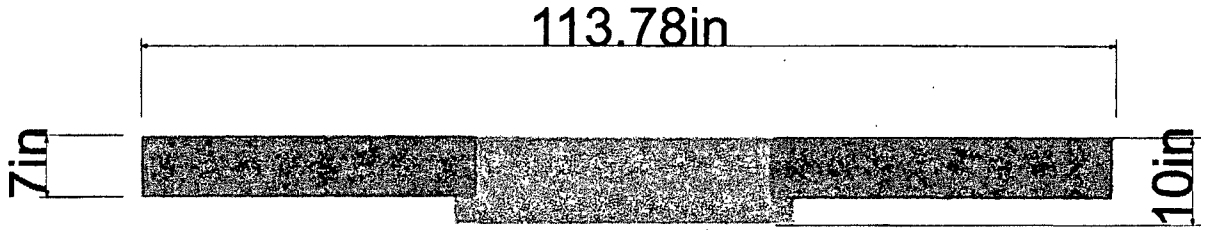
.4:50:18:32 SUCCESSFUL ENTRY 0035496 0.00
:V | |FORM| |LTAI| |Col 66|Row 1|Page 1|T27 ZONE01

x Mitzi Corey x 7/31/03

BOZA000053

98

top view - looking up



front view

fabricated aluminum channel letter w/flexi fronts + jewel-lite trim. Illuminated.

99

BOZA000054

WRITTEN NOTICE OF VIOLATION

DATE & TIME VIOLATION OBSERVED: September 16, 2009

DATE & TIME NOTICE SERVED: 9/30/09 9:30 am

PERSON SERVED:
William Slicer
122 Lake Elizabeth Drive
Columbia, SC 29203
(803) 463-4393

REGARDING THE FOLLOWING PROPERTY: TOBACCO MERCHANT

Street Address: 1220 Bower Parkway, Suite E-4

TMS#: 002797-01-55

Zoned: C-3 (General Commercial)

Dear Mr. Slicer,

Your attention is called to the operation of a drinking establishment (SIC 5813) without obtaining a Special Exception from Board of Zoning Appeals at the above-referenced property. As such, in accordance with § 17-90 of the City of the Zoning Ordinance of the City of Columbia, South Carolina (hereinafter referred to as "the Zoning Ordinance"), you are in violation of §17-258 Table of Permitted Uses, 5813 Drinking Places (copy enclosed).

You are hereby ordered to correct this violation by ceasing the on-premise consumption of beer, wine, and alcoholic beverages at this location immediately. Please note that a City representative from the Zoning Division will revisit the premises to confirm compliance with the Zoning Ordinance (3) three days after the receipt of this letter.

For your convenience, I have enclosed a Board of Zoning Appeals Application for Special Exception, Letter of Agency, Site Plan Checklist, Fee Schedule, and Board of Zoning Appeals 2009 Calendar for your review. Should you have any questions regarding the Board of Zoning Appeals Special Exception process, please feel free to contact me.

Please be advised that § 17-111 of the Zoning Ordinance allows that any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the Board of Zoning Appeals by filing a written appeal within 30 days of the date of the decision. Section 17-112 of the Zoning Ordinance charges the Board of Zoning Appeals with hearing appeals ". . . when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article . . .". If you choose to appeal, your appeal must be filed in writing in the office of the Zoning Division, 1136 Washington Street, Columbia, SC 29201 within 30 days of the date of this letter.

Lastly, thank you in advance for your prompt attention to this matter. Please contact me at the telephone number below if you have any questions or comments.

Signature of Issuing Officer: _____
PRINT NAME: Johnathan E. Chambers

Title: Deputy Zoning Administrator
Telephone: (803) 545-3333

ORDINANCE NO.: 2009-036

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina Chapter 17, Planning, Land Development and Zoning, Article III, Zoning, Division 1, Generally, Sec. 17-54 Rules of construction; interpretation of types of districts; Division 8, District Descriptions; Use and Dimensional Regulations, Sec. 17-231, Districts enumerated; Sec. 17-258 Table of permitted uses; Sec. 17-260, Warehousing (SIC 4227 and 424); Sec. 17-263, Retail trade (SIC 52-59); Sec. 17-265, Day care services (SIC 835); Sec. 17-275, Lot size, setback and height requirements; Sec. 17-282 Antennas; Sec. 17-283 Wireless communication facilities; 17-286 Motor vehicle, boat and recreation vehicle dealers; Sec. 17-287 Used merchandise stores; Sec. 17-288 Offices and clinics of other health practitioners including therapeutic massage; Sec. 17-290, Microbrewery; and to add Sec. 17-291 ID innovista design, Sec. 17-292 MX-2 mixed-use urban district; Sec. 17-293: Manufacturing (SIC 20-39); Division 9, Supplementary District Regulation to add Sec. 17-323, -ID innovista design district; Division 10, Off-Street Parking and Loading Facilities, Sec. 17-342 Number of parking spaces; Division 12, Signs, Sec. 17-406. Permitted signs, Article V, Historic Preservation and Architectural Review, Sec. 17-653 Design and development review commission; and Sec. 17-655 Administration;

ORIGINAL STAMPED IN RED

BE IT ORDAINED by the Mayor and Council this 3rd day of June, 2009, that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 17,

Sec. 17-54. Rules of construction; interpretation of types of districts

(a) *Words to have customary meanings.* The words and phrases used in this article shall have their customary meanings, or shall be defined as defined in a standard dictionary, except for the specific words and phrases as defined in this article.

(b) *Tense.* The present tense includes the future tense.

(c) *Number.* The singular number includes the plural number, and the plural number includes the singular number.

(d) *Person.* The word "person" includes a firm, association, partnership, trust, company, corporation, or any other entity usually defined in legal usage as a person.

(e) *Shall* and *may.* The word "shall" is mandatory; the word "may" is permissive.

(f) *Used* and *occupied.* The word "used" or "occupied" includes the words "intended, designed or arranged to be used or occupied."

(g) *Lot.* The word "lot" includes the words "plot or parcel."

(h) *Structure.* The word "structure" includes the word "building."

(i) *Interpretation of types of districts or zones.* Types of districts or zones, when used as a descriptive term for purposes of identifying certain circumstances in which particular regulations are applied (as, for example, ". . . when such parking lot is contiguous to a residential district . . . ") are defined as follows:

(1) Residential districts include:

a. D-1 development district;

b. RS-1, RS-1A, RS-2 and RS-3 single-family residential districts;

c. RD two-family residential district; and

d. RG-1, RG-1A, RG-2 and RG-3 general residential districts.

(2) Commercial districts include:

a. C-1 office and institutional district;

b. C-2 neighborhood commercial district;

ORIGINAL
STAMPED IN REC

C-2 Neighborhood Commercial District
C-3 General Commercial District
C-3A General Commercial Overlay District
C-4 Central Area Commercial District
C-5 Central Business District
C-6 Limited Commercial District
MX-1 Mixed-Use Corridor/Neighborhood District
MX-2 Mixed-Use Urban
M-1 Light Industrial District
M-2 Heavy Industrial District
PUD-R Residential Planned Unit Development District
PUD-C Commercial Planned Unit Development District
-MU Multiple Use Areas
-AP Airport Height Restrictive Area
-FW Floodway Area
-FP Floodplain Area
-DP Design and Preservation Area
-S Sign Designated Area
-DD Design/Development District
-PD Planned Development Area
-5P Five Points Overlay District
-ID Innovista Design District

ORIGINAL
STAMPED IN RED

Principal Uses				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
		183	Aquaponics	a														a	a				
	19		General farms, primarily crop	x														a/e	a/e				
2	Agricultural production--Livestock			x																			No requirement
7	Agricultural services																						
	74		Veterinary services (section 17-256)																				
		741	With indoor kennels								e	e	x	x	x			x			x	x	3 for each 1,000 square feet of gross floor area
		742	With outdoor kennels								e	e	x	e	x			x					
	76		Landscape and horticultural services																				
		781	Landscape counseling and planning								x	x	x	x	x	x		x	x	x	x	x	3 for each 1,000 square feet of gross floor area
		782	Lawn and garden services										x	a				x	x				1.7 for each 1,000 square feet of gross floor area
		783	Ornamental shrub and tree services										x	e				x	x				
8	Forestry			x																			No requirement
9	Fishing, hunting and trapping			x																			1.7 for each 1,000 square feet of gross floor area
	91		Commercial fishing	x																			
	92		Fish hatcheries and preserves	x																			
	97		Hunting and trapping, and game propagation	x																			
DIVISION B. MINING																							
14	Mining and quarrying of nonmetallic minerals, except fuels																			x			No requirement
DIVISION C. CONSTRUCTION																							
15	Building construction--General contractors and operative builders																	x	x				3 for each 1,000 square feet of gross floor area
	151		Office only								x	x	x	e	x	x	x	x	x	a/e	x	x	
16	Construction other than building construction--General contractors																	x	x				
	161		Office only								x	x	x	e	x	x	x	x	x	a/e	x	x	
17	Construction--Special trade contractors																	x	x				
	171		Office only											e				x	x	a/e	x	x	
DIVISION D. MANUFACTURING (section 17-293)																							

ORIGINAL
STAMPED IN REC

Principal Uses				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
41	Local and suburban transit and interurban highway passenger transportation and service facilities for motor vehicle passenger transportation												e		e	e		x	x		e	e	
42	Motor freight transportation and warehousing																	x	x				
	421	Trucking, local and long distance																x	x				
		4212	Local trucking without storage										e					x	x				
		4214	Local trucking with storage															x	x				
	422	Public warehousing																x	x				
		4227	Mini-warehouse (section 17-260)										e					x					
	423	Terminal and joint terminal maintenance facilities for motor freight transportation																x	x				4 for each 1,000 square feet of gross floor area
	424	Private commercial storage (section 17-260)									a	a	x		x	a	a	x	x			x	1.7 for each 1,000 square feet of gross floor area
43	U.S. Postal Service										e	e	e	x	e	e	e	x		e	e	e	4 for each 1,000 square feet of gross floor area
44	Water transportation																	x	x				1.7 for each 1,000 square feet of gross floor area
45	Transportation by air																	x	x				
46	Pipelines																	x	x				
47	Transportation services																	x	x				1.7 for each 1,000 square feet of gross floor area
	472	Arrangement of Transportation Services									x	x	x	x	x	x	x	x	x		x	x	3 for each 1,000 square feet of gross floor area
48	Communication																						
	481	Telephone communication (wire or radio)											x	x	x	x		x			x	x	3 for each 1,000 square feet of gross floor area
	482	Telegraph											x	x				x				x	
	483	Radio and television broadcasting											x	x	x	x	x	x	x		e	e	
	484	Cable										x						x				x	
	489	Communication services, not elsewhere classified											x						x	x			1.7 for each 1,000 square feet of gross floor area
49	Electric, gas and sanitary services																						
	491	Electric substations		e	e	e	e	e	e	e	e	e	e	e	e	e	e	x	x	x	e	e	1.7 for each 1,000 square feet of gross floor area
	492	Gas production and distribution											e					e	x				
	493	Combination electric and gas; and other utility services											e							x			

ORIGINAL
STAMPED IN REC

Principal Uses				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
	494	Water supply (section 17-258)		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
	496	Sanitary services																					
		4952	Sewerage systems (section 17-259)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
		4953	Refuse systems																x				
DIVISION F. WHOLESALE TRADE																							
50	Wholesale trade--Durable goods																	x	x				
	501	Motor vehicles and automotive parts and supplies											e					x	x				1.7 for each 1,000 square feet of gross floor area
		5093	Scrap															a	a				
51	Wholesale trade--Nondurable goods																						
	511	Paper and paper products											e					x	x				
	512	Drugs, drug proprietaries and druggists' sundries											e						x				
	513	Apparel--Goods and notions											e					x	x				1.7 for each 1,000 square feet of gross floor area
	514	Groceries and related products											e					x	x				
	515	Farm products--Raw materials																x	x				
	516	Chemicals and allied products																x	x				
	517	Petroleum and petroleum products																					
		5171	Petroleum bulk stations and terminals																x				1.7 for each 1,000 square feet of gross floor area
		5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals															x	x				1.7 for each 1,000 square feet of gross floor area
	518	Beer, wine and distilled alcoholic beverages																x	x				
	519	Miscellaneous nondurable goods											e					x	x				
DIVISION G. RETAIL TRADE (section 17-260)																							
52	Building materials, hardware, garden supply and mobile home dealers																						
	521	Lumber and other building materials dealers											e					x			e		1.7 for each 1,000 square feet of gross floor area
	523	Paint, glass and wallpaper stores										x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
	525	Hardware stores										x	x	x	x	x	x	x			x	x	

ORIGINAL
STAMPED IN RED

Principal Uses			D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
	526	Retail nurseries, lawn and garden supply stores									x	x	x			x	x			x	x	
	527	Mobile home dealers																x			-	3 for each 1,000 square feet of gross floor area
53	General merchandise stores																					
	531	Department stores									x	x	x	x	x	x				x	x	3.5 for each 1,000 square feet of gross floor area
	533	Variety stores									x	x	x	x	x	x				x	x	
	539	Miscellaneous general merchandise stores									x	x	x	x	x	x	x			x	x	
54	Food stores																					
	541	Grocery stores									x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
	543	Fruit stores and vegetable markets										x	x				x			x	x	
	546	Retail bakeries									x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
	549	Miscellaneous									x	x		x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
55	Automotive dealers and gasoline service stations																					
	551	Motor vehicle dealers (new and used) (17-286)										x		x			x			c	c	3 for each 1,000 square feet of gross floor area
	552	Motor vehicle dealers (used only) (17-286)										x		x			x			c	c	3.5 for each 1,000 square feet of gross floor area
	553	Auto and home supply stores (17-286)									x	x	x	x	x	x	x			c	c	3.3 for each 1,000 square feet of gross floor area
	554	Gasoline service stations									e	e	e	e	e	e	x	x		e	e	
	555	Boat dealers (17-286)									e	e					x			c	c	3.5 for each 1,000 square feet of gross floor area
	556	Recreational and utility trailer dealers (17-286)									e	e					x			c	c	
56	Apparel and accessory stores									d	x	x	x	x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
57	Furniture, home furnishings and equipment stores										x	x	x	x	x	x	x			x	x	
58	Eating and drinking places																					
		5812	Eating places								d	x	x	x	x	x	x	x			x	x	8 for each 1,000 square feet of gross floor area
		5813	Drinking places (alcoholic beverages) (section 17-266)								e	e	e	e	x	x	e	x			c	c	12 for each 1,000 square feet of gross floor area
59	Miscellaneous retail																					
	591	Drugstores and proprietary stores								d	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of

ORIGINAL
STAMPED IN REC

Principal Uses			D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
592		Liquor stores									e	x	e	x	x	x	x			x	x	gross floor area
5931		Used merchandise stores with weapons										e	e	e	e	e	e	e		c	e	
5932		Used merchandise stores without weapons (17-287)										c	c	c	c	c	c	c		c	c	
5933		Pawn shops										e	e	e	e	e	e	e		e	e	
594		Miscellaneous shopping goods stores									x	x	x	x	x	x	x			x	x	
596		Non-store retailers																				
	5961	Mail order house									x	x	x	x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
	5962	Automatic merchandising machine operators										x	x				x					3 for each 1,000 square feet of gross floor area
593		Fuel and ice dealers																				
	5982	Fuel and ice dealers, except fuel oil dealers and bottled gas dealers										x		x			x					3.5 for each 1,000 square feet of gross floor area
	5983	Fuel oil dealers										e					x	x				1.7 for each 1,000 square feet of gross floor area
	5984	Liquefied petroleum gas (bottled gas) dealers										e					x	x				
599		Retail stores, not elsewhere classified																				
	5992	Florist								e	x	x	x	x	x	x	x			x	x	
	5993	Cigar store and stands								e	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
	5994	News dealers and newsstands								e	x	x	x	x	x	x	x			x	x	
	5999	Miscellaneous retail stores, not elsewhere classified								e	x	x	x	x	x	x	x			x	x	
DIVISION H. FINANCE, INSURANCE AND REAL ESTATE (60--67)										x	x	x	x	x	x	x	x	x	x	x	x	
	6141	Non-depository personal credit institutions (pay day loan and/or title loan establishments)								e	e	e	e	e	e	e	e	e	e			3 for each 1,000 square feet of gross floor area
	6553	Cemetery subdividers and developers	e	e	e	e	e	e	e	x	x	x	x	x	x	x	x	x	x	o	o	
DIVISION I. SERVICES																						
70		Hotels, roominghouses, camps and other lodging places																				
701		Hotels, motels and tourist courts										s	e	x	x	x				x	x	1 for each bedroom

ORIGINAL
STAMPED IN RED

Principal Uses			D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
701.1	Suite hotel (section 17-269)										e	x		x	x	x	x			x	x	
701.2	Bed and breakfast hotel (section 17-268)			e							e	x		x	x	x	x			x	x	
702	Roominghouses and boardinghouses							e		e	e											
703	Camps and trailering parks	e																				No requirements
704	Organization hotels and lodginghouses, on membership basis							e		x	x	x		x	x	x				x	x	1 for each 3 beds
72	Personal services																					
721	Laundry, cleaning and garment services																					
	7211	Power laundries										e					x	x				
	7212	Garment pressing and agents for laundries and dry cleaners								e	x	x	e	x	x	x	x			x	x	1.7 for each 1,000 square feet of gross floor area
	7213	Linen supply										x		x			x			o	e	
	7214	Diaper service										x		x			x			o	o	
	7215	Coin-operated laundries and dry cleaning				a	a	a	a	e	e	x	e	x	x	x	x	x		x	x	3.5 for each 1,000 square feet of gross floor area
	7216	Dry cleaning plants, except rug cleaning														x	x					1.7 for each 1,000 square feet of gross floor area
	7217	Carpet and upholstery cleaning	a'													x	x			o	o	
	7218	Industrial launderers	a'													x	x					
	7219	Laundry and garment services not elsewhere classified										e				x	x				x	3.5 for each 1,000 square feet of gross floor area
722	Photographic studies, portrait									x	x	x	x	x	x	x	x		x	x	x	1.7 for each 1,000 square feet of gross floor area
723	Beauty shops								a'	e	x	x	x	x	x	x	x		x	x	x	2.5 per chair or basin sink
724	Barbershops								a'	e	x	x	x	x	x	x	x		x	x	x	
725	Shoe repair shops, shoeshine parlors and hat cleaning shops										x	x	x	x	x	x	x		x	x	x	1 for each 300 square feet of gross floor area
726	Funeral service and crematories									x		x	x	x		x			x	x	x	5 plus 1 for each 2 seats of main assembly room
729	Miscellaneous personal services, except massage parlors and spas									e	e	x		x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
	7298	Body piercing facilities and tattoo establishments										e					e			x	x	
	7299	Massage parlors, spas								e	e	e		e	e							

ORIGINAL
STAMPED IN RED

Principal Uses				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
73	Business services																						
		7311	Advertising agencies								X	X	X		X	X	X	X		X	X	X	3 for each 1,000 square feet of gross floor area
		7312	Outdoor advertising agencies										e					X			o	o	
	732	Consumer credit reporting agencies									X	X	X	X	X	X	X	X			X	X	3.5 for each 1,000 square feet of gross floor area
		7332	Blueprinting and photocopying services (section 17-251)								X	X	X		X	X	X	X		X	X	X	
		7333	Commercial photography, art and graphics								X	X	X		X	X	X	X		X	X	X	3 for each 1,000 square feet of gross floor area
		7399	Stenographic services and reproduction services not elsewhere classified								X	X	X	X	X	X	X	X			X	X	
	734	Services to dwellings and other buildings																					
		7342	Disinfecting and extermination services										X	X	X			X			o	o	3 for each 1,000 square feet of gross floor area
		7349	Cleaning and maintenance services to dwellings and other buildings not elsewhere classified										X	X	X			X			o	o	
	735	Equipment rental and leasing services											X					X	X		c	c	
	736	Personal supply services											X	X	X	X		X			X	X	
		7361	Employment agencies										X	X	X	X		X		X	X	X	
		7362	Temporary help supply services								X	X	X		X	X *	X		X		X	X	
	737	Computer and data processing services									X	X	X	X	X	X		X		X	X	X	
	738	Miscellaneous business services																					
		7381	Detective agencies and protective services								e		X	X	X	X	X	X		e	X	X	3 for each 1,000 square feet of gross floor area
		7384	Photofinishing laboratories															X	X		X	X	1.7 for each 1,000 square feet of gross floor area
		7389	Miscellaneous										X	X				X	X		X	X	
		7399	Business services not elsewhere classified								e		X		X	X		X			X	X	3 for each 1,000 square feet of gross floor area
		7399.1	Recycling centers (see section 17-270)															e	e				
75	Automobile repair, services and garages																						

BOZA000064

109

ORIGINAL
STAMPED IN RED

Principal Uses				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
751	Automobile rental and leasing without drivers																						
		7512	Passenger car rental and leasing without drivers										x		x			x			o	o	3 for each 1,000 square feet of gross floor area
		7513	Truck rental and leasing without drivers										x		x			x			o	o	
		7519	Utility trailer and recreational vehicle rental										x		x			x			o	o	3 for each 1,000 square feet of gross floor area
752	Automobile parking																						
		7523	Parking lots	e	e	e	e	e	e	e	x	x	x		x	x	x	x	x		x	x	No requirements
		7525	Parking structures								e	e	e		e	e	e	e	x		x	x	No requirements
753	Automotive repair shops												o	e	e			x	x				3.3 for each 1,000 square feet of gross floor area
754	Automotive services, except repair																						
		7542	Carwashes										x	e	x			x					3.3 for each 1,000 square feet of gross floor area
		7549	Automotive services, except repair and carwashes										e	e	e			x	x				
76	Miscellaneous repair services																						
762	Electrical repair shops																						
		7621	Radio and mobile telephone installation shops								e		x		x	x	x	x					3.3 for each 1,000 square feet of gross floor area
		7622	Radio and television repair shops									x	x	e	x		x	x			x	x	
		7623	Refrigeration and air conditioning service and repair shops										x	e	x			x					
763	Watch, clock and jewelry repair										e	x	x	x	x	x	x	x		x	x	x	
764	Reupholstery and furniture repair										a	a	x	x	x			x			x	x	
769	Miscellaneous repair shops and related services																						
		7692	Welding repair															x	x				3.3 for each 1,000 square feet of gross floor area
		7699	Repair shops, not otherwise classified									e	x		x		e	x			e	e	
78	Motion pictures																						
781	Motion picture production												x		x	x	x				x	x	1 for each 5 seats in the main auditorium or 1 for each 50 square feet of space used for seating
		7832	Motion picture theaters except drive-in								e	e	x		x	x	e	x			x	x	

ORIGINAL
STAMPED IN RED

Principal Uses				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
		7833	Drive-in motion picture theaters										c					c					No requirements
79	Amusement and recreation services except motion pictures																						
	791		Dance studios and schools								x	x	x	x	x	x	x	x		x	x	x	5 for each 1,000 square feet of gross floor area
	793		Bowling alleys and billiard and pool establishments									c	x		x	x		x			x	x	5 for each bowling lane or 1 for each 200 square feet of gross floor area
	794		Commercial sports																				
		7941	Professional sports clubs and promoters										x		x	x		x					3 for each 1,000 square feet of gross floor area
		7948	Racing including track operation										x					x					1.5 for each 1,000 square feet of gross floor area
	795		Civic sports and recreation																				
	7951		Municipal or other public passive recreation facilities (parks, greenways, including administration facilities)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	No requirements
	7952		Municipal active recreation facilities (athletic ball fields, swimming pools, playgrounds, including administration facilities) (Sec. 17-289).	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	No requirements
	799		Miscellaneous amusement and recreation services																				
		7991	Physical Fitness Facilities and Yoga Studios								c	x	x	x	x	x	x	x		x	x	x	5 for each 1,000 square feet of gross floor area
		7992	Public golf courses	e	e	e	e	e	e	e	x		x					x					5 for each hole
		7993	Coin-operated amusement devices										x		x	x	x	x			x	x	5 for each 1,000 square feet of gross floor area
		7996	Amusement parks										x		x	x		x					1 for each 75 square feet of exhibit or amusement area
		7997	Membership sports and recreation clubs	e	e	e		e	e	e	e	e	x		x	x		x			x	x	5 for each 1,000 square feet of gross floor area
		7999	Amusement and recreation services not elsewhere classified										x		x			x			e	e	
			7999.1 Bingo parlors										e		e			e					
80	Health services																						
	801		Offices of physicians								x	x	x	x	x	x	x	x		x	x	x	5 for each 1,000 square feet of

ORIGINAL
STAMPED IN RE

Principal Uses			D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
	804	Offices and Clinics of Other Health Practitioners including Therapeutic Massage (17-283)								S	S	S	S	S	S	S	S		S	C	C	gross floor area
	805	Nursing and personal care facilities				C	C	C	C	X		X		X	X	X				C	C	1 for each 6 beds
	806	Hospitals								X		X	X	X	X					X	X	1 for each 2 beds (not including bassinets)
	807	Medical and dental laboratories								X	X	X	X	X	X	X	X		X	X	X	1.7 for each 1,000 square feet of gross floor area
81	Legal services									X	X	X	X	X	X	X	X		X	X	X	3 for each 1,000 square feet of gross floor area
82	Educational services																					
	821	Elementary and secondary schools	C	C	C	C	C	C		X	X	X	X	X	X	C				C	X	2 per classroom, plus 2 per office, plus 1 for every 5 seats in main auditorium
	822	Colleges, universities, professional schools and junior colleges								X		X	X	X	X	X				X	X	1 for each 5 seats in the main assembly hall plus 4 for each classroom plus 2 for each office
	823	Libraries and information centers	C	C	C	C	C	C		X	X	X	X	X	X		C		X	X	X	3 for every 1,000 square feet of gross floor area
	824	Correspondence schools and vocational schools																				
		8244 Business and secretarial schools								X	C	X	X	X	X		X			X	X	1 for each 5 seats in the main assembly hall plus 4 for each classroom plus 2 for each office
		8249 Vocational schools except vocational high schools not elsewhere classified								X		X	X	X	X		X			X	X	
83	Social services																					
	832	Individual and family social services								X	X	X	X	X	X				X	X	X	3 for each 1,000 square feet of gross floor area
	833	Job training and vocational rehabilitation services								X	X	X	X	X	X		X		X	X	X	
	835	Day care facilities (section 17-262)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C		C	C	C	1 per every 4 students
	836	Residential care (section 17-263)	C	C	C	C	C	C	C	C	C	C		C	C					C	C	1 per every 4 residents subject to state law
84	Museums, art galleries, botanical and zoological gardens																					
	841	Museums and art galleries								X	C	P	X	X	X	X	X		X	X	X	3 for each 1,000 square feet of gross floor area

ORIGINAL
STAMPED IN REC.

Principal Uses			D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
	842	Arboreta, botanical and zoological gardens	e							e	e	x	x	x	x		x		x	x	x	
86	Membership organizations																					
	861	Business associations								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,800 square feet of gross floor area
	862	Professional membership								x	x	x	x	x	x	x	x		x	x	x	
	863	Labor unions and similar labor organizations								x		x	x	x	x	x	x	x	x	x	x	
	864	Civic, social and fraternal associations								x	e	x	x	x	x	x	x		x	x	x	
	865	Political organizations								x	x	x	x	x	x	x	x		x	x	x	
	866	Religious organizations	e	e	e	e	e	e	e	x	x	x	x	x	x	x	x		x	x	x	
87	Engineering, Accounting, Research, Management, And Related Services																					
	871	Engineering, architectural and surveying services								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
	872	Accounting, auditing and bookkeeping services								x	x	x	x	x	x	x	x		x	x	x	
	8731	Commercial, physical, and biological research										e					x	x		e	x	
	8732	Commercial economic, sociological, and educational research								x	x	x	x	x	x	x	x			x	x	
	8733	Noncommercial Research Organizations								x	x	x	x	x	x	x	x		x	x	x	
	8734	Testing laboratories										x		x			x	x		e	x	
	874	Management and public relations services								x	x	x		x	x	x	x			x	x	
88	Private households																					
		8811 Dwellings																				
		8811.1 Detached one-family	x	x	x	x	x	x	x	x	e	e	e						x	x		2 for each dwelling unit
		8811.2 Attached one-family				x	x	x		e	e								x	x		
		Townhouses (section 17-265)							x		e									x	x	
		Two-family			x	x	x	x		x	e	e	e							x	x	
		Multifamily				x	x	x		e	e	e	e							x	x	Under 500 square feet: 1 S/DU 501 to 750 square feet: 1.75/DU Over 750 square feet: 2/DU
		Group development		c		x	x	x		e	e	e	e							x	x	
		High-rise (section 17-304)							x	x		e	x	x	x					x	x	
		Mid-rise (section 17-264)								x		e		x	x	x				x	x	
		8811.3 Mobile home parks subject to article VI, division 2, of this chapter					e	e				e										2 per mobile home accommodation

ORIGINAL
STAMPED IN RED

Principal Uses				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	Off-Street Parking Requirements
		8811.4	Dormitories								c		e		x	x					e	x	1 for each bedroom
		8811.5	Fraternity and sorority houses				e	e	c		e		e		e	e					e	e	
		8811.6	Dormitories Private							c					c	c					c		
89	Miscellaneous services										x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
DIVISION J. PUBLIC ADMINISTRATION																							
91	Executive, legislative and general government except finance																						
	911	Executive offices									x	x	x	x	x	x	x				x	x	3 for each 1,000 square feet of gross floor area
	912	Legislative bodies									x	x	x	x	x	x					x	x	
	919	General government not elsewhere classified									x	x	x	x	x	x	x				x	x	
92	Justice, public order and safety																						
	921	Courts									x		x	x	x	x					x	x	3 for each 1,000 square feet of gross floor area
	922	Public order and safety																					
		9223	Correctional institutions										e					e	e				1 for each 6 inmates
		9224	Fire and Police protection	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	1 for each employee on shift
93	Public finance, taxation and monetary policy										x	x	x	x	x	x	x				x	x	3 for each 1,000 square feet of gross floor area
94	Administration of human resources programs										x	x	x	x	x	x	x				x	x	
95	Administration of environmental quality and housing programs										x	x	x	x	x	x	x				x	x	
96	Administration of economic programs										x	x	x	x	x	x	x				x	x	

ORIGINAL STAMPED IN RED

Sec. 17-260. Warehousing (SIC 4227 and 424).

(a) *Private commercial storage (SIC 424).* Warehousing, or other storage of wares, is permitted in the various districts as follows:

(1) *C-1 and C-6 districts.* In C-1 and C-6 districts, warehousing is permitted as an accessory use not involving over 2,000 square feet of area;

(2) *C-2 districts.* In C-2 districts, warehousing is permitted as an accessory use not involving over 2,000 square feet of area, and as a special exception it may be permitted as an accessory use not involving over 3,000 square feet of area;

(3) *C-3, C-4, MX-1, and MX-2 districts.* In C-3, C-4, MX-1, and MX-2 districts, warehousing is allowed as a permitted principal use or as an accessory use not involving over 8,000 square feet of area, and as a special exception involving not over 12,000 square feet of area; and

(4) *C-5 district.* In the C-5 district, warehousing is a permitted accessory use, but it must not involve the storage of goods to be wholesaled in excess of 2,000 square feet of gross floorspace.

Sec. 17-263. Retail trade (SIC 52-59).

(a) *C-2 district.* In C-2 zoning districts, any retail trade activities must not occupy in excess of 5,000 square feet in area. Retail trade occupying between 5,000 and 10,000 square feet may be permitted as a special exception. Retail trade occupying in excess of 10,000 square feet is prohibited. Gasoline pumps may be added as an accessory use by special exception.

(b) *C-6 and MX-1 districts.* In C-6 and MX-1 zoning districts, all retail trade activities are allowed as a permitted use up to 10,000 square feet in area. Retail trade occupying more than 10,000 square feet may be allowed as a special exception by the board of zoning appeals.

(c) *MX-2 districts.* In MX-2 zoning districts any single retail trade shall not occupy a building footprint in excess of 30,000 square feet.

Sec. 17-265. Day care services (SIC 835).

Day care facilities may be allowed in various districts as outlined in this section. Day care facilities are permitted in all zoning districts as a special exception and as a conditional use in the MX-2 zoning district subject to the following conditions:

(1) *General requirements.* Before granting a special exception for establishment of a day care center or kindergarten, the board of zoning appeals shall receive a determination that the facility meets the requirements set forth in Rules and Regulations Relating to Licensing Day Care Facilities and Child Care Centers of the state department of social services.

(2) *Fencing.* A fenced play area of not less than 3,000 square feet shall be provided. The number of children in the fenced play area at any time shall not exceed the ratio of one child for every 150 square feet of fenced-in play area. No fence shall be less than four feet in height.

(3) *Loading and unloading.* An area adequate for loading and unloading of children to be accommodated shall be provided, and that area shall not be located within any public right-of-way.

(4) *Play equipment.* No play equipment shall be closer than 20 feet to any residential lot line.

(5) *Facilities, operation and maintenance.* Facilities, operation and maintenance shall meet requirements of the city board of health.

(6) *Additional conditions.* The board shall determine if additional safeguards and conditions are appropriate in order to protect children to be accommodated from detrimental characteristics of use of adjacent areas, or to protect adjacent uses from potentially incompatible characteristics arising from the day care centers.

Sec. 17-275. Lot size, setback and height requirements.

Lot, setback and height requirements shall comply with table 2 unless modified by special provisions, exceptions and conditions contained elsewhere in this article.

ORIGINAL STAMPED IN RED

TABLE 2. SCHEDULE OF MAJOR HEIGHT AND AREA REQUIREMENTS

	Minimum Lot Area per Unit (square feet)			Minimum Yard Requirements (feet)					
District	First Unit	Each Additional Unit	Approximate Maximum Density (units per acre)	Front	Rear	Side	Minimum Lot Width (feet)	Maximum Height (feet)	Percent Maximum Lot Coverage
D-1	40,000	NA	1.1	35	15	10	150	40	25
RS-1	15,000	NA		35	15	8	90 h	40	30
RS-1A	12,000	NA	3.6	35	15	6	75 h	40	30
RS-1B	10,000	NA	4.4	25	10	5	60 h	40	30
RS-2	8,500	NA	5.1	25	10	5	60 h	40	30
RS-3	5,000	NA	8.7	20	10	5	50 h	40	30
RD g	5,000	2,500 f	5.8	25	10	5	50 h	40	50
RG-1 g	5,000	5,000	8.7	25	10	5	50 h	40	40
RG-1A g	5,000	3,600	11.7	25	10	5	50 h	40	40
RG-2 g	5,000	2,500	16.4	25	10	5	50 h	40	40
RG-3 g,j	NA a	NA	NA	25	25	25	150	6x[b]	40
C-1 g	5,000	2,500	16.4	25	10	5	NA h	50 c	50
C-2	NA	NA	NA	25	10	0 or 3	NA	50 c	NA
C-3	NA	NA	NA	25	10	0 or 3	NA	50 c	NA
C-3A	0	NA	0	25	10	0 or 3	0	50	50
C-4	NA	NA	NA	NA	NA	0 or 3	NA	NA	NA
C-5	NA	NA	NA	NA	NA	NA	NA	NA	NA
C-6	NA	NA	NA	NA	NA	0 or 3	NA	50 c	NA
M-1	NA	NA	NA	25	0 e	0 d	NA	50 c	NA
M-2	NA	NA	NA	25	0 e	0 d	NA	50 c	NA
UTD	5,000	NA	8.7	25	10	5	50	40	30
MX-1	N/A	N/A	N/A	0 – 10[k]	N/A	N/A	N/A	50'	N/A
MX-2	N/A	N/A	N/A	N/A[l]	N/A	N/A	N/A	N/A[m]	N/A

Note: Detached single-family units shall require 5,000 square feet per unit and the density shall meet the same requirements for the first unit.
Footnotes:

[a] Minimum lot area for a high-rise residential development shall be one acre.

[b] The height of a high-rise residential development shall not exceed six times the distance from the property line adjacent to the street to the face of the building.

[c] Buildings between the height of 50 and 75 feet may be allowed provided there is an increase of one foot in side, front and rear yards over the minimum requirements for each additional three feet in height.

[d] No side yard is required except that a landscaped buffer must be provided in accordance with this article.

[e] No rear yard is required except that a landscaped buffer must be provided in accordance with this article.

[f] A minimum lot area of 7,500 square feet is required for a duplex.

[g] Detached single-family dwellings shall be required to have 5,000 square feet per unit. The density shall meet the same requirements for the first unit.

[h] Residential lots shall have a minimum lot depth of 70 feet.

[i] Minimum lot area of 5,000 square feet is required for single-family units. Minimum yard requirement for single-family units is: rear--ten feet, and side--five feet.

[j] Principal structures shall be no more than ten feet from a front lot line.

[k] No required minimum front yard setback. Maximum front yard setback shall be 15 feet.

[l] The building façade of the floor located at or directly above 45 feet in height, shall be setback at least 8 feet from the main façade and the area created may be used for outdoor uses. This requirement may be waived for any area of the façade within 50 feet of a street corner.

Sec. 17-282. Antennas.

(a) In all zoning districts, any antenna of any height shall comply with all yard and setback requirements.

(b) In C-1, C-2, C-3, C-3A, C-4, C-5, C-6, UTD, M-1, M-2, MX-1, and MX-2 zoning districts, antennas may be placed at any location not visible from any adjacent public street. Antennas may be placed on top of a principal structure less than 30 feet in height provided that screening is provided with materials compatible with the principal structure at least equal in height to the antenna. Antennas may be placed on top of flat-roofed structures which exceed 30 feet in height. Antennas erected upon any pitched-roof structure, regardless of the height of the structure, must be screened with materials compatible with the principal structure, the screening to be not less than equal in height to the antenna. In these districts, dish type antenna measuring less than three feet in diameter may be placed at any location on a principal structure except for the building facade or any street-oriented side wall.

(c) In D-1, RS-1, RS-1A, RS-1B, RS-2, RS-3, RD, RG-1, RG-1A, RG-2 and RG-3 zoning districts, no antenna shall be permitted between the front of a principal structure and any adjacent public street, and in the case of corner lots, the side of a principal structure and the street. No dish type antenna more than 18 inches in diameter shall be placed on the roof or other portion of a building so as to be visible from any adjacent public street.

Sec. 17-283. Wireless communication facilities.

(a) *Intent.* It is the intent of this section to provide a definition of wireless communication facilities and to provide regulations for placement of them.

(b) *Definitions.* For the purposes of this section, the following words or phrases shall have the following meanings:

Incidental: something that does not alone justify its use

An incidental use depends on something else.

EXHIBIT _____

Presenter _____

Case No. _____

Date _____

ed by wife joining with husband in deed, which operates as release or satisfaction of interest and not as conveyance.

Inchoate instrument. Instruments which the law requires to be registered or recorded are said to be "inchoate" prior to registration, in that they are then good only between the parties and privies and as to persons having notice.

Inchoate interest. An interest in real estate which is not a present interest, but which may ripen into a vested estate, if not barred, extinguished, or divested.

Inchoate lien. The lien of a judgment, from the day of its entry, subject to be defeated by its vacation, becoming a consummate lien if the motion for a new trial is thereafter overruled; such lien then relating back to the original entry of the judgment.

Inchoate right. In patent law, the right of an inventor to his invention while his application is pending which matures as "property" when the patent issues. Mullins Mfg. Co. v. Booth, C.C.A.Mich., 125 F.2d 660, 664.

Incident. Something dependent upon, appertaining or subordinate to, or accompanying something else of greater or principal importance, something arising or resulting from something else of greater or principal importance. Mola v. Reiley, 100 N.J.Super. 343, 241 A.2d 861, 864. Used both substantively and adjectively of a thing which, either usually or naturally and inseparably, depends upon, appertains to, or follows another that is more worthy. Used as a noun, it denotes anything which inseparably belongs to, or is connected with, or inherent in, another thing, called the "principal". Also, less strictly, it denotes anything which is usually connected with another, or connected for some purposes, though not inseparably. Thus, the right of alienation is incident to an estate in fee-simple, though separable in equity.

Incident of ownership. An element of ownership or degree of control over a life insurance policy. The retention by an insured of an incident of ownership in a life insurance policy will cause the policy proceeds to be included in the insured's gross estate upon death. I.R.C. § 2042(2).

In estate taxation, if decedent retains control or right in property, as for example the right to change beneficiary of insurance policy, the property falls into his gross estate for estate tax purposes. In re Lumpkin's Estate, C.A.Tex., 474 F.2d 1092.

Incidental. Depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose. Davis v. Pine Mountain Lumber Co., 273 C.A.2d 218, 77 Cal.Rptr. 825.

Incidental beneficiary. Person who may derive benefit from performance of contract, though he is neither the promisee nor the one to whom performance is to be rendered. Salzman v. Holiday Inns, Inc., 48 A.D.2d 258, 369 N.Y.S.2d 238, 242. A person who is a donee or creditor (third party) beneficiary of a contract is entitled, in certain circumstances, to enforce such contract. Since there will often be many people indirectly or even directly benefitted by any given contractual performance, the term "incidental beneficiary" is used to describe those persons who would benefit by the performance but who were not intended by the parties to be benefitted and who thus cannot enforce the contract.

A person is not a beneficiary of a trust if the settlor does not manifest an intention to give him a beneficial interest, although he may incidentally benefit from the performance of the trust. Restatement, Second, Trusts, § 126.

Incidental damages. *See* Damages.

Incidental powers. This term, within the rule that a corporation possesses only those powers which its charter confers upon it, either expressly or as incidental to its existence, means such powers as are directly and immediately appropriate to the execution of the powers expressly granted and exist only to enable the corporation to carry out the purpose of its creation.

Incident to arrest. A search can be "incident to arrest" only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. James v. State of La., La., 382 U.S. 36, 86 S.Ct. 151, 15 L.Ed.2d 30. *See also* Search incident to arrest.

Incidental to employment. A risk is "incidental to employment" within Worker's Compensation Act, when it belongs to or is connected with what a worker has to do in fulfilling the duties of his or her employment.

Incidental use. In zoning, use of premises which is dependent on or affiliated with the principal use of such premises. Needham v. Winslow Nurseries, Inc., 330 Mass. 95, 111 N.E.2d 453.

Incidere /insítariy/. Lat. In the civil and old English law, to fall into; to fall out; to happen; to come to pass. To fall upon or under; to become subject or liable to. *Incidere in legem*, to incur the penalty of a law.

Incipitur /insípətər/. Lat. It is begun; it begins. In old practice, when the pleadings in an action at law, instead of being recited at large on the issue-roll, were set out merely by their commencements, this was described as entering the *incipitur*; *i.e.*, the beginning.

Incite /insáyt/. To arouse; urge; provoke; encourage; spur on; goad; stir up; instigate; set in motion; as, to "incite" a riot. Also, generally, in criminal law to instigate, persuade, or move another to commit a crime; in this sense nearly synonymous with "abet."

Inciter. In criminal law, an aider or abettor; an accessory.

Incivile /insívəliy/. Lat. Irregular; improper; out of the due course of law.

Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare, vel respondere /insívəliy èst, náysay tówtə líyjiy pərəpéktə, yúwəs élakwə partíkyələ íyjəs prəpózətə, jùwdəkériy, vél rəspòndériy/. It is improper, without looking at the

EXHIBIT

Presenter

119

Westlaw.

Rathkopf's The Law of Zoning and Planning

Database updated September 2009

Edward H. Ziegler, Jr., Arden H. Rathkopf, and Daren A. Rathkopf

Chapter
33. Zoning and Accessory Uses

Edward H. Ziegler, Jr.[*]

I. Provision for by Ordinance

References

§ 33:3. Customarily incidental to principal use

The incidental or accessory use under a zoning law has been defined as a use which is dependent on or pertains to the principal or main use.[1] For example, a Michigan court has held that professional services which plaintiff rendered from her home as a psychotherapist and marriage counselor did not qualify as an accessory use because such services were not customarily incidental to the residential use in that the services did not further, or enhance, the principal use of the property. The plaintiff suggested that it was "customary" for social workers to practice from their homes and that her practice was "incidental" to the principal use of the home as a residence, but the court ruled that an accessory use must be "customarily incidental" to the main use.[2]

Similarly, where a zoning ordinance defined "accessory use" as "a building or use incidental, subordinate and reasonably necessary to the conduct of the principal building or use and located on the same lot as the principal building," the Supreme Court of Vermont defined the word "necessary" to mean "essential to a desirable or projected end or condition and not to be dispensed with without loss, damage, inefficiency or the like." Thus, a pharmacy was held as a matter of law, not to be an accessory use to a physician's office building.[3]

In another case the court defined the phrase "incidental to the use as a residence" in the following language: "A use is thus incidental so long as the main use of the dwelling remains residential and the occupation activity is factually subordinate."[4] However, where the accessory use attains such proportions that the residential use of the premises becomes subordinate to the maintenance of a business, the claimed accessory use is no longer permitted.[5]

When an accessory use attains such magnitude as to no longer be incidental to the principle use, it loses its status as an accessory use. In Township of Groveland v. Jennings,[6] a corporation proposed to construct and operate, as an accessory use, a treatment plant to process hazardous waste and to utilize the finished product as a fill for mined cavities on the property. Mining and reclamation was a permitted use. The court, quoting this treatise on the above proposition, determined that the issue was whether the corporation was processing industrial waste so as to reclaim the land or whether it was reclaiming the land in order to be allowed to operate a hazardous waste disposal plant. It was noted that the corporation purchased the property for $1.8 million and inten-

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

Date
Case No.
Presenter
EXHIBIT

120

ded to invest $10 million more for the processing equipment, and that the land would be reclaimed over a period of 25 years. The court concluded that the magnitude of the project indicated that the dominant purpose of the corporation's proposal was the disposal of industrial wastes for profit. Any reclamation was purely incidental to this main objective.

The common phrase "accessory use—customarily incidental to any of the above permitted uses" imposes a further limitation on the qualification found in the word "incidental." The requirement that the accessory use be "customarily" incidental to a permitted use necessitates clarification as to the word "customarily." In Jantausch v. Borough of Verona[7] the question was as to whether a beauty parlor could be maintained in a residence. The New Jersey court said:

> What would "customary" mean in the present setting? There are many, many home occupations; so much so, that general legislation has been adopted to subject home work to regulation and licensing by the State Department of Labor and Industry. R.S. 34:6-120 et seq. Thereunder permits have been issued for some specific 50 categories of activities. Is "customary" to be measured by reference to the State or to a more restricted area, perhaps the borough itself?And is "customary" a mathematical concept in this context, and if it is, does it require the conduct of beauty culture in the home to be *the* habitual or *the* usual mode of operation measured on the basis of all beauty work in the area? Bassett (p. 100) cites the milliner and the lawyer as persons engaged in customary home occupations. Today many milliners, perhaps a majority, operate independently of the home. Certainly, in this area, most lawyers so operate. Do they cease to be customary home occupations? No doubt the degree of use is a factor. Dolan v. DeCapua, 13 N.J. Super. 500, 508, 80 A.2d 655 (Law Div. 1951). The practice should be sufficient to justify the observation that is not unique or rare. It should be appreciable or perhaps substantial. It should be sufficient to constitute a recognized mode of activity in the field, but it need not be the more prevalent one. It seems to me that no more can be implied in the word 'home,' either directly or through the intermediate implication therein of a requirement that it be "customary."[8]

In Pennsylvania, it is not sufficient, in order to establish the validity of an accessory use, merely to show that some other property owners use their property in the same fashion. Rather, in order to establish a use as "customarily incidental," it is necessary to show "that a significant percentage of like principal uses in the area have accessory uses of the nature and extent in question." This requires a delineation of the geographic area under consideration and an indication both of the total number of principal uses and of how many of those principal uses maintain the accessory use in question. Furthermore, there must be some showing that these other instances of accessory use are regarded as being in conformity with the zoning ordinance.[9]

In other jurisdictions, however, the term "customarily incidental" has not been interpreted, as it has in Pennsylvania, to require any sort of showing that a "significant percentage" of principal uses maintain the accessory use in question.[10] Thus, in an Illinois case which considered the question of whether a house trailer maintained as quarters for groundskeepers was an accessory use to a golf course, the court indicated that it would not require a showing that most, or even many, golf courses followed the same practice. Rather, all that was required was a showing that the practice be sufficiently followed as to constitute it as a "recognized mode of activity in the field."[11]

Naturally, the perception of which accessory uses are considered "customary" changes with the times. Thus, if a particular accessory use is not customarily indulged in, and even if that use is found incident to only a small

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

percentage of similar principal use, it may nevertheless be found to be "customary". Accordingly, the New Jersey Supreme Court, in permitting a heliport as an accessory use to a construction firm's headquarters, ruled that the fact that most construction firms did not have heliports was not controlling. The court stated that this practice is increasingly coming into vogue and, since air travel was the most efficient means for the company's executives to visit out-of-state job sites, there was a distinct functional relationship between the heliport and the main use. The court did note that if a municipality found it necessary to restrict heliports in particular zones, then it was free to do so by ordinance.[12]

[FN*] Edward Ziegler is Professor of Law at the University of Denver College of Law. He is a frequent author and speaker on planning and zoning law issues and is the principal author for revision of this treatise.

[FN1] See, e.g., Town of Needham v. Winslow Nurseries, Inc., 330 Mass. 95, 111 N.E.2d 453, 40 A.L.R.2d 1450 (1953); Fox v. Zoning Bd. of Appeals of Town of West Hartford, 146 Conn. 70, 147 A.2d 472 (1958); Gratton v. Pellegrino, 115 N.H. 619, 348 A.2d 349 (1975).

And see Potts v. City of Hugo, 416 N.W.2d 465 (Minn. Ct. App. 1987) (parking of semi truck during idle hours at home in residential district was not a permitted accessory use and violated parking ordinance). An auto raceway next to a motel is neither "customarily incidental" nor does it depend on or pertain to the use of a motel. Guhl v. Par-3 Golf Club, Inc., 238 Ga. 43, 231 S.E.2d 55 (1976). Similarly, a separate large-scale amusement park with a ferris wheel and a number of other rides for children was held not to be permissible as an accessory use to a nonconforming aquarium. Marine Attractions, Inc. v. City of St. Petersburg Beach, 224 So. 2d 337 (Fla. Dist. Ct. App. 2d Dist. 1969).

[FN2] Lerner v. Bloomfield Tp., 106 Mich. App. 809, 308 N.W.2d 701 (1981).

And see Henry v. Board of Appeals of Dunstable, 418 Mass. 841, 641 N.E.2d 1334 (1994) (excavation of 300,000 to 400,000 cubic yards of gravel was not incidental to horticultural use as tree farm); Allegheny West Civic Council, Inc. v. Zoning Bd. of Adjustment of City of Pittsburgh, 552 Pa. 541, 716 A.2d 600 (1998) (engineering business held not customarily incidental to dwelling unit).

[FN3] In re Porter Medical Associates Use Change Permit, 139 Vt. 132, 423 A.2d 491 (1980).

[FN4] Jantausch v. Borough of Verona, 41 N.J. Super. 89, 124 A.2d 14, 19 (Law Div. 1956), judgment aff'd, 24 N.J. 326, 131 A.2d 881 (1957). See also State ex rel. Kaegel v. Holekamp, 151 S.W.2d 685 (Mo. Ct. App. 1941), in which the court construed the term home occupation as follows:
The important thing is, however, that under both the terms of the ordinance and the common sense of the matter, an occupation which will be permitted in a home in a district set apart for residential purposes must be one 'customarily incident to' the use of the premises as a dwelling place, and not one in which the use of the premises as a dwelling place is largely incidental to the occupation carried on.

The court goes on to say in explanation of this statement:
For example, a woman might do sewing or dressmaking in her home (as it is common knowledge that many women do), and such usage of the premises would be a legitimate home occupation of the character permit-

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

ted by the ordinance so long as she did not maintain objectionable signs or displays on the exterior of the premises; keep a stock in trade or sell commodities on the premises; employ persons other than members of the immediate family residing on the premises; or make use of mechanical equipment other than that, such as a sewing machine, which is permissible for purely domestic or household purposes. It is true that her work would be done for remuneration, but it would be none the less a recognized use of a home as such, and not a business or undertaking foreign to any ordinary home purpose and to which her living on the premises would be merely incidental.

Text quoted in Mola v. Reiley, 100 N.J. Super. 343, 348, 241 A.2d 861 (Law Div. 1968), in which the court held that a primary use must be and must continue to be dominant to an accessory use and, accordingly, before a permit for an accessory use may be obtained, "[the existence of] a primary use to which the accessory use is incidental and subordinate must be demonstrated. The requirement of subordination of the accessory use to the primary use, by itself, frustrates an application for such an accessory use without a demonstration of the primary use."

[FN5] E.g., People v. Daly, 28 N.Y.S.2d 603 (Spec. Sess. 1941).

[FN6] Groveland Tp. v. Jennings, 106 Mich. App. 504, 308 N.W.2d 259 (1981), judgment aff'd, 419 Mich. 719, 358 N.W.2d 888 (1984).

[FN7] Jantausch v. Borough of Verona, 41 N.J. Super. 89, 124 A.2d 14 (Law Div. 1956), judgment aff'd, 24 N.J. 326, 131 A.2d 881 (1957).

[FN8] 41 N.J. Super. at 100, 124 A.2d at 20, cited in State v. Smiley, 182 Neb. 211, 153 N.W.2d 906, 908 (1967).

New Jersey. DaPurificacao v. Zoning Bd. of Adjustment of Tp. of Union, 377 N.J. Super. 436, 873 A.2d 582 (App. Div. 2005) (holding that a pigeon coop is not a permitted accessory use on residential property).

[FN9] Champaine v. Zoning Hearing Bd. of East Bradford Tp., 30 Pa. Commw. 544, 374 A.2d 752 (1977), citing Bennett v. Zoning Bd. of Adjustment, 396 Pa. 57, 151 A.2d 439 (1959); Suhy v. Zoning Bd. of Adjustment of City of Philadelphia, 402 Pa. 657, 169 A.2d 62 (1961); Gross v. Zoning Bd. of Adjustment of City of Philadelphia, 424 Pa. 603, 227 A.2d 824 (1967). Compare, however, Klein v. Lower Macungie Tp., 39 Pa. Commw. 81, 395 A.2d 609 (1978) (a showing that a significant proportion of homes have tennis courts was not required to establish tennis courts as a "customarily incidental" residential accessory use).

[FN10] See the cases cited below.

Delaware. The Supreme Court of Delaware has ruled that prior community experience is not necessarily the proper criterion to use in judging whether certain activity is a customary accessory use. Since Delaware is a small state (of only 600,000 people), the court stated that a determination as to what is "customary" should be made by reference to state-wide practices. The court added that such broad geographic scopes would not foreclose innovative land uses. The court thus abandoned a more restrictive standard implied by Westminster Presbyterian Church v. Turner, 343 A.2d 604 (Del. 1975). Commis-

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

sioners of Bellefonte v. Coppola, 453 A.2d 457 (Del. 1982).

Nebraska. See State v. Smiley, 182 Neb. 211, 214, 153 N.W.2d 906, 908 (1967), wherein the court stated, with regard to proof of an accessory use: "No doubt the degree of use is a factor. ... The practice should be sufficient to justify the observation that [it] is not unique or rare. It should be appreciable or perhaps substantial. It should be sufficient to constitute a recognized mode of activity in the field, but it need not be the more prevalent one."

New Jersey. See Schantz v. Rachlin, 101 N.J. Super. 334, 244 A.2d 328 (Ch. Div. 1968), judgment aff'd, 104 N.J. Super. 154, 249 A.2d 18 (App. Div. 1969).

See generally Tullo v. Millburn Tp., Essex County, 54 N.J. Super. 483, 496, 149 A.2d 620 (App. Div. 1959), in which the court interpreted the ordinance on the basis of what was *contemporaneously* a customary part of the principal use, saying in a case in which the question was whether an outdoor swimming pool was impliedly an integral part of the operation of a country club: "outdoor swimming pools *have, in recent years,* become a customary part of group activities. They have likewise become frequent as accessory to private dwellings which Millburn regulates and permits by its ordinance." And see People v. Nicosia, 42 Misc. 2d 300, 248 N.Y.S.2d 24 (County Ct. 1963), in which the court stated that the word customary involves a determination of the time sense in which the word was used.

With respect to the geographical extent of the custom, there is a reference to this in Building Inspector of Falmouth v. Gingrass, 338 Mass. 274, 154 N.E.2d 896 (1959), where the court held that in order for the storage of an airplane to be construed as a permissible accessory use in a single residence district, there would have to be a finding that this was customary in the immediate vicinity or in the state as a whole.

Ohio. Costlow v. Etna Twp. Bd. of Zoning Appeals, 2002-Ohio-5955, 2002 WL 31426391 (Ohio Ct. App. 5th Dist. Licking County 2002) (upholding board finding that the outdoor storage of materials and use of intermodal storage units for carpets and padding was not a customarily incidental accessory use for a carpet business).

[FN11] Lake County v. LaSalle Nat. Bank, 76 Ill. App. 3d 179, 32 Ill. Dec. 282, 395 N.E.2d 392 (2d Dist. 1979), citing Lawrence v. Zoning Bd. of Appeals of Town of North Branford, 158 Conn. 509, 264 A.2d 552 (1969).

[FN12] State v. P. T. & L. Const. Co., Inc., 77 N.J. 20, 389 A.2d 448 (1978). See also Boublis v. Garden State Farms, Inc., 122 N.J. Super. 208, 299 A.2d 763 (Law Div. 1972) (heliport permitted as accessory use to large dairy plant). For a discussion of airplanes and helicopters as accessory uses see § 33:29, infra.

Westlaw. © 2009 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

RLZPN § 33:3

END OF DOCUMENT

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

The Tobacco Merchant
1220 Bower Parkway
Business License/Zoning Issues

September 3, 2009 – Business License received a complaint on the Smoking Ban Hotline about smoking in this establishment. The complainant said this establishment was now a bar instead of a retail cigar shop.

September 9, 2009 – Johnathan Chambers visited the business and viewed a very large bar area with bar stools, tables and TV's. The bar was selling alcohol including draft beer.

This business when originally licensed in April 2009. The business never told Business License or Zoning of their intentions to operate as a bar (in the future). All paperwork processed by Business License and Zoning was very clear that this location would be a retail tobacco shop only. The operation changed in late June/early July when a full service bar was installed (without a permit).

Operating as a bar in that area has different requirements from the retail license they currently have. This area is zoned C-3 and the operation of a bar requires approval from the Board of Zoning Appeals. The sales of beer, wine and liquor requires collecting and remitting Hospitality taxes. And lastly, operating as a bar eliminates their exemption from the smoking ban ordinance. They can no longer smoke in this location.

September 10, 2009 – Brenda Kyzer & Johnathan Chambers called and spoke with the owner, Mr. William Slicer. We explained the issues now faced since the operation changed to a bar. Johnathan offered to extend the deadline for the October BOZA meeting to Monday afternoon if Mr. Slicer agreed to get all the paperwork to him by then. Johnathan is emailing him the application today. We will meet with Mr. Slicer on Monday, September 14 @ 9am. Brenda explained she would provide him with the Hospitality information at that meeting. She also explained that he would need to quit smoking in that location immediately.

Can't really say he was upset about this information. His claim is his wife came down and handled the licensing process and she claims that she was very clear about their intended operations – both present and future. He thinks the sales of the beer, wine and liquor is incidental and because of that he should still be exempt from the smoking ban ordinance. He seem to write down all the information we presented to him and was very receptive to meeting with us as quickly as possible to get these issues resolved.

September 14, 2009 – Meeting with Brenda Kyzer, Johnathan Chambers, William Slicer (owner), Darryl Smalls (owner's attorney). Brenda presented packet of HT information. The forms were for June – December 2009. Brenda also presented a copy of the smoking ban ordinance. Mr. Smalls wanted to know if the city had defined incidental as it relates to the smoking ban. Their position is the beer/wine/alcohol is incidental within this retail establishment and the tobacco products are the main activity. And if you compare the

beer/wine/alcohol sales to the tobacco, the tobacco is much greater than what is being generated from the beer/wine/alcohol sales.

Johnathan gave them Zoning's position about being a bar. If they wish to continue operating as a bar, the owner would need to apply for special exception. The owner does not want to be classified as a bar and therefore is not going to apply for special exception. Instead, they want Johnathan to issue a letter of violation for operating as a bar so that they can appeal it to the board. Their position will be they are a retail tobacco shop – not a bar. Johnathan will draft the letter today and send it to the owner. The letter will tell them to cease operation immediately but JC doubts they will be issuing any citations for violation of the letter because of their intentions to appeal. They will have until October 14, 2009 to apply for the November 10, 2009 hearing date for the appeal.

In the meantime, Mr. Smalls would like for the city to define "incidental" as stated in the smoking ban ordinance. Brenda indicated that she would be seeking legal advice about issuing citations for smoking during the time while Zoning appeal is being worked out. Mr. Smalls asked that if Business License is instructed/advised to issue citations that he be notified beforehand so he will be aware and Mr. Slicer asked that I notify him so that the citation can be issued to him and not his employees or the person smoking.

I will be contacting Legal for advice on how to proceed.

APPLIT151656NOV0609 | 09 | INQ | APPLICATION | ******

Last Changed on APR 22 2009 by Employee 21828 | NEXT SCREEN | APPLI

Account Number 33786 -8 | Name of Business | THE TOBACCO MERCHANT

Status: REGULAR | Out of Business ! | Cola/Rich | C | NOTES ATTACHED!

Location of Business

Number	Suffix	Dir	Street Name	Type
1220			BOWER	PKWY

Apt/Hotel: Name STE E-4 Type

In COLUMBIA License Area? Y | Located In L

Business Codes

077 - I Type TOBACCO PRODUCTS RETAIL

S.I.Code 35999 | Bus.Start Date 12061997

Federal ID 582282753 | StateTaxNo. 3232486

Application Type 2 | Ownership Type 1

Mailing Address

THE TOBACCO MERCHANT
1220 BOWER PKWY
COLUMBIA, SC

Phone Numbers

Local 749-5499
Ho/Of 803-351-2346
Emerg

ZIP CODE 29212 + 4

No.Employees 5 | Hazardous Material/Waste N

Minority N and Certificate Number

Audit Dt 00000000 | Out of Business Dt 04282009

10:07:06:07 INPUT REQUEST

Current License Year 2009

License Number
Date Printed
Business Gross$
License Fee $
Penalty Fee $
Fee Paid $

Pd | Rec #

Geographic Information

Business License Area
Planning Zone
Census Tract
Tax Map 2797 | Block 1 | Lot 5 | Suffix

Owner's Name

PAUL BROCK/ PRESIDENT

Previous Account Number

@

0.00

LNAMET151655NOV0609 091 FOR LOOKUP BUSINESS BY NAME or LOCATION

MORE LOCATIONS FOR YOUR SELECTION! PRESS XMIT! NEXT SCREEN LNAME

Business Name / Business Code	Business Location / Account Status	Area	SIC	#Empl	SDate	Account No. / Audit	NHMAO
THE TOBACCO MERCHANT	1220 BOWER PKWY_STE E-4				COLA YL	33786	
077-I TOBACCO PRODUCT	Regular OutofBusiness		35999	0005	120697		YNN21
WILLYS FOXFIRE GRILL	1220 BOWER PKWY_STE E10				COLA YL	58634	
106-I FAMILY DINE-IN	Regular OutofBusiness		85813		122203	Y	N23
FOXFIRE GRILL	1220 BOWER PKWY_STE E10				COLA YR	72117	
106-I RESTAURANT	Regular OutofBusiness		85813	0020	010108		YNN23
JENNY CRAIG	1230 BOWER PKWY				COLA YL	49964	
109-I WEIGHT MGMT	Regular OutofBusiness		67299	0004	051501		YNN21
CHARLESTON CRAB HOUSE	1230 BOWER PKWY_B-6				COLA YL	50513	
106-I RESTAURANT	Regular OutofBusiness		85813	0060	020102		YNN21
ATLANTA BREAD COMPANY	1230 BOWER PKWY_STE B1				COLA YL	55460	
106-I DELI/BAKERY	Regular OutofBusiness		15812	0015	081503		NN21
APPLEONE EMPLOYMENT AGENC	1230 BOWER PKWY_STE 3-B				COLA YL	56453	
051-I EMPLOYMENT	Regular OutofBusiness			0005	060203		NN11
WISH TWO	1230 BOWER PKWY_STE BB				COLA YL	67476	
077-I JEWELRY/ACCESSO	Regular OutofBusiness		35999	0001	020106		NN22
ZAS BRICK OVEN PIZZA	1260 BOWER PKWY_A-8				COLA YL	53271	
106-I RESTAURANT	Regular OutofBusiness		85813	0100	082602		YNN21

LOCATION: No 1260 Sufx Dir Name BOWER Type PKWY

NAME I/T Acct 53790 R/C R I C A/I I @

10:06:39:38 INQUIRY REQUEST 0.00

BOARD OF ZONING APPEALS
CASE SUMMARY FOR

APPLICATION FOR ADMINISTRATIVE APPEAL
1220 BOWER PARKWAY, SUITE E-4
TOBACCO MERCHANT

January 12, 2010 at 10:00 a.m.
City Council Chambers, 3rd Floor, City Hall, 1737 Main Street
Columbia, South Carolina

Case Number:	09-087-AA, Agenda Item #3
Subject Property:	1220 Bower Parkway, Suite E-4, TMS#002797-01-055.
Zoning District:	C-3, General Commercial District.
Applicant:	Darryl D. Smalls, Attorney.
Property Owner:	Developers Diversified Realty Corporation.
Council District:	1
Summary Prepared:	12/16/09

Requested Action: Administrative Appeal of the Zoning Administrator's decision to classify the use as a drinking establishment (Tobacco Merchant).

Applicable Sections of Zoning Ordinance:

§17-112(1)	The Board of Zoning Appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article.
§17-55	Drinking place is defined as an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises.

Case History:

4/22/09	Our office approved a Business License Clearance Form for the change in ownership and the establishment of a cigar store/stand (§17-258, 5399) at this location.
9/3/09	Our office received a complaint that the above referenced location was operating as a drinking establishment.
9/9/09	Onsite inspection was conducted of the property.
9/14/09	Our office and Business License staff met with the business owner and his counsel regarding the complaints; operation of the drinking place without a special exception, and the enforcement of City Codes.
9/16/09	An additional onsite inspection was conducted to obtain pictures of business.
9/30/09	Written Notice of Violation was given to the business owner stating that the business in question was operating as a drinking place without a Special Exception and operation of the drinking place must cease immediately.
10/5/09	Administrative Appeal filed.

11/10/09	Applicant was granted a deferral by the Board.
12/8/09	Applicant was granted a deferral by the Board.

New Staff Comments:

On December 8, 2009 the Board granted a deferral due to the applicant's attorney being required to appear in an out of town court.

On November 10, 2009 the applicant's attorney requested a deferral after the Board's discussion regarding the possibility of the applicant pursuing a Special Exception for a drinking establishment at this location. To date, the applicant has not submitted an application for a Special Exception.

Staff Comments:

On September 3, 2009 our office received a complaint that the above-referenced location was operating as a drinking place. After researching our records, we found that the business in question was approved on April 22, 2009 as cigar store/stand (§17-258, 5399).

On September 9, 2009 an onsite inspection was conducted. At the time of inspection, the business appeared to be a drinking establishment. Next, we contacted the applicant to discuss what we found during the inspection. At that time, the applicant indicated that he had recently purchased the business. He also indicated that they recently began selling beer and wine shortly after they installed the bar. We informed him that we would re-inspect the property to take pictures and make a determination regarding the classification of the business.

On September 16, 2009 a re-inspection was conducted and at that time I determined that the business was operating as a drinking place. On September 30, 2009 a written notice of violation was given to the business owner stating that the business in question was operating as a drinking establishment without a Special Exception and operation of the drinking place must cease immediately.

On October 5, 2009 our office received the Administrative Appeal Application that is before the Board. The appellant states that "the Tobacco Merchant legally operates as a tobacco retail establishment which has incidental sales [beer and wine] pursuant to the City of Columbia Ordinances." Staff's position is that the amount of seating and area attributed to the on-premise consumption of beer and wine is significant and not incidental sales. Regardless, the definition of a drinking place is an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises. Lastly, the appellant reinforces this position by displaying signage advertising "Cold Beer".

In closing, staff feels that it is clear that this business is operating as a drinking place based upon the amount of seating and area attributed to the on-premise consumption of beer and wine based upon the floor plan created by staff is significant and not incidental sales. We humbly request that the Board uphold the determination of the Zoning Administrator.

Persons expressing support or concern about this application submitted the documents outlined below to staff. All documents are attached hereto and made a part of the record of the public hearing.

None.

Zoning Map

1220 Bower Parkway, Suite E-4
Tobacco Merchant

Department of Planning & Development Services

ORIGINAL PREPARATION/DATE:
This map was prepared by:

C Michael Conley
November 30, 2009

DISCLAIMER:
The City of Columbia Department of Planning and Development Services data represented on this map or plan is the product of compilation, as produced by others. It is provided for informational purposes only and the City of Columbia makes no representation as to its accuracy. Its use without field verification is at the sole risk of the user.

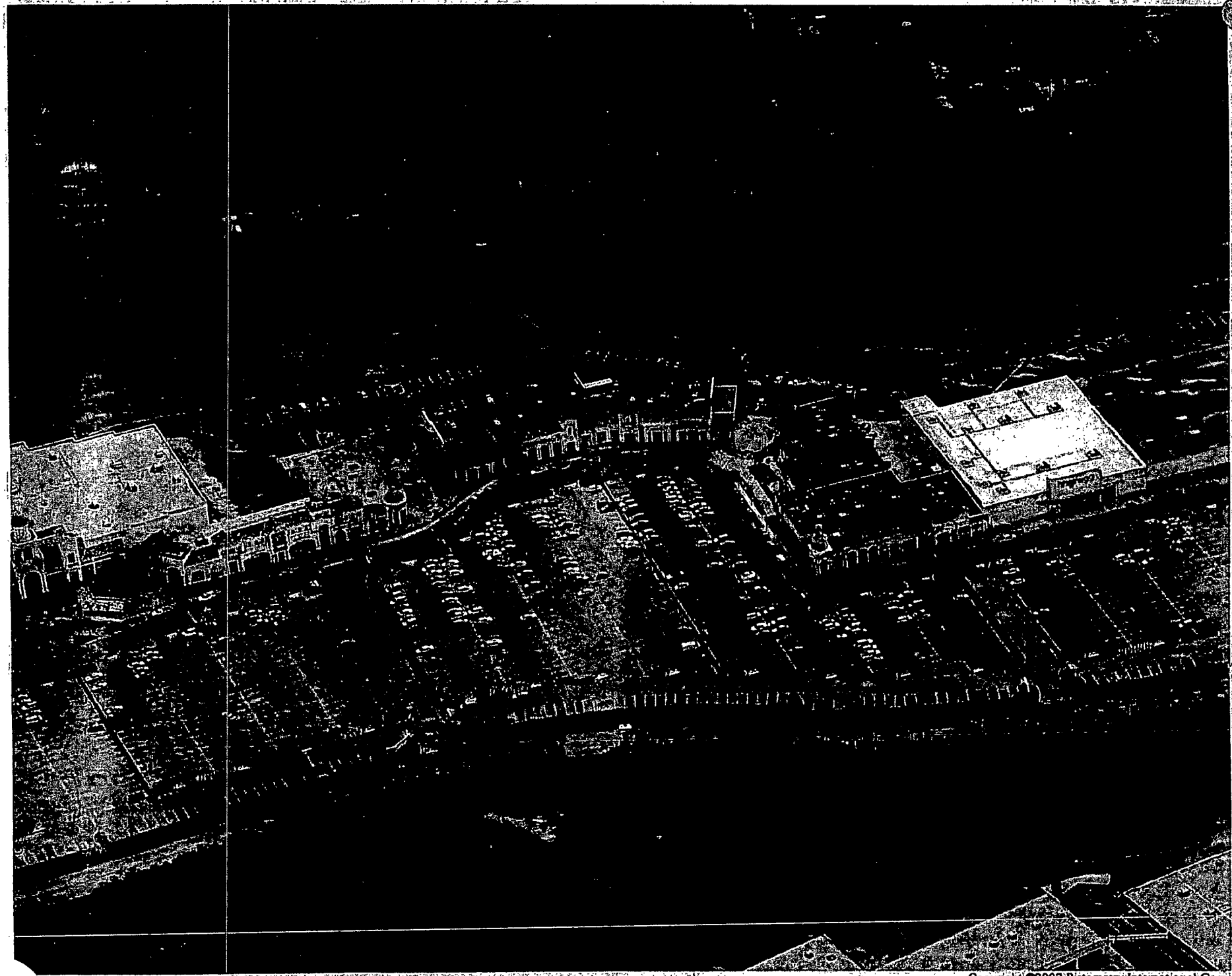
** DATA SOURCE: CITY OF COLUMBIA, GIS DIVISION

BOZA000086

Average Scale: 1 inch = 163.5 feet

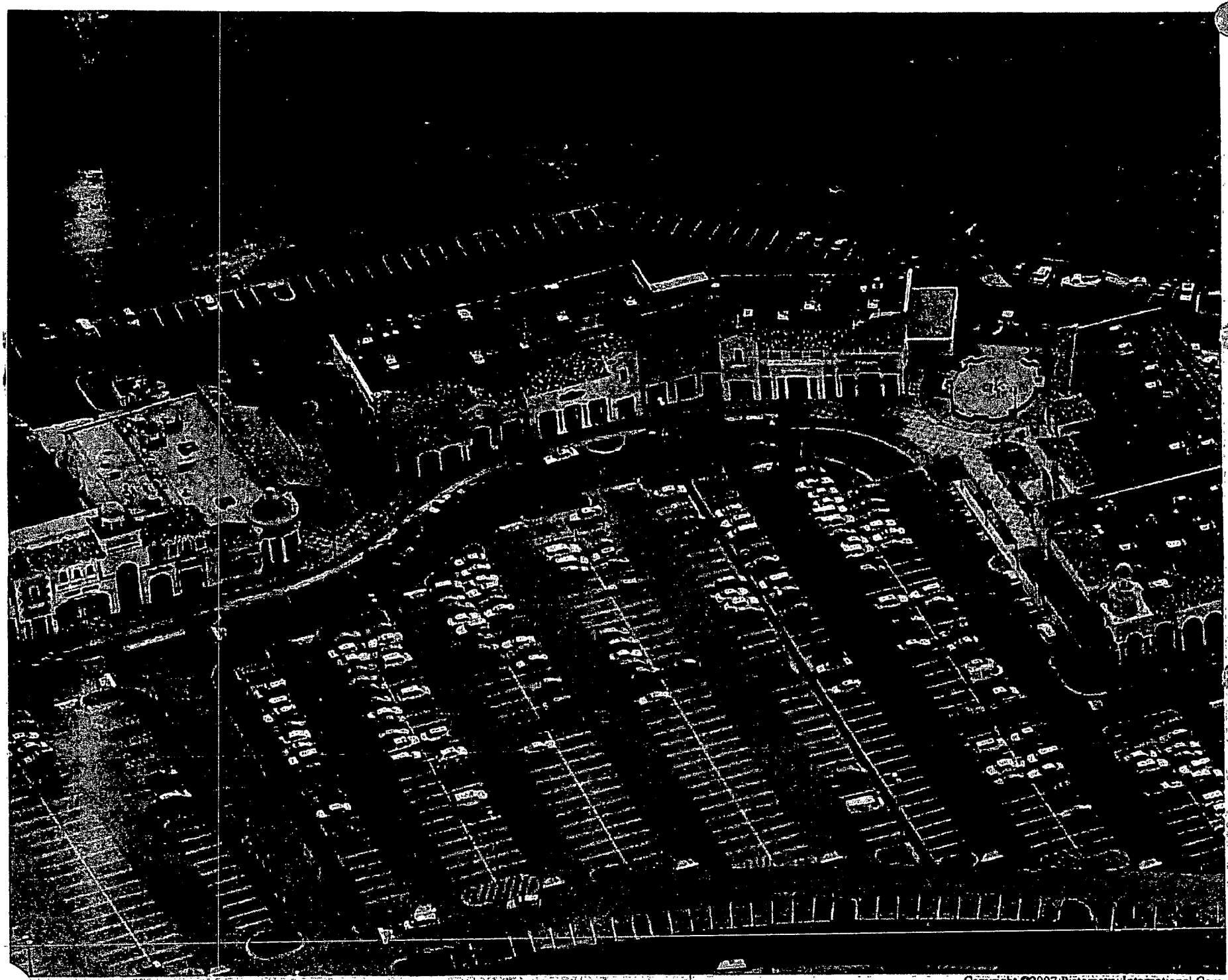
Copyright ©2007 Pictometry International Corp.

BGA0008/



Average Scale: 1 inch = 111.2 feet

Copyright ©2007 Pictometry International Corp.



Average Scale: 1 inch = 55.6 feet

Copyright ©2007 Pictometry International Corp.

Receipt # _____

Appeal # _____

CITY OF COLUMBIA
ZONING BOARD OF ADJUSTMENT
APPEAL FOR ADMINISTRATIVE REVIEW

1. Location of affected property: 1220 Bower Parkway, Suite E-4

TMS# Page: 06279701 Block: _____ Lot _____
SS

2. I (we) allege that the Zoning Administrator did err by ( ) granting ( ) denying an application ( ) to use ( ) to occupy ( ) to alter ( ) to erect ( ) to add to ( ) to move ( ) to demolish ( ) for a temporary compliance certificate ( ) for a compliance certificate - nonconformity ( ) for a compliance certificate (✓) other finding that Tobacco Merchant is in violation of the Drinking Places ordinance affecting the above listed property.

3. The Zoning Administrator's decisions and reasons therefore were:

Improper the Tobacco Merchant is a Tobacco Retail Establishment

4. I (we) contend that the Zoning Administrator was in error in that: The Tobacco Merchant legally operates as a Tobacco Retail establishment which has incidental sales pursuant to the City of Columbia ordinances

5. I (we) have been aggrieved by this decision or are affected by it in that: The Zoning Administrator seeks to require the Tobacco Merchant to obtain a special exception and become a Drinking establisment. At this point the Tobacco Merchant does not seek to become a Drinking Place.

Tobacco Merchant	6326 St. Andrews Rd Suite 287 Columbia SC 29212	803-551-0285
Appellant	Appellant's Address	Telephone Number

Appellant's Signature — Attorney at Law Representing Tobacco Merchant

Darryl Smalls

Attorney and Counselor at Law
6326 St.Andrews Road Suite 207 Columbia, SC 29212
Tel. 803.551.0985 Fax 803.551.0986

Darryl D. Smalls
Tel: 803.551.0985
darryl.smallslaw@live.com

OCT
RECEIVED
DEVELOPMENT
SERVICES

October 1, 2009

Johnathan E. Chambers
Deputy Zoning Administrator
1136 Washington Street
Columbia, SC 29201

RE: Tobacco Merchant

Dear Mr. Chambers:

I have been retained to represent the Tobacco Merchant in the above referenced zoning matter. Pursuant to Section 17-111 of the City of Columbia Zoning Ordinance, the Tobacco Merchant hereby appeals the written notice of violation dated September 16, 2009.

The notice of violation improperly asserts that the Tobacco Merchant is in violation of section 17-258, drinking places. The Tobacco Merchant operates as a Tobacco Retail establishment which has incidental sales pursuant to the City of Columbia ordinances.

The Tobacco Merchant respectfully requests an appeal before the Board of Zoning Appeals.

With kind regards, I remain

Very truly yours,

Darryl D. Smalls

DDS
Enclosures

cc: William Slicer

WRITTEN NOTICE OF VIOLATION

DATE & TIME VIOLATION OBSERVED: September 16, 2009

DATE & TIME NOTICE SERVED: 9/30/09 9:30 am

PERSON SERVED:
William Slicer
122 Lake Elizabeth Drive
Columbia, SC 29203
(803) 463-4393

REGARDING THE FOLLOWING PROPERTY: TOBACCO MERCHANT

Street Address: 1220 Bower Parkway, Suite E-4

TMS#: 002797-01-55

Zoned: C-3 (General Commercial)

Dear Mr. Slicer,

Your attention is called to the operation of a drinking establishment (SIC 5813) without obtaining a Special Exception from Board of Zoning Appeals at the above-referenced property As such, in accordance with § 17-90 of the City of the Zoning Ordinance of the City of Columbia, South Carolina (hereinafter referred to as "the Zoning Ordinance"), you are in violation of §17-258 Table of Permitted Uses, 5813 Drinking Places (copy enclosed).

You are hereby ordered to correct this violation by ceasing the on-premise consumption of beer, wine, and alcoholic beverages at this location immediately. Please note that a City representative from the Zoning Division will revisit the premises to confirm compliance with the Zoning Ordinance (3) three days after the receipt of this letter.

For your convenience, I have enclosed a Board of Zoning Appeals Application for Special Exception, Letter of Agency, Site Plan Checklist, Fee Schedule, and Board of Zoning Appeals 2009 Calendar for your review. Should you have any questions regarding the Board of Zoning Appeals Special Exception process, please feel free to contact me.

Please be advised that § 17-111 of the Zoning Ordinance allows that any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the Board of Zoning Appeals by filing a written appeal within 30 days of the date of the decision. Section 17-112 of the Zoning Ordinance charges the Board of Zoning Appeals with hearing appeals ". . . when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article . . .". If you choose to appeal, your appeal must be filed in writing in the office of the Zoning Division, 1136 Washington Street, Columbia, SC 29201 within 30 days of the date of this letter.

Lastly, thank you in advance for your prompt attention to this matter. Please contact me at the telephone number below if you have any questions or comments.

Signature of Issuing Officer: _____
PRINT NAME: Johnathan E. Chambers

Title: Deputy Zoning Administrator
Telephone: (803) 545-3333

CITY OF COLUMBIA
BUSINESS LICENSE
CLEARANCE FORM

14054

PURPOSE STATEMENT: Clearance forms are required for all businesses located in the City limits of Columbia, SC. Any new business, change of ownership or location for an existing business must complete this form. Approvals needed are dependent upon the physical location and nature of your business. Upon completion, mail to City of Columbia Business License Division, P.O. Box 147, Columbia, SC 29217 or bring to 1339 Main St. 1st Floor, Business License Division. If you have any questions, please call 803-545-3345.

DATE: 4-22-09
NAME OF BUSINESS: The Tobacco Merchant
NAME OF OWNER(S): William & Jackie Slicer
BUSINESS ADDRESS: 1220 Bower Pkwy Ste E-4
TELEPHONE: (BUS) 803-463-4393 **(CELL)** _____ **(FAX)** _____
TYPE OF BUSINESS: Cigar Bar/Shop
EMAIL ADDRESS: _____
TYPE OF BUILDING: ( ) RESIDENCE (✓) STORE ( ) OFFICE BUILDING ( ) WAREHOUSE ( ) OTHER
SIC CODE: 077 35999 **NAICS CODE:** _____

✓ **STEP 1** – ZONING DIVISION (803) 545-3333 PAID APR 29 2009
IS THIS A SEXUALLY ORIENTED BUSINESS? _____ (YES) ✓ (NO) _____ (INITIALS)
TMS#: 2797 - 01 - 55 ZONING DISTRICT: C-3
ORDINANCE SECTION 17-258 5993 DESCRIPTION: Cigar Store / Lounge
(✓) APPROVED _____ ( ) DENIED _____
ZONING ANALYST SIGNATURE: _____ DATE: 4/22/09
ZONING ANALYST NAME (PRINT): Michael Lizarb

✓ **STEP 2** – BUSINESS LICENSE (803) 545-3345
BUSINESS LICENSE SIGNATURE: Lisa N. Cole DATE: 4-22-09

THE FOLLOWING DEPARTMENTS SHALL NOT INSPECT AND/OR GRANT APPROVAL PRIOR TO THE COMPLETION OF STEPS 1 AND 2 ABOVE

✓ **STEP 3** – BUILDING INSPECTIONS (803) 545-3420
(✓) APPROVED _____ ( ) DENIED _____
BUILDING INSPECTOR SIGNATURE: Brent Hawkins (kas) DATE: 5-22-09

✓ **STEP 4** – FIRE DEPARTMENT (803) 545-3701
(✓) APPROVED _____ ( ) DENIED _____
FIRE MARSHALL SIGNATURE: Kat O. Satt DATE: 5-22-09

STEP 5 – RICHLAND COUNTY HEALTH DEPARTMENT (803) 576-2910
LEXINGTON COUNTY HEALTH DEPARTMENT (803) 785-8113
( ) APPROVED _____ ( ) DENIED _____
AGENCY SIGNATURE: _____ DATE: _____

DIVISION 1. GENERALLY

Sec. 17-55. Definitions.
The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building or use. An accessory building or use is:

(1) Subordinate to and serves a principal building or principal use;

(2) Subordinate in area, extent or purpose to the principal building or principal use served;

(3) Designed for the comfort, convenience or necessity of occupants of the principal use served; and

(4) Located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served.

Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

Drinking place means an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises.

Drive-through facility means any use, either principal or accessory, that provides goods or services to a person without requiring the person to leave his or her vehicle. Examples of drive-through facilities include, but are not limited to, drive-through automated teller machines, automated car washes, and drive-through windows at restaurants, financial institutions, dry-cleaning establishments, and retail establishments such as liquor stores and pharmacies. Drive-in motion picture theaters, automotive service facilities (except automated car washes), automotive repair facilities, and fuel pumps and like service islands at gasoline service stations are not considered drive-through facilities.

Principal structure means a structure or building having significant or primary use and justifying its own utilization (such as a dwelling or office building) as contrasted to accessory structures which are incidental or subordinate to primary structures and do not alone justify their utilization (such as a tool shed or auto garage used in conjunction with a dwelling). Certain structures may be either principal or accessory, depending upon utilization, such as a parking garage as an accessory structure to a high-rise apartment or as a principal structure when operated commercially in a business area.

Principal use means the significant or primary activity carried out within a structure or upon land (such as retail sales within a store or occupancy of a dwelling unit as a residence) as contrasted to accessory uses which are incidental or subordinate to primary uses (such as sale of soft drinks at an automobile service station). Certain uses may be either principal or accessory, depending upon their relationship with other uses, as for

example a newsstand as an accessory use within a hotel lobby or as a principal usewithin a separate structure.

Restaurant means a place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on or off the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, fast-food restaurant, eating and drinking establishment or other similar business. ~~, but shall not include a fast-food restaurant. In a restaurant, any facilities for carryout shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises.~~

~~*Restaurant, fast-food* means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast-food restaurant if it exhibits any of the following characteristics:~~
~~(1) There is space or facilities allocated and used for carryout service, or for carryout and customer self-service for on-premises consumption combined;~~
~~(2) Most food items are already prepared or packaged before the customer places an order; and~~
~~(3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.~~
This definition does not include ~~an establishment~~ establishments that sell food or beverages as an accessory use or for off-premises preparation or consumption, such as ~~known as~~ a retail grocery store, convenience store, or delicatessen ~~or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption~~.

Structure ~~means anything constructed or erected, the use of which~~ requires location on the ~~ground, or attachment to something having~~ ~~[illegible]~~ ground, including mobile homes, travel trailers, signs, mobile signs, tubs, swimming pools or other bathing facilities, portable signs and antennas, but excluding from definition as structures the following: minor landscaping features such as ornamental pools, planting boxes, birdbaths, paved surfaces, walkways, driveways, recreational equipment, flagpoles and mailboxes.

(Code 1979, § 6-3012; Ord. No. 96-25, 11-6-96; Ord. No. 2002-0[illegible], § 1, 6-5-02)
Cross references: Definitions generally, § 1-2.
Secs. 17-56--17-80. Reserved.

Sec. 17-258. Table of permitted uses.

Uses permitted in the general zoning districts shall be as set forth in table 1 and as modified by special provisions, exceptions and conditions contained elsewhere in this article.

(1) Symbols used in table 1 are as follows:
   a. "x" means that the indicated use is permitted in the indicated district.
   b. "e" means that the indicated use is permitted in the indicated district, subject to the granting of a special exception by the board of zoning appeals.
   c. "a" means that the indicated use is permitted as an accessory use in the indicated districts.
   d. "a/e" means that the indicated use is permitted as an accessory use in indicated districts, but is also permitted in those districts as a principal use if approved by the board of zoning appeals as a special exception.
   e. "n.e.c." means "not elsewhere covered" in the Standard Industrial Classification Coding Manual.
   f. "n.r." means "no requirement."

(2) Any use not permitted in a district is expressly prohibited.

(3) In residential districts, the following uses are prohibited:
   a. Storage in connection with a trade;
   b. Storage or long term parking of commercial vehicles or industrial storage in excess of one day; and
   c. Storage of building materials except in connection with active construction.

(4) A section number following the use category means that the use is allowed but must meet the conditions and requirements set forth in the referenced section.

(5) The zoning administrator may utilize the Standard Industrial Classification Manual to determine the appropriate classification of land use.

(6) Any drive-through facility shall require review and approval by the Board of Zoning Appeals as a special exception.

TABLE 1. TABLE OF PERMITTED USES

LEGEND:
x = permitted use in the district e = special exception by Board of Zoning Appeals; a = permitted accessory use, a/e = permitted as an accessory use or as a principal use by special exception; and nr = no requirements.

Principal Uses				Zoning Districts																	
				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	Off-Street Parking Requirements
DIVISION A: AGRICULTURE, FORESTRY AND FISHING																					
1	Agricultural production–Crops																				
	18	Horticultural specialties		x																	No requirement
		181	Ornamental floriculture and nursery products	x																	
		189	Horticultural specialties not elsewhere classified	x																	
	19	General farms, primarily crop		x																	
2	Agricultural production–Livestock			x																	
7	Agricultural services																				
	74	Veterinary services (section 17-256)																			3 for each 1,000 square feet of gross floor area
		741	With indoor kennels								e	e	x	x	x			x			
		742	With outdoor kennels								e	e	x	e	x			x			

141

TABLE 1. TABLE OF PERMITTED USES

LEGEND

x = permitted use in the district, e = special exception by Board of Zoning Appeals, a = permitted accessory use, a/e = permitted as an accessory use or as a principal use by special exception, and nr = no requirements.

Principal Uses				Zoning Districts																
				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	Off-Street Parking Requirements
	554	Gasoline service stations										e	e	x	e	e	e	x	x		gross floor area
	555	Boat dealers										e	e					x			3.5 for each 1,000 square feet of gross floor area
	556	Recreational and utility trailer dealers										e	e					x			
56	Apparel and accessory stores										e	x	x	x	x	x	x	x			3 for each 1,000 square feet of gross floor area
57	Furniture, home furnishings and equipment stores											x	x	x	x	x	x	x			
58	Eating and drinking places																				8 for each 1,000 square feet of gross floor area
	581	Eating and drinking places																			
		5812	Eating places (except fast food)								a	x	x	x	x	x	x	x			
		5813	Drinking places (alcoholic beverages) (section 17-266)								e	e	e	e	x	x	e	x			12 for each 1,000 square feet of gross floor area
		5814	Fast food eating places										e	e	e	e	e	e			
59	Miscellaneous retail																				
	591	Drugstores and proprietary stores									a	x	x	x	x	x	x	x			3.5 for each 1,000 square feet of gross floor area
	592	Liquor stores										e	x	e	x	x	x	x			
	593	Used merchandise stores											e	e	e	e	e	e	e		
	594	Miscellaneous shopping goods stores										x	x	x	x	x	x	x			
	596	Non-store retailers																			3 for each 1,000 square feet of gross floor area
		5961	Mail order house									x	x	x	x	x	x	x			
		5962	Automatic merchandising machine operators										x	x				x			3 for each 1,000 square feet of gross floor area
	598	Fuel and ice dealers																			
		5982	Fuel and ice dealers, except fuel oil dealers and bottled gas dealers										x		x			x			3.5 for each 1,000 square feet of gross floor area
		5983	Fuel oil dealers										e					x	x		1.7 for each 1,000 square feet of gross floor area
		5984	Liquefied petroleum gas (bottled gas) dealers										e					x	x		
	599	Retail stores, not elsewhere classified																			3.5 for each 1,000 square feet of gross floor area
		5992	Florist								e	x	x	x	x	x	x	x			
		5993	Cigar store and stands								e	x	x	x	x	x	x	x			
		5994	News dealers and newsstands								e	x	x	x	x	x	x	x			
		5999	Miscellaneous retail stores, not elsewhere classified								e	x	x	x	x	x	x	x			

communications), or by any combination of radio and wire, pursuant to authority granted by the Federal Communications Commission, the state public service commission, or either of them.

Radiotelephone communications facilities and *telephone communications facilities* mean any facilities used in the provision of radiotelephone communications or telephone communications services, including towers, antennas, electronic equipment, wires, cables, substations, equipment shelters, buildings and other facilities necessary to, or approved or required by the Federal Communications Commission, the state public service commission or either of them for use in or the provision of, radiotelephone communications services or telephone communications services.

Regulatory flood protection elevation means the elevation of the regulatory flood at any point, which may vary from place to place depending on topography, anticipated hydraulic conveyance capacity, encroachment into areas subject to flood, and other factors.

Restaurant means a place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on or off the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, fast-food restaurant, eating and drinking establishment or other similar business. This definition does not include establishments that sell food or beverages as an accessory use or for off-premises preparation or consumption, such as a retail grocery store, convenience store, or delicatessen.

Restaurant, fast food means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it exhibits any of the following characteristics:

(1) There is space or facilities allocated and used for carryout service, or for carryout and customer self-service for on-premises consumption combined;

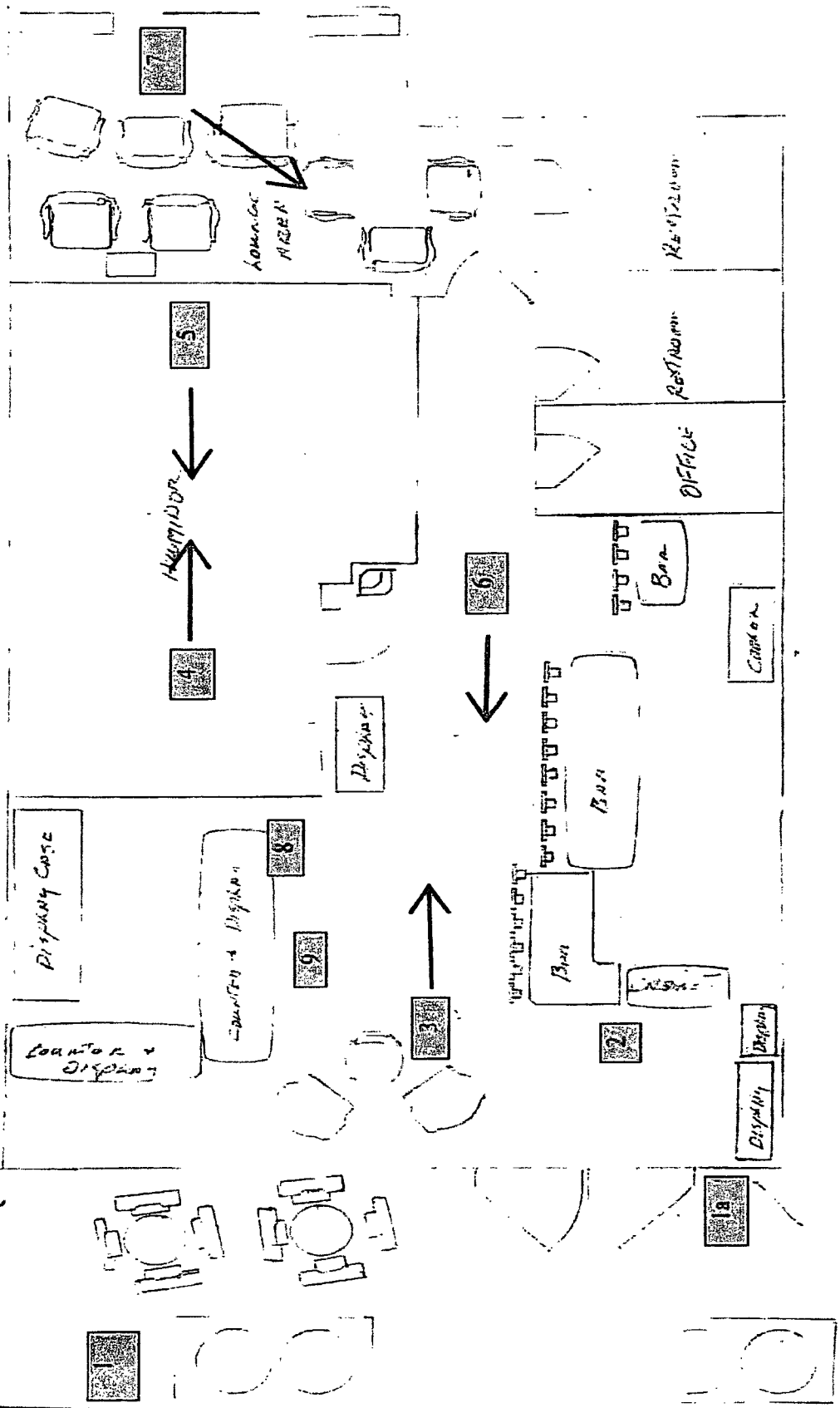
(2) Most food items are already prepared or packaged before the customer places an order; and

(3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

This definition does not include an establishment known as a retail grocery store, convenience store or delicatessen or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption.

Roominghouse and *boardinghouse* mean any dwelling, other than a hotel or motel, in which more than three persons who are not members of the owner's or operator's family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which such accommodations are offered in ten or more rooms shall be considered to be a hotel or motel.

Screening. A visual shield against a higher impact land use created in a buffer transition yard with plantings, walls, fencing, etc.


7
5
4
6
8
9
3
2
1
Bar
Bar
Bar
Counter & Display
Counter & Display
Display Case
Display
Display
Display

Picture 1

BOZA000100

145

Picture 1a

941

BOZA000102

141

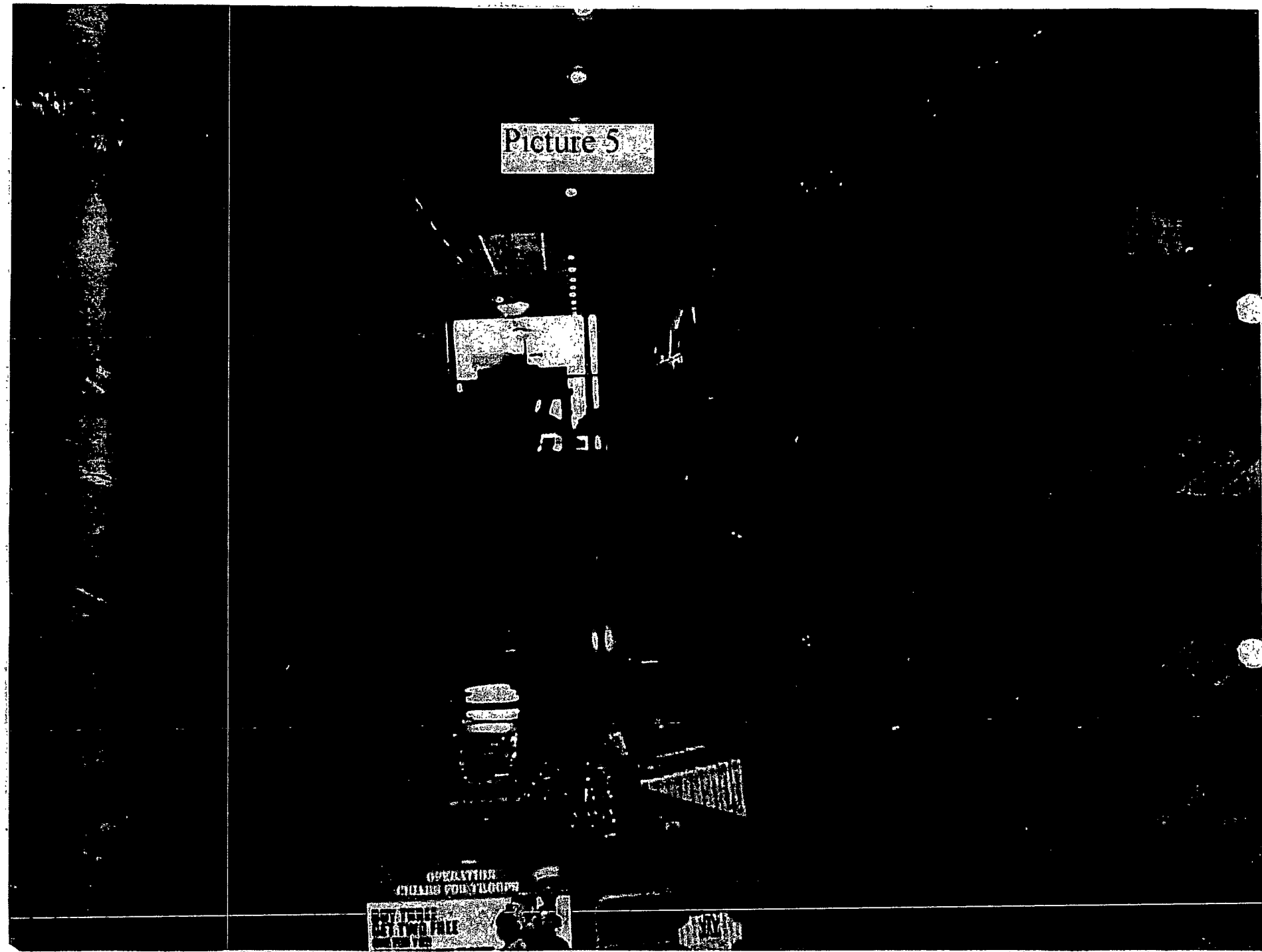
Picture 3

Picture 4

BOZA000104

149

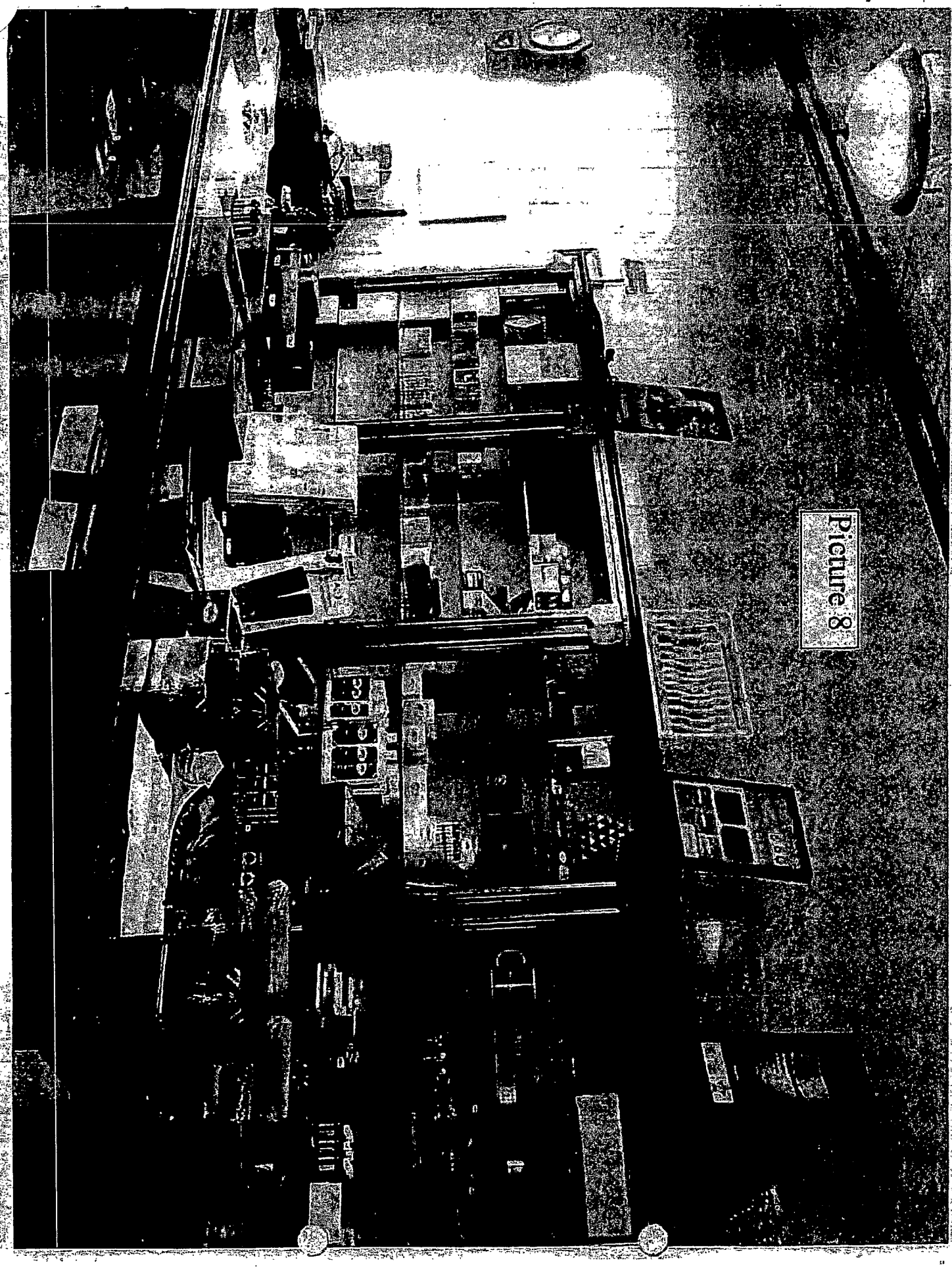
Picture 5



Picture 6

BQZA000106

Picture 7



Picture 8

Picture 9

hsl

COLUMBIA

Everybody Counts - Everybody Contributes - Everybody Benefits

January 05, 2010

Darryl Smalls
Attorney at Law
6326 St. Andrews Road, Suite 207
Columbia, SC 29212

Re: 1220 Bower Parkway, Suite E-4,
Lexington County TMS No. 002797-01-055,

Dear Mr. Smalls:

This letter is to advise you that the Board of Zoning Appeals at its December 08, 2009 meeting approved your request to defer your application for Administrative Appeal at the above location. This item has been placed on the January 12, 2010 agenda. **Please be prepared to present your case at the January public hearing or withdraw your application until such time that you feel you are ready to present your case to the Board.**

At your earliest convenience, please let me know your intentions.

C Michael Conley
Senior Zoning Analyst

cc: File

FAX COVER SHEET

CITY OF COLUMBIA
DEVELOPMENT SERVICES
PHONE (803) 545-3333
FAX (803) 343-8779

DATE: January 05, 2010

TO: Darryl Smalls
COMPANY: Attorney at Law
FAX#: (803) 551-0986

FROM: C Michael Conley
Senior Zoning Analyst

PAGES (inc. cover): 2

COMMENTS: Enclosed is information concerning your Board of Zoning Appeals case with the City of Columbia. If there is anything else I can do for you, please feel free to contact me.

Sincerely,

C Michael Conley

Application for Administrative Appeal

1220 Bower Parkway, Suite E-4
(TMS#002797-01-055)

Administrative Appeal of the Zoning Administrator's decision to classify the use as a drinking establishment (Tobacco Merchant) (Zoned C-3).

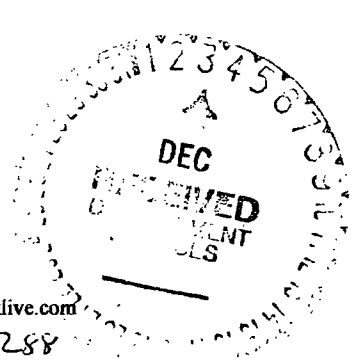
Note: Applicant has requested this case be deferred until 1/12/10.

This page intentionally left blank.

Darryl Smalls

Attorney and Counselor at Law
455 St.Andrews Road Bldg E Suite 2 Columbia, SC 29210
Tel: 803.551.0985 Fax: 803.551.0986

Darryl D. Smalls
Tel: 803.551.0985
darryl.smallslaw@live.com



727-6288

November 2, 2009

Johnathan E. Chambers
Deputy Zoning Administrator
1136 Washington Street
Columbia, SC 29201

RE: Tobacco Merchant Zoning Appeal

Dear Mr. Chambers:

I am formally requesting that the zoning hearing scheduled for December 8, 2009 be rescheduled due to the fact I am scheduled to be in a workers' compensation hearing in Charleston, South Carolina on December 8, 2009. Please let me know the new date and time for the zoning appeal hearing.

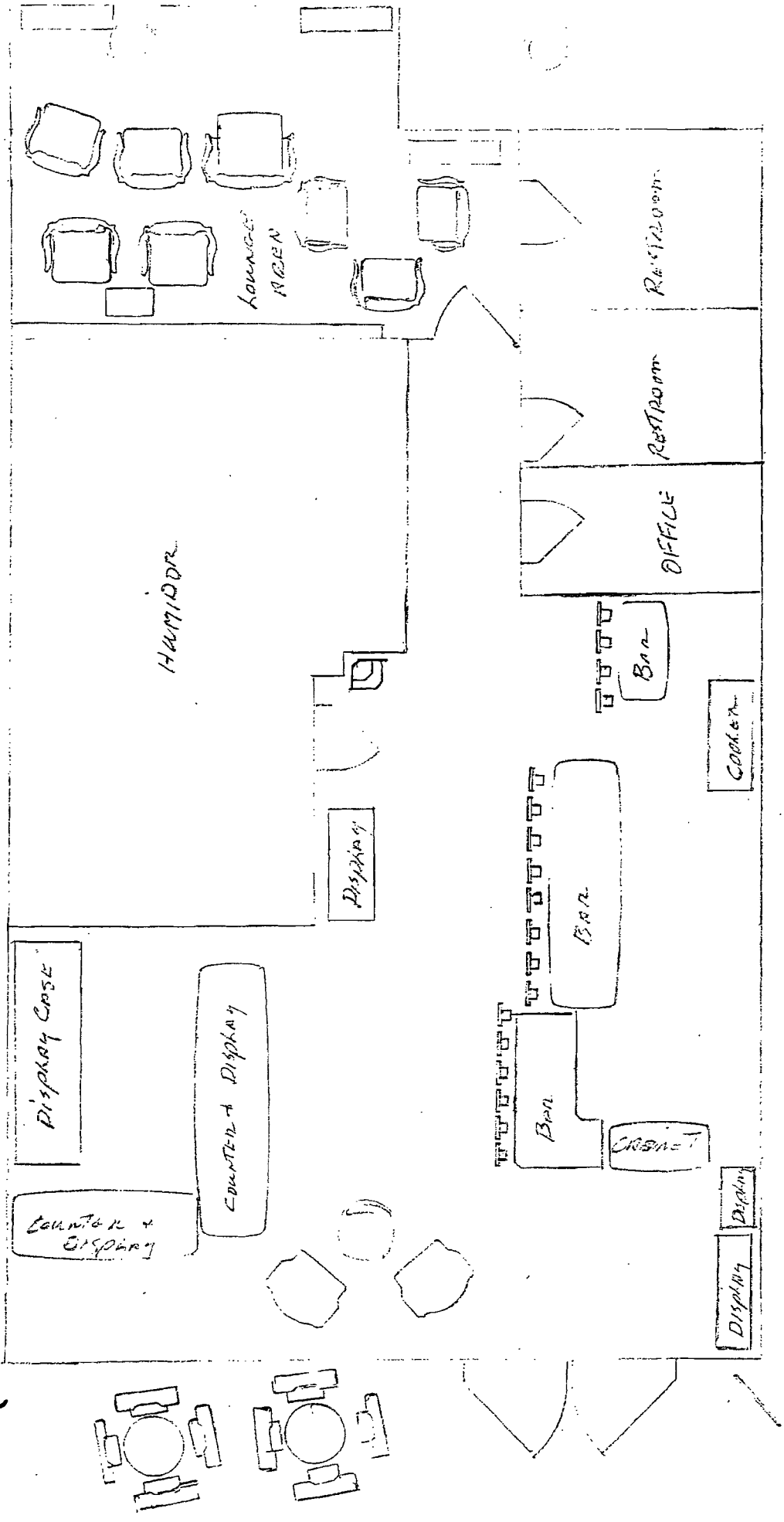
With kind regards, I remain

Very truly yours,

Darryl D. Smalls

DDS
Enclosures

cc: William Slicer



RAWING FOR SITE
IT + FROM PICTURES.
OT TO SCALE

Receipt # _____

Appeal # _____

CITY OF COLUMBIA
ZONING BOARD OF ADJUSTMENT
APPEAL FOR ADMINISTRATIVE REVIEW

1. Location of affected property: 1220 Bower Parkway, Suite E-4

TMS# Page: 06279701 Block: _____ Lot: _____
SS

2. I (we) allege that the Zoning Administrator did err by ( ) granting ( ) denying an application ( ) to use ( ) to occupy ( ) to alter ( ) to erect ( ) to add to ( ) to move ( ) to demolish ( ) for a temporary compliance certificate ( ) for a compliance certificate - nonconformity ( ) for a compliance certificate (✓) other finding that Tobacco Merchant is in violation of the Drinking Places ordinance affecting the above listed property.

3. The Zoning Administrator's decisions and reasons therefore were:

Improper the Tobacco Merchant is a Tobacco Retail Establishment

4. I (we) contend that the Zoning Administrator was in error in that: The Tobacco Merchant legally operates as a Tobacco Retail establishment which has incidental sales pursuant to the City of Columbia ordinances

5. I (we) have been aggrieved by this decision or are affected by it in that: The Zoning Administrator seeks to require the Tobacco Merchant to obtain a special exception and become a Drinking establishment. At this point the Tobacco Merchant does not seek to become a Drinking Place.

Tobacco Merchant
Appellant

6226 St. Andrews Rd Suite 207
Columbia SC 29212
Appellant's Address

803-551-0285
Telephone Number

Appellant's Signature

Attorney At Law
Representing Tobacco Merchant

FOR OFFICE USE ONLY
PLEASE DO NOT WRITE ON THIS SIDE OF FORM

DECISION OF THE ZONING BOARD OF ADJUSTMENT

1. The Zoning Administrator's decision is: ( ) Affirmed ( ) Reversed ( ) Modified

2. It is the decision of the Zoning Board of Adjustment that the proper interpretation of the ordinance concerning the point in question is: _____

_____

_____

_____

3. The Zoning Administrator is therefore directed to: _____

_____

_____

_____

4. Record of Vote: 1) _____ 2) _____

3) _____ 4) _____ 5) _____

6) _____ 7) _____

Darryl Smalls

Attorney and Counselor at Law
6326 St.Andrews Road Suite 207 Columbia, SC 29212
Tel: 803.551.0985 Fax: 803.551.0986

Darryl D. Smalls
Tel: 803.551.0985
darryl.smallslaw@live.com

OCT
RECEIVED
DEVELOPMENT
SERVICES

October 1, 2009

Johnathan E. Chambers
Deputy Zoning Administrator
1136 Washington Street
Columbia, SC 29201

RE: Tobacco Merchant

Dear Mr. Chambers:

I have been retained to represent the Tobacco Merchant in the above referenced zoning matter. Pursuant to Section 17-111 of the City of Columbia Zoning Ordinance, the Tobacco Merchant hereby appeals the written notice of violation dated September 16, 2009.

The notice of violation improperly asserts that the Tobacco Merchant is in violation of section 17-258, drinking places. The Tobacco Merchant operates as a Tobacco Retail establishment which has incidental sales pursuant to the City of Columbia ordinances.

The Tobacco Merchant respectfully requests an appeal before the Board of Zoning Appeals.

With kind regards, I remain

Very truly yours,

Darryl D. Smalls

DDS
Enclosures

cc: William Slicer

WRITTEN NOTICE OF VIOLATION

DATE & TIME
VIOLATION OBSERVED: September 16, 2009

DATE & TIME
NOTICE SERVED: 9/30/09 9:30 am

PERSON SERVED:
William Slicer
122 Lake Elizabeth Drive
Columbia, SC 29203
(803) 463-4393

REGARDING THE FOLLOWING PROPERTY: TOBACCO MERCHANT

Street Address: 1220 Bower Parkway, Suite E-4

TMS#: 002797-01-55

Zoned: C-3 (General Commercial)

Dear Mr. Slicer,

Your attention is called to the operation of a drinking establishment (SIC 5813) without obtaining a Special Exception from Board of Zoning Appeals at the above-referenced property. As such, in accordance with § 17-90 of the City of the Zoning Ordinance of the City of Columbia, South Carolina (hereinafter referred to as "the Zoning Ordinance"), you are in violation of §17-258 Table of Permitted Uses, 5813 Drinking Places (copy enclosed).

You are hereby ordered to correct this violation by ceasing the on-premise consumption of beer, wine, and alcoholic beverages at this location immediately. Please note that a City representative from the Zoning Division will revisit the premises to confirm compliance with the Zoning Ordinance (3) three days after the receipt of this letter.

For your convenience, I have enclosed a Board of Zoning Appeals Application for Special Exception, Letter of Agency, Site Plan Checklist, Fee Schedule, and Board of Zoning Appeals 2009 Calendar for your review. Should you have any questions regarding the Board of Zoning Appeals Special Exception process, please feel free to contact me.

Please be advised that § 17-111 of the Zoning Ordinance allows that any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the Board of Zoning Appeals by filing a written appeal within 30 days of the date of the decision. Section 17-112 of the Zoning Ordinance charges the Board of Zoning Appeals with hearing appeals "... when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article ...". If you choose to appeal, your appeal must be filed in writing in the office of the Zoning Division, 1136 Washington Street, Columbia, SC 29201 within 30 days of the date of this letter.

Lastly, thank you in advance for your prompt attention to this matter. Please contact me at the telephone number below if you have any questions or comments.

Signature of Issuing Officer: _____
PRINT NAME: Johnathan E. Chambers

Title: Deputy Zoning Administrator
Telephone: (803) 545-3333

CITY OF COLUMBIA
BUSINESS LICENSE
CLEARANCE FORM

14054

PURPOSE STATEMENT: Clearance forms are required for all businesses located in the City limits of Columbia, SC. Any new business, change of ownership or location for an existing business must complete this form. Approvals needed are dependent upon the physical location and nature of your business. Upon completion, mail to City of Columbia Business License Division, P.O. Box 147, Columbia, SC 29217 or bring to 1339 Main St. 1st Floor, Business License Division. If you have any questions, please call 803-545-3345.

DATE: 4-22-09
NAME OF BUSINESS: The Tobacco Merchant
NAME OF OWNER(S): William & Jackie Slicer
BUSINESS ADDRESS: 1220 Bower Pkwy Ste E-4
TELEPHONE: (BUS) 803-463-4393 **(CELL)** _____ **(FAX)** _____
TYPE OF BUSINESS: Cigar Bar/Shop
EMAIL ADDRESS: _____
TYPE OF BUILDING: ( ) RESIDENCE (✓) STORE ( ) OFFICE BUILDING ( ) WAREHOUSE ( ) OTHER
SIC CODE: 077 35999 **NAICS CODE:** _____

STEP 1 – ZONING DIVISION (803) 545-3333

PAID MAY 26 2009

IS THIS A SEXUALLY ORIENTED BUSINESS? _____ **(YES)** ✓ **(NO)** ✓ **(INITIALS)**

TMS#: 2797 - 01 - 55 ZONING DISTRICT: C-3
ORDINANCE SECTION 17-258 5993 DESCRIPTION: City Face / Strip
(✓) APPROVED _____ ( ) DENIED _____
ZONING ANALYST SIGNATURE: _____ DATE: 4/22/09
ZONING ANALYST NAME (PRINT): Michael Lirwin

STEP 2 – BUSINESS LICENSE (803) 545-3345

BUSINESS LICENSE SIGNATURE: Lisa N. Cole DATE: 4-22-09

THE FOLLOWING DEPARTMENTS SHALL NOT INSPECT AND/OR GRANT APPROVAL PRIOR TO THE COMPLETION OF STEPS 1 AND 2 ABOVE

STEP 3 – BUILDING INSPECTIONS (803) 545-3420

(✓) APPROVED _____ ( ) DENIED _____
BUILDING INSPECTOR SIGNATURE: Brent Hawkins (KOS) DATE: 5-22-09

STEP 4 – FIRE DEPARTMENT (803) 545-3701

(✓) APPROVED _____ ( ) DENIED _____
FIRE MARSHALL SIGNATURE: Kent O. Sott DATE: 5-22-09

STEP 5 – RICHLAND COUNTY HEALTH DEPARTMENT (803) 576-2910
LEXINGTON COUNTY HEALTH DEPARTMENT (803) 785-8113

( ) APPROVED _____ ( ) DENIED _____
AGENCY SIGNATURE: _____ DATE: _____

DIVISION 1. GENERALLY

Sec. 17-55. Definitions.
The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building or use. An accessory building or use is:

(1) Subordinate to and serves a principal building or principal use;

(2) Subordinate in area, extent or purpose to the principal building or principal use served;

(3) Designed for the comfort, convenience or necessity of occupants of the principal use served; and

(4) Located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served.

Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

Drinking place means an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises.

Drive-through facility means any use, either principal or accessory, that provides goods or services to a person without requiring the person to leave his or her vehicle. Examples of drive-through facilities include, but are not limited to, drive-through automated teller machines, automated car washes, and drive-through windows at restaurants, financial institutions, dry-cleaning establishments, and retail establishments such as liquor stores and pharmacies. Drive-in motion picture theaters, automotive service facilities (except automated car washes), automotive repair facilities, and fuel pumps and like service islands at gasoline service stations are not considered drive-through facilities.

Principal structure means a structure or building having significant or primary use and justifying its own utilization (such as a dwelling or office building) as contrasted to accessory structures which are incidental or subordinate to primary structures and do not alone justify their utilization (such as a tool shed or auto garage used in conjunction with a dwelling). Certain structures may be either principal or accessory, depending upon utilization, such as a parking garage as an accessory structure to a high-rise apartment or as a principal structure when operated commercially in a business area.

Principal use means the significant or primary activity carried out within a structure or upon land (such as retail sales within a store or occupancy of a dwelling unit as a residence) as contrasted to accessory uses which are incidental or subordinate to primary uses (such as sale of soft drinks at an automobile service station). Certain uses may be either principal or accessory, depending upon their relationship with other uses, as for

example a newsstand as an accessory use within a hotel lobby or as a principal usewithin a separate structure.

Restaurant means a place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on or off the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, fast-food restaurant, eating and drinking establishment or other similar business. ~~, but shall not include a fast food restaurant. In a restaurant, any facilities for carryout shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises.~~

~~*Restaurant, fast food* means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it exhibits any of the following characteristics:~~
~~(1) There is space or facilities allocated and used for carryout service, or for carryout and customer self service for on-premises consumption combined;~~
~~(2) Most food items are already prepared or packaged before the customer places an order; and~~
~~(3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.~~
This definition does not include ~~an establishment~~ establishments that sell food or beverages as an accessory use or for off-premises preparation or consumption, such as ~~known as~~ a retail grocery store, convenience store, or delicatessen ~~or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption~~.

Structure means anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground, including mobile homes, travel trailers, signs, mobile signs, tubs, swimming pools or other bathing facilities, portable signs and antennas, but excluding from definition as structures the following: minor landscaping features such as ornamental pools, planting boxes, birdbaths, paved surfaces, walkways, driveways, recreational equipment, flagpoles and mailboxes.

(Code 1979, § 6-3012; Ord. No. 96-25, 11-6-96; Ord. No. 2002-050, § 1, 6-5-02)
Cross references: Definitions generally, § 1-2.
Secs. 17-56--17-80. Reserved.

Sec. 17-258. Table of permitted uses.

Uses permitted in the general zoning districts shall be as set forth in table 1 and as modified by special provisions, exceptions and conditions contained elsewhere in this article.

(1) Symbols used in table 1 are as follows:
   a. "x" means that the indicated use is permitted in the indicated district.
   b. "e" means that the indicated use is permitted in the indicated district, subject to the granting of a special exception by the board of zoning appeals.
   c. "a" means that the indicated use is permitted as an accessory use in the indicated districts.
   d. "a/e" means that the indicated use is permitted as an accessory use in indicated districts, but is also permitted in those districts as a principal use if approved by the board of zoning appeals as a special exception.
   e. "n.e.c." means "not elsewhere covered" in the Standard Industrial Classification Coding Manual.
   f. "n.r." means "no requirement."

(2) Any use not permitted in a district is expressly prohibited.

(3) In residential districts, the following uses are prohibited:
   a. Storage in connection with a trade;
   b. Storage or long term parking of commercial vehicles or industrial storage in excess of one day; and
   c. Storage of building materials except in connection with active construction.

(4) A section number following the use category means that the use is allowed but must meet the conditions and requirements set forth in the referenced section.

(5) The zoning administrator may utilize the Standard Industrial Classification Manual to determine the appropriate classification of land use.

(6) Any drive-through facility shall require review and approval by the Board of Zoning Appeals as a special exception.

TABLE 1. TABLE OF PERMITTED USES

LEGEND:
x = permitted use in the district; e = special exception by Board of Zoning Appeals; a = permitted accessory use; a/e = permitted as an accessory use or as a principal use by special exception; and nr = no requirements.

Principal Uses				Zoning Districts																	
				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	Off-Street Parking Requirements
DIVISION A. AGRICULTURE, FORESTRY AND FISHING																					
1	Agricultural production--Crops																				
	18	Horticultural specialties		x																	No requirement
		181	Ornamental floriculture and nursery products	x																	
		189	Horticultural specialties not elsewhere classified	x																	
	19	General farms, primarily crop		x																	
2	Agricultural production--Livestock			x																	
7	Agricultural services																				
	74	Veterinary services (section 17-256)																			3 for each 1,000 square feet of gross floor area
		741	With indoor kennels								e	e	x	x	x			x			
		742	With outdoor kennels								e	e	x	e	x			x			

TABLE 1. TABLE OF PERMITTED USES

LEGEND:
x = permitted use in the district; e = special exception by Board of Zoning Appeals; a = permitted accessory use; a/e = permitted as an accessory use or as a principal use by special exception; and nr = no requirements.

Principal Uses				Zoning Districts																Off-Street Parking Requirements
				D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	
	554	Gasoline service stations										e	e	x	e	e	e	x	x		gross floor area
	555	Boat dealers										e	e					x			3.5 for each 1,000 square feet of gross floor area
	556	Recreational and utility trailer dealers										e	e					x			
56	Apparel and accessory stores										e	x	x	x	x	x	x	x			3 for each 1,000 square feet of gross floor area
57	Furniture, home furnishings and equipment stores											x	x	x	x	x	x	x			
58	Eating and drinking places																				8 for each 1,000 square feet of gross floor area
	581	Eating and drinking places																			
		5812	Eating places (except fast food)								a	x	x	x	x	x	x	x			
		5813	Drinking places (alcoholic beverages) (section 17-266)								e	e	e	e	x	x	e	x			12 for each 1,000 square feet of gross floor area
		~~5814~~	~~Fast food eating places~~										e	e	e	e	e	e			
59	Miscellaneous retail																				
	591	Drugstores and proprietary stores									a	x	x	x	x	x	x	x			3.5 for each 1,000 square feet of gross floor area
	592	Liquor stores										e	x	e	x	x	x	x			
	593	Used merchandise stores											e	e	e	e	e	e	e		
	594	Miscellaneous shopping goods stores										x	x	x	x	x	x	x			
	596	Non-store retailers																			3 for each 1,000 square feet of gross floor area
		5961	Mail order house									x	x	x	x	x	x	x			
		5962	Automatic merchandising machine operators										x	x				x			3 for each 1,000 square feet of gross floor area
	598	Fuel and ice dealers																			
		5982	Fuel and ice dealers, except fuel oil dealers and bottled gas dealers										x		x			x			3.5 for each 1,000 square feet of gross floor area
		5983	Fuel oil dealers										e					x	x		1.7 for each 1,000 square feet of gross floor area
		5984	Liquefied petroleum gas (bottled gas) dealers										e					x	x		
	599	Retail stores, not elsewhere classified																			3.5 for each 1,000 square feet of gross floor area
		5992	Florist								e	x	x	x	x	x	x	x			
		5993	Cigar store and stands								e	x	x	x	x	x	x	x			
		5994	News dealers and newsstands								e	x	x	x	x	x	x	x			
		5999	Miscellaneous retail stores, not elsewhere classified								e	x	x	x	x	x	x	x			

communications), or by any combination of radio and wire, pursuant to authority granted by the Federal Communications Commission, the state public service commission, or either of them.

Radiotelephone communications facilities and *telephone communications facilities* mean any facilities used in the provision of radiotelephone communications or telephone communications services, including towers, antennas, electronic equipment, wires, cables, substations, equipment shelters, buildings and other facilities necessary to, or approved or required by the Federal Communications Commission, the state public service commission or either of them for use in or the provision of, radiotelephone communications services or telephone communications services.

Regulatory flood protection elevation means the elevation of the regulatory flood at any point, which may vary from place to place depending on topography, anticipated hydraulic conveyance capacity, encroachment into areas subject to flood, and other factors.

Restaurant means a place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on or off the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, fast-food restaurant, eating and drinking establishment or other similar business. This definition does not include establishments that sell food or beverages as an accessory use or for off-premises preparation or consumption, such as a retail grocery store, convenience store, or delicatessen.

Restaurant, fast food means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it exhibits any of the following characteristics:

(1) There is space or facilities allocated and used for carryout service, or for carryout and customer self-service for on-premises consumption combined;

(2) Most food items are already prepared or packaged before the customer places an order; and

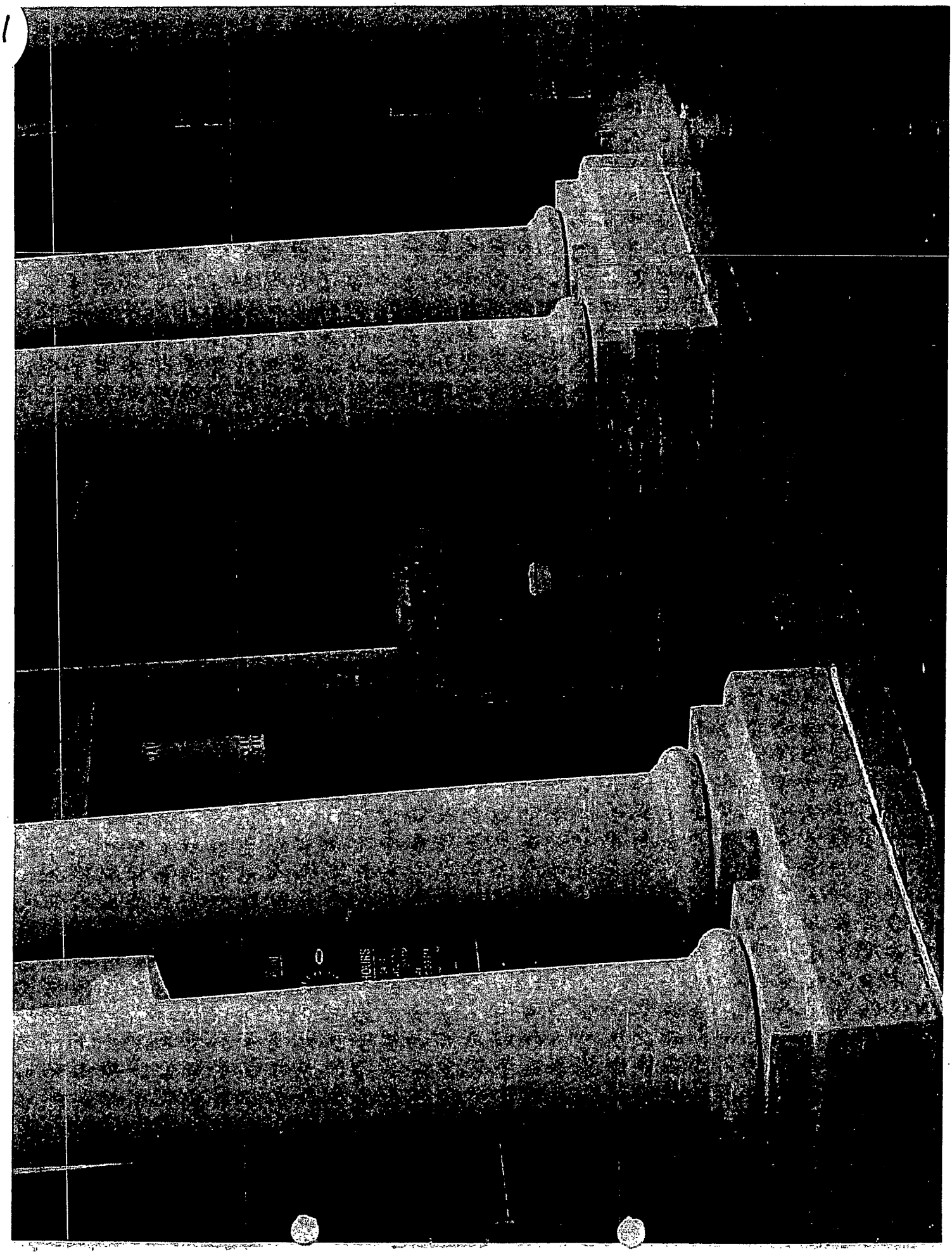
(3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

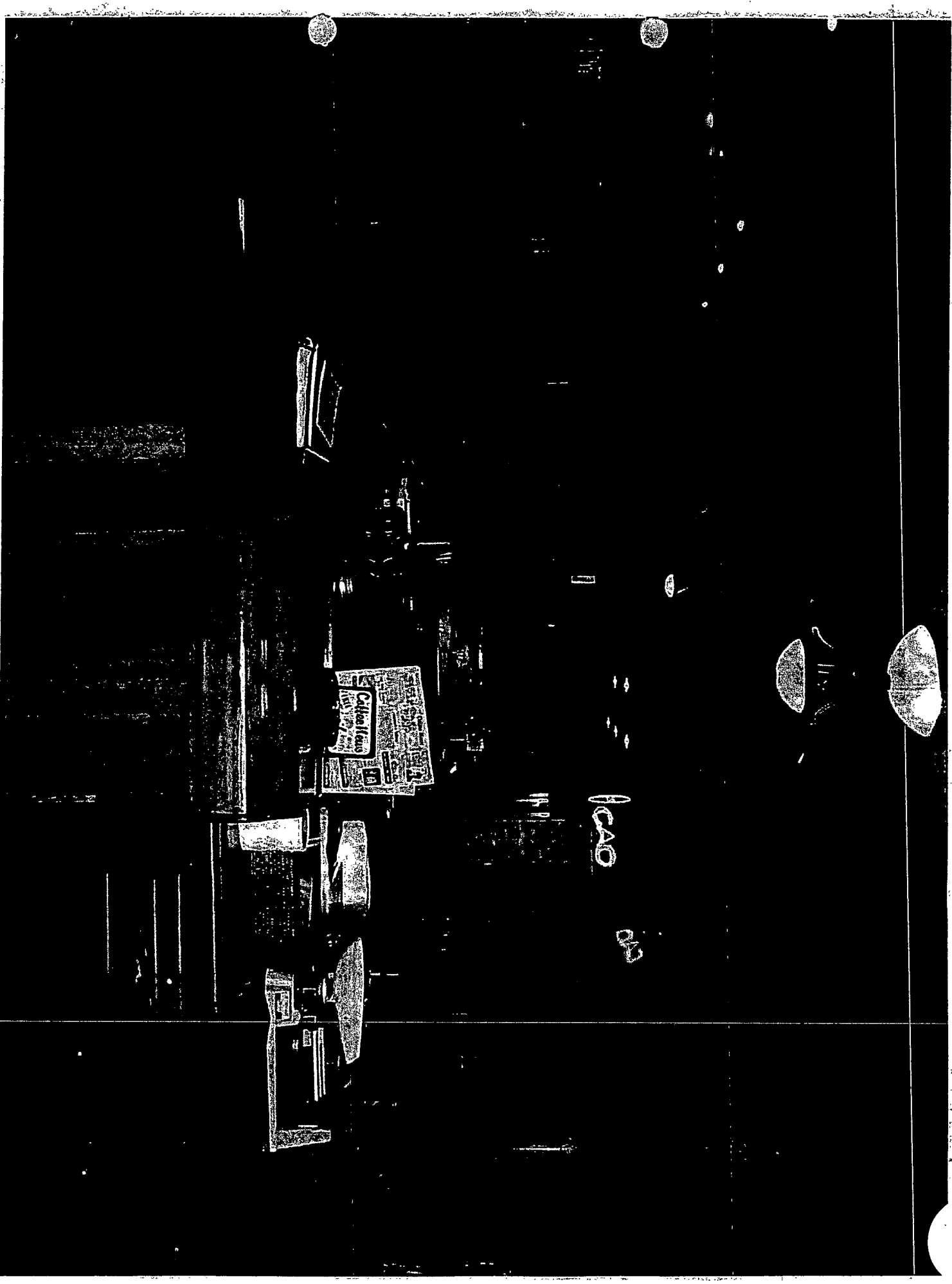
This definition does not include an establishment known as a retail grocery store, convenience store or delicatessen or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption.

Roominghouse and *boardinghouse* mean any dwelling, other than a hotel or motel, in which more than three persons who are not members of the owner's or operator's family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which such accommodations are offered in ten or more rooms shall be considered to be a hotel or motel.

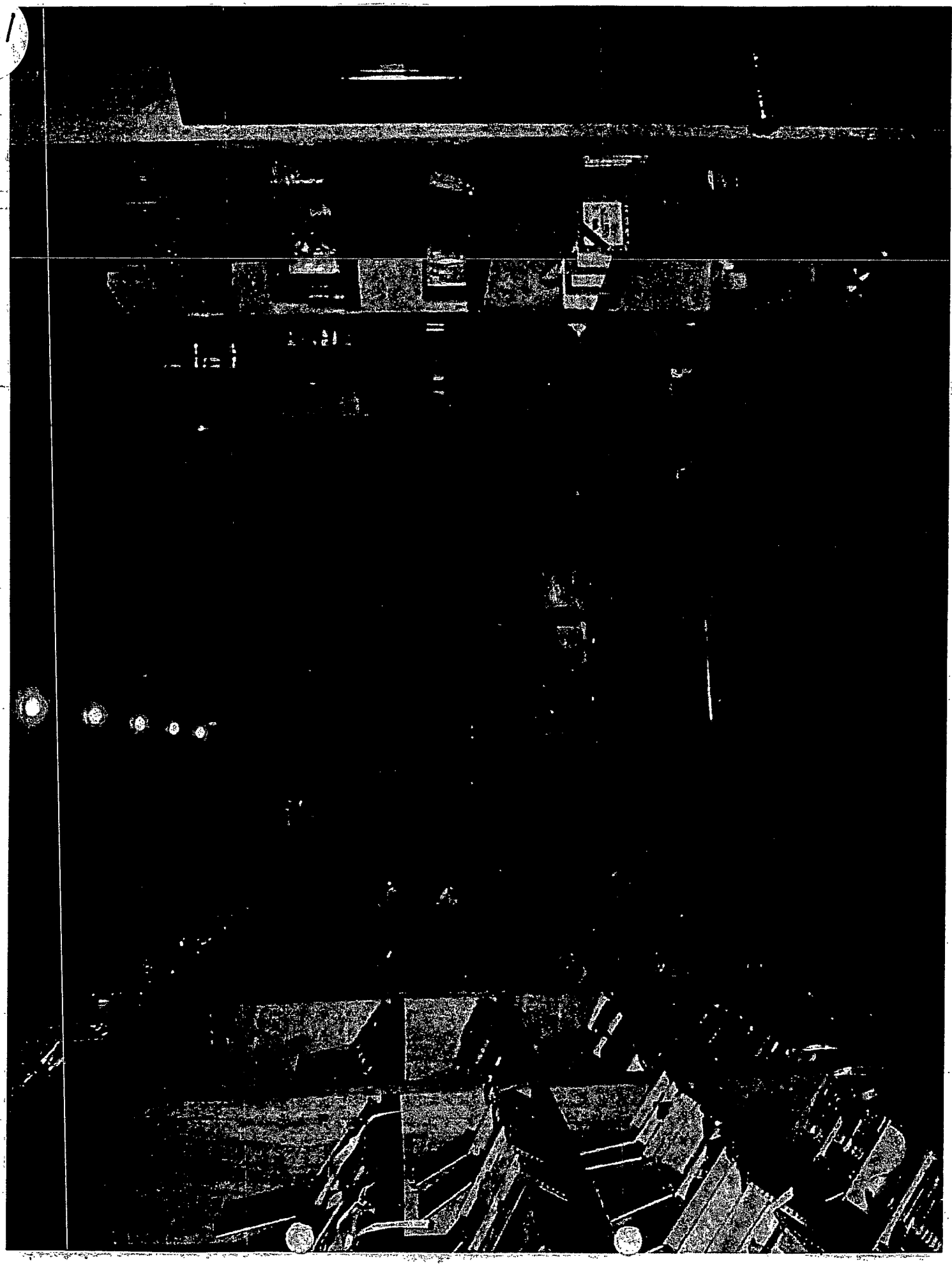
Screening. A visual shield against a higher impact land use created in a buffer transition yard with plantings, walls, fencing, etc.

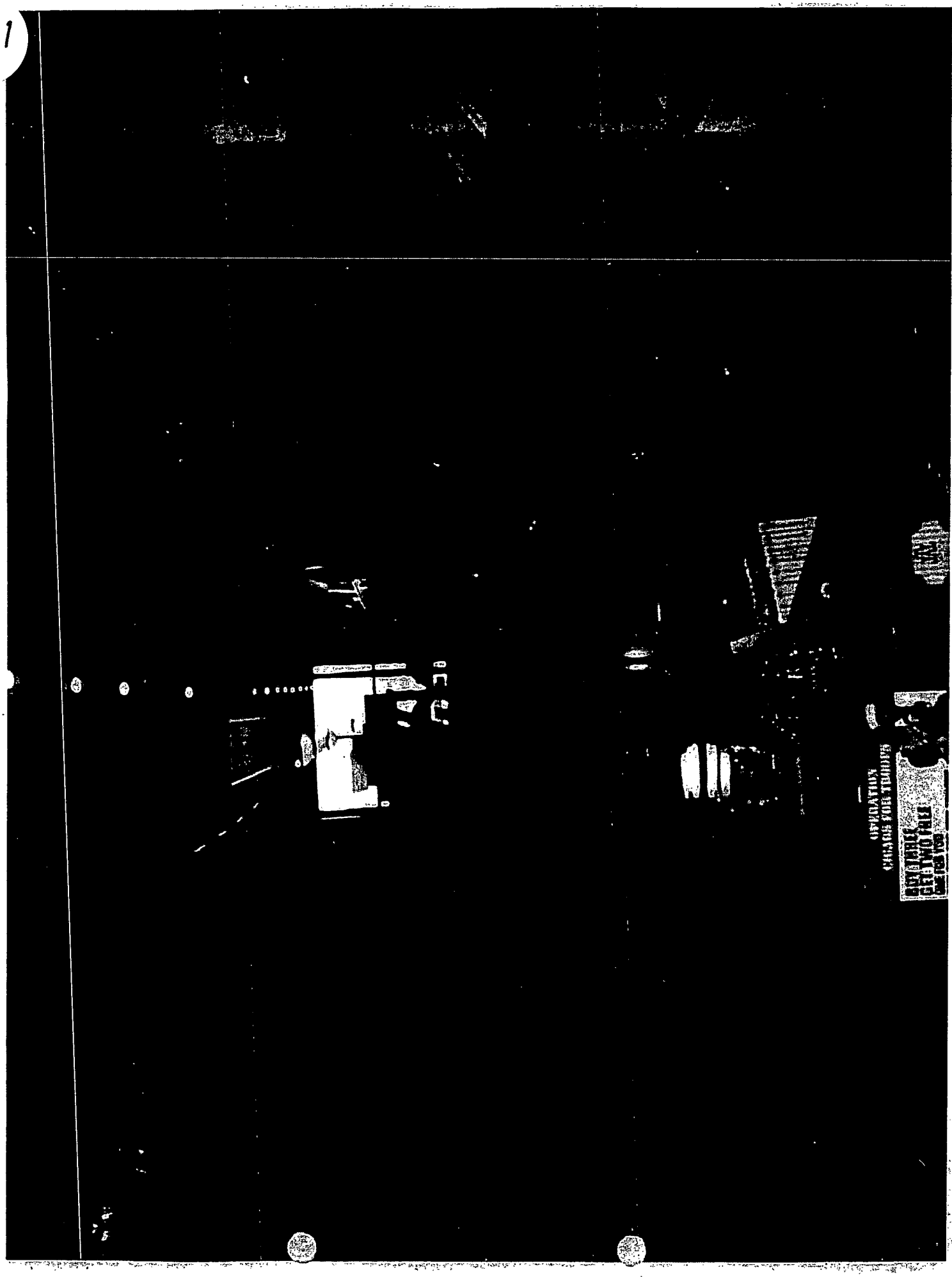
BOZA000126

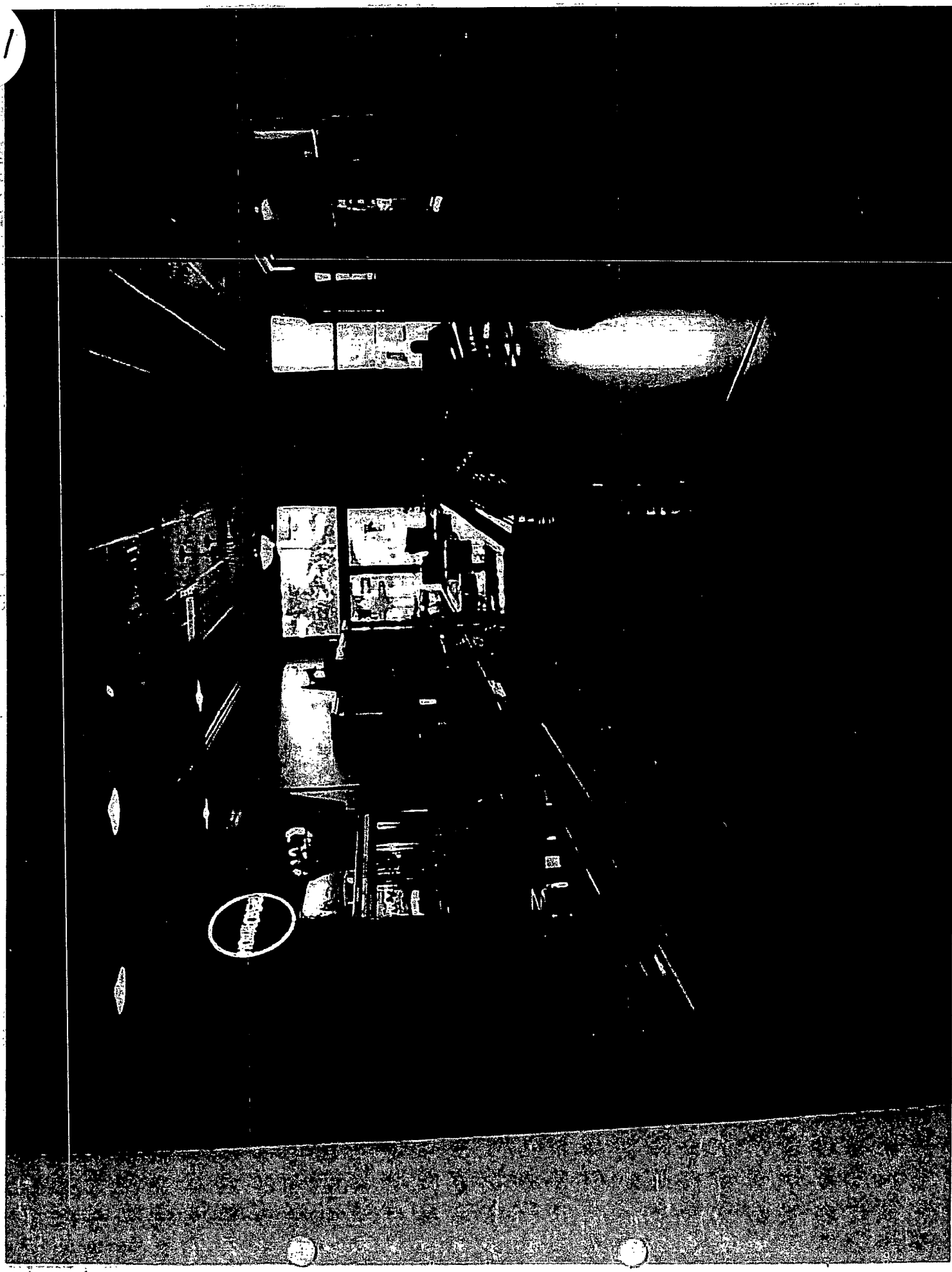


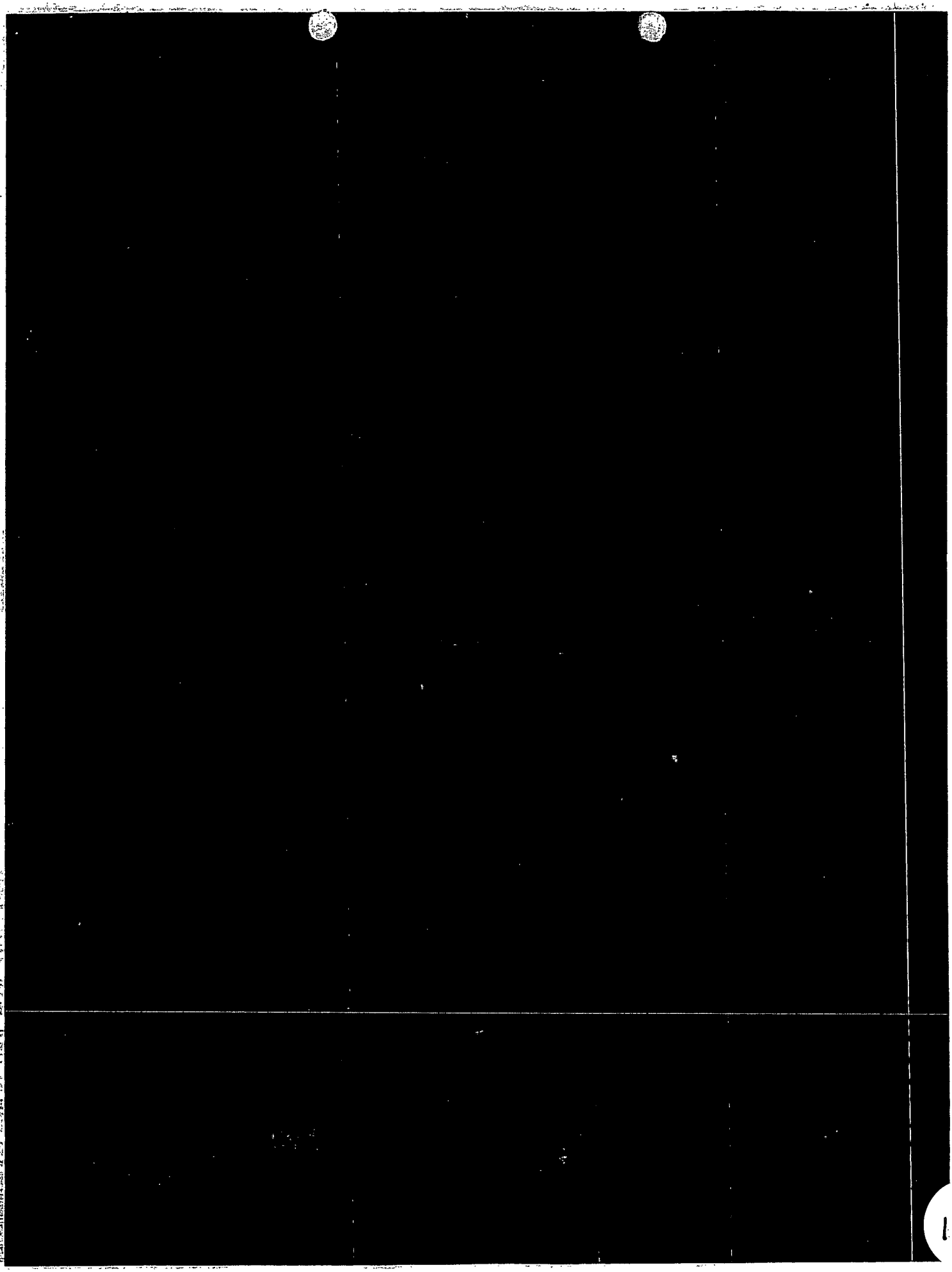


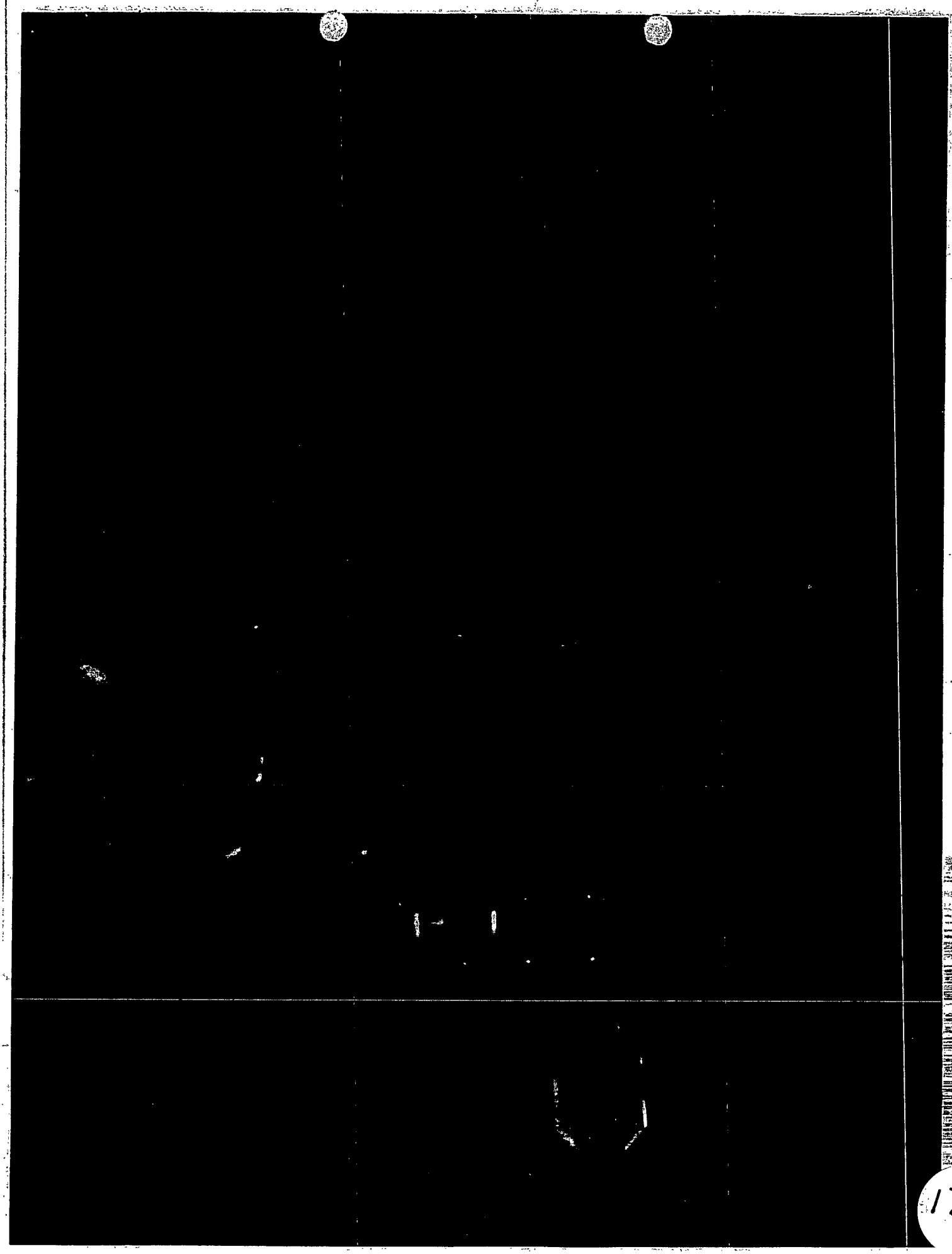
Coffee Mate




OPERATION
CHECKS FOR TRAINERS







1220 Bass Parkway Spec. E-4

C-3

027197-01-55

City of Columbia
1136 Washington Street (P.O. Box 147)
Columbia, SC 29201

Phone: (803) 545-3420
Fax: (803) 733-8699

Paid Invoice Summary

DATE	10/22/2009

ACCOUNT:

Tobacco Merchant
Ste E-4
1220 Bower Pkwy
Columbia SC 29212

Phone: 803 749 5499

Date	Reference Number	Invoice Number	FeeCat	Description	Status	Amount
10/22/2009		09-08386	1010000-422700	Zoning-AdministravtiveAppeal	Paid	(-) 75.00

Date	InvoiceNum	Status	Payment	Amount
10/22/2009	09-08386	Original Due		75.00
10/22/2009	09-08386	Paid	Check 1237	(-) 75.00

Total Paid 75.00

Save Time & Money with Online Permits and Inspections. Go To: www.buildingdepartment.com

2010-CP-32-1368

COPY

CITY OF COLUMBIA
BOARD OF ZONING APPEALS
JANUARY 12, 2010 - 10:00 AM
Minutes

I. CALL TO ORDER and DETERMINATION OF QUOROM

In attendance: Ernest W. Cromartie, III, Patrick Hubbard, Calhoun McMeekin, III, Tony Thompson, Preston Young, and Elizabeth Webber-Akre
Absent: None
Staff: Marc Mylott, Johnathan Chambers, Mike Conley, Andrea Wolfe

Elizabeth Webber-Akre, chairperson, called the meeting to order at 10:00 AM, and explained the purpose and role of the Board of Zoning Appeals. Protocol of the Consent Agenda and Regular Agenda was explained. Sworn testimony of those intending to speak was taken.

Johnathan Chambers, Deputy Zoning Administrator, reviewed general housekeeping rules.

BETTIA A. CARRIER
CLERK OF COURT
LEXINGTON SC
2012 FEB 13 A 10:39
FILED

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

1. **10-003-SE** **Dist. 1** **612 Columbia College Drive (TMS#09212-07-02).** Special exception to establish a single family residence (Zoned C-2).

2. **10-004-SE** **Dist. 3** **2815 Covenant Road (TMS#11515-03-05).** Special exception to establish a day care facility (Play Pals Family Childcare Home) (Zoned RS-2).

Motion by Mr. Hubbard to approve Consent Agenda items 1 and 2 subject to any conditions that may be found within the case summary for that application and to adopt as the findings of the BOZA, those findings in each case prepared by Staff, also found within each case summary; *seconded by Mr. Cromartie.* **Motion carries 6-0.**

III. REGULAR AGENDA

A. OLD BUSINESS

3. **09-087-AA** **Dist. 1** **1220 Bower Parkway, Suite E-4 (TMS#002797-01-055).** Administrative Appeal of the Zoning Administrator's decision to classify the use as a drinking establishment (Tobacco Merchant) (Zoned C-3).

Mr. Chambers reminded the BOZA that this case was deferred at the November 2009 Board of Zoning Appeals (BOZA) meeting to allow the appellant time to decide whether or not they wanted to obtain a

special exception for the use of their business as a drinking establishment. Since that time, no application for special exception has been received; therefore the Administrative Appeal stands before the BOZA.

Mr. Hubbard asked for clarity in making a determination as it appears there are two principle uses being discussed: a tobacco establishment and a drinking establishment; and if an attempt was made to gather evidence in terms of factors for an accessory use; such as square footage, sales, etc. in Staff making a decision. Mr. Chambers defined the classification of a drinking establishment as an establishment engaged in the retail sales of drinks such as beer, ale or wine for consumption on the premises. Based upon the sale of alcohol and based upon the amount of area attributed to drinking; the City classifies The Tobacco Merchant as a drinking establishment. Mr. Mylott added that an inspector surveyed the interior of the establishment and that information is provided in BOZA packets.

Mr. Hubbard asked if what Staff considers 'bar space' could be 'someone just sitting there smoking and not having a drink'. Mr. Mylott said it could be and the area where there are just chairs could be a place where someone has a drink and does not smoke. Mr. Hubbard asked if data was available regarding sales. Mr. Chambers said there was not. Mr. McMeekin asked if there is any data established that defines the amount of daily or weekly sales in a bar. Mr. Mylott stated there is a definition in the Zoning Ordinance §17-55 that states an accessory, building or use is subordinate to and serves a principle building or use; subordinate in area, extent or purpose to the principle building or use; designed for the comfort, convenience or necessity or occupants of the principle; and located on the same lot as the principle building or principle use served. Some exceptions are given that primarily reference specifics, such as barns, sheds, tennis courts, etc.

Mr. Cromartie said 'drinking place' as defined does not include any reference to a distinction between principle or accessory use and asked how that comes into play under a strict reading of 'drinking place'. Mr. Mylott said there is none. Mr. Cromartie said in theory any place that sells beer or alcohol or ale or wine for consumption in a retail capacity could be defined as a drinking place, regardless of principle, accessory or primary, subordinate or whatever, and questioned if that was the 'going imposition' of Staff. Mr. Mylott said that is correct. Mr. Hubbard said if that is the case, there are many places that will have fundraisers with a cash bar and asked if they would become, for that night, a drinking establishment. Mr. Mylott could not answer at that time, saying he will have to think that through. Mr. Hubbard asked if any alcohol is sold at all, no matter how minor or how rare, would that be the principle use. Mr. Mylott said the Ordinance does say retail sale and that may be the distinction between fundraising efforts and an establishment where ones goes in to purchase a drink. Mr. Hubbard then asked if any retail sales occur whatsoever, no matter how minor, that automatically becomes a place where the principle use is a drinking establishment. Mr. Mylott said 'is or includes a drinking establishment' if one of the principle uses is a drinking establishment. There is no distinction between accessory use and principle use in that instance. There are many ways to read different things, hence the reason for the Appeal, and in his reading, that wasn't contemplated by authors of the Zoning Ordinance when contemplating the definition of restaurant; which includes a drinking establishment and therefore allows for the cross purpose use class in that type of operation.

Mr. Hubbard said, regarding another Ordinance, the definition of a retail tobacco store states where the sale of other products is incidental as noted in §8-215 regulations and requirements as related to smoking of tobacco products. It seems to him that Ordinance contemplates there can be a retail tobacco area and not become something else just by sales being incidental. Mr. Mylott said that may be, however Ordinances are written at different times by different people and he cannot comment on pretence behind that. Different departments in the City will classify different users with different terms. The use as classified by Zoning Staff has no impact on what Business Licensing may or may not call it; they make their own decisions..

Darrell Smalls, attorney representing The Tobacco Merchant, gave a historical background on the case: Mr. Smalls said the owners, Jackie and Bill Slicer, intended to continue this business as a tobacco retail establishment, but also wanted to include the sale of beer and wine, and made this very clear when they

applied for their business license. Mr. Smalls said the form provided in the BOZA packets is a City of Columbia Business License Clearance that was completed by a City of Columbia official; it was not completed by the Slicers, and specifically states the type of business as cigar/tobacco shop. He noted that all steps on the form were signed and approved, stating the City knew what they were doing and planned. The business operated from April 2009 until September 2009 with no problems selling beer and wine, and also selling tobacco products. In September 2009, a written violation of zoning was issued stating a special exception for drinking was required. The applicants feel they do not need a Special Exception because they completed all the necessary forms previously.

The case was deferred to allow Mr. Smalls to discuss with his clients if it was in their best interest to apply for a Special Exception. In speaking with other City officials regarding the smoking ban, it was found if they applied for a Special Exception for drinking, they would be in violation for smoking. Therefore, the Slicers decided not to apply for a Special Exception and be in violation of the smoking ban as a tobacco retail store. The decision to continue with the Appeal was made on two grounds: 1) they feel the City is estopped; the City cannot now claim they are in violation of the Ordinance when all the necessary forms were completed as Mr. Smalls just pointed out with regard to the Business License Clearance Form. 2) the Smoking Ordinance provides for exception for a retail tobacco establishment to sell incidental items. It is their position that the sale of beer and wine is incidental to the sale of tobacco products and they have the financial figures to support that; it is 6% to 8% of the total sales for The Tobacco Merchant. The Smoking Ban provides exception to retail tobacco establishments and they are a retail tobacco establishment.

Mr. Smalls said even though the City states The Tobacco Merchant is a drinking establishment, there are numerous places where drinks are sold and the City has not classified them as drinking establishments, but as restaurants. Not all restaurants sell beer and wine; there are drinking establishments that sell beer and wine, as referenced at the first hearing, and have wine tastings. He said he had list of various establishments published in the newspaper that charge for beer and wine tastings and not are classified as a restaurant or licensed as drinking establishment. A final point is that the Columbia City Council will address the smoking ban issue as it relates to retail tobacco establishments. He suggested the BOZA may want to wait on making a decision until City Council meets on Wednesday as that decision could make the BOZA's decision moot.

Mr. Mylott briefly conferred with Mr. Chambers at this time. He said in referring back to comments made by Mr. Hubbard and Mr. Cromartie and his brief conference with Mr. Chambers, he stands corrected stating it would not be appropriate to say "in every instance in which there is the retail sale of beer or wine that that would constitute a principle use". Mr. Mylott said his additional consideration came as he had a chance to briefly review the Zoning Ordinance. In looking at other instances, for example, under daycare, "means the care, supervision or guidance of persons unaccompanied by the parent, guardian or custodian". The City knows of countless operations where they provide daycare to the employees, but that is not classified as a principle use, it is an accessory use; but it does not state that it is only a principle use. It is set up in the same way as a drinking establishment.

Mr. Mylott said Mr. Chambers reminded him that Staff, upon their inspection and then sending the letter to the appellant, was that it was not being done based on the fact that it either is a principle use or is not. In their opinion it failed to meet the definition of an accessory use; that it was in its establishment, a principle operation. That is based on the amount of area that is allocated to opportunities for drinking and the size of the bar, as well as advertisements for drinking located outside of the store as provided in the Staff report. So it failed the definition on two parts: that the intent to allow someone to have a drink was not subordinate in extent or purpose; and was not designed for the comfort, convenience or necessity of the occupants, but was intended to bring in outside persons for a drink. Mr. Mylott said he wanted to clarify that and apologized for the confusion.

Mr. Hubbard said he also wanted to question the estoppel argument and what a cigar bar means. He read the definition of principle use from the Zoning Ordinance, "...a principle use is contrasted to an accessory use which are incidental or subordinate..." He said he is bothered that no investigation was made as to whether the seating area was for smoking only versus drinking and smoking; so he is bothered factually as to the square footage. Mr. Smalls testimony is that 6% to 8 % constitute the sale of alcohol, which is less than 10% and a very small amount. He referenced the sale of soft drinks at a service station and said it would probably be same percentage. It is now at the point that this could be an accessory use, it is not automatically a principle use; he stated the facts are bothering him.

Mr. Mylott said, from his perspective, the notion of soft drinks at an automobile station is roughly one station of about 3 by 3 on a counter to have drinks filled, not a bar. Second, there was nothing suggesting designated seating restrictions for the inspector to note, no signs saying 'do not leave the bar with your drinks', 'smoking only', any walls, or anything else to prevent someone from walking to any of the other areas with their drinks. It could also be the instance 'because it wasn't labeled as such', and that bothers him *the other way.*

Mr. Cromartie said this has already been raised, but attempting to parcel out what is principle or incidental; the space or the usage of the establishment is being looked at. In talking about retail sales and the sale of other things; sales become a factor in as much as square footage could be. There could be a poor allocation of space and 90 % of the shop could be consumed by a bar, but only constitute 10% of sales. Or it could be that the bar area is 10% and constitute 90% of that which constitutes the revenue of the establishment. What is being looked is solely square footage, and he feels that will not accomplish what must be looked at.

Mr. Mylott said he understood, but Staff did not feel that extra information in terms of where the revenue is allocated was necessary to determine that, in Staff's opinion, it failed the definition of accessory use. There is not a 'hard and fast' definition of accessory use based on the amount of sales. Amounts of sales can vary from a very large number and then the percentage of alcohol sales would be higher; to a small number if business is not good. Mr. Mylott said he believes the bar was a later addition and sales may not have 'caught up yet'. There are so many 'what ifs' that could apply.

Mr. Hubbard said there is a definition in the Ordinance of accessory use and principle use, and the BOZA must apply that. He said the language of the Ordinance is subordinate and that is why he is 'wrestling with this'. Today is the first time figures have been given and it is unknown if it is subordinate to. This is one building with various uses and it is hard to determine which use is in place if someone is walking around. He asked how much square footage is occupied by the alcohol; i.e., a cooler for the beer, a cooler for the wine, square footage for the tobacco products. Mr. Mylott did not have those figures and said he will review the information and get back with those. Mr. Hubbard suggested the new information regarding sales was important and Mr. Mylott said he did not wish to minimize that, but the definition of accessory is structured is an "and". All the criteria have to be met to be considered an accessory building or use. Therefore, by the failing of subordinate in area, extent or purpose, and the design for the comfort and convenience of the occupants of the principle use served; Staff felt these two criteria were not met and as such, failed to be an accessory use. Mr. Hubbard stated that the definition refers to subordinate with "or" not an "and"; and his interpretation of Mr. Smalls' presentation is that the serving of alcohol was designed for the comfort, convenience or the necessity of the occupants of the principle use. Mr. Mylott questioned why there would be a sign outside that said "*cold beer*". Mr. Hubbard said to let patrons know they would have that convenience when they come to smoke. The sign is another issue and he questioned the size of that sign in respect to the one advertising the sale of tobacco, being an extension of the main sign. Mr. Mylott said 'that is one way to look at it'.

Mr. Hubbard referenced the estoppel argument saying the appellant said the business was a cigar bar and asked the definition of a cigar bar, saying he could not find one in the Ordinance. Mr. Mylott said there is and when approved by the Zoning Analyst, it was approved as a cigar store and stand.

Mr. Cromartie asked the total square footage of The Tobacco Merchant and what percentage of the square footage is used for bar space. Mr. Chambers said the floor plan included in packets is from an on-field inspection of the zoning inspector going in and doing a rough sketch as to the proportion based upon pictures and his inspection. However, the applicant has not provided anything that gives the exact square footage of the area, but the information provided by the inspection is very close. Basically there are three different bars in the establishment. Item 2 shows two bars that are connected and there is an additional bar near the office shown in item 6. Mr. Cromartie said, consistent with the principle use, shown in items 4 and 5 is a very large humidor for storage and maintenance of cigars; also section 7 shows a lounge area that does not have any bar area. Mr. Chambers said 'that is correct and the lounge area has televisions in there as well'. Anyone can use the area, there are no restrictions saying '*you cannot drink in this area*'. Mr. Mylott added, to be fair to Mr. Hubbard's comment, there was nothing stating '*you cannot sit at the bar area and only smoke*'.

Mr. Cromartie asked the applicant to estimate the size of that area. Mr. Smalls said a rough estimate of the space for the bar area is about 20% of the total area. This cigar store is the second largest cigar store in the state of South Carolina. Looking at exhibit 1, the humidor space is probably about 40% of the store and takes up the largest amount of space in the store. Mr. Smalls said, regarding the sign in front of the store which states "*great smokes and cold beer*"; it is felt that clearly, the smokes or cigars or tobacco retail is the primary purpose of this store, anything else is accessory or incidental. Mr. Hubbard asked if Mr. Slicer, the owner, wanted to speak. Mr. Slicer said Mr. Small represented and spoke on his behalf.

Board discussion opened. Mr. Hubbard said he is bothered by two things; it is not automatically clarified that it is a drinking establishment. It must be a principle use rather than an accessory use, and the same language of incidental is used in defining principal use in the smoking. Mr. Hubbard feels and adequate factual investigation was not made; and second, he is unsure to the extent that the facts are available that it is a principle use rather than an accessory use.

Mr. Cromartie agreed with Mr. Hubbard's initial assessment saying part of the issue is the BOZA is now at the part of discussion evaluating what criteria should be used to reach the decision for principle and accessory for this use. Mr. Hubbard said he researched South Carolina code and it has a provision that the BOZA can remand the matter back to Staff saying there are not sufficient facts to make a decision. Ms. Akre personally does not feel that is necessary for her to make a decision. Mr. Young questioned if it would be moot for the BOZA to make a decision as this case is being presented to Council and they may make a totally different decision. Mr. Mylott said City Council will only reference the Smoking Ban Ordinance and anything that relates to the business license because there is an on-going zoning case. In his perspective, they are two separate and distinct entities. The use of the establishment falls on the BOZA and its decision. Even if it was rezoned, is a zoning issue and a separate distinct action from business licensing.

Mr. Smalls said if the City does modify the language of the smoking ban, the applicant would feel more comfortable applying for the special exception because the business would exist as it is today without changes. Mr. Cromartie said, the issue of remanding back to Staff, he does not like the idea of delaying the decision or the business owner's opportunity to conduct business one way or the other. He does not want to delay but would also like to have more information provided and instruction from the BOZA to Staff. Ms. Akre said to make a point that would have been a great suggestion to have been brought up in November 2009 when the case was heard the first time.

Mr. Smalls said they will be willing to provide any information needed to the BOZA and to Staff necessary to make a decision.

Motion by Mr. Hubbard that this issue be remanded back to Administrative Staff because he feels the record is insufficient for review and that the case be placed back on the agenda for next month. It has been decided that it is not automatically a principle use and analysis based on the facts, whatever input the appellant wants to provide to allow the BOZA to make an adequate decision be provided.

Mr. Mylott asked Mr. Hubbard that the two primary facts he is seeking are square footages and sales. Mr. Hubbard said it is not just square footage but also the number of people who are there to only drink or smoke and/or drink and smoke; he wants an attempt made to quantify this. Mr. Slicer said the problem would be what type of day would be referenced. Up to 5:00 PM, 90% would solely be tobacco usage and as the night progresses, the ration will obviously change. Ms. Akre said she does not know how this can be quantified. Mr. Mylott asked if the BOZA was requesting an inspector be sent out to monitor the activity all day. Mr. Hubbard feels they should trust the appellant. There is the language, there are four factors of accessory, and discussion of principle.

Ms. Akre asked for a second on the motion before additional conversation is held. **Motion to remand back to Staff by Mr. Hubbard**; *seconded by Mr. Cromartie.* No further discussion. Motion carries 4-2; Mr. Thompson, Mr. Cromartie, Mr. Young, and Mr. Hubbard in favor; in opposition are Ms. Akre and Mr. McMeekin. The case will return next month with more information.

B. NEW BUSINESS

4. 10-001-SE **Dist. 4** **4039 Trenholm Road (TMS#13910-01-12).** Special exception to construct a 130-foot tall low-profile wireless communication facility (Optima Towers) (Zoned C-3).

This case is for a 130' low profile wireless communication facility near the corner of Trenholm Road and Beltline Boulevard. The is the first application of this type to be seen by the BOZA. The tower is a stealth tower called a "Monopine tower" which emulates a very tall pine tree. No comments or letters were received from the public. The property was properly posted and posting has been maintained.

Johnathan Yates, attorney representing the applicant, introduced himself and Keith Powell of Optima Towers and Gerald Jones of AT&T Mobility. Mr. Yates and Mr. Powell worked with Staff years ago to 'craft' the Ordinance that has a big stealth component. The key to stealth is to try and determine what works with the context of the area. This tower is located in the Kilbourne Park neighborhood on estate-owned property and consists of three parcels that are the only parcels zoned C-3. This area has incredible tree coverage. Mr. Powell has been working with AT&T and there is now a second carrier, Sprint, interested in providing coverage in the area. Mr. Yates brought photos of actual tree facilities throughout the nation for BOZA members to review. It is hoped that when someone drives through the neighborhood and passes the tree tower, they will not notice it is not a real tree. The tree tower will be located in the Kilbourne Park area with a building wrapped around it and fencing behind it. The building will shield the base of the tree and protect the equipment. It will resemble a small business area. Meetings and presentations have been held with the Kilbourne Park Neighborhood Association and the Heathwood West Neighborhood Association neighborhoods. Mr. Yates said he hopes by the lack of attendance today that the meetings went well.

Mr. Yates said there are three sets of criteria that are reviewed. 1) Would the safety of residents, employees and travelers be endangered, included by not limited to the failure of this structure? Public safety will be enhanced due to access to 911 services. The towers are designed to meet a basic windspeed of 100 mph which is safer than surrounding trees and utility poles in the area. All required standards are met and it is designed with a certified fall zone. 2) Is this in an area that would substantially detract? The whole goal was to fit in the context of the neighborhood. The area is key stocked with trees and the tower will fit in. The

building will be surrounded with Leland Cypress for additional landscaping. 3) Is there a communication tower within 1,000'? No, there are five communication towers within one and 1 ¾ of the site. Mr. Jones will testify that AT&T is on all of those. The desire for this site was to bring voice and data coverage into Heathwood West and Kilbourne Park. This is what is termed as a capacity site. The next question is where attempts have been made to co-locate on existing WCF; and they are on all the closest ones. The last question is will others be allowed to co-locate; that is Optima's business. The towers were initially designed for AT&T with space for four other carriers built in. Sprint has already applied for space. There are two carriers and space for three others.

Five additional criteria are required by the City of Columbia. 1) is an architectural or landscape feature emulated that is typical of the surrounding area? Absolutely, the Pine tree is typical of the area. The building that will house the structure while typical is even nicer that those in the area. 2) will they respect and to the extent possible compliment the style, height, bulk, mass, material of existing building structures and vegetation? Yes, a "tree" is being used, surrounded by a building, and an additional 38 Leland Cypress will be planted. 3) will existing vegetation be preserved? No existing vegetation will be removed; in fact additional trees will be planted. 4) will scenic view sheds be preserved? Mr. Yates presented seven photo-simulations to show what it will look like with the Monopine tower inserted. It was hard to determine where the tower was located. 5) will the WCF respect existing topography, including minimizing the extent to which it is a dominating feature on a hillcrest or ridgeline? The tower is actually topographically lower on both sides of Beltline. The last question for the WCF is if it is in one of the following eight districts, a neighborhood meeting must be conducted. C-3 is not included in those; however, a meeting was conducted with Kilbourne Park and Heathwood West. It was found these meetings were invaluable.

The final criteria that must be met for all special exceptions in City of Columbia: 1) traffic - there will be 30 days, and about 8-10 maintenance days per year; very low impact on traffic use; 2) impact on vehicular and pedestrian safety - based on data gathered throughout the country with access to 911 providers for first responders, law enforcement; vehicular and pedestrian safety will actually be enhanced; 4) impact on aesthetic character – using a tree, building and additional Leland Cypress; the site is also lower topographically so it will work in the context. The tower will be located behind three C-3 sites and will be screened from view. 5) impact in terms of orientation and spacing – the tower will be behind other buildings and meets C-3 setbacks. There will be no adversely effect on public interest – the purpose is for public interest.

Mr. Yates thanked Staff for all their assistance of the project, as well as Mr. Rentz and Ms. Buscardi and the BOZA members for their time and help.

Mr. Hubbard questioned the color and symmetry of the tree saying he feels improvement needs to be done with the artificial look of the structure. Mr. Yates said this is the first time he has done this and these are older photos. They have come a long way and the newer towers are much more lifelike. Mr. Yates gave examples of different bark types and said they will photograph existing pines in the area to match color as much as possible. Quality has changed dramatically. Older ones remain but newer are very realistic. Mr. Yates said the goal of Optima is to determine the context of the neighborhood and conform to it, to work with what is there and not be dominant and an eyesore. Bark samples were placed into the record as Exhibit A, and all documentation that was presented was previously provided in BOZA packets.

Motion by Mr. Hubbard to approve 4039 Trenholm Road special exception to construct a 130-foot tall low-profile wireless communication facility (Optima Towers) incorporating the listing of all criteria as presented in the record and say that they have all been satisfied, *seconded by Mr. Thompson.* **Motion carries 6-0.**

5. 10-002-AA Dist. 3 **2627 Harrison Road (TMS#11514-12-05).** Administrative Appeal of the Zoning Administrator's decision regarding the re-establishment of a non-conforming use (Zoned RG-2).

Mr. Chambers reviewed the background on this Administrative Appeal as outlined in packets.

Craig Stoneburner, property owner, has owned the property for 34 years and used the property used commercially downstairs. Mr. Stoneburner said there was no intent to abandon or discontinue use. The business could not have occupied the building until renovations were completed and the CO obtained. He said information about the issuance of the business license was left out of case history. He read the notices issued for renovations. Mr. Stoneburner said the use was for commercial downstairs and residential upstairs. Stop work orders were issued because the building showed two entrances. It always had two entrances – one for the upstairs and one for the downstairs. He feels the Business License office misinformed the contractor of the grandfather clause and then reviewed the history of renovations made. Mr. Stoneburner feels the Zoning Department is incorrect and the non-conforming timeframe is not valid, and it was handled improperly. A CO has been issued now.

Mr. Hubbard said the time to stop work order was issued on 5/12/04 and asked when the 12-month period began. Mr. Chambers said on 10/6/03, a business license was issued to the art gallery. The bottom portion of the business license states it must be occupied by 12/31/2003 or the grandfather status will be lost. Business began 12/1/2003 and ended 12/31/04, there status lost.

Ms. Akre questioned why all other permits were issued for single-family residential. Mr. Mylott said, going by the out of business date, you would have technically 12 months from that out of business date. There is ample evidence, especially in the site plan approval by the Planning Commission and later permits; it shows the business was not operating. Unless a business contacts the business license division stating they are no longer operating, the office waits until the expiration of the next notification cycle. If there is no renewal, they will list the business as out of date. Ms. Akre said it appears the vacancy issue is very clear in her opinion from both sides and it appears from permits issued in the packets, they are for residential only. Mr. Stoneburner said that is not the case, the intent was always to be commercial and the license was always in place. They could not occupy the building because a CO was not issued. The business was changed to triplex as approved by the Planning Commission because money was invested in the property and it was considered non-conforming. Ms. Akre said the business no longer qualifies for a non-conforming and evidence must be shown. Mr. Stoneburner said the builder Mr. Asfar, was coerced into building a duplex or triplex. Mr. Mylott asks why he did not appeal at that time and Mr. Stoneburner said he is not sure. Mr. Mylott said it appears the issue is with Mr. Asfar for breaking the contract and not with the City. Mr. Stoneburner said it is not and feels it is unfair, each department says something different.

Mr. Hubbard said he feels these arguments are for City Council, they wrote the Ordinance. All the BOZA can do is to apply them. It is too late, this happened five years ago. Mr. Stoneburner said Mr. Hubbard was exactly right, but the point is it was still under construction and the intent was to always use it commercially. Mr. Hubbard stated the Ordinance has "or", *intent or vacancy or discontinuance*, so regardless of your intent, City Council states other things must be reviewed. He should have come 5 years ago. Mr. Stoneburner said the Ordinance was written poorly and asked how things can be fixed under a time limit when certain things are still being fixed.

Ms. Akre said that is a conversation between the property owner and contractor and not relevant to what is being reviewed today. She agrees wholeheartedly with Mr. Hubbard and added City Staff is subject to Ordinance and subject to the requirements of their job, which is to enforce what the Ordinance says. There is no subjectivity, there are not shades of grey, they cannot 'sit around over lunch and decide who they want to

approve and who they don't'. They are required to operate in an extremely objective manner per the job the City pays them to do. She asked if there were any other questions regarding vacancy.

Mr. Stoneburner added they have been taken to court on this and lost. They have been given leniency and lost. He feels the point is it isn't right and should be some leniency. Ms. Akre said he should take those concerns to City Council if he feels that way.

Motion by Mr. Hubbard to uphold Zoning Administrator's decision for **2627 Harrison Road** regarding the re-establishment of a non-conforming use. It is way too late to go back and make a decision after all that has happened. If an argument about the interpretation about what it means to be vacant saying it was not really vacant, it was under construction; the argument should have been made five years ago, not now. Looking at what has happened since then, the decision is even stronger based on the fact of the abandonment of non-conforming use. The Ordinance is very clear and if there is any argument, it should be taken up by City Council; *seconded by Mr. Young*. **Motion carries 6-0.**

IV. OTHER BUSINESS

Approval of December 08, 2009 minutes by Mr. Cromartie, seconded by Ms. Akre; motion carries 6-0.

V. ADJOURNMENT

There being no further business, motion to adjourn at 12:01 p.m. by Ms. Akre.

Respectfully submitted by Andrea Wolfe
Sr. Admin. Secretary
Planning and Development Services Department
City of Columbia

CITY OF COLUMBIA
BOARD OF ZONING APPEALS
FEBRUARY 9, 2010 - 10:00 AM
Minutes

I. CALL TO ORDER and DETERMINATION OF QUOROM

In attendance: Ernest W. Cromartie, III, Patrick Hubbard, Calhoun McMeekin, III, Tony Thompson, Preston Young, and Elizabeth Webber-Akre
Absent: None
Staff: Marc Mylott, Johnathan Chambers, Andrea Wolfe

Elizabeth Webber-Akre, chairperson, called the meeting to order at 10:05 AM, and explained the purpose and role of the Board of Zoning Appeals. Protocol of the Consent Agenda and Regular Agenda was explained. Sworn testimony of those intending to speak was taken.

Johnathan Chambers, Deputy Zoning Administrator, reviewed general housekeeping rules.

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

None.

There were no items on the Consent Agenda for consideration.

III. REGULAR AGENDA

A. OLD BUSINESS

1. **09-087-AA** **Dist. 1** **1220 Bower Parkway, Suite E-4 (TMS#002797-01-055).** Administrative Appeal of the Zoning Administrator's decision to classify the use as a drinking establishment (Tobacco Merchant) (Zoned C-3).

Johnathan Chambers, Deputy Zoning Administrator, reviewed the history of the case. Mr. Chambers said the Board of Zoning Appeals (BOZA) remanded the case to Staff to gain additional information. Specifically the BOZA asked Staff to obtain a floor plan with the square footage of the business and some financial information regarding the operation of the business. A floor plan was provided that gives an indication of areas separated for retail tobacco sales and areas for drinking. Most notably, Staff found that 557 sq. ft., or approximately 27% of the business, could be attributed to the retail sales of tobacco only. Whereas 1,190 sq. ft., or 58%, were found to be areas were beer and wine could be consumed within the business.

With regards to financial information, the applicant provided Staff with documentation suggesting approximately 10% of the sales are from beer and wine and the other 90% from tobacco products. As it

relates to the information in the direction the BOZA gave Staff at the last meeting, Mr. Chambers reminded the BOZA that during the applicant's testimony, the appellant suggested the nature of the operation changed when asked about percentages as related to tobacco versus beer and wine sales. The applicant testified there would be a problem in providing figures based upon the time of day, suggesting the operation changes as an increase in the evening hours from retail sales during the day to beer and wine in the evening hours.

Ms. Akre said Mr. Hubbard and Mr. Cromartie made and seconded the motion to remand back for this additional information, and asked if they had any comments now that the information has been provided. Mr. Hubbard returned to a point of controversy from last month asking if it is automatically a drinking establishment and therefore principle; or it could be an accessory use and determined to that effect. Mr. Mylott responded it is the latter. Mr. Hubbard then asked if the statement 'space attributed to…' meant it could be used for either use, and said in looking at the photographs, it appeared a lot of the areas in blue had display cases for tobacco products. Mr. Chambers said that was correct in regard to the statement and that there are two areas with display cases noted.

Mr. Hubbard questioned which building sign is more prominent when driving by; the sign on the top front of the building or the one on the sidewalk. Mr. Chambers said the signage on the top displaying the name of the tobacco shop would be. Mr. Hubbard then said he doesn't quite understand the "attributed to idea". In the discussion of what a principle use might be, the code states a newsstand, depending on its location, might be a principle use or an accessory use. A newsstand in a separate building is probably a principle use, but a newsstand in a hotel lobby would be an accessory use. He asked Staff if he read the newspaper anywhere in that lobby, would they attribute that space to newsstand. Mr. Mylott said he does not believe they are mutually exclusive. It's the same argument being discussed here, attributed to can be one or both. Mr. Hubbard said then the blue area could be attributed to one use or the other, and then the likelihood is that most of the people drinking are also smoking. Mr. Mylott said it could be one use *and* the other because they could be done together; but he could not comment to the likelihood on both occurring. Mr. Hubbard said, as a non-smoker, he would not want to go there to drink and assumes most people who drink there are smokers and questioned if Mr. Mylott had any assumptions. Mr. Mylott said, of Mr. Hubbard's assumptions, there are none that he can confirm or deny; and his assumption is that they can be one or both but he has no idea of percentage. It could also be that it is not an accessory use, but two principle uses. Ms. Akre added they way the diagram is labeled states 'area available for'. Mr. Hubbard said it appears clearly that based on the percentage of sales that a principle use is the sales of tobacco. Mr. Mylott said it would if you use that as your only factor. He thanked Staff for the information.

Mr. Cromartie also thanked Staff and the applicant for bringing back the information. He said there are two gold areas noted in the diagram specifically attributed to tobacco sales and products; blue areas attributed to both drinking and smoking; but there are no areas attributed solely for the consumption of beer or wine. Mr. Mylott said it was difficult to put diagram this, therefore the words 'area available for' were used. If someone had a drink in hand, it can be assumed they would not be told they cannot walk into the humidor. It is unlikely they would because that area is primarily for retail sale, so Staff attempted to divide the areas up as best as possible. What was looked at is square footage based on the usage since last month.

Darryl Smalls, attorney representing the Tobacco Merchant, gave a brief discussion on their position saying they clearly feel the sale of beer and wine is an accessory use. Mr. Smalls referenced the Ordinance §17.55 that defined specifically accessory use and principle use for sale; saying in this instance, the principle use is clearly the sale of tobacco products. Regarding the second part of the definition, 'subordinate in area', controversy exists in the definition between the appellant and Zoning Staff. The blue areas Staff has designated are what *they* designate and he feels ultimately it is the BOZA's decision to designate specific areas as smoking and drinking areas. His position is, looking at the 300 sq. ft. designated as the bar area, is where the retail sale of beer and wine would be; there are no waitresses and beer or wine can only be

purchased at that area; and tobacco products are sold only in displays and tobacco product areas. The sale of beer and wine to customers is designed as a convenience.

It can be assumed beer and wine sales increase in the evening; but they are still incidental to the sale of tobacco. Three restaurants are in the building and anyone can go there for beer and wine, if someone doesn't smoke. Sales are 93% for tobacco and 7% alcohol, and are still incidental. Mr. Hubbard questioned this percentage against what Staff presented as percentages. Mr. Mylott aid the sale of alcohol did not start at the same time as the retail sale of tobacco. Therefore Staff took the figures provided for retail and tobacco, divided each by the hours of operation to determine a monthly amount, and multiplied that by 12 to project across one year. Mr. Smalls said the figures provided to Staff were for the total time the business has been under new ownership; he assumes at some point it was not for beer and wine sales, he is unsure.

Mr. Cromartie asked Mr. Smalls if it is his testimony that the purchase and sale of beer and wine only occurs in the 300 sq. ft. area. He responded it is. That is where beer and wine is purchased, but there are no restrictions on where one can go to consume alcohol, and there is not restriction where one can go to smoke. Mr. Cromartie said that would not necessarily be accurate because one could still smoke in that 300 sq. ft. area. There are two areas in which one can buy tobacco products, there is one are where drinks can be purchased, and it appears the remaining areas are not specifically noted for the purchase of drinks or tobacco products. He said it seems that 40% is mixed used; taking the 300 sq. ft. it comes to about 18% and 27% is exclusive tobacco. Mr. Smalls responded that is a 'better way' to look at it as far as mixed use. There are numerous display cases throughout the establishment that feature tobacco products. It would be better to designate it as mixed use rather than an area for smoking.

Mr. Hubbard questioned the mixed use areas asking if either Mr. Smalls or Mr. Slicer could say how often someone comes into the establishment to drink and not smoke. Mr. Smalls said he could not address that and asked Mr. Slicer to do so. Mr. Slicer said it would be *extremely rare*. If someone does not smoke, he could not imagine them frequenting his establishment. Mr. Mylott asked Mr. Slicer if there were any types of policies that would prohibit the use of other products; such as someone coming to the bar to drink and bringing their own cigarettes. Mr. Slicer said it would be rare, but possible.

Mr. Hubbard asked what percentage of the area is used to store the beer and wine used for sale versus the storage of tobacco products. Mr. Slicer said the beer and wine is specifically stored in the 300' sq. ft. bar area where it is sold.

Mr. Hubbard again questioned the mixed use area referencing the example of newsstands in a store; and also a service station selling soft drinks. He asked if the entire area where the coke machine would be and the entire service station would be a mixed use area. Mr. Mylott said that area would be called a convenience store if snack and drink items are sold; such as a pantry. It would be a convenience store with two principle uses. If there was only a stand-alone coke machine, it would be an accessory to the gas station.

Ms. Akre said since November, the BOZA has listened to a number of different aspects and facets that could be part of this case. This is an administrative appeal and the Board must make a decision whether an error was made in applying the Ordinance. Hearing all the information made and issues presented, there may be an underlying issue not being spoken. The City and counties have already put the Smoking Ordinance in place in many areas is to help with health issues. She has concerns with the argument some Board members are making that in essence it may be that having this business will be a way to create a smoking bar and a way to circumvent the Smoking Ordinance. Mr. Mylott said he feel compelled to offer that when Staff made their decision, it was not with consideration whether or not this impacted or didn't impact the Smoking Ordinance. Business license and Zoning have different classes and decisions are based on their departments and ordinances.

Ms. Smalls said although the issue of smoking is being discussed, that is not the issue presented. The issue is whether drinking can be allowed in this establishment and whether it can be incorporated. The Smoking Ban is an exception in this establishment and people are there to smoke anyway, so the health issue is irrelevant. Ms. Akre said she is just offering her own thoughts. It is clear that the principle use of The Tobacco Merchant is to sell tobacco products. Based on a complaint received, the Zoning Administrator and Staff went to inspect the business and found the sale and consumption of beer and wine was also being done. Based on their interpretation of the Zoning Ordinance, that constitutes The Tobacco Merchant as a drinking establishment and that is not what their permit is for; therefore the reason for this case being presented. Ms. Akre said she is just 'offering her thoughts as this case has been presented for the last few months'. Mr. Smalls said they are also working on the smoking issue separately with the City and will probably be heard by City Council.

Mr. Hubbard said he agrees with several comments Ms. Akre made and that the smoking issue is a separate issue from what is being dealt with today. It is not really a health issue but about second hand smoke in the workplace. He read from the Smoking Ordinance, "the intent is to protect non-smokers from involuntary exposure to second hand smoke in the workplace". The idea being that workers have less choice about whether or not they want to be in a particular place. Regarding accessory use, he feels that the people who administer zoning should decide that use. Mr. Hubbard said what is happening is what lawyers call the 'standard of reviews. He is unsure if the BOZA is to assume the decision Staff made is correct and unless it can be determined that decision is incorrect'; Staff's determination will be upheld. Or whether this is to be reviewed anew and no presumptions are to be given to Staff; which is the way he feels it should be reviewed. He feels this is an accessory use because there is a very small percentage of the floor dedicated to this use. No less than 90% of sales are going to tobacco sales.

Motion by Mr. Hubbard to reverse the Administrative Appeal by the Zoning Administrator to make a finding that the drinking use is an accessory use based on the facts presented today. This finding does not pertain if the amount of space or the percentage of sales changes, it is only based on facts presented today; *seconded by Mr. Thompson.* **In favor of the motion are Mr. Thompson, Mr. Cromartie and Mr. Hubbard. Opposed to the motion are Mr. Young, Ms. Akre and Mr. McMeekin. The motion fails.**

Motion by Mr. McMeekin to uphold the Zoning Administrator's decision that the on-premise consumption of beer and wine are significant and not incidental, *seconded by Mr. Young.* **In favor of motion are Ms. Akre, Mr. McMeekin and Mr. Young. Opposed to the motion are Mr. Cromartie, Mr. Thompson and Mr. Hubbard.** ***The motion fails; therefore the application was not considered favorably and the decision of the Zoning Administrator will be upheld.***

B. NEW BUSINESS

None.

IV. OTHER BUSINESS

Approve January 12, 2010 Minutes.

Motion by Mr. Cromartie to approve the minutes for January 12, 2010, seconded by Ms. Akre. Motion carries 6-0.

Discuss new Rules of Procedure.

Mr. Mylott presented the Rules of Procedure for discussion. Mr. Mylott said the Municipal Association rules were used as a standard, with some minor edits and revisions. He suggested this be reviewed line-by-line and then the document will be returned as a clean document. He asked the attorneys on the BOZA for assistance in way the procedures are ultimately approved. State Statue §621.790 says, "the board shall adopt Rules of Procedure in accordance with the provisions of an Ordinance adopted pursuant to this chapter". Mr. Mylott said this body, the BOZA, does not adopt Ordinances; that is done by City Council. The Municipal Association's Guide to Comprehensive Planning state it is adopted by a majority of the Board of Zoning Appeals. He said he wanted clarification on this to ensure something is not adopted by the BOZA that should ultimately be adopted by City Council. Mr. Hubbard suggested the City Attorney be advised and Mr. Cromartie seconded this suggestion. Mr. Mylott agreed to do so and proceeded with review of content of the Procedures.

Stylization and punctuation changes were discussed. Mr. Hubbard questioned the meeting time for the BOZA saying this is the only board that meets during the day. He suggested the meeting be held at the end of the day, and have a set time stated or noted. Mr. Cromartie suggested quarterly evening meetings be held, or allow the applicant to choose if they prefer a day meeting or an evening meeting. Ms. Akre stated after hours meetings are burdensome. If someone feels an issue is important enough, they should block off time to attend the meeting. Her feelings are business is being conducted during the meetings and therefore, they should be held during business hours. Mr. Mylott said it can be noted in the procedures that meetings are held at a specific time. The meeting calendar schedule for the year 2010 has been set for the year. If BOZA members desire a change in meeting time, he suggested they notify Staff in October and this information can be reviewed and sent to the City Clerk prior to year end. Mr. Hubbard said the current amendment can be amended by majority vote if needed. Mr. Mylott said a specific time and place will be noted as that is not currently done.

The next item discussed the agenda; it does not specify packets. Mr. Mylott said, if needed, the agendas can be sent out sooner. Ms. Akre said they used to receive copies, via email, of agendas for **all** the meetings and asked if this could be done again. Mr. Mylott said he will assure BOZA members will be added to the distribution lists again. Mr. McMeekin added that it would be good to receive the agenda ahead of time to review cases; but he does not want to go paperless. Mr. Mylott said that will not be done unless requested. City Council has gone completely paperless and packets are on CD viewed by Council members' laptops. Mr. Thompson and Ms. Akre said they would like to do that also. Staff will check accommodations for laptop use for those who wish this as a preference.

The next issue regarded majority of quorum. The statements regarding 'odd' voting in the event of minimum quorum will be removed. Ms. Akre questioned the difficulty in filling the vacant board seats. Mr. Mylott said it has not been formally placed on City Council agenda but has been advertised and applications have been received. Mr. Hubbard said to maintain that four is a quorum because there are seven BOZA member positions. He said there is also the issue of split voting, two/two, and feels that should be returned to another meeting when more members are in attendance. Mr. Mylott and board members discussed some ideas; and then asked him to work on rewording and then get back to them. Mr. Hubbard also suggested a copy of Roberts Rules of Order be available for meetings. Mr. Mylott agreed to this.

Filing an appeal - Mr. Mylott stated if someone files an appeal, it must be the property owner. A renter, attorney, etc. cannot file unless they have a deed or letter from the property owner designating them as such. He said he will tweak the language and send this back to the board for review. It should have ties back to the property owner. Ms. Akre asked if there is anything stated regarding someone who does not have any ties to the property, just a neighbor or member of the public not having any party to the application, having a voice in an appeal. This has occurred in the past and many times is carried too far. Mr. Hubbard said that is a

standard for a member of the public to take to court. The concept is substantial interest; and is in that 'grey section' where judgment calls have to be made. Mr. Mylott said State Statue states "..appeals to the Board may be taken by any person aggrieved..."; Mr. Hubbard said that is where substantial would come in. Mr. Mylott suggested where there is language in the Zoning Ordinance; it should not be replicated in the rules and regs.

Withdrawal of the appeal – time frame changed to be consistent with the time frame for an appeal of the Zoning Ordinance. Language states if someone does re-file, it is treated as a new application and fees must be paid again.

One time continuance is considered the same as a deferral – language included to state the date and time for re-hearing so that anyone in attendance would continue to have notice for when the issue will be considered by the Board.

Hearings section – Mr. Hubbard questioned statements regarding making judicial decisions saying the BOZA is quasi-adjudicative and should not do this. Specifics need to be drafted to define situations. Mr. Mylott will have the City Attorney help with this section and provide assistance to the BOZA. Mr. Cromartie suggested Mr. Mylott have Mr. Meggs review and then he can offer council to the Board with suggested language.

Deferral section - States the applicant can request a deferral if they don't agree with the BOZA decision. Ms. Akre feels deferral is overused; especially by an applicant to delay Board decision, try and fix issues, or just stall. BOZA has a decision to make and applicants should make time to attend meetings and to be prepared. The Board should be more selective in way this is done. Mr. Hubbard questioned the section in continuance and why it is not stated there. Mr. Mylott said it will be added together as one area. Mr. Cromartie voiced concerns with deferral in instances when there were only four Board members in attendance and the applicant thought by deferring to the next month when all members would be in attendance, a different outcome may occur. Mr. McMeekin said if there is a seven-member Board, an applicant should not have to present to only four members. Ms. Akre said she agrees but that should be done at the very beginning of the case. The BOZA should not have to hear the case by the members in attendance and then have to hear again at the next meeting when more members are in attendance or the applicant does not feel things are going well. Continuance and deferral are two different issues. Continuance may mean the applicant is not in attendance and until issues are known why, can continue to the next meeting. Deferral is because of decision.

Mr. Mylott questioned when there is a properly noticed application and the public says they did not have time to meet with applicant and request deferral. Board members stated the applicant and neighbors should meet ahead of time. It is the applicant's position to meet with the neighborhood.

Disposition and abstaining by Board members – Mr. Mylott did not have a copy of Robert's Rules of Order to reference reasons for abstaining. He will review and note what is stated in RRO. Mr. Cromartie questioned the idea of recusal. Mr. Hubbard stated that recusal is not a voting member; abstention is that one is entitled to vote but makes the decision to not vote. Recusal could void a quorum and abstention does not. Ms. Akre said she has always been told if someone is recused, they should not speak at all and should really leave the room. One must recuse if there is a financial or ownership interest involved; or a very unusual involvement. Board members feel the conflict should be stated to be on record.

Re-hearing – talks of new evidence not heard at the hearing or evidence of a clerical error or mutual mistake of fact affecting the outcome.

Ms. Akre said the issue of attendance by Board members needed to be discussed. Mr. Mylott said that is referenced on page 6 in the City handbook and read from that. Not all Board members had a copy of the

handbook and this will be provided to them by Mr. Mylott. Mr. Hubbard said if there is conflict between Bylaws and the Ordinance, the Ordinance prevails.

Motions - Mr. Mylott will reference Roberts Rules of Order for issues to provide consistency.

Election of officers.

Mr. Hubbard nominated Mr. Cromartie as chair of the Board of Zoning Appeals, accepted by Mr. Mr. Cromartie. Nomination seconded by Mr. McMeekin. All in favor 6-0.

Mr. McMeekin nominated Mr. Hubbard as vice-chair, accepted by Mr. Hubbard. Nomination seconded by Mr. Cromartie. All in favor 6-0.

V. ADJOURNMENT

There being no further business, motion to adjourn at 11:48 a.m. by Ms. Akre.

Respectfully submitted by Andrea Wolfe
Sr. Admin. Secretary
Planning and Development Services Department
City of Columbia

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C/A NO.: 2010-CP-32-01368
Tobacco Merchant	)	
	)	Respondents' Memorandum of Law
Appellant	)	
	)	
vs.	)	
	)	
City of Columbia Zoning Administrator, Board of Zoning Appeals and City of Columbia	)	
	)	
Respondents,	)	

FILED
2012 FEB 13 A 9:03

Respondents City of Columbia Zoning Administrator, Board of Zoning Appeals ("BOZA") and City of Columbia (hereinafter collectively "Respondents") submits this memorandum of law in opposition to the Notice of Intent to Appeal filed by the Appellant on or about March 29, 2010. Respondents filed their Return to the Petition on April 26, 2010, and subsequently provided the court with a complete record of the proceedings held on January 12, 2010, and February 9, 2010, before the City of Columbia Board of Zoning Appeals.[1]

I. Procedural/Factual Background

On April 22, 2009, the Appellant sought approvals from the City of Columbia to open a business in the City. Upon submission of the Business License Clearance Form, the Zoning Division approved the zoning for a "cigar store/stand" in a C-3 zoning district. The Zoning Division characterized the business with the use code of "5993" as

[1] The record provided to the court consists of DVDs of the hearings held before BOZA on January 12, 2010, and February 9, 2010, and documents submitted to BOZA which are numbered BOZA000001 through BOZA000138. Respondents also seek to supplement the record with the official minutes of the proceedings held on January 12, 2010, and February 9, 2010, which are numbered BOZA000139 through BOZA000154.

found in its Table of Permitted Uses at section 17-258 of the City Code. (BOZA000011; BOZA000120) This use code signifies businesses with the principal use of "cigar store and stands." City Code, §17-258. According to the Table of Permitted Uses, cigar stores and stands are permitted in a C-3 district. A "drinking establishment" is permitted only by special exception in a C-3 district. A Zoning Permit was issued on this same date with a description of the business as a "Tobacco stand." (BOZA000048)

On September 3, 2009, the Zoning Division received a complaint that the Tobacco Merchant was operating as a drinking place. A "drinking place" is defined as an "establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises. The Zoning Division inspected the location and met with the business owner and his counsel regarding the complaint and the Zoning Division's view that the business was being operated as a drinking place without a special exception. (BOZA000012)

The Zoning Division issued a Written Notice of Violation on September 16, 2009. (BOZA000023) The notice stated that the location was being operated as a drinking establishment without obtaining a special exception. The notice invited the owner to submit an application for a special exception. Id.

However, rather than apply for a special exception to operate as a drinking establishment, the owner appealed the Zoning Administrator's determination to BOZA. (BOZA000021) The Tobacco Merchant asserted that the Zoning Administrator was in error because "The Tobacco Merchant legally operates as a tobacco retail establishment which has incidental sales [of alcohol] pursuant to the City of Columbia ordinances." Id.

BOZA first heard this matter on January 12, 2010. The Zoning Administrator stated his position that the business was being classified as a drinking place based upon the sale of alcohol and the amount of area in the building attributed to drinking. The Zoning Administrator also stated that the sale of alcohol did not meet the definition of accessory use found in the Zoning Ordinance. This determination was based on the amount of area that is allocated to opportunities for drinking and the size of the bar, as well as advertisements for drinking located outside of the store. At the time of this hearing there was no data available regarding sales. BOZA remanded the matter to the Zoning Division in order to gather additional facts concerning sales figures, square footage, and customers' utilization of the business. (BOZA 000139 – BOZA 000147)

BOZA next heard the matter on February 9, 2010. The Zoning Administrator provided evidence that approximately 27% of the area of the business could be attributed to retail sales of tobacco only whereas approximately 58% of the floor space constituted areas where alcohol could be consumed. The Zoning staff also provided a floor plan showing the areas separated for drinking and for retail tobacco sales. (BOZA000009) The owner provided sales figures suggesting that approximately 10% of sales came from alcohol with the other 90% coming from tobacco products. The Zoning Administrator reminded BOZA of the owner's previous admission that sales figures and customer usage would change depending on the time of day. The owner had previously asserted that during the daylight hours the business was predominantly tobacco sales and use but as the evening progressed alcohol sales would increase. In the ensuing discussion about the use of the business the owner acknowledged that a person could enter the establishment to drink and not smoke. The owner also acknowledged that nothing would prohibit a patron

from coming to the establishment to drink and bringing his own cigarettes. (BOZA 000150)

At the two hearings, the issue was framed as whether the sale of alcohol at the establishment was an accessory use. The Zoning Administrator took the position that the sale of alcohol failed the definition of accessory use found in the Zoning Ordinance. The Appellant argued that the sale of alcohol was an accessory use and that tobacco retail was the principal use of the location.

At the conclusion of the second hearing, a motion was made to reverse the Zoning Administrator's decision and find that the alcohol consumption and sales was an accessory use. This motion failed upon a 3-3 vote. An alternative motion was made to uphold the Zoning Administrator's decision. This motion also failed upon a 3-3 vote. Therefore, pursuant to BOZA's written regulations, the Zoning Administrator's decision classifying the business use of the Appellant's property as a drinking establishment was upheld.

II. Standard of Review

"Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances." Clear Channel Outdoor v. City of Myrtle Beach, 360 S.C. 459, 465, 602 S.E.2d 76, 79 (Ct. App. 2004), *aff'd*, 372 S.C. 230, 642 S.E.2d 565 (2007). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

III. Law/Analysis

A. Respondents' decision was reasonably supported by the evidence.

As explained earlier, the Zoning Administrator determined that the sale and consumption of alcohol at the location did not constitute an accessory use. An "accessory use" is:

> (1) subordinate to and serves a principal building or principal use; (2) subordinate in area, extent or purpose to the principal building or principal use served; (3) designed for the comfort, convenience or necessity of occupants of the principal use served; and (4) located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served. Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

City Code, §17-55, Definitions. "Accessory uses are those which are customarily incident to the principal use." Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, ___, 524 S.E.2d 404, 410 (1999). "An accessory use must be one 'so necessary or commonly to be expected that it cannot be supposed that the ordinance was intended to prevent it.'" Id. (quoting Borough of Northvale v. Blundo, 203 A.2d 721, 723 (1964)); see also 8 McQuillin Mun. Corp. § 25:151 (3d ed. 2010) (stating an accessory use is one which is dependent on or pertains to the principal use and which may be considered an integral part of the primary use).

In Whaley, our Supreme Court found that parking the cab of an 18-wheeler at a residence was not an accessory use because such use is not "customarily incident" to a residential zone. Whaley, 337 S.C. at ___, 524 S.E.2d at 410; see also Lerner v. Bloomfield Tp., 308 N.W.2d 701 (Mich. 1981) (holding that home-based psychotherapy and marriage counseling did not qualify as an accessory use because such services were not customarily incident to residential use).

The following facts reasonably support the Respondents' decision to find that the Tobacco Merchant's sale of alcohol did not constitute an accessory use and that the business was required to obtain a special exception to serve alcohol:

- area - only 27% of the business was devoted exclusively to tobacco sales, whereas beer and wine could be consumed in approximately 58% of the area (BOZA000009, BOZA000148);
- the size of the bar area and the number of seats allocated to the bar area (19 seats) (BOZA000009);
- the business advertised the sale of beer on a store-front sign (BOZA000032);
- the business does not require a customer to purchase tobacco in order to purchase alcohol (BOZA 000150);
- the business does not restrict the use of tobacco products to those purchased in-house (BOZA 000150);
- the sales figures may not accurately describe the character of the business at different times of the day (BOZA000142, BOZA000144);
- the nature of the business changes from day to night (BOZA000144);
- the sale of tobacco started before the business installed a bar and began serving alcohol (BOZA 000142-3); and
- the bar was installed without obtaining a building permit (BOZA000080).

These facts demonstrate that the sale of alcohol is not subordinate to the sale of tobacco. They also demonstrate that the sale of alcohol is not designed for the comfort, convenience or necessity of the occupants. Rather, the sale of alcohol was designed and intended to bring in outside persons for a drink. The ability to purchase a soft drink at a

gas station is a convenience. The sale and consumption of alcohol at a tobacco retail store is a luxury, not a necessity.

We submit that the sales figures are of limited value in determining whether alcohol sales are an accessory use. Zoning determinations such as in the present case are made based on the use of land; sales figures may not truly reflect how an area is being used. For example, a general retail establishment may sell diamonds, among many other items. Just a few diamond sales from behind a small counter space may yield a high percentage of gross sales but may not be an adequate measure of the general use of the land.

If sales figures were to be used as the best gauge of an accessory use then at what point does the use change from accessory to principal? When alcohol sales reach 20%? 51%? A narrow approach relying too much on alcohol sales may not adequately take into account the definitional approach of determining an accessory use and whether one use is "customarily incident" to another.

The Tobacco Merchant's sale of alcohol did not meet the definition of accessory use in the Zoning Ordinance. The evidence in this matter clearly depicts that the Tobacco Merchant operates as a bar. It is of no avail that the Tobacco Merchant also sells tobacco. Moreover, there is no evidence that the sale of alcohol is customarily incident to the sale of tobacco.

We submit that Respondents correctly found that the use of the Tobacco Merchant for alcohol sales and consumption did not constitute an accessory use. Therefore, in order to serve alcohol the Tobacco Merchant is required to seek and obtain a special exception.

B. BOZA's written decision was sufficient.

Appellant asserts BOZA's written decision was not properly issued in writing as required by section 6-29-800(F). In relevant part, the written decision stated that

> Based upon the application, submitted documents, and testimony considered by the Board of Zoning Appeals at the January [12, 2010] and February 9, 2010 public hearing, and in accordance with § 17-113(a) of the Zoning Ordinance, the Board of Zoning Appeals failed to approve your Application for Administrative Appeal.

(BOZA000007). Petitioner contends this does not satisfy the statutory requirement that a decision be in writing with findings of fact and conclusions of law separately stated.

"Though the statue does not specify the form the writing must take, it is well-settled that courts reviewing the decisions of zoning boards . . . may look to written documents as well as records of proceedings as sufficient formats for final decisions." Austin v. Bd. of Zoning Appeals, 362 S.C. 29, __, 606 S.E.2d 209, 212 (Ct. App. 2004). The underlying substance of the decision is of more importance than the form of the written decision. See Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) (stating "the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case.").

As in Austin, the evidence considered by BOZA is "clearly laid out in the transcript of the hearing" and in the written materials submitted to BOZA and made part of the record. Austin, 362 S.C. at 35, 606 S.E.2d at 212. The written materials, taken together with the record of the public hearing, including the minutes, "provides sufficient basis for a reviewing court to determine whether the decision was supported by the facts

of the case." Id. For example, in addition to the minutes and the video of the proceedings, the Zoning Administrator set forth detailed written evidence concerning its basis for concluding that the classification of the business as a drinking place did not constitute an accessory use. (BOZA000011 – BOZA000014; BOZA000080 – BOZA000081).

IV. Conclusion

For the reasons stated herein, Respondents respectfully request that the court uphold the decision classifying the Tobacco Merchant's business use as a drinking establishment.

Respectfully submitted,

Peter M. Balthazor
Office of the City Attorney
P.O. Box 667
Columbia, South Carolina 29202
(803) 737.4242
Facsimile: (803) 737.4250
Attorney for Respondents

February 13, 2012

Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C/A NO.: 2010-CP-32-01368
Tobacco Merchant Appellant vs. City of Columbia Zoning Administrator, Board of Zoning Appeals and City of Columbia Respondents,	)	Respondents' Supplemental Memorandum of Law

FILED
2012 MAR -6 P 4:32
BETH A. GARRICK
CLERK OF COURT
LEXINGTON SC

Respondents City of Columbia Zoning Administrator, Board of Zoning Appeals ("BOZA") and City of Columbia (hereinafter collectively "Respondents") submit this supplemental memorandum of law in opposition to the brief submitted by the Appellant on February 27, 2012. The court heard this matter on February 13, 2012, and the written record has been submitted to the court.[1] In submitting this memorandum, the Respondents incorporate by reference their previous memorandum and the arguments made at the hearing.

I. Procedural/Factual Background

On April 22, 2009, the Appellant sought approvals from the City of Columbia to open a business in the City. The Appellant claims in its brief that the City "approved the Tobacco Merchant's license as a Cigar Lounge." This is incorrect and there is no

[1] The record provided to the court consists of DVDs of the hearings held before BOZA on January 12, 2010, and February 9, 2010, and documents submitted to BOZA which are numbered BOZA000001 through BOZA000138. Without objection at the hearing, respondents supplemented the record with the official minutes of the proceedings held on January 12, 2010, and February 9, 2010, which are numbered BOZA000139 through BOZA000154. Pursuant to the court's instructions at the hearing, Respondents are also submitting with this memorandum certified copies of relevant portions of the City of Columbia Zoning Ordinance (§§ 17-51 through 17-114; 17-258; and 17-269) (attached as Exhibit B).

evidence in the record to support this statement. Apparently, the Business License Division listed the type of business as a "Cigar Bar/Shop." (BOZA000120) However, the Zoning Division described the use of the property as a "cigar store/stand" and assigned a use code of "5993" as found in its Table of Permitted Uses at section 17-258 of the City Code. (BOZA000011; BOZA000120) This use code signifies businesses with the principal use of "cigar store and stands." City Code, §17-258. A Zoning Permit was issued on this same date with a description of the business as a "Tobacco stand." (BOZA000048) The Business License Division's characterization of this business is not relevant to the Zoning Division's enforcement of zoning ordinances in this matter.

II. Law/Analysis

A. The Respondents did not err in concluding that the sale of alcohol at the Tobacco Merchant did not constitute an accessory use.

The Zoning Administrator determined that the sale and consumption of alcohol at the location did not constitute an accessory use. An "accessory use" is:

> (1) subordinate to and serves a principal building or principal use; (2) subordinate in area, extent or purpose to the principal building or principal use served; (3) designed for the comfort, convenience or necessity of occupants of the principal use served; and (4) located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served. Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

City Code, §17-55, Definitions. "Accessory uses are those which are customarily incident to the principal use." Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, ___, 524 S.E.2d 404, 410 (1999). "An accessory use must be one 'so necessary or commonly to be expected that it cannot be supposed that the ordinance was intended to

prevent it.'" Id. (quoting Borough of Northvale v. Blundo, 203 A.2d 721, 723 (1964)); see also 8 McQuillin Mun. Corp. § 25:151 (3d ed. 2010) (stating an accessory use is one which is dependent on or pertains to the principal use and which may be considered an integral part of the primary use).

In Whaley, our Supreme Court found that parking the cab of an 18-wheeler at a residence was not an accessory use because such use is not "customarily incident" to a residential zone. Whaley, 337 S.C. at ___, 524 S.E.2d at 410; see also Lerner v. Bloomfield Tp., 308 N.W.2d 701 (Mich. 1981) (holding that home-based psychotherapy and marriage counseling did not qualify as an accessory use because such services were not customarily incident to residential use).

The Appellant asserts that its business has "incidental" sales of alcohol pursuant to the City of Columbia smoking ordinance. The Appellant cites to sections 8-217, 8-816 [sic], and 8-818 [sic] of the City of Columbia Code of Ordinances.[2] The smoking ordinances are not relevant to the present dispute and should not be considered. The Respondents are not seeking to enforce any provision of the smoking ordinances. The Respondents do not have jurisdiction to hear and decide issues related to any ordinances other than zoning ordinances. See S.C. Code § 6-29-800(A)(1) (Supp. 2011) (stating the board of appeals has the power to hear and decide appeals concerning decisions made by the zoning administrator in the enforcement of the zoning ordinance).

In any event, the record reasonably supports the conclusion that sale of alcohol is not "incidental" to the sale of tobacco products. The fact that the sale of alcohol may be

---

[2] Respondents understand the Appellant to be citing to sections 8-216 ("Definitions"); and 8-218 ("Exceptions"). However, the Appellant did not enter into evidence the subject ordinance sections. Courts will not take judicial notice of municipal ordinances. See Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000) (declining to take judicial notice of a zoning ordinance regarding zoning appeals which was not included in the record on appeal).

in some fashion "common" or "accepted" in other jurisdictions, as Appellant asserts, does not support the conclusion that it is incidental.

An incidental use in the zoning context means that it is a use which is dependent on or pertains to the principal use. See 2 Rathkopf's The Law of Zoning and Planning § 33.3 (4th ed.) (copy attached hereto as Exhibit A); see also Black's Law Dictionary 1540 (7th ed. 1999) (defining "incidental use" in the zoning context as a "land use that is dependent on or affiliated with the land's primary use").

There is no evidence in this matter that alcohol sales are dependent on the primary use of the business as a retail tobacco store. As convenient as it may be for a customer to buy a cigar and have a drink, it does not follow that such a luxury is dependent on tobacco sales. Pipes, cigar cutters, cigarette papers and the like are incidental to tobacco sales. Alcohol sales are not incidental simply for the reason that some persons may like to drink when they smoke, or vice versa.

The Appellant cites to the percentages of sales of alcohol and tobacco products as evidence that alcohol sales are incidental. The numbers tell us only about sales and tell us nothing about whether one product is dependent on the other product. If anything, the numbers prove that tobacco sales are robust and certainly do not prove that one use depends on another.

B. The Respondents are not estopped from ruling that the sale of alcohol was not an accessory use such that a special exception would be required to operate a drinking establishment at the location.

The Appellant asserts that it sought approval from the Zoning ***and*** Business License Divisions to sell tobacco products and incidental sales of beer and wine. The Appellant also claims that the City approved the "license" as a "Cigar Lounge."

There is no evidence in this matter that the Zoning Division approved a "license" for incidental alcohol sales. As explained earlier, the Zoning Division issued a Zoning Permit for the use of the business as a "cigar store/stand." The Zoning Division did not approve a license in any form for a "Cigar Lounge." The Zoning Permit issued to the Appellant did not permit the sale of alcohol, except as an accessory use.

It is not relevant to the present zoning dispute the manner in which the Business License Division may have characterized the Tobacco Merchant. The Business License Division does not make zoning determinations.

"As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy." Greenville County v. Kenwood Enters., Inc., 353 S.C. 157, 171, 577 S.E.2d 428 (2003). The public cannot be estopped by the unauthorized or erroneous conduct of its agents or through mistaken statements of law. Id.; DeStefano v. City of Charleston, 304 S.C. 250, 403 S.E.2d 648 (1991). "If estoppel is applicable against a government agency, a relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Quail Hill, LLC v. County of Richland, 387 S.C. 223, 236-7, 692 S.E.2d 499, 506 (2010).

In Quail Hill, the Supreme Court held that the county could not be estopped where the landowner received erroneous zoning information from an unauthorized

employee. Here, there is no evidence that the Appellant received erroneous information from the Zoning Division. To the extent that the Appellant now relies on the Business License Division's characterization of the business to estop a zoning determination, Quail Hill makes it clear that a party cannot justifiably rely on assertions from unauthorized individuals. The Business License Division's characterization of the use of the property is not applicable to the Zoning Division and cannot be relied upon by the Appellant. Moreover, there is no evidence that the Appellant consulted the Zoning Division about its alleged plans to sell alcohol or sought clarification from the Zoning Division about permitted uses on the property. See Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229 (2001) (holding City, which had issued erroneous building permits, was not estopped from enforcing zoning ordinance where building owner could have easily ascertained flood limitations on his building by reviewing the zoning/flood ordinance).

C. The Respondent's decision did not violate the Appellant's equal protection or due process rights.

"In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." Denene, Inc. v. City of Charleston, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004). "The standard for reviewing all substantive due process challenges to . . . municipal ordinances, including economic and social welfare legislation, is whether the ordinance bears a reasonable relationship to any legitimate interest of government." Id.

The "requirements of equal protection are satisfied if (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the

classification rests on some reasonable basis." Doe v. Am. Red Cross Blood Servs., 297 S.C. 430, 437, 377 S.E.2d 323, 327 (1989).

In support of its argument that the Appellant was denied equal protection and due process rights, the Appellant simply asserts that its business was treated differently than other similarly situated businesses. The Appellant makes no attempt to explain, first of all, that it is a member of a class. The Appellant also makes no attempt to prove that any classification was not reasonably related to a legitimate government interest. See State v. White, 348 S.C. 532, 560 S.E.2d 420 (2002) (holding the challenging party has the initial burden "to show that the ordinance is arbitrary and has no reasonable relation to a lawful purpose").[3] It is assumed for purposes of this memorandum that the Appellant claims it is a member of a class of retail tobacco stores. The Appellant goes on to claim that its equal protection rights are being violated because other members of the class are not being pursued for violations.

The Respondents respectfully assert that the Appellant is mischaracterizing the issue of code enforcement with one of equal protection. The fact that the City of Columbia has enforced its zoning ordinances against the Appellant does not prove a violation of equal protection. As discussed at the BOZA hearings, the Zoning Division received a complaint and acted on it. Enforcement of the zoning ordinance against the Appellant is not conditioned upon every other similarly situated business, if any, being cited at the same time. The Appellant's argument is akin to saying that a police officer

[3] The Appellant's argument concerning due process and equal protection is so short and conclusory that it is difficult to frame a response and should be deemed abandoned. See South Carolina Dep't of Probation, Parole & Pardon Servs. v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000) (stating that appellate court will decline to consider an argument where it is so conclusory as to be an abandonment of the issue).

violates one's equal protection rights if he decides to arrest one person for disorderly conduct while witnessing the same behavior from another and not making an arrest.

Finally, in terms of due process, the fact that the zoning ordinances may create some situations where the Appellant does not have unlimited free use of their property does not automatically equate to constitutional infirmity. See Bear Enters. v. County of Greenville, 319 S.C. 137, 141, 459 S.E.2d 883, 886 (Ct. App. 1995) ("A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property."). The Appellant has not been deprived of its property or precluded from obtaining beneficial use of the property. There has been no due process violation.

D. The Respondents' actions did not constitute a taking without just compensation.

The Appellant claims it has been subjected to a taking without just compensation because the Respondents' actions denied the Appellant an economically viable use of its property. The Appellant cites Agins v. City of Tiburon, 447 U.S. 255 (1980), for this proposition. Agins has been overruled for at least one of its holdings and is not the proper precedent under which to analyze regulatory takings cases. See Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005).

Regulatory takings challenges are analyzed under the standards set forth in Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978). The Appellant has made no attempt to establish that the Respondents have violated any of the Penn Central factors. The Appellant has not set forth any facts to apply to the Penn Central factors. As stated earlier, the Appellant has not been precluded from obtaining beneficial use of the

property. The use of the property as a tobacco retail store can continue, just as it was in the 13 years prior to the Appellant's acquisition of the business.

Moreover, the Appellant's takings claim is not ripe. The Appellant has not been deprived of an economically viable use of its property. Drinking establishments are permitted at the Appellant's location pursuant to a special exception. The Respondents alerted the Appellant that it was operating a drinking establishment without a special exception and invited the Appellant to seek a special exception. (BOZA 000023; 000141) The Appellant has not sought, nor been deprived of, a special exception to operate a drinking establishment.

E. The Board's tie vote did not violate the Appellant's due process rights.

As explained at the hearing on this matter, all that is required for the Board to conduct business is the presence of a quorum. City Code, § 17-111. In some instances a quorum may consist of only six members. Therefore, the Board has enacted a rule of procedure to address such a scenario. See City Code, § 17-111(b)(1) (authorizing the board to establish rules of procedure); S.C. Code Ann. § 6-29-800(B) (Supp. 2011) (acknowledging the board's use of its own rules to set and determine appeals). The rule states that if no affirmative action is taken by the board, it will be determined that the appeal did not receive the requested relief, and its effect is to deny the appeal. (BOZA 000007)

III. Conclusion

For the reasons stated herein, Respondents respectfully request that the court uphold the decision classifying the Tobacco Merchant's business use as a drinking establishment.

Respectfully submitted,

Peter M. Balthazor
Office of the City Attorney
P.O. Box 667
Columbia, South Carolina 29202
(803) 737.4242
Facsimile: (803) 737.4250
Attorney for Respondents

March 5, 2012
Columbia, South Carolina

Tobacco Merchant v. City of Columbia Zoning
Administrator, Board of Zoning Appeals
and City of Columbia
C/A NO.: 2010-CP-32-01368

EXHIBIT A

Westlaw.

Rathkopf's The Law of Zoning and Planning
Database updated November 2011

Edward H. Ziegler, Jr., Arden H. Rathkopf, and Daren A. Rathkopf

Chapter
33. Zoning and Accessory Uses
Edward H. Ziegler, Jr.[FN*]

I. Provision for by Ordinance

References

§ 33:3. Customarily incidental to principal use

The incidental or accessory use under a zoning law has been defined as a use which is dependent on or pertains to the principal or main use.[FN1] For example, a Michigan court has held that professional services which plaintiff rendered from her home as a psychotherapist and marriage counselor did not qualify as an accessory use because such services were not customarily incidental to the residential use in that the services did not further, or enhance, the principal use of the property. The plaintiff suggested that it was "customary" for social workers to practice from their homes and that her practice was "incidental" to the principal use of the home as a residence, but the court ruled that an accessory use must be "customarily incidental" to the main use.[FN2]

Similarly, where a zoning ordinance defined "accessory use" as "a building or use incidental, subordinate and reasonably necessary to the conduct of the principal building or use and located on the same lot as the principal building," the Supreme Court of Vermont defined the word "necessary" to mean "essential to a desirable or projected end or condition and not to be dispensed with without loss, damage, inefficiency or the like." Thus, a pharmacy was held as a matter of law, not to be an accessory use to a physician's office building.[FN3]

In another case the court defined the phrase "incidental to the use as a residence" in the following language: "A use is thus incidental so long as the main use of the dwelling remains residential and the occupation activity is factually subordinate."[FN4] However, where the accessory use attains such proportions that the residential use of the premises becomes subordinate to the maintenance of a business, the claimed accessory use is no longer permitted.[FN5]

When an accessory use attains such magnitude as to no longer be incidental to the principle use, it loses its status as an accessory use. In Township of Groveland v. Jennings,[FN6] a corporation proposed to construct and operate, as an accessory use, a treatment plant to process hazardous waste and to utilize the finished product as a fill for mined cavities on the property. Mining and reclamation was a permitted use. The court, quoting this treatise on the above proposition, determined that the issue was whether the corporation was processing industrial waste so as to reclaim the land or whether it was reclaiming the land in order to be allowed to operate a hazardous waste disposal plant. It was noted that the corporation purchased the property for $1.8 million and intended to invest $10 million more for the processing equipment, and that the land would be reclaimed over a period of 25 years. The court concluded that the magnitude of the project indicated that the dominant purpose of the

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

corporation's proposal was the disposal of industrial wastes for profit. Any reclamation was purely incidental to this main objective.

The common phrase "accessory use—customarily incidental to any of the above permitted uses" imposes a further limitation on the qualification found in the word "incidental." The requirement that the accessory use be "customarily" incidental to a permitted use necessitates clarification as to the word "customarily." In Jantausch v. Borough of Verona[FN7] the question was as to whether a beauty parlor could be maintained in a residence. The New Jersey court said:

> What would "customary" mean in the present setting? There are many, many home occupations; so much so, that general legislation has been adopted to subject home work to regulation and licensing by the State Department of Labor and Industry. R.S. 34:6-120 et seq. Thereunder permits have been issued for some specific 50 categories of activities. Is "customary" to be measured by reference to the State or to a more restricted area, perhaps the borough itself?And is "customary" a mathematical concept in this context, and if it is, does it require the conduct of beauty culture in the home to be *the* habitual or *the* usual mode of operation measured on the basis of all beauty work in the area? Bassett (p. 100) cites the milliner and the lawyer as persons engaged in customary home occupations. Today many milliners, perhaps a majority, operate independently of the home. Certainly, in this area, most lawyers so operate. Do they cease to be customary home occupations? No doubt the degree of use is a factor. Dolan v. DeCapua, 13 N.J. Super. 500, 508, 80 A.2d 655 (Law Div. 1951). The practice should be sufficient to justify the observation that is not unique or rare. It should be appreciable or perhaps substantial. It should be sufficient to constitute a recognized mode of activity in the field, but it need not be the more prevalent one. It seems to me that no more can be implied in the word 'home,' either directly or through the intermediate implication therein of a requirement that it be "customary."[FN8]

In Pennsylvania, it is not sufficient, in order to establish the validity of an accessory use, merely to show that some other property owners use their property in the same fashion. Rather, in order to establish a use as "customarily incidental," it is necessary to show "that a significant percentage of like principal uses in the area have accessory uses of the nature and extent in question." This requires a delineation of the geographic area under consideration and an indication both of the total number of principal uses and of how many of those principal uses maintain the accessory use in question. Furthermore, there must be some showing that these other instances of accessory use are regarded as being in conformity with the zoning ordinance.[FN9]

In other jurisdictions, however, the term "customarily incidental" has not been interpreted, as it has in Pennsylvania, to require any sort of showing that a "significant percentage" of principal uses maintain the accessory use in question.[FN10] Thus, in an Illinois case which considered the question of whether a house trailer maintained as quarters for groundskeepers was an accessory use to a golf course, the court indicated that it would not require a showing that most, or even many, golf courses followed the same practice. Rather, all that was required was a showing that the practice be sufficiently followed as to constitute it as a "recognized mode of activity in the field."[FN11]

Naturally, the perception of which accessory uses are considered "customary" changes with the times. Thus, if a particular accessory use is not customarily indulged in, and even if that use is found incident to only a small percentage of similar principal use, it may nevertheless be found to be "customary". Accordingly, the New Jersey Supreme Court, in permitting a heliport as an accessory use to a construction firm's headquarters, ruled that

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

the fact that most construction firms did not have heliports was not controlling. The court stated that this practice is increasingly coming into vogue and, since air travel was the most efficient means for the company's executives to visit out-of-state job sites, there was a distinct functional relationship between the heliport and the main use. The court did note that if a municipality found it necessary to restrict heliports in particular zones, then it was free to do so by ordinance.[FN12]

[FN*] Edward Ziegler is Professor of Law at the University of Denver College of Law. He is a frequent author and speaker on planning and zoning law issues and is the principal author for revision of this treatise.

[FN1] See, e.g., Town of Needham v. Winslow Nurseries, Inc., 330 Mass. 95, 111 N.E.2d 453, 40 A.L.R.2d 1450 (1953); Fox v. Zoning Bd. of Appeals of Town of West Hartford, 146 Conn. 70, 147 A.2d 472 (1958); Gratton v. Pellegrino, 115 N.H. 619, 348 A.2d 349 (1975).

And see Potts v. City of Hugo, 416 N.W.2d 465 (Minn. Ct. App. 1987) (parking of semi truck during idle hours at home in residential district was not a permitted accessory use and violated parking ordinance). An auto raceway next to a motel is neither "customarily incidental" nor does it depend on or pertain to the use of a motel. Guhl v. Par-3 Golf Club, Inc., 238 Ga. 43, 231 S.E.2d 55 (1976). Similarly, a separate large-scale amusement park with a ferris wheel and a number of other rides for children was held not to be permissible as an accessory use to a nonconforming aquarium. Marine Attractions, Inc. v. City of St. Petersburg Beach, 224 So. 2d 337 (Fla. Dist. Ct. App. 2d Dist. 1969).

[FN2] Lerner v. Bloomfield Tp., 106 Mich. App. 809, 308 N.W.2d 701 (1981).

And see Henry v. Board of Appeals of Dunstable, 418 Mass. 841, 641 N.E.2d 1334 (1994) (excavation of 300,000 to 400,000 cubic yards of gravel was not incidental to horticultural use as tree farm); Allegheny West Civic Council, Inc. v. Zoning Bd. of Adjustment of City of Pittsburgh, 552 Pa. 541, 716 A.2d 600 (1998) (engineering business held not customarily incidental to dwelling unit).

[FN3] In re Porter Medical Associates Use Change Permit, 139 Vt. 132, 423 A.2d 491 (1980).

[FN4] Jantausch v. Borough of Verona, 41 N.J. Super. 89, 124 A.2d 14, 19 (Law Div. 1956), judgment aff'd, 24 N.J. 326, 131 A.2d 881 (1957). See also State ex rel. Kaegel v. Holekamp, 151 S.W.2d 685 (Mo. Ct. App. 1941), in which the court construed the term home occupation as follows:

The important thing is, however, that under both the terms of the ordinance and the common sense of the matter, an occupation which will be permitted in a home in a district set apart for residential purposes must be one 'customarily incident to' the use of the premises as a dwelling place, and not one in which the use of the premises as a dwelling place is largely incidental to the occupation carried on.

The court goes on to say in explanation of this statement:

For example, a woman might do sewing or dressmaking in her home (as it is common knowledge that many women do), and such usage of the premises would be a legitimate home occupation of the character permitted by the ordinance so long as she did not maintain objectionable signs or displays on the exterior of the premises; keep a stock in trade or sell commodities on the premises; employ persons other than members of

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

the immediate family residing on the premises; or make use of mechanical equipment other than that, such as a sewing machine, which is permissible for purely domestic or household purposes. It is true that her work would be done for remuneration, but it would be none the less a recognized use of a home as such, and not a business or undertaking foreign to any ordinary home purpose and to which her living on the premises would be merely incidental.

Text quoted in Mola v. Reiley, 100 N.J. Super. 343, 348, 241 A.2d 861 (Law Div. 1968), in which the court held that a primary use must be and must continue to be dominant to an accessory use and, accordingly, before a permit for an accessory use may be obtained, "[the existence of] a primary use to which the accessory use is incidental and subordinate must be demonstrated. The requirement of subordination of the accessory use to the primary use, by itself, frustrates an application for such an accessory use without a demonstration of the primary use."

[FN5] E.g., People v. Daly, 28 N.Y.S.2d 603 (Spec. Sess. 1941).

[FN6] Groveland Tp. v. Jennings, 106 Mich. App. 504, 308 N.W.2d 259 (1981), judgment aff'd, 419 Mich. 719, 358 N.W.2d 888 (1984).

[FN7] Jantausch v. Borough of Verona, 41 N.J. Super. 89, 124 A.2d 14 (Law Div. 1956), judgment aff'd, 24 N.J. 326, 131 A.2d 881 (1957).

[FN8] 41 N.J. Super. at 100, 124 A.2d at 20, cited in State v. Smiley, 182 Neb. 211, 153 N.W.2d 906, 908 (1967).

New Jersey. DaPurificacao v. Zoning Bd. of Adjustment of Tp. of Union, 377 N.J. Super. 436, 873 A.2d 582 (App. Div. 2005) (holding that a pigeon coop is not a permitted accessory use on residential property).

[FN9] Champaine v. Zoning Hearing Bd. of East Bradford Tp., 30 Pa. Commw. 544, 374 A.2d 752 (1977), citing Bennett v. Zoning Bd. of Adjustment, 396 Pa. 57, 151 A.2d 439 (1959); Suhy v. Zoning Bd. of Adjustment of City of Philadelphia, 402 Pa. 657, 169 A.2d 62 (1961); Gross v. Zoning Bd. of Adjustment of City of Philadelphia, 424 Pa. 603, 227 A.2d 824 (1967). Compare, however, Klein v. Lower Macungie Tp., 39 Pa. Commw. 81, 395 A.2d 609 (1978) (a showing that a significant proportion of homes have tennis courts was not required to establish tennis courts as a "customarily incidental" residential accessory use).

[FN10] See the cases cited below.

Delaware. The Supreme Court of Delaware has ruled that prior community experience is not necessarily the proper criterion to use in judging whether certain activity is a customary accessory use. Since Delaware is a small state (of only 600,000 people), the court stated that a determination as to what is "customary" should be made by reference to state-wide practices. The court added that such broad geographic scopes would not foreclose innovative land uses. The court thus abandoned a more restrictive standard implied by Westminster Presbyterian Church v. Turner, 343 A.2d 604 (Del. 1975). Commissioners of Bellefonte v. Coppola, 453 A.2d 457 (Del. 1982).

Nebraska. See State v. Smiley, 182 Neb. 211, 214, 153 N.W.2d 906, 908 (1967), wherein the court

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

stated, with regard to proof of an accessory use: "No doubt the degree of use is a factor. ... The practice should be sufficient to justify the observation that [it] is not unique or rare. It should be appreciable or perhaps substantial. It should be sufficient to constitute a recognized mode of activity in the field, but it need not be the more prevalent one."

New Jersey. See Schantz v. Rachlin, 101 N.J. Super. 334, 244 A.2d 328 (Ch. Div. 1968), judgment aff'd, 104 N.J. Super. 154, 249 A.2d 18 (App. Div. 1969).

See generally Tullo v. Millburn Tp., Essex County, 54 N.J. Super. 483, 496, 149 A.2d 620 (App. Div. 1959), in which the court interpreted the ordinance on the basis of what was *contemporaneously* a customary part of the principal use, saying in a case in which the question was whether an outdoor swimming pool was impliedly an integral part of the operation of a country club: "outdoor swimming pools *have, in recent years,* become a customary part of group activities. They have likewise become frequent as accessory to private dwellings which Millburn regulates and permits by its ordinance." And see People v. Nicosia, 42 Misc. 2d 300, 248 N.Y.S.2d 24 (County Ct. 1963), in which the court stated that the word customary involves a determination of the time sense in which the word was used.

With respect to the geographical extent of the custom, there is a reference to this in Building Inspector of Falmouth v. Gingrass, 338 Mass. 274, 154 N.E.2d 896 (1959), where the court held that in order for the storage of an airplane to be construed as a permissible accessory use in a single residence district, there would have to be a finding that this was customary in the immediate vicinity or in the state as a whole.

Ohio. Costlow v. Etna Twp. Bd. of Zoning Appeals, 2002-Ohio-5955, 2002 WL 31426391 (Ohio Ct. App. 5th Dist. Licking County 2002) (upholding board finding that the outdoor storage of materials and use of intermodal storage units for carpets and padding was not a customarily incidental accessory use for a carpet business).

[FN11] Lake County v. LaSalle Nat. Bank, 76 Ill. App. 3d 179, 32 Ill. Dec. 282, 395 N.E.2d 392 (2d Dist. 1979), citing Lawrence v. Zoning Bd. of Appeals of Town of North Branford, 158 Conn. 509, 264 A.2d 552 (1969).

[FN12] State v. P. T. & L. Const. Co., Inc., 77 N.J. 20, 389 A.2d 448 (1978). See also Boublis v. Garden State Farms, Inc., 122 N.J. Super. 208, 299 A.2d 763 (Law Div. 1972) (heliport permitted as accessory use to large dairy plant). For a discussion of airplanes and helicopters as accessory uses see § 33:29, infra.

Westlaw. © 2011 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

RLZPN § 33:3

END OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

Tobacco Merchant v. City of Columbia Zoning
Administrator, Board of Zoning Appeals
and City of Columbia
C/A NO.: 2010-CP-32-01368

EXHIBIT B

ARTICLE II. PLANNING COMMISSION*

Sec. 17-31. Established; duties.

There is hereby constituted a planning commission for the city, whose duties shall be as fixed by S.C. Code 1976, § 6-29-310 et seq.
(Code 1979, § 6-1001)

Sec. 17-32. Membership; term of members.

The planning commission shall consist of nine members, to be appointed by the city council for three years, with terms of three members expiring each year. No member of the planning commission shall hold an elected public office in the city or in the county. Those elected or appointed officials as may be designated by the city council shall meet with the planning commission in an advisory capacity only.
(Code 1979, § 6-1002)

Secs. 17-33—17-50. Reserved.

ARTICLE III. ZONING†

DIVISION 1. GENERALLY

Sec. 17-51. Purpose and scope of article; statutory authority.

Pursuant to authority conferred by S.C. Code 1976, § 6-29-70 et seq., and to promote the public health, safety, morals and general welfare, lessen congestion in the streets, secure safety from fire, panic and other dangers, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, and facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements in accordance with a comprehensive plan, the city council does ordain and enact into law the regulations set out in this article:

(1) Dividing the city into districts and establishing the boundaries thereof;

(2) Regulating and restricting the height, number of stories and size of buildings and other structures;

(3) Regulating and restricting the percentage of lot area that may be occupied;

(4) Regulating and restricting the size of yards, courts and other open spaces;

(5) Regulating and restricting the density of population;

(6) Regulating and restricting the location and use of buildings, structures and land for trade, industry, residence and other purposes;

*State law reference—Local planning commissions, S.C. Code 1976, § 6-29-310 et seq.
†State law reference—Zoning by local government, S.C. Code 1976, § 6-29-710 et seq.

CERTIFIED
A TRUE COPY
Erika D. Moore
2.9.12

(7) Defining powers and duties of the board of zoning appeals with respect to these regulations;

(8) Providing penalties for violations of these regulations;

(9) Defining certain terms used in these regulations;

(10) Repealing the previous zoning ordinance; and

(11) For other purposes.

(Code 1979, § 6-3001; Ord. No. 99-011, §§ 1, 2, 4-21-99)

Sec. 17-52. Title of article.

This article shall be known and may be cited as the Zoning Ordinance of the City of Columbia, South Carolina.

(Code 1979, § 6-3002)

Sec. 17-53. Jurisdiction.

The regulations set forth in this article shall apply to all land and improvements thereon within the city limits.

(Code 1979, § 6-3003)

Sec. 17-54. Rules of construction; interpretation of types of districts.

(a) *Words to have customary meanings.* The words and phrases used in this article shall have their customary meanings, or shall be defined as defined in a standard dictionary, except for the specific words and phrases as defined in this article.

(b) *Tense.* The present tense includes the future tense.

(c) *Number.* The singular number includes the plural number, and the plural number includes the singular number.

(d) *Person.* The word "person" includes a firm, association, partnership, trust, company, corporation, or any other entity usually defined in legal usage as a person.

(e) *Shall* and *may.* The word "shall" is mandatory; the word "may" is permissive.

(f) *Used* and *occupied.* The word "used" or "occupied" includes the words "intended, designed or arranged to be used or occupied."

(g) *Lot.* The word "lot" includes the words "plot or parcel."

(h) *Structure.* The word "structure" includes the word "building."

CERTIFIED
A TRUE COPY
CITY CLERK 2.9.12

(i) *Interpretation of types of districts or zones.* Types of districts or zones, when used as a descriptive term for purposes of identifying certain circumstances in which particular regulations are applied (as, for example, "... when such parking lot is contiguous to a residential district ...") are defined as follows:

(1) Residential districts include:

a. D-1 development district;

b. RS-1, RS-1A, RS-2 and RS-3 single-family residential districts;

c. RD and RD-2 two-family residential district; and

d. RG-1, RG-1A, RG-2 and RG-3 general residential districts.

(2) Commercial districts include:

a. C-1 office and institutional district;

b. C-2 neighborhood commercial district:

c. C-3 general commercial district;

d. C-4 central area commercial district:

e. C-5 central business district;

f. C-6 limited commercial district; and

g. -MU multiple use district.

h. MX-1 mixed-use corridor/neighborhood district.

i. MX-2 mixed-use urban

(3) Industrial districts include:

a. M-1 light industrial district; and

b. M-2 heavy industrial district.

(4) Other districts not enumerated in this subsection shall be interpreted by the zoning administrator as being specifically residential, commercial or industrial, in any particular instance in keeping with the protective intent and purpose of this article as interpreted in the specific instance.

(j) *Interpretation of "contiguous" as applied to lots or districts.* The word "contiguous," as applied to lots or districts, shall be interpreted as meaning "sharing a common boundary of ten or more feet in length."

(k) *Interpretation of "on the premises of."* The phrase "on the premises of," as applied to accessory uses or structures, shall be interpreted to mean "on the same lot."
(Code 1979, § 6-3011; Ord. No. 2008-025, 6-18-08; Ord. No. 2009-036, 6-3-09; Ord. No. 2010-110, 7-28-10)

CERTIFIED
A TRUE COPY
Tina D. Moore
CITY CLERK 2.9.12

Sec. 17-55. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building or use. An accessory building or use is:

(1) Subordinate to and serves a principal building or principal use;

(2) Subordinate in area, extent or purpose to the principal building or principal use served;

(3) Designed for the comfort, convenience or necessity of occupants of the principal use served; and

(4) Located on the same lot as the principal building or principal use served, with the exception of such accessory off-street facilities as are permitted to locate elsewhere than on the same lot with building or use served.

Accessory uses shall include but not be limited to barns, sheds, home tennis courts, swimming pools, automobile garages, decks, patios and private recreation areas.

Alley means a minor right-of-way used or intended to be used primarily for vehicular service access to the rear or side of properties otherwise abutting a street.

Antenna means any device for radiating or receiving electromagnetic radiation. This definition shall specifically include, but is not limited to, all radio, television, microwave and satellite dish antennas.

Apartment means a part of a building consisting of rooms intended, designed or used as a residence by an individual or family.

Applicant means any person who submits an application for review and/or approval.

Bedroom means any room or space used or intended to be used for sleeping purposes.

Boardinghouse. See *Roominghouse*.

Buffer transition yard. A landscaped transitional area intended to separate and screen adjacent differing land uses. The buffer yard is located within the property to be screened and is adjacent to the lot lines of the property but not to lot lines abutting the right of way. (See *street protective yard*)

Building means any structure having a roof supported by columns or walls and which is designed for shelter, support or enclosure of persons, animals or property of any kind.

Caliper. The standard for trunk diameter measurements of nursery stock. Caliper of the trunk is measured six inches above the ground for four-inch or smaller caliper trees and 12 inches above the ground for larger sizes.

Cambium. The layer of formative cells between the wood and bark in woody plants.

CERTIFIED
A TRUE COPY
228
Erika D. Moore
CITY CLERK

Clear cutting. The removal of all trees from a property, whether by cutting or other means, excluding stream buffer requirements.

Club means an incorporated or unincorporated association for civic, social, cultural, religious, literary, political or like activities, operated for the benefit of its members and not open to the general public.

Commercial timber operations. Activities occurring on tracts of land five acres or more in size devoted to the production of marketable forest products through generally accepted silvicultural practices including, but not limited to, harvesting, site preparation, and regeneration.

Commercial vehicle means a vehicle or portion thereof defined as a commercial vehicle by S.C. Code Ann. § 56-1-2030 (4), any attachment capable of being pulled or designed to be pulled by a commercial vehicle, and construction equipment of any kind. Commercial vehicle shall not include any vehicle commonly designated as a pick-up truck, an authorized emergency vehicle as defined by S.C. Code Ann. § 56-5-170, or any vehicle while actively engaged in temporary loading, unloading, or service.

Community residential care facility includes any institution, place, building or agency providing for a period exceeding 24 consecutive hours accommodation, board, and a degree of personal assistance in feeding, dressing or other essential daily living activities to two or more individuals not related to the administrator or owner of the facility within the third degree of consanguinity. These individuals, by reason of age or physical or mental infirmity, are unable to care sufficiently or properly for themselves or manage their own affairs but do not require the daily services of a registered or licensed practical nurse. A community residential care facility includes any chemical abuse residential treatment facility, such as a halfway house, and other facilities providing inpatient or detoxification services.

Critical root zone. The area of tree roots within the crown dripline. This zone is generally defined as a circle with a radius extending from the tree trunk to a point no less than the farthest crown dripline. Disturbances within this zone will directly affect a tree's chance for survival.

D.B.H. Diameter at breast height, the standard for trunk diameter measurements of trees existing on a site. D.B.H. is measured in inches at a height of 4½ feet above the ground. If a tree splits into multiple trunks below 4½ feet, the trunk is measured at the narrowest point beneath the split.

Day care means the care, supervision or guidance of persons, unaccompanied by the parent, guardian or custodian, on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home.

Day care facility means any state licensed, registered or approved facility which provides care, supervision or guidance for any person who is not related by blood, marriage or adoption to the owner or operator of such a facility, whether or not the facility is operated for profit and

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK

whether or not the facility makes a charge for services offered by it. This definition includes but is not limited to day nurseries, nursery schools, kindergartens, day care centers, group day care homes and family day care homes. The term does not include:

(1) Any education facility, whether private or public, which operates solely for educational purposes in grades 1 or above.

(2) Facilities operated in connection with a shopping center, industrial or office building or service, or other facility, where the same children are cared for while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available.

(3) Summer resident or day camps.

(4) Bible schools normally conducted during vacation periods.

Deciduous. Not evergreen; shedding leaves annually.

Density factor for the site (DFS). A unit of measure used to prescribe and calculate required tree coverage on a site. Unit measurements are based on tree size.

Display area. An outdoor area for storage or display of merchandise for sale or lease, whether permanent or temporary, containerized or openly displayed.

Dormitory, private means a building or part of building not operated by an academic institution containing rooms forming one or more habitable units which are used or intended to be used by residents of academic institutions for living, sleeping, cooking, and/or eating purposes.

Dormitory, public means a building or part of a building operated by an academic institution containing rooms forming one or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

Drinking place means an establishment engaged in the retail sale of drinks, such as beer, ale or wine for consumption on the premises.

Drive-through facility means any use, either principal or accessory, that provides goods or services to a person without requiring the person to leave his or her vehicle. Examples of drive-through facilities include, but are not limited to, drive-through automated teller machines, automated car washes, and drive-through windows at restaurants, financial institutions, dry-cleaning establishments, and retail establishments such as liquor stores and pharmacies. Drive-in motion picture theaters, automotive service facilities (except automated car washes), automotive repair facilities, and fuel pumps and like service islands at gasoline service stations are not considered drive-through facilities.

Dwelling means any building designed, occupied or intended for human occupancy, not to include a hotel, motel, roominghouse, hospital or other accommodation used more or less for transient occupancy.

CERTIFIED
A TRUE COPY
Lita D. Moore
CITY CLERK 2.9.12

Dwelling, multifamily means a building containing three or more dwelling units, with each unit having a common structural wall with another dwelling unit. The term "multifamily" shall be understood to include apartments, tenements, condominiums, cooperatives and similar types of structures.

Dwelling, single-family attached means a building designed for and occupied exclusively as a residence by one family, being attached by means of a common dividing side wall to one or more buildings likewise designed for and occupied as a residence for one family. A single dwelling unit occupies each structure from ground to roof, and independent access is available for each unit from the outside. Such attached one-family dwellings are commonly referred to as "town," "patio," "common zero lot line" or "cluster" houses.

Dwelling, single-family detached means a building containing not more than one dwelling unit, not physically attached to any other principal structure, and specifically excluding mobile homes.

Dwelling, townhouse means one of a series of three or more attached one-family dwelling units on separate lots which:

(1) May or may not have a common roof.

(2) Share a common exterior wall.

(3) Are separated from each other by a fire resistive party wall, portions extending at least from the lowest floor level to the roof.

Dwelling, two-family detached means a building, commonly known as a duplex, containing no more than and no less than two dwelling units, not physically attached to any other principal structure.

Dwelling unit means any dwelling designed, occupied or intended for occupancy by a single family unit. A structure or part of a structure shall be considered a dwelling unit where any one of the following elements are proposed or present:

(1) A full bath, except where (a) the full bath is the primary use of the structure, and (b) no other area of the structure may be readily inhabited (i.e. a stand-alone bath house); or

(2) A range, oven, stove, broiler, or other like cooking appliance generally designed for permanent installation; or

(3) A separate power meter, except where the Building Official has determined that power could not be safely supplied from an existing meter; or

(4) A separate water meter or connection to a well.

Encroachment. Any disturbance in the natural grade, through construction of impervious surfaces, trenching or excavation, storage of equipment, materials or earth, or through parking or circulation of vehicles or equipment.

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12

Evergreen. A tree, shrub, or other plant whose leaves remain green throughout all seasons; opposed to "deciduous."

Family means an individual; or two or more persons related by blood or marriage living together; or a group of individuals, of not more than three persons, not related by blood or marriage but living together as a single housekeeping unit.

Flood means a temporary rise of water level in lakes, streams, natural drainage courses, artificial drainage courses or other waterways that results in inundation of areas not ordinarily covered by water.

Flood frequency means the average length of time between flood occurrence, statistically determined, for which it is expected that a specific flood level will be equaled or exceeded.

Flood, regulatory means a flood which is representative of large floods known to have occurred generally in the area or reasonably characteristic of floods which may be expected to occur, having a specified flood frequency, and which may reasonably be expected to cause damage or hazard of damage sufficient to justify protection therefrom.

Floodplain means those areas subject to periodic inundation by large floods which occur with calculable flood frequency and subject to flooding which may reasonably be expected to cause damage or hazard of damage sufficient to justify protection therefrom. For purposes of this article, the floodplain is considered to be that area designated by the notation "-FP" appended to a basic district classification. The boundaries of such areas are generally lateral to the boundaries of floodway areas or to the drainage course along which they are located.

Floodway means that cross-sectional area of the floodplain which is necessary for hydraulic conveyance and discharge of the regulatory flood and within which hydraulic velocities are such that significant hazard to structures or other properties exists.

Grand tree. A grand tree is any tree in fair or better condition that equals or exceeds the following diameter sizes:

Tree Type	*Tree Diameter*	*Examples*
Large hardwoods	24″ d.b.h.	Oak, Hickory, Tulip Poplar, Beech
Large softwoods	30″ d.b.h.	Pine, Deodar Cedar, Red Cedar
Small hardwoods	10″ d.b.h.	Dogwood, Redbud, American Holly

A lesser-sized tree can be considered a grand tree if it is a rare or unusual species, of exceptional quality, or of historical significance.

Grand tree stand. A contiguous grouping of trees that has been determined to be of value by the zoning administrator. Determination is based on any of the following criteria: maturity (even-aged); purity of species composition; rare or unusual nature of the species; historical significance; or exceptional aesthetic quality.

Gross floor area means the total horizontal area of all floors of a building, including exterior balconies and mezzanines, measured from the interior faces of the exterior walls of a building.

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12
232

Group commercial or industrial development means a single lot containing one or more buildings used for commercial or industrial purposes which individually or collectively contain a gross floor area of 25,000 square feet or more.

Group housing development means two or more separate dwellings or three or more dwelling units located on a single lot. Group housing developments include triplexes, quadruplexes, townhouses, apartments, high-rise residential structures and other similar structures.

Hardwood tree. A broad-leaved tree, so called because its wood is harder and more compact than that of a softwood, or needle-bearing conifer.

High-rise residential structure means any building which contains dwelling units and exceeds five stories or 50 feet in height.

Home occupation means an occupation, profession or trade customarily and commonly carried out by an occupant in a dwelling unit as a secondary use which is clearly incidental and subordinate to the residential character of the dwelling unit.

Hotels.

(1) *Hotel* means a building, or part thereof, in which sleeping accommodations are offered to the public, in which there is a public dining room for the convenience of the guests. Access to the sleeping rooms shall be through an inside lobby or the office.

(2) *Hotel, bed and breakfast* means any owner-occupied building or portion thereof offering transient lodging accommodations and breakfast to a unit consisting of not more than five rooms where rent is paid. Transient lodging is defined as occupancy not to exceed a period of two consecutive weeks at a time.

(3) *Hotel, suite* means any commercially owned and operated facility or portion thereof offering transient lodging accommodations. The units are specifically designed to provide complete cooking and eating facilities and completely furnished to a unit consisting of not more than three rooms. A complimentary meal may or may not be furnished as part of the rental agreement.

Junk, salvage, scrap or wrecking yard means any use involving storage or processing of inoperable, unused, dismantled or wrecked vehicles, equipment or machinery or the storage or processing of scrap metal, waste paper, rags, food processing wastes, construction wastes, industrial wastes, secondhand building materials, or other scrap, salvage, waste or junk materials.

Lot means an area of land clearly defined by plat or metes and bounds description duly recorded with the register of mesne conveyances of the county.

Lot, corner means a lot located at the intersection of two or more streets. A lot abutting on a curved street shall be considered a corner lot if straight lines drawn from the foremost point of the lot lines to the foremost point of the lot (or an extension of the lot where it has been rounded by a street radius) meet at an interior angle of less than 135 degrees.

CERTIFIED
A TRUE COPY
Tisha D. Mears
CITY CLERK 2.9.12

Lot depth means the distance from the street frontage to the lot line opposite the street frontage, determined by measurement from the center of the street frontage to the opposite property line.

Lot frontage. The front of an interior lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided upon that basis. The phrase "street frontage" shall be interpreted to have the same meaning as the phrase "lot frontage."

Lot, interior means a lot, other than a corner lot, with only one frontage on a street.

Lot, reversed frontage means a lot which is at right angles, or approximately right angles, to the general pattern in the area involved. A reversed frontage lot may also be a corner lot or an interior lot or, rarely, a through lot.

Lot, through means a lot, other than a corner lot, with frontage on more than one street other than an alley. Through lots with frontage on two streets may be referred to as double frontage lots.

Lot width means the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard; provided, however, that the width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than 80 percent of the required lot width, and in the case of lots fronting on a cul-de-sac, the width between side lot lines at their foremost points shall not be less than 20 feet.

Masonry wall. A wall constructed of brick, stone or stucco.

Microbrewery means the production of beer, regardless of the percentage of alcoholic volume (ABV), in quantities not to exceed 15,000 barrels or 475,000 gallons per year.

Miniwarehouse means a building or group of buildings in a controlled access and fenced compound that contains individual, compartmentalized and controlled access stalls or lockers for the dead storage of customers' goods or wares.

Mobile home means a movable or portable dwelling unit over 32 feet in length and over eight feet in width, constructed to be towed on its own chassis, designed without a permanent foundation, and capable of supporting year round occupancy, which may include one more components that can be retracted for towing purposes and subsequently expanded, or which may consist of two or more units separately towable but designed to be joined into one integral unit. The term "mobile home" shall not include prefabricated, modular or unitized dwellings placed on permanent foundations, nor shall it include travel trailers, campers or similar units designed for recreation or other short term uses.

Mobile home park means a lot used, designed or intended to be used for the purpose of supplying parking space for two or more occupied mobile homes, and which includes buildings, structures, vehicles or enclosures used or intended to be used as part of that mobile home park. Sales or storage lots for unoccupied mobile homes are not considered to be mobile home parks.

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12

Modular unit means a structure consisting of two or more prefabricated components, which is designed to be placed on a permanent foundation at the site and is not readily relocated. The components generally arrive at the site complete except for exterior siding, furniture, plumbing and electrical fixtures. Modular units shall be considered buildings and shall conform with the regulations for site-built units in the Standard Building Code.

Motel means a commercial establishment offering lodging and automobile parking for transient travelers, which has individual entrances from outside the building to serve the separate units.

Nonconforming is a term applied to lots, structures, uses of land or structures, and characteristics of use of land or structures which were lawful before the passage of the ordinance from which this article is derived or before the amendment of this article, but which are prohibited by this article or which are not in compliance with the requirements of this article.

Park means an area or facility intended to be used for recreation, exercise, sports or similar activities, or an area intended to enhance the enjoyment of natural features or natural beauty, but specifically excluding commercially operated amusement parks.

Parking space, off-street means an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street arranged so that no maneuvering incidental to parking shall be on any public street and so that an automobile may be parked or unparked therein without moving any other automobile.

Person. The word "person" includes an individual or a firm, association, partnership, trust, company, corporation, or any other entity defined in legal usage as a person.

Principal structure means a structure or building having significant or primary use and justifying its own utilization (such as a dwelling or office building) as contrasted to accessory structures which are incidental or subordinate to primary structures and do not alone justify their utilization (such as a tool shed or auto garage used in conjunction with a dwelling). Certain structures may be either principal or accessory, depending upon utilization, such as a parking garage as an accessory structure to a high-rise apartment or as a principal structure when operated commercially in a business area.

Principal use means the significant or primary activity carried out within a structure or upon land (such as retail sales within a store or occupancy of a dwelling unit as a residence) as contrasted to accessory uses which are incidental or subordinate to primary uses (such as sale of soft drinks at an automobile service station). Certain uses may be either principal or accessory, depending upon their relationship with other uses, as for example a newsstand as an accessory use within a hotel lobby or as a principal use within a separate structure.

Protected zone. Portions of a property required by permit to remain in open space; areas required by permit to be landscaped areas and buffer transition yards.

Radiotelephone communications and *telephone communications* mean the provision of voice and data communications by radio (radiotelephone communications) or by wire (telephone

CERTIFIED
A TRUE COPY
Lisa D. Moore
CITY CLERK 2.9.12

communications), or by any combination of radio and wire, pursuant to authority granted by the Federal Communications Commission, the state public service commission, or either of them.

Radiotelephone communications facilities and *telephone communications facilities* mean any facilities used in the provision of radiotelephone communications or telephone communications services, including towers, antennas, electronic equipment, wires, cables, substations, equipment shelters, buildings and other facilities necessary to, or approved or required by the Federal Communications Commission, the state public service commission or either of them for use in or the provision of, radiotelephone communications services or telephone communications services.

Regulatory flood protection elevation means the elevation of the regulatory flood at any point, which may vary from place to place depending on topography, anticipated hydraulic conveyance capacity, encroachment into areas subject to flood, and other factors.

Restaurant means a place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on or off the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, fast-food restaurant, eating and drinking establishment or other similar business. This definition does not include establishments that sell food or beverages as an accessory use or for off-premises preparation or consumption, such as a retail grocery store, convenience store, or delicatessen.

Roominghouse and *boardinghouse* mean any dwelling, other than a hotel or motel, in which more than three persons who are not members of the owner's or operator's family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which such accommodations are offered in ten or more rooms shall be considered to be a hotel or motel.

Screening. A visual shield against a higher impact land use created in a buffer transition yard with plantings, walls, fencing, etc.

Setback line. The setback line is the same as the depth or width of any required yard. Such line defines the minimum distance between any structure and an adjacent lot boundary and is not necessarily the same as the building line, which is the distance between the actual structure and an adjacent lot boundary.

Shade tree. An evergreen or deciduous tree of a species with an expected mature height of over 40 feet and an expected crown spread of over 30 feet.

Shrub. A woody plant, usually maturing at less than 12 feet, having several permanent stems, instead of a single trunk.

Sign means any device designed to inform or attract as defined in division 12 of this article.

Small-maturing tree. An evergreen or deciduous tree with a mature height of over 15 feet but no greater than 25 feet.

CERTIFIED
A TRUE COPY
Erika D. Meade
CITY CLERK 2.9.12

Softwood tree. A coniferous (cone-bearing) tree such as pine, cedar and bald cypress.

Street means a public thoroughfare designed to provide the principal means of access to abutting property, or designed to serve as a roadway for vehicular travel, or both, but excluding alleys.

Street protective yard. A landscaped area planted with trees and other vegetation that is parallel and adjacent to the recorded or proposed public street right-of-way.

Structure means anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground, including mobile homes, travel trailers, signs, mobile signs, tubs, swimming pools or other bathing facilities, portable signs and antennas, but excluding from definition as structures the following: minor landscaping features such as ornamental pools, planting boxes, birdbaths, paved surfaces, walkways, driveways, recreational equipment, flagpoles and mailboxes.

Temporary vendor means a person who sells merchandise, goods, services, or forms of amusement from a temporary structure, such as a tent, awning, canopy, umbrella, stand, booth, cart, or trailer, from a vehicle, or from his person. A temporary vendor does not include a person who conducts the majority of his business from within a permanent and enclosed building located upon the same lot.

Thinning. The selective cutting or removal of trees.

Timber harvesting. The felling of trees for timber products. This term may include both clear-cutting and the thinning of timber.

Travel or camping vehicle means a vehicular portable structure designed as a temporary dwelling for travel or recreational use, not exceeding 35 feet in length.

Tree. A self-supporting woody perennial plant with a trunk diameter of at least two inches measured at six inches above ground level, with a mature height of at least 12 feet, and usually having one main stem or trunk and many branches.

Tree form. Plants that have been grown and maintained as trees, not shrubs, usually with three to five stems, trunks, or canes, and free of limbs from the ground up to three or four feet.

Tree inventory. A tally of the number, species, approximate size and approximate location of existing trees on a site, obtained through photos, including aerials. To be verified by on-site viewing of city staff authorized to perform the verification.

Tree survey. A survey completed by a registered land surveyor, usually as part of a site plan, of the location, size (as D.B.H.) and species of the existing trees on a site. (For purposes of this ordinance, this survey shall include grand trees, trees of 12" or greater D.B.H. in any areas to be disturbed, and any other trees identified to meet the required density factor for the site.) To be verified by on-site viewing of city staff authorized to perform the verification.

Utility service area. An area that contains a utility box, booster box, switching station, lift station, substation, transformer, pedestal, or similar above-grade device used to serve an underground utility.

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12

Vehicular display area. An area where vehicles are stored and displayed for sale or lease.

Vehicular surface area. An area where motor vehicles are either stored or driven, including private driveways, private streets built in accordance with this chapter, parking lots, rental lots and depots.

Yard means a required open space unoccupied and unobstructed by any structure or portion thereof from a height of 48 inches above the finished grade level of the ground. For the purpose of interpretation and regulation, certain exceptions are set forth in division 8 of this article.

Yard, front means a yard extending between side lot lines across the front of a lot, and measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without that rounding. Front and rear lines of a required front yard shall be parallel.

Yard, rear means a yard extending across the rear of the lot between the inner side yard lines, measured at right angles to a straight line joining the rearmost points of the side lot lines. The forward rear yard line of a required rear yard shall be parallel to the straight lines so established.

Yard, side means a yard extending from the rear line of the required front yard to the rear lot line, measured at right angles to a straight line joining the ends of the front and rear lot lines on the same side of the lot. The inner side yard line of a required side yard shall be parallel to the straight line so established. In the case of through lots, side yards shall extend from the rear lines of the required front yards. In the case of corner lots, the yards remaining after full and half depth front yards have been established shall be considered to be the side yards.

(Code 1979, § 6-3012; Ord. No. 96-25, 11-6-96; Ord. No. 2002-050, § 1, 6-5-02; Ord. No. 2006-004, 1-18-06; Ord. No. 2007-015, 6-6-07; Ord. No. 2008-004, 1-23-08; 2008-049, 11-5-08; Ord. No. 2009-023, 4-1-09; Ord. No. 2010-119, 8-2-11)

Cross reference—Definitions generally, § 1-2.

Secs. 17-56—17-80. Reserved.

DIVISION 2. ADMINISTRATION, ENFORCEMENT AND PENALTIES

Sec. 17-81. Responsibility for administration.

(a) *Zoning administrator.* A zoning administrator designated by the city manager shall administer and enforce this article. The zoning administrator may be provided with the assistance of such other persons as the city manager may direct. It is the intent of this article that all questions of administration and enforcement shall first be presented to the zoning administrator and that such questions shall be presented to the board of zoning appeals only upon reference by, or appeal from, the zoning administrator, and that recourse from the decisions of the board of zoning appeals shall be to the courts as provided by law.

CERTIFIED
A TRUE COPY
Tuka D. Moore
CITY CLERK 2.9.12
238

(b) *City council.* It is further the intent of this article that the function of the city council under this article shall not include hearing and deciding questions of interpretation and enforcement which may arise, but that the city council shall have only the responsibility for acting on proposals for amendment or repeal of this article, and for establishing a schedule of fees and charges as provided in this article.
(Code 1979, § 6-3171; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-82. Duties of zoning administrator.

The duties of the zoning administrator shall include:

(1) Interpretation of the terms and provisions of this article;

(2) Administration of the provisions of this article relating to zoning permits and certificates;

(3) Administration of provisions of this article relating to applications for special exceptions, variances, appeals from an administrative decision and other actions before the zoning board of zoning appeals;

(4) Administration of provisions of this article relating to applications for zoning amendments and giving notice of hearings on such amendment requests as specified in this article;

(5) The receipt of complaints from persons who allege that violations of this article have occurred, to properly investigate or cause to be investigated such complaints, and to initiate or cause to be initiated action to prevent, enjoin, abate or remove such violations;

(6) The maintenance of the official copy of the zoning map and other such records and official materials as may relate to the adoption, amendment, enforcement or administration of this article; and

(7) Other such duties as may properly relate to the accomplishment of the spirit and intent of this article.
(Code 1979, § 6-3172; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-83. Zoning permit.

(a) *Required.* No building or other structure shall be erected, moved, added to or structurally altered without a zoning permit therefor issued by the zoning administrator. A zoning permit shall not be issued by the zoning administrator except in conformity with the provisions of this article, unless he receives a written order from the board of zoning appeals in the form of an interpretation involving error or a special exception or variance as provided in division 3 of this article. If the permit is denied, reasons shall be stated for the denial.

(b) *Application.* All applications for zoning permits shall be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon, the exact sizes and locations on the lot of all buildings already existing, if any, and the location and dimensions of

CERTIFIED
A TRUE COPY
CITY CLERK 2.9.12

the proposed building or alteration. The application or plans shall include such other information as lawfully may be required by the zoning administrator, including existing or proposed uses of the building and land, the number of families, housekeeping units or rental units the building is designed to accommodate, conditions existing on the lot and on nearby lots, and such other matters as may be necessary to determine conformance with and provide

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12

for the enforcement of this article. One copy of the plans shall be returned to the applicant by the administrative official, after he shall have marked the copy either as approved or disapproved and attested to this by his signature on the copy.

(c) *Expiration.*

(1) If the work described in any zoning permit has not begun within six months from the date of issuance thereof, or in the case of a special exception, within the time limit established therefor, the permit shall expire and be canceled by the zoning administrator. Written notice thereof shall be given to the persons affected.

(2) If the work described in any zoning permit has not been substantially completed within one year of the date of issuance thereof, the permit shall expire and be canceled by the zoning administrator, except as follows:

a. In the case of a special exception, work shall be substantially completed within the time limit established therefor by the zoning board of zoning appeals; or

b. In the case of work which may reasonably be expected to require more than one year for completion, the zoning administrator may specify a time limit in excess of one year at the time of original issuance of the zoning permit.

(3) Written notice of the expiration of any zoning permit shall be given to the persons affected, including notice that further work as described in the canceled permit shall not proceed unless and until a special zoning permit has been obtained.

(d) *Certificate of occupancy.* No renovated, new or used structure may be occupied or used until the zoning administrator has approved a certificate of occupancy.
(Code 1979, § 6-3173; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-84. Certificate of zoning compliance.

(a) *Required.* It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof, hereafter created, erected, changed, converted, or wholly or partially altered or enlarged in its use or structure until a certificate of zoning compliance shall has been issued therefore by the zoning administrator stating that the building or proposed use of the building or land conforms to the requirements of this article.

(b) *Nonconforming uses.*

(1) Upon enactment or amendment of provisions of this article, owners or occupants of uses made nonconforming shall apply for certificates of zoning compliance for the purpose of establishment of vested interest in those nonconforming uses, and the zoning administrator may issue those certificates upon acceptance of reasonable proof that the nonconformity was in existence at the time of such enactment or amendment, and certificates of zoning compliance issued upon such applications shall state specifically wherein the nonconforming use differs from the requirements of this article. In instances where the building official finds that a residential structure was originally constructed in the manner for which it or the associated use has now been

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12

deemed nonconforming, the zoning administrator may issue those certificates upon acceptance of reasonable proof that the nonconformity has not been vacant, abandoned or discontinued for any period of 12 consecutive months within the last six years.

(2) After the issuance of a certificate of zoning compliance for nonconforming uses and/or structures, the zoning administrator shall conspicuously post, on or adjacent to the property affected, one notice for every 100 feet of street frontage or portion thereof. At least one such notice shall be visible from each public thoroughfare that abuts the property. Such notice shall be posted on the same day that the certificate is issued by the zoning administrator. Such notice shall indicate the nature of the nonconformity, identification of the property affected, the date the certificate declaration of nonconforming was issued, where information may be examined, when and how written comments may be received by the zoning administrator, and date by which an appeal must be filed.

(3) Written notice of the issuance of a certificate of zoning compliance for nonconforming uses and/or structure shall be mailed by the zoning administrator on the same day that the certificate is issued by the zoning administrator to all owners of property contiguous to and directly across a thoroughfare from the property for which a certificate has been requested. Mailing address shall be derived from the most recent owner(s) name and address as is set forth on the real property tax notice for the then current year issued by the Richland or Lexington County Treasurer's Office. The notice shall contain the same information as required of properties posted for these certificates.

(4) The failure to post and deliver the notification as provided in this section shall not invalidate a certificate of zoning compliance.

(c) *Temporary certificate.* A temporary certificate of zoning compliance may be issued by the zoning administrator and other officials or agencies where additional approval is required, and shall authorize only the use, arrangement or location set forth in the approved plans and applications. Location or construction at variance with that authorized shall be deemed a violation of this article, punishable as provided in this article.
(Code 1979, § 6-3174; Ord. No. 2008-112, 6-3-09)

Sec. 17-85. Construction and use to conform with approved plans.

Zoning permits or certificates of zoning compliance issued on the basis of plans and applications approved by the zoning administrator and other officials or agencies where additional approval is required authorize only the use, arrangement or location set forth in the approved plans and applications, and no other use, arrangement, location or construction. Use, arrangement, location or construction at variance with that authorized shall be deemed a violation of this article, punishable as provided in this article.
(Code 1979, § 6-3175)

CERTIFIED
A TRUE COPY
Linda D. Moore
CITY CLERK 2.9.12

Sec. 17-86. Schedule of fees and charges.

(a) The city council may establish a schedule of fees and charges, and a collection procedure, for zoning permits, certificates of zoning compliance, appeals, amendments and other matters pertaining to this article. This schedule of fees and charges, if established, shall be posted in the office of the zoning administrator, and may be altered or amended only by the city council; provided, however, that such fees and charges shall not be levied against the city council, the planning commission, the zoning administrator, or any department or agency of the city.

(b) No permit, certificate, special exception or variance shall be issued or granted unless and until such costs, charges, fees or expenses have been paid in full, nor shall any action be taken on proposed amendments or on proceedings before the board of zoning appeals unless and until applicable charges and fees have been paid in full.
(Code 1979, § 6-3176; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-87. Enforcement generally.

If the zoning administrator shall find that any of the provisions of this article are being violated, he shall, in writing, notify the owner or tenant of the property, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; or discontinuance of any illegal work being done; or shall take any other action authorized by this article to ensure compliance with, or to prevent violation of, its provisions.
(Code 1979, § 6-3177)

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12

Sec. 17-88. Complaints regarding violations.

Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a verbal complaint. The complaint, stating fully the causes and basis thereof, shall be filed with the zoning administrator. He shall record the complaint properly, investigate promptly, and take action thereon as provided by this article.
(Code 1979, § 6-3178)

Sec. 17-89. Remedies.

In case any building or structure is erected, constructed, reconstructed, altered, maintained or used in violation of this article or regulations in furtherance of this article, the city council, city attorney, zoning administrator or any person aggrieved may, in addition to other remedies provided by law, institute injunction, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.
(Code 1979, § 6-3179)

Sec. 17-90. Penalty.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land is used in violation of this article, or there is a violation of any condition or requirement in connection with special exceptions, variances or rezonings under the terms of this article, that violation shall constitute a misdemeanor, punishable, upon conviction, in accordance with section 1-5. Violation of this article or failure to comply with any of the requirements of this article shall be a misdemeanor. Each day such violation continues after due notice to discontinue that violation shall be considered a separate offense. The owner or tenant of any building, structure, premises or part thereof, and any architect, surveyor, builder, engineer, contractor, agent or other person who commits, participates in, assists in or maintains that violation, may each be found guilty of a separate offense and suffer the penalties provided in this section. Nothing contained in this section shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.
(Code 1979, § 6-3180)

Secs. 17-91—17-110. Reserved.

DIVISION 3. BOARD OF ZONING APPEALS*

Sec. 17-111. Organization and procedures.

(a) *Establishment; membership.* A board of zoning appeals is hereby established, which shall consist of seven members appointed by the city council, a majority of which shall constitute a quorum. The members shall be appointed for staggered terms of five years and

*__Editor's note__—Ord. No. 99-011, § 2, adopted Apr. 21, 1999, changed the designation of div. 3 from "board of adjustment" to "board of zoning appeals."

CERTIFIED
A TRUE COPY
Lucia D. Moore
CITY CLERK

until successors are appointed and qualified. Members may be removed for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect one of its members chairman for a one-year term.

(b) *Meetings and rules of procedure; records.*

(1) The board shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of this article. Meetings of the board shall be held at the call of the chairman and at those other times as the board may determine. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such facts, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the zoning administrator and shall be a public record.

(c) *Appeal procedure.* Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning administrator. That appeal shall be taken within 30 days by filing with the zoning administrator from whom the appeal is taken and with the board of zoning appeals a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board of zoning appeals shall fix a reasonable time for hearing the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

(d) *Stay of proceedings pending appeal.* An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning administrator from whom the appeal is taken certifies to the board of zoning appeals, after notice of appeal is filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of zoning appeals or by a court of record on application, on notice to the zoning administrator from whom the appeal is taken and on due cause shown. (Code 1979, § 6-3191; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-112. Powers and duties.

The board of zoning appeals shall have the following powers and duties:

(1) *Administrative review.* The board of zoning appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.

CERTIFIED
A TRUE COPY
Linda D. Moore
CITY CLERK 2.9.12

(2) *Special exceptions.*

a. *Duties.* Duties of the board are as follows:

1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;
2. Decide the questions as are involved in determining whether special exceptions should be granted;
3. Prescribe appropriate conditions and safeguards in conformity with this article; and
4. Deny special exceptions when not in harmony with the intent and purpose of this article.

b. *Procedures in consideration of special exception applications.*

1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
4. The board of zoning appeals shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.
5. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
6. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.

c. *Criteria for special exceptions.* In addition to definitive standards in this article, the board of zoning appeals shall consider the following:

1. Traffic impact;
2. Vehicle and pedestrian safety;
3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and

CERTIFIED
A TRUE COPY
Linda D. Moore
CITY CLERK 2.9.12

5. Orientation and spacing of improvements or buildings.

d. *Effect of failure to meet conditions.*

1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this article.

2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

(3) *Variances.*

a. *Duties.* Duties of the board are as follows:

1. It shall be the duty of the board to authorize upon appeal in specific cases a variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals that the conditions listed under subsection (3)b of this section have been met.

2. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.

3. In granting any variance, the board may prescribe conditions and safeguards in conformity with this article.

b. *Procedures in consideration of request for variance.*

1. A written application for a variance shall be submitted demonstrating that:

(i) There are extraordinary and exceptional conditions pertaining to the piece of property;

(ii) These conditions do not generally apply to other property in the vicinity;

(iii) Because of these conditions, the application of this division to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

2. The board may not grant a variance the effects of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2.9.12

extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.

3. Notice of public hearing shall be given as described in subsection (2)b.2 of this section.
4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.
5. The board of zoning appeals shall make findings that the requirements of subsection (3)b.1 of this section have been met by the applicant for a variance.
6. The board of zoning appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
7. The board of zoning appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
8. The board of zoning appeals may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.

c. *Effect of failure to meet conditions.*

1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article, punishable under penalties established in this article.
2. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.

(4) *Joint applications for special exception and variance(s).* Whenever in conjunction with an application for special exception, an applicant files an application for variance, the board of zoning appeals may combine the applications and consider them simultaneously, provided that the procedures established for special exceptions and variances within this section 17-112 shall not be varied.

(Code 1979, § 6-3192; Ord. No. 99-011, §§ 2, 3, 4-21-99; Ord. No. 2004-058, 7-21-04)

Sec. 17-113. Actions and decisions of board in favor of applicant.

(a) Upon appeal of a decision of the zoning administrator, the board of zoning appeals may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the zoning administrator from whom the appeal is taken.

CERTIFIED
A TRUE COPY
Erika D. Mae
CITY CLERK 2-9-12

(b) All final decisions and orders of the board shall be in writing and be permanently filed in the office of the zoning administrator as a proper record. All findings of fact and conclusions of law shall be separately stated in final decisions or orders of the board.
(Code 1979, § 6-3193; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-114. Appeals from decisions of board.

Any person who may have a substantial interest in any decision of the board of zoning appeals, or any officer or bureau of the city having authority, may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the decision of the board is mailed.
(Code 1979, § 6-3194; Ord. No. 99-011, § 2, 4-21-99; Ord. No. 2008-030, 4-2-08)

Secs. 17-115—17-130. Reserved.

DIVISION 4. AMENDMENTS

Sec. 17-131. Authorized.

The city council may, from time to time, amend any part of the text or map of this article.
(Code 1979, § 6-3201)

Sec. 17-132. Initiation.

(a) *Text amendments.* Amendments to the zoning text may be initiated by:

(1) Adoption of a motion by the planning commission.

(2) Application by a member of the city council.

(3) The zoning administrator or city manager.

(b) *Map amendments.* An amendment to the zoning map may be initiated by:

(1) Adoption of a motion by the city planning commission.

(2) Application by a member of the city council.

(3) The zoning administrator or city manager.

(4) The filing of an application by the property owner or his authorized agent.
(Code 1979, § 6-3202)

Sec. 17-133. Contents of application.

The application for amendment shall contain at least the following information:

(1) Name, address and telephone number of the applicant;

(2) Tax map reference (sheet, block and lot numbers) and street address of the property;

(3) Proposed amendment to the text or property map reference;

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK 2-9-12

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
9 Fishing, hunting and trapping	x																			
91 Commercial fishing	x																			
92 Fish hatcheries and preserves	x																			1.7 for each 1,000 square feet of gross floor area
97 Hunting and trapping, and game propagation	x																			
DIVISION B. MINING																				
14 Mining and quarrying of nonmetallic minerals, except fuels																	x			No requirement
DIVISION C. CONSTRUCTION																				
15 Building construction—General contractors and operative builders															x	x				
151 Office only								x	x	x	e	x	x	x	x	x	a/e	x	x	
16 Construction other than building construction—General contractors															x	x				3 for each 1,000 square feet of gross floor area
161 Office only								x	x	x	e	x	x	x	x	x	a/e	x	x	
17 Construction—Special trade contractors															x	x				
171 Office only											e				x	x	a/e	x	x	
DIVISION D. MANUFACTURING (section 17-293)																				
20 Food and kindred products															x	x			a/c	
205 Bakery products										x					x	x			a/c	
207 Microbrewery (section 17-290) products										c					x	x		c	c	1.7 for each 1,000 square feet of gross floor area
21 Tobacco products																x				
22 Textile mill products																x			a/c	
23 Apparel and other finished products made from fabrics and similar materials															x	x		e	a/c	

CERTIFIED A TRUE COPY
CITY CLERK 2-9-19

250

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
24 Lumber and wood products, except furniture															x	x			a/c	3 for each 1,000 square feet of gross floor area
241 Logging camps and logging contractors	e																			
25 Furniture and fixtures										e		e			x	x		e	a/c	
26 Paper and allied products																x		e	a/c	
27 Printing, publishing and allied industries										x		e	e		x	x		e	a/c	
28 Chemicals and allied products																x			a/c	1.7 for each 1,000 square feet of gross floor area
29 Petroleum refining and related industries																x				
30 Rubber and miscellaneous plastic products																x			a/c	
31 Leather and leather products																x				
32 Stone, clay, glass and concrete products																x		e	a/c	
33 Primary metal industries																x			a/c	
34 Fabricated metal products, except machinery and transportation equipment																x		e	a/c	
35 Machinery, except electrical																x			a/c	
36 Electrical and electronic machinery, equipment and supplies																x			a/c	1.7 for each 1,000 square feet of gross floor area
37 Transportation and equipment																x				
38 Measuring, analyzing and controlling instruments; photographic, medical and optical goods; watches and clocks															x	x			a/c	
39 Manufacturing industries, not elsewhere classified																x		e	a/c	
DIVISION E. TRANSPORTATION, COMMUNICATION, ELECTRIC, GAS AND SANITARY SERVICES																				

CERTIFIED
A TRUE COPY
CITY CLERK 2.7.12

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
40 Railroad transportation																x			e	
401 Railroads																x			e	
402 Railway express service															x	x			e	
41 Local and suburban transit and interurban highway passenger transportation and service facilities for motor vehicle passenger transportation										e		e	e		x	x		e	e	
42 Motor freight transportation and warehousing															x	x				1.7 for each 1,000 square feet of gross floor area
421 Trucking, local and long distance															x	x				
4212 Local trucking without storage										e					x	x				
4214 Local trucking with storage															x	x				
422 Public warehousing															x	x				
4227 Miniwarehouse (section 17-260)										e					x					
423 Terminal and joint terminal maintenance facilities for motor freight transportation															x	x				4 for each 1,000 square feet of gross floor area
424 Private commercial storage (section 17-260)								a	a	x		x	a	a	x	x			x	1.7 for each 1,000 square feet of gross floor area
43 U.S. Postal Service								e	e	e	x	e	e	e	x		e	e	e	4 for each 1,000 square feet of gross floor area
44 Water transportation															x	x				1.7 for each 1,000 square feet of gross floor area
45 Transportation by air															x	x				
46 Pipelines															x	x				
47 Transportation services															x	x				

CERTIFIED A TRUE COPY
CITY CLERK

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
472 Arragement of transportation services								x	x	x	x	x	x	x	x	x		x	x	3 per each 1,000 square feet of gross floor area
48 Communication																				
481 Telephone communication (wire or radio)										x	x	x	x		x			x	x	
482 Telegraph										x	x				x				x	3 for eqach 1,000 square feet of gross floor area
483 Radio and television broadcasting										x	x	x	x	x	x	x		e	e	
484 Cable									x						x				x	
489 Communication services, not elsewhere classified										x						x	x			1.7 for each 1,000 square feet of gross floor area
49 Electric, gas and sanitary services																				
491 Electric substations	e	e	e	e	e	e	e	e	e	e	e	e	e	e	x	x	e	e	e	1.7 for each 1,000 square feet of gross floor area
492 Gas production and distribution															e	x				
493 Combination electric and gas, and other utility services																x	e			
494 Water supply (section 17-261)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
495 Sanitary services																				
4952 Sewerage systems (section 17-262)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
4953 Refuse systems																x				
DIVISION F. WHOLESALE TRADE																				
50 Wholesale trade—Durable goods															x	x				1.7 for each 1,000 square feet of gross floor area
501 Motor vehicles and automotive parts and supplies										e					x	x				
5093 Scrap															e	e				
51 Wholesale trade—Nondurable goods																				

CERTIFIED A TRUE COPY
Ericka D. Adams
CITY CLERK
2.9.12

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
511 Paper and paper products										e					x	x				
512 Drugs, drug proprietaries and druggists' sundries										e						x				
513 Apparel—Goods and notions										e					x	x				1.7 for each for each 1,000 square feet of gross floor area
514 Groceries and related products										e					x	x				
515 Farm products—Raw materials															x	x				
516 Chemicals and allied products															x	x				
517 Petroleum and petroleum products																				
5171 Petroleum bulk stations and terminals																x				
5172 Petroleum and petroleum products wholesalers, except bulk stations and terminals															x	x				1.7 for each 1,000 square feet of gross floor area
518 Beer, wine and distilled alcoholic beverages															x	x				
519 Miscellaneous nondurable goods										e					x	x				
DIVISION G. RETAIL TRADE (section 17-263)																				
52 Building materials, hardware, garden supply and mobile home dealers																				
521 Lumber and other building materials dealers										e					x			e		1.7 for each 1,000 square feet of gross floor area
523 Paint, glass and wallpaper stores									x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
525 Hardware stores									x	x	x	x	x	x	x			x	x	
526 Retail nurseries, lawn and garden supply stores									x	x	x			x	x			x	x	
527 Mobile home dealers																x				3 for each 1,000 square feet of gross floor area

CERTIFIED A TRUE COPY
CITY CLERK
2.9.12
254

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
53 General merchandise stores																				
531 Department stores									x	x	x	x	x	x				x	x	
533 Variety stores									x	x	x	x	x	x				x	x	3.5 for each 1,000 square feet of gross floor area
539 Miscellaneous general merchandise stores									x	x	x	x	x	x	x			x	x	
54 Food stores																				
541 Grocery stores									x	x	x	x	x	x	x			x	x	
543 Fruit stores and vegetable markets										x	x				x			x	x	3.5 for each 1,000 square feet of gross floor area
546 Retail bakeries									x	x	x	x	x	x	x			x	x	
549 Miscellaneous									x	x		x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
55 Automotive dealers and gasoline service stations																				
551 Motor vehicle dealers (new and used) (17-286)										x		x			x			c	c	3 for each 1,000 square feet of gross floor area
552 Motor vehicle dealers (used only) (17-286)										x		x			x			c	c	3.5 for each 1,000 square feet of gross floor area
553 Auto and home supply stores (17-286)									x	x	x	x	x	x	x			c	c	3.3 for each 1,000 square feet of gross floor area
554 Gasoline service stations (17-286)									e	e	x	e	e	e	x	x		e	e	
555 Boat dealers (17-286)									e	e					x			c	c	3.5 for each 1,000 square feet of gross floor area
556 Recreational and utility trailer dealers (17-286)									e	e					x			c	c	
56 Apparel and accessory stores								e	x	x	x	x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
57 Furniture, home furnishings and equipment stores									x	x	x	x	x	x	x			x	x	
58 Eating and drinking places																				

CERTIFIED A TRUE COPY
CITY CLERK 2.9.12

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
5812 Eating places								a	x	x	x	x	x	x	x			x	x	8 for each 1,000 square feet of gross floor area
5813 Drinking places (alcoholic beverages) (section 17-269)								e	e	e	e	x	x	e	x			e	e	12 for each 1,000 square feet of gross floor area
59 Miscellaneous retail																				
591 Drugstores and proprietary stores								a	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
592 Liquor stores									e	e	e	e	e	e	e			e	e	
5931 Used merchandise stores with weapons										e	e	e	e	e	e	e		e	e	
5932 Used merchandise stores without weapons (17-87)										c	c	c	c	c	c	c		c	c	
5933 Pawn shops										e	e	e	e	e	e	e		e	e	
594 Miscellaneous shopping goods stores									x	x	x	x	x	x	x			x	x	
596 Non-store retailers																				
5961 Mail order house									x	x	x	x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
5962 Automatic merchandising machine operators										x	x				x					
598 Fuel and ice dealers																				
5982 Fuel and ice dealers, except fuel oil dealers and bottled gas dealers										x		x			x					3.5 for each 1,000 square feet of gross floor area
5983 Fuel oil dealers										e					x	x				1.7 for each 1,000 square feet of gross floor area
5984 Liquefied petroleum gas (bottled gas) dealers										e					x	x				
599 Retail stores, not elsewhere classified																				

CERTIFIED A TRUE COPY
ATTEST: Lukas D. Lloyd
4-9-12

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																		*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
5992 Florist								e	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
5993 Cigar store and stands								e	x	x	x	x	x	x	x			x	x	
5994 News dealers and newsstands								e	x	x	x	x	x	x	x				x	
5999 Miscellaneous retail stores, not elsewhere classified								e	x	x	x	x	x	x	x			x	x	
DIVISION H. FINANCE, INSURANCE AND REAL ESTATE (60—67)								x	x	x	x	x	x	x	x	x	x	x	x	
6141 Non-depository personal credit institutions (pay day loan and/or title loan establishments (section 17-294)								c	c	c	c	c	c	c	c	c	c			3 for each 1,000 square feet of gross floor area
6553 Cemetery subdividers and developers	e	e	e	e	e	e	e	x	x	x	x	x	x	x	x	x	x	o	o	
DIVISION I. SERVICES																				
70 Hotels, roominghouses, camps and other lodging places																				
701 Hotels, motels and tourist courts										x	e	x	x	x				x	x	1 for each bedroom
701.1 Suite hotel (section 17-272)									e	x		x	x	x	x			x	x	
701.2 Bed and breakfast hotel (section 17-271)			e						e	x		x	x	x	x			x	x	
702 Roominghouses and boardinghouses						e		e	e											
703 Camps and trailering parks	e																			No requirements
704 Organization hotels and lodginghouses, on membership basis						e		x	x	x		x	x	x				x	x	1 for each 3 beds
72 Personal services																				
721 Laundry, cleaning and garment services																				

CERTIFIED A TRUE COPY
Luke D. Miller
CITY CLERK

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
7211 Power laundries										e					x	x				1.7 for each 1,000 square feet of gross floor area
7212 Garment pressing and agents for laundries and dry cleaners								e	x	x	e	x	x	x	x			x	x	
7213 Linen supply										x		x			x			o	e	
7214 Diaper service										x		x			x			o	o	
7215 Coin-operated laundries and dry cleaning				a	a	a	a	e	e	x	e	x	x	x	x	x		x	x	3.5 for each 1,000 square feet of gross floor area
7216 Dry cleaning plants, except rug cleaning														x	x					1.7 for each 1,000 square feet of gross floor area
7217 Carpet and upholstery cleaning														x	x			o	o	
7218 Industrial launderers														x	x					
7219 Laundry and garment services not elsewhere classified										e				x	x				x	3.5 for each 1,000 square feet of gross floor area
7219.1 Taylor and alteration shops									x	x	x	x	x	x				x	x	
722 Photographic studies, portrait								x	x	x	x	x	x	x	x		x	x	x	1.7 for each 1,000 square feet of gross floor area
723 Beauty shops							a	e	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
724 Barbershops							a	e	x	x	x	x	x	x	x		x	x	x	
725 Shoe repair shops, shoeshine parlors and hat cleaning shops									x	x	x	x	x	x	x		x	x	x	1 for each 300 square feet of gross floor area
726 Funeral service and crematories								x		x	x	x		x			x	x	x	5 plus 1 for each 2 seats of main assembly room

CERTIFIED A TRUE COPY
CITY CLERK 2.9.12

259

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																		*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
729 Miscellaneous personal services, except massage parlors and spas								e	e	x		x	x	x	x			x	x	
7298 Body piercing facilities and tattoo establishments										e					e			x	x	3.5 for each 1,000 square feet of gross floor area
7299 Massage parlors, spas								e	e	e		e	e							
73 Business services																				
7311 Advertising agencies								x	x	x		x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
7312 Outdoor advertising agencies										e					x			o	o	
732 Consumer credit reporting agencies								x	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
7332 Blueprinting and photocopying services (section 17-264)								x	x	x		x	x	x	x		x	x	x	
7333 Commercial photography, art and graphics								x	x	x		x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
7399 Stenographic services and reproduction services not elsewhere classified								x	x	x	x	x	x	x	x			x	x	
734 Services to dwellings and other buildings																				

CERTIFIED
A TRUE COPY
Cathy D. Moore
CITY CLERK 2.9.12

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
7342 Disinfecting and extermination services										x	x	x			x			o	o	
7349 Cleaning and maintenance services to dwellings and other buildings not elsewhere classified										x	x	x			x			o	o	
735 Equipment rental and leasing services services										x					x	x		c	c	3 for each 1,000 square feet of gross floor area
736 Personal supply services										x	x	x	x		x			x	x	
7361 Employment agencies								x	x	x	x	x	x	x	x	x	x	x	x	
7362 Temporary help supply services								x	x	x		x	x	x		x		x	x	
737 Computer and data processing services								x	x	x	x	x	x		x	x	x	x	x	
738 Miscellaneous business services																				
7381 Detective agencies and protective services								x	x	x	x	x	x	x	x		e	x	x	3 for each 1,000 square feet of gross floor area
7384 Photofinishing laboratories															x	x		x	x	1.7 for each 1,000 square feet of gross floor area
7389 Miscellaneous										x	x				x	x		x	x	
7399 Business services not elsewhere classified								e		x		x	x		x			x	x	3 for each 1,000 square feet of gross floor area
7399.1 Recycling centers (see section 17-273)															e	e				
75 Automobile repair, services and garages																				
751 Automobile rental and leasing without drivers																				

CERTIFIED A TRUE COPY
CITY CLERK

260

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
7512 Passenger car rental and leasing without drivers										x		x			x			o	o	
7513 Truck rental and leasing without drivers										x		x			x			o	o	3 for each 1,000 square feet of gross floor area
7519 Utility trailer and recreational vehicle rental										x		x			x			o	o	
752 Automobile parking																				
7523 Parking lots	e	e	e	e	e	e	e	x	x	x		x	x	x	x	x		x	x	No requirements
7525 Parking structures								e	e	e		e	e	e	e	x		x	x	
753 Automotive repair shops										e	e	e			x	x				3.3 for each 1,000 square feet of gross floor area
754 Automotive services, except repair																				
7542 Carwashes										x	e	x			x					3.3 for each 1,000 square feet of gross floor area
7549 Automotive services, except repair and carwashes										e	e	e			x	x				
76 Miscellaneous repair services																				
762 Electrical repair shops																				
7621 Radio and mobile telephone installation shops								e		x		x	x	x	x					3.3 for each 1,000 square feet of gross floor area
7622 Radio and television repair shops									x	x	e	x		x	x			x	x	
7623 Refrigeration and air conditioning service and repair shops										x	e	x			x					
763 Watch, clock and jewelry repair								e	x	x	x	x	x	x	x		x	x	x	
764 Reupholstery and furniture repair								a	a	x	x	x			x				x	
769 Miscellaneous repair shops and related services																				

CERTIFIED A TRUE COPY
CITY CLERK

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
7692 Welding repair															x	x				3.3 for each 1,000 square feet of gross floor area
7699 Repair shops, not otherwise classified									e	x		x		e	x			e	e	
78 Motion pictures																				
781 Motion picture production										x		x	x	x				x	x	1 for each 5 seats in the main auditorium or 1 for each 50 square feet of space used for seating
7832 Motion picture theaters except drive-in								e	e	x		x	x	e	x			x	x	
7833 Drive-in motion picture theaters										e					e					No requirements
79 Amusement and recreation services except motion pictures																				
791 Dance studios and schools								x	x	x	x	x	x	x	x		x	x	x	5 for each 1,000 square feet of gross floor area
793 Bowling alleys and billiard and pool establishments									e	x		x	x		x			x	x	5 for each bowling lane or 1 for each 200 square feet of gross floor area
794 Commercial sports																				

CERTIFIED A TRUE COPY
CITY CLERK

262

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
7941 Professional sports clubs and promoters										x		x	x		x					3 for each 1,000 square feet of gross floor area
7948 Racing including track operations										x					x					1.5 for each 1,000 square feet of gross floor area
795 Civic sports and recreation																				
7951 Municipal or other passive recreation facilities (parks, greenways, including administration facilities)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	No requirements
7952 Municipal active recreation facilities (athletic ball fields, swimming pools, playgrounds, including administration facilities)(Sec. 17-289)	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	
799 Miscellaneous amusement and recreation services																				
7991 Physical fitness facilities and yoga facilities								e	x	x	x	x	x	x	x		x	x	x	5 for each 1,000 square feet of gross floor area
7992 Public golf courses	e	e	e	e	e	e	e	x		x					x					5 for each hole
7993 Coin-operated amusement devices										x		x	x	x	x			x	x	5 for each 1,000 square feet of gross floor area
7996 Amusement parks										x		x	x		x					1 for each 75 square feet of exhibit or amusement area
7997 Membership sports and recreation clubs	e	e	e		e	e	e	e	e	x		x	x		x			x	x	5 for each 1,000 square feet of gross floor area
7999 Amusement and recreation services not elsewhere classified										x		x			x			e	e	
7999.1 Bingo parlors										e		e			e					
80 Health services																				

CERTIFIED A TRUE COPY
CITY CLERK 2.9.12

263

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
801 Offices of physicians								x	x	x	x	x	x	x	x		x	x	x	5 for each 1,000 square feet of gross floor area
804 Offices and clinics of other health practitioners including therapeutic massage (17-288)								c	c	c	c	c	c	c	c		c	c	c	
805 Nursing and personal care facilities				e	e	e	e	x		x		x	x	x				e	e	1 for each 6 beds
806 Hospitals								x		x	x	x	x					x	x	1 for each 2 beds (not including bassinets)
807 Medical and dental laboratories								x	x	x	x	x	x	x	x		x	x	x	1.7 for each 1,000 square feet of gross floor area
81 Legal services								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
82 Educational services																				
821 Elementary and secondary schools	e	e	e	e	e	e		x	x	x	x	x	x	e				e	x	2 per classroom, plus 2 per office, plus 1 for every 5 seats in main auditorium
822 Colleges, universities, professional schools and junior colleges								x		x	x	x	x	x				x	x	1 for each 5 seats in the main assembly hall plus 4 for each classroom plus 2 for each office
823 Libraries and information centers	e	e	e	e	e	e		x	x	x	x	x	x		e		x	x	x	3 for every 1,000 square feet of gross floor area
824 Correspondence schools and vocational schools																				
8244 Business and secretarial schools								x	e	x	x	x	x		x			x	x	1 for each 5 seats in the main assembly hall plus 4 for each classroom plus 2 for each office
8249 Vocational schools except vocational high schools not elsewhere classified								x		x	x	x	x		x			x	x	
83 Social services																				

CERTIFIED A TRUE COPY
CITY CLERK 2.9.12

264

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
832 Individual and family social services								x	x	x	x	x	x				x	x	x	3 for each 1,000 square feet of gross floor area
833 Job training and vocational rehabilitation services								x	x	x	x	x	x		x		x	x	x	
835 Day care facilities (section 17-262)	e	e	e	e	e	e	e	e	e	e	e	e	e	e	e		e	e	c	1 per every 4 students
836 Residential care (section 17-266)	e	e	e	e	e	e	e	e	e	e		e	e					e	e	1 per every 4 residents subject to state law
84 Museums, art galleries, botanical and zoological gardens																				
841 Museums and art galleries								x	e	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
842 Arboreta, botanical and zoological gardens	e							e	e	x	x	x	x		x		x	x	x	
86 Membership organizations																				
861 Business associations								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
862 Professional membership								x	x	x	x	x	x	x	x		x	x	x	
863 Labor unions and similar labor organizations								x		x	x	x	x	x	x	x	x	x	x	
864 Civic, social and fraternal associations								x	x	x	x	x	x	x	x		x	x	x	
865 Political organizations								x	x	x	x	x	x	x	x		x	x	x	
866 Religious organizations	e	e	e	e	e	e	e	x	x	x	x	x	x	x	x		x	x	x	
87 Engineering, accounting, research, management, and related services organizations																				

CERTIFIED A TRUE COPY
CITY CLERK

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																			*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
871 Engineering, architectural and surveying services								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
872 Accounting, auditing and bookeeping services								x	x	x	x	x	x	x	x		x	x	x	
8731 Commercial, physical and biological researchs										e					x	x		e	x	
8732 Commercial economic, sociological, and educational research								x	x	x	x	x	x	x	x			x	x	
8733 Noncommercial research organization								x	x	x	x	x	x	x	x		x	x	x	
8734 Testing laboratories										x		x			x	x		e	x	
874 Management and public relations services								x	x	x		x	x	x	x			x	x	
88 Private households																				
8811 Dwellings																				
8811.1 Detached one-family	x	x	x	x	x	x	x	x	e	e	e						x	x		2 for each dwelling unit
8811.2 Attached one-family				x	x	x		e	e								x	x		
Townhouses (section 17-268)							x		e									x	x	
Two-family			x	x	x	x		x	e	e	e							x	x	
Multifamily				x	x	x		e	e	e	e							x	x	
Group development		e		x	x	x		e	e	e	e							x	x	Under 500 square feet: 1.5/DU 501 to 750 square feet: 1.75/DU Over 750 square feet: 2/DU
High-rise (section 17-304)							x	x		e	x	x	x					x	x	
Mid-rise (section 17-267)								x		e		x	x	x				x	x	
8811.3 Mobile home parks subject to article VI, division 2, of this chapter					e	e														2 per mobile home accommodation

CERTIFIED A TRUE COPY
Erika D. Adams
CITY CLERK
FEB 2 9 13

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"a/c = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	*Zoning Districts*																		*Off-Street Parking Requirements*
	D-1	*RS-1 RS-1A RS-1B RS-2 RS-3*	*R-D RD-2*	*RG-1*	*RG-1A*	*RG-2*	*RG-3*	*C-1*	*C-2*	*C-3*	*C-3A*	*C-4*	*C-5*	*C-6*	*M-1*	*M-2*	*UTD*	*MX-1*	*MX-2*	
8811.4 Dormitories, Public								e		e		x	x					e	x	
8811.5 Fraternity and sorority houses				e	e	e		e		e		e	e					e	e	1 for each bedroom
8811.6 Dormitories, Private							c					c	c					c		
89 Miscellaneous services								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
DIVISION J. PUBLIC ADMINISTRATION																				
91 Executive, legislative and general government except finance																				
911 Executive offices								x	x	x	x	x	x	x				x	x	
912 Legislative bodies								x	x	x	x	x	x					x	x	3 for each 1,000 square feet of gross floor area
919 General government not elsewhere classified								x	x	x	x	x	x	x				x	x	
92 Justice, public order and safety																				
921 Courts								x		x	x	x	x					x	x	3 for each 1,000 square feet of gross floor area
922 Public order and safety																				
9223 Correctional institutions										e					e	e				1 for each 6 inmates
9224 Police and fire protection	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	1 for each employee on shift
93 Public finance, taxation and monetary policy								x	x	x	x	x	x	x				x	x	
94 Administration of human resources programs								x	x	x	x	x	x	x				x	x	
95 Administration of environmental quality and housing programs								x	x	x	x	x	x	x				x	x	3 for each 1,000 square feet of gross floor area
96 Administration of economic programs								x	x	x	x	x	x	x					x	

CERTIFIED A TRUE COPY
ATTEST: Judith D. Moore
DATE: 5/9/19

(Code 1979, § 6-3091; Ord. No. 93-82, 9-15-93; Ord. No. 99-011, § 2, 4-21-99; Ord. No. 99-076, 9-15-99; Ord. No. 2000-028, 5-17-00; Ord. No. 2000-024, § 3, 3-29-00; Ord. No. 2003-39, 5-21-03; Ord. No. 2003-040, 5-21-03; Ord. No. 2003-046, 8-6-03; 2004-005, 2-11-04; Ord. No. 2004-066, 7-21-04; Ord. No. 2005-066, 7-20-05; Ord. No. 2005-092, 8-24-05; Ord. No. 2007-015, 6-6-07; Ord. No. 2008-004, 1-23-08; Ord. No. 2008-025, 6-18-08; Ord. No. 2008-051, 11-5-08; Ord. No. 2008-069, 10-1-08; Ord. No. 2009-023, 4-1-09; Ord. No. 2009-024, 4-1-09; Ord. No. 2009-036, 6-3-09; Ord. No. 2009-064, 8-5-09 Ord. No. 2009-099, 10-7-09; Ord. No. 2009-109, 1-27-10; Ord. No. 2009-117, 2-3-10; Ord. No. 2009-132, 2-3-10; Ord. No. 2010-050, 4-7-10; Ord. No. 2010-110, 7-28-10; Ord. No. 2010-119, 8-2-11; Ord. No. 2010-135, 10-6-10; Ord. No. 2010-143, 12-7-10; Ord. No. 2011-033, 5-24-11; Ord. No. 2011-047, 8-2-11; Ord. No. 2011-048, 8-2-11)

Note—Formerly numbered as 17-255.

CERTIFIED
A TRUE COPY
CITY CLERK 2.9.12
268

e. Parking spaces shall be provided for at least two automobiles for each such dwelling, either on the premises or in a community parking lot or garage, the title to which and/or the easement for the use of which runs with and/or is appurtenant to the title to such dwelling. No such parking lot or garage shall be located more than 200 feet from the dwelling which it serves.

f. All common driveways, parking areas, open spaces or other amenities shall have provision for perpetual maintenance by the participating property owners.

(Code 1979, § 6-3091.10; Ord. No. 2000-024, § 3, 3-29-00)

Note—Formerly numbered as 17-265.

Sec. 17-269. Drinking establishments.

Drinking places in conformity with state law shall be permitted, subject to the following provisions:

(1) *Spacing requirements.* Lots used as drinking places shall not be located closer than 400 feet to any other lot used as a drinking place and shall not be closer than 600 feet to any lot which contains a school or place of worship.

(2) *Hours of operation.* The hours of operation shall be subject to approval by the board of zoning appeals when such establishment is located adjacent to a residential zone.

(3) *Parking requirements.* Off-street parking requirements shall be 12 per each 1,000 square feet of gross floor area.

(4) *Ingress and egress.* Adequate ingress and egress shall be provided.

(Code 1979, § 6-3091.11; Ord. No. 99-011, § 2, 4-21-99; Ord. No. 2000-024, § 3, 3-29-00)

Note—Formerly numbered as 17-256.

Sec. 17-270. Restaurants.

Restaurants under 5,000 square feet are allowed as a permitted use in a C-2 district. Restaurants in excess of 5,000 square feet may be allowed as a special exception by the board of zoning appeals.

(Code 1979, § 6-3091.12; Ord. No. 99-011, § 2, 4-21-99; Ord. No. 2000-024, § 3, 3-29-00)

Note—Formerly numbered as 17-267.

Sec. 17-271. Bed and breakfast hotels.

Bed and breakfast hotels are permitted in C-1, C-2, C-3, C-4, C-5, C-6 and M-1 districts. Bed and breakfast hotels may be permitted as a special exception in RG-1, RG-1A, RG-2, RG-3 and RD districts subject to the following conditions and other conditions as approved by the board of adjustment:

(1) The proposed use of the property shall not adversely affect the immediate neighborhood.

(2) No bed and breakfast hotel in an RG-1, RG-1A, RG-2, RG-3 or RD district shall be located within a 1,500-foot radius of the proposed site.

CERTIFIED
A TRUE COPY
Erika D. Moore
CITY CLERK

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Judge W. Jeffrey Young, Lexington County

Case No. 2012-212228

Tobacco Merchant, **Appellant**

v.

City of Columbia Zoning Administrator,
Board of Zoning Appeals and City of Columbia **Respondent**

Rule 210 Certification

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

Darryl D. Smalls, Attorney at Law
Darryl D. Smalls
P.O. Box 212724
Columbia, SC 29221
(803) 727-6288
Attorney for Appellant Tobacco Merchant

RECEIVED
MAY 03 2013
SC Court of Appeals

Other Counsel of Record

Peter Balthazor
City of Columbia Attorney
P.O. Box 667
Columbia, S.C. 29202

May 2, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COURT OF COMMON PLEAS

CASE No. 2012-212228

Tobacco Merchant,

Appellant

v.

Respondent

City of Columbia, City Zoning Administrator
City Board of Zoning Appeals

Proof of Service

I, the undersigned, attorney for the appellant, do hereby certify that I have served counsel of record with the **RECORD ON APPEAL** by mailing a copy of the same by United States mail first class, to the following addresses:

Peter Balthazor
City of Columbia Attorney
P.O. Box 667
Columbia, S.C. 29202

Darryl D. Smalls, Attorney at Law

Darryl D. Smalls
P.O. Box 212724
Columbia, S.C. 29221
803-727-6288
Attorney for Tobacco Merchant

Date: 5/3, 2013

RECEIVED
MAY 03 2013
SC Court of Appeals