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**S.C. Supreme Court**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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Opinion No. 2014-UP-305 (S.C. Ct. App. filed July 30, 2014)

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Tobacco Merchant,

Petitioner,

v.

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

Respondent.

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INDEX FOR PETITION FOR A WRIT OF CERTIORARI

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**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**

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MAY 03 2013  
**SC Court of Appeals**



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# COLUMBIA



*Everybody Counts - Everybody Contributes - Everybody Benefits*

February 24, 2010

Darryl Smalls  
Attorney at Law  
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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  
Elizabeth Webber-Akre, Chair of the Board of Zoning Appeals

2.24.10  
Date

Cc: Brenda J. Kyzer, Business License Administrator

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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

*WJB*

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

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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)

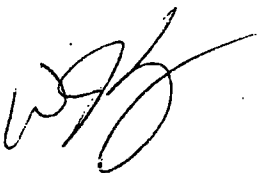
At the two BOZA hearings, the issue was framed as whether the sale of alcohol at the establishment was an accessory use. The Zoning Administrator took the position that the sale of alcohol failed the definition of accessory use found in the Zoning Ordinance. (BOZA 000149) The Appellant argued that the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

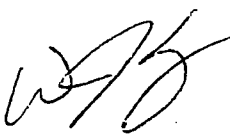




Bloomfield Tp., 308 N.W.2d 701 (Mich. Ct. App. 1981) (holding that home-based psychotherapy and marriage counseling did not qualify as an accessory use because such services were not customarily incident to residential use).

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);



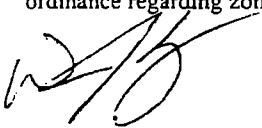
These facts demonstrate that the sale of alcohol is not subordinate to the sale of tobacco. They also demonstrate that the sale of alcohol is not designed for the comfort, convenience or necessity of the occupants. Rather, the sale of alcohol was designed and intended to bring in outside persons for 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.<sup>1</sup> 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

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<sup>1</sup> 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 statute 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").<sup>2</sup> 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

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<sup>2</sup> 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.

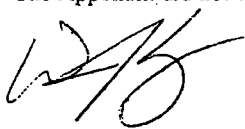
F. The Board's tie vote did not violate the Appellant's due process rights.

The Appellant asserts that the BOZA decision should be reversed or remanded because BOZA's vote resulted in a tie.<sup>3</sup> 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)

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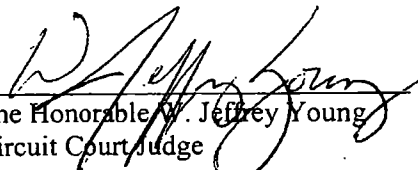
<sup>3</sup> The Appellant's treatment of this issue is also so short and conclusory that it should be deemed abandoned. The Appellant did not cite any authority for its position.



**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

1 State of South Carolina ) In the Court  
2 County of Lexington ) Of Common Pleas  
3  
4 Docket No. 2010-CP-32-01368  
5  
6 Tobacco Merchant, )  
7 Plaintiff, )  
8 VS. ) TRANSCRIPT OF RECORD  
9 )  
10 City of Columbia Zoning )  
11 Administrator, )  
12 Defendant. )

13 February 13, 2012  
14 Lexington, South Carolina  
15

16 B E F O R E:

17 The Honorable W. Jeffrey Young, Judge.  
18

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

20 Darryl D. Smalls, Esquire  
21 Attorney for the Plaintiff

22 Peter M. Balthazor, Esquire  
23 Attorney for the Defendant  
24

25 Brenda J. Sigwald, Circuit Court  
P.O. Box 206, Jackson, South Carolina 29831

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

1 THE COURT: This is Tobacco Merchant?

2 MR. SMALLS: Yes, sir.

3 LAW CLERK: Good morning, Judge.

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

7 What number is this on the docket?

8 The CLERK: Fifty-eight.

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

12 Is that correct?

13 THE CLERK: 1368.

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

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

18 MR. SMALLS: Yes, sir, Your Honor.

19 THE COURT: All right.

20 MR. SMALLS: We have some housekeeping --

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

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

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

1 | housekeeping matters right here in the beginning.

2 |         THE COURT: All right.

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

10 |         THE COURT: I got that.

11 |         MR. BALTHAZOR: And --

12 |         THE COURT: I see that.

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

20 |         THE COURT: All right.

21 |         MR. SMALLS: No objection, Your Honor.

22 |         THE COURT: All right. Without objection.

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

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

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

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

7 MR. SMALLS: Ten days?

8 THE COURT: Ten days.

9 MR. SMALLS: Thank you, Your Honor.

10 THE COURT: All right. You may proceed.

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

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



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

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

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

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

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

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

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

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

8 |         THE COURT: Yes, sir.

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

16 |         Number two, that the board erred in that the  
17 | final decision by making no specific findings of  
18 | fact and ruling of law as required by city  
19 | ordinance and state law.

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

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

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

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

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

1 incidental and subordinate to sale of tobacco  
2 products.

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

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

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

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

16 THE COURT: Thank you.

17 Yes, sir.

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

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

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

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

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

15 MR. BALTHAZOR: Well, I think in this  
16 instance since this is a zoning case and in a  
17 zoning case, I believe we're dealing with what --  
18 just the use of land, not necessarily the raw  
19 numbers of what -- what sales may be. And that's  
20 what -- there are some competing ordinances as Mr.  
21 Smalls recognized. There's the smoking ban  
22 ordinance which the city did enact in probably  
23 2008, but that is not under the jurisdiction of  
24 the the zoning administrators. That's not  
25 something that BOZA deals with.

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

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

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

18           First of all --

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

21           MR. BALTHAZOR: Well, I --

22           THE COURT: -- or was someone absent?

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



1 is set to be seven persons --

2 THE COURT: So normally you would take  
3 the --

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

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

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

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

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

1 MR. BALTHAZOR: I mean -- yes.

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

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

9 THE COURT: Okay.

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

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

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

9           THE COURT: Again, let me ask you --

10          MR. BALTHAZOR: -- front of the business.

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

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

1 | looked at the nature of this.

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

17 |       I don't -- I want to touch on the argument  
18 | made that the approvals were given from the city  
19 | to sell beer and wine from the get-go of this. I  
20 | don't agree with that. I don't think the record  
21 | necessarily supports that either. On page 11 and  
22 | 24 -- I'm sorry, not 11. I know page 24 of the  
23 | record, there is a business license clearance  
24 | form. And I'm trying to find -- and also on page  
25 | 48 of the record is a zoning permit that was

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

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

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

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

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

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

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

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

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

3 MR. BALTHAZOR: I would appreciate that.

4 THE COURT: Five days later.

5 MR. BALTHAZOR: Sure. I will just finish  
6 up by saying, Mr. Smalls acknowledged that this  
7 business had been opened for about fifteen years  
8 and I think the ownership changed or I think Mr.  
9 Smalls represents the new owners that came in in  
10 2009 to start this business. Prior to that, there  
11 was no sale of alcohol at this business. And the  
12 record demonstrates, I think on page 80 of the  
13 record, that the initial opening of the business  
14 by Mr. Smalls clients did not include alcohol  
15 sales. They later installed this bar -- installed  
16 the bar without getting a building permit and then  
17 started serving beer and alcohol and that's when a  
18 complaint came in.

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

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

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



1 THE COURT: Sure.

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

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

9 THE COURT: All right. Thank you.

10 MR. BALTHAZOR: Thank you, Your Honor.

11 THE COURT: Mr. Smalls?

12 MR. SMALLS: Thank you, Your Honor.

13 THE COURT: Briefly.

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

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

18 MR. SMALLS: I think it's 24.

19 THE COURT: Twenty-four.

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

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

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

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

14       THE COURT: Cigar bar slash shop.

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

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

22       MR. SMALLS: Yeah.

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

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

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

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

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

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

18 MR. SMALLS: Yeah.

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

22 MR. SMALLS: We hope that's true.

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

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

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

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

13 |       Thank you, Your Honor.

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

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

18 |       THE COURT: Yes, sir.

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

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

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

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

9 MR. BALTHAZOR: That works.

10 THE COURT: That way we'll have it.

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

13 THE COURT: Thank you, gentlemen.

14 MR. SMALLS: Thank you, Your Honor.

15 THE COURT: Ten days, Mr. Smalls.

16 MR. SMALLS: Thank you, Your Honor.

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

19 MR. BALTHAZOR: Okay. Thanks.

20

21 \* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

22

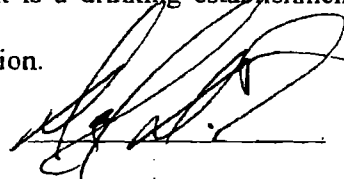
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24

25



- 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 30, 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

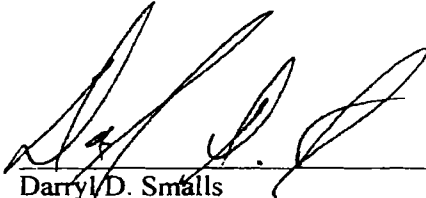
Counsel Served:

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

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

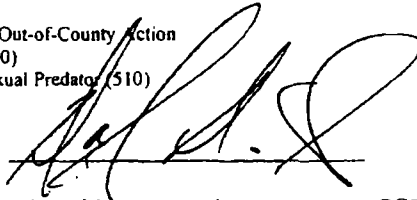
Erica Salley  
Clerk City of Columbia  
P.O. Box 147  
Columbia, S.C. 29217

3/30, 2010

  
Darryl D. Smalls

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

Submitting Party Signature:



Date:

3/29/10

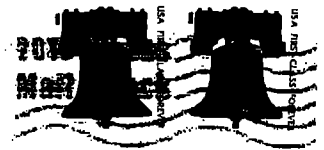
**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

49

BOZA000004

Darryl Smith  
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



**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<br><i>X</i> <i>Darryl Smalls</i>                                                                                                                                                                                                                                                     |  | <input type="checkbox"/> Agent<br><input type="checkbox"/> Addressee |
| B. Receiver (Print Name)<br><i>Darryl Smalls</i>                                                                                                                                                                                                                                                  |  | C. Date of Delivery<br><i>MAR 16 2010</i>                            |
| D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>YES, enter delivery address below: <input type="checkbox"/> No                                                                                                                                                      |  |                                                                      |
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7006 3450 0003 4383 3100

PS Form 3811, February 2004 Domestic Return Receipt

*1220 Bowe / Phony, Ste E-*  
102595-02-M-11

U.S. Postal Service

**CERTIFIED MAIL RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com).

**OFFICIAL USE**

Postage \$  
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Restricted Delivery Fee (Endorsement Required)  
Total Postage & Fees \$

\$

Sent To

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4

*Darryl Smalls*  
*6326 St Andrews Ste 207*  
*Columbia, SC 29212*

PS Form 3800, August 2005

See Reverse for Instructions

BOZA000006

51

# 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.

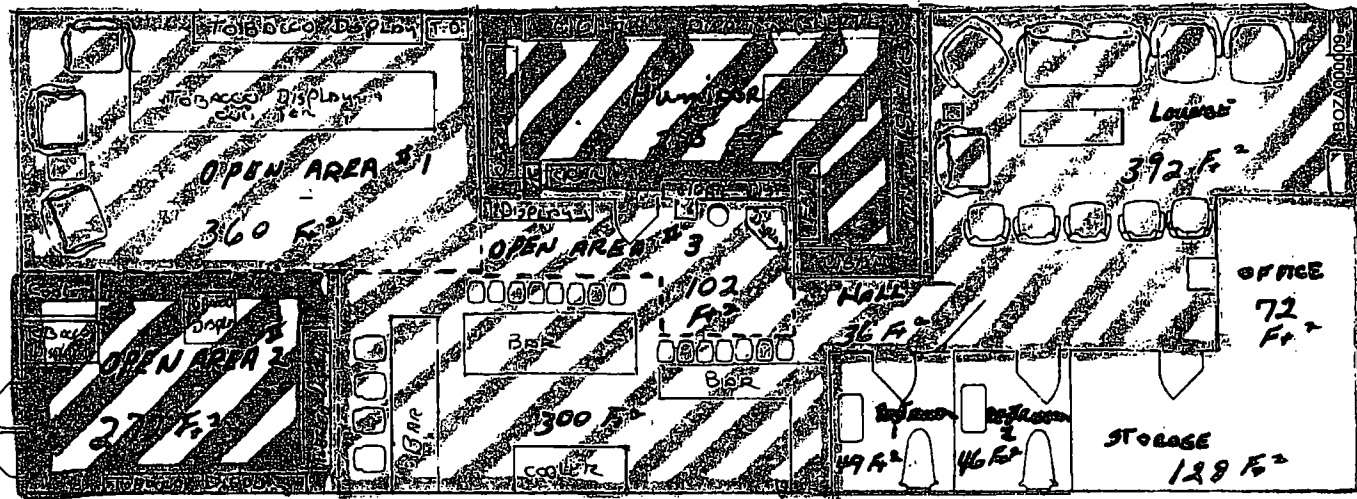
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Elizabeth Webber-Akre  
Elizabeth Webber-Akre, Chair of the Board of Zoning Appeals

2.24.10  
Date

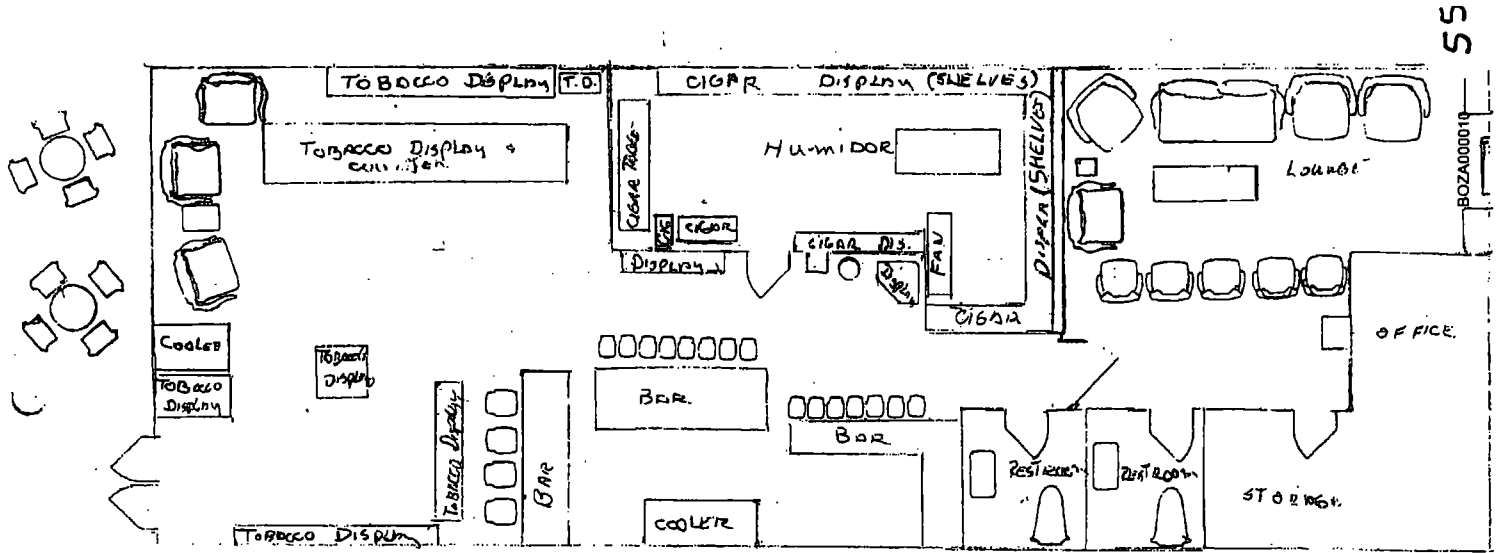
Cc: Brenda J. Kyzer, Business License Administrator

T:\DEVELOPMENTSERVICES\ZONING\BOZA\2010\FEBRUARY\BOWERPARKWAY\_1220\BOWERPARKWAY\_1220\_UPHELD\_LETTER.DOC



|                         |                   |
|-------------------------|-------------------|
| <del>OPEN AREA #1</del> | <del>360 F²</del> |
| <del>OPEN AREA #2</del> | <del>27 F²</del>  |
| <del>OPEN AREA #3</del> | <del>102 F²</del> |
| <del>LOBBY</del>        | <del>392 F²</del> |
| <del>OFFICE</del>       | <del>72 F²</del>  |
| <del>STORAGE</del>      | <del>128 F²</del> |
| <del>RESTROOM #1</del>  | <del>19 F²</del>  |
| <del>RESTROOM #2</del>  | <del>46 F²</del>  |

|                        |                   |
|------------------------|-------------------|
| TOTAL F²               | 2,042 Sq. Ft.     |
| <del>AREA #1</del>     | <del>360 F²</del> |
| <del>AREA #2</del>     | <del>27 F²</del>  |
| <del>AREA #3</del>     | <del>102 F²</del> |
| <del>LOBBY</del>       | <del>392 F²</del> |
| <del>OFFICE</del>      | <del>72 F²</del>  |
| <del>STORAGE</del>     | <del>128 F²</del> |
| <del>RESTROOM #1</del> | <del>19 F²</del>  |
| <del>RESTROOM #2</del> | <del>46 F²</del>  |





**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, 3<sup>rd</sup> 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      | PARCELS     |
| RAILROADS        | CITY LIMITS |
| STREETS          |             |
| ZONING           |             |
| Zoning Districts |             |
| C-1              | C-2         |
| C-3              | C-3A        |
| RS-1             | C-4         |
| RS-1A            | MS-1        |
| RS-1B            | MS-2        |
| RS-2             | PUD-C       |
| RS-3             | PUD-L       |
| RD-1             | PUD-R       |
| RD-1A            | PUD-L-R     |
| RD-2             | PUD-L-B     |
| RD-3             | PUD-L-B     |
| UTD              | Out of City |
| MX-1             |             |

ORIGINAL PREPARATION DATE:  
This map was prepared by:  
C. Michael Corley  
November 30, 2009

**DISCLAIMER:**  
The City of Columbia Department of Planning and Development Services does not represent on this map or plan the products of a professional, 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  
BOZA000015

69



Average Scale: 1 inch = 163.5 feet

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19

BOZA000017



Average Scale: 1 inch = 111.2 feet

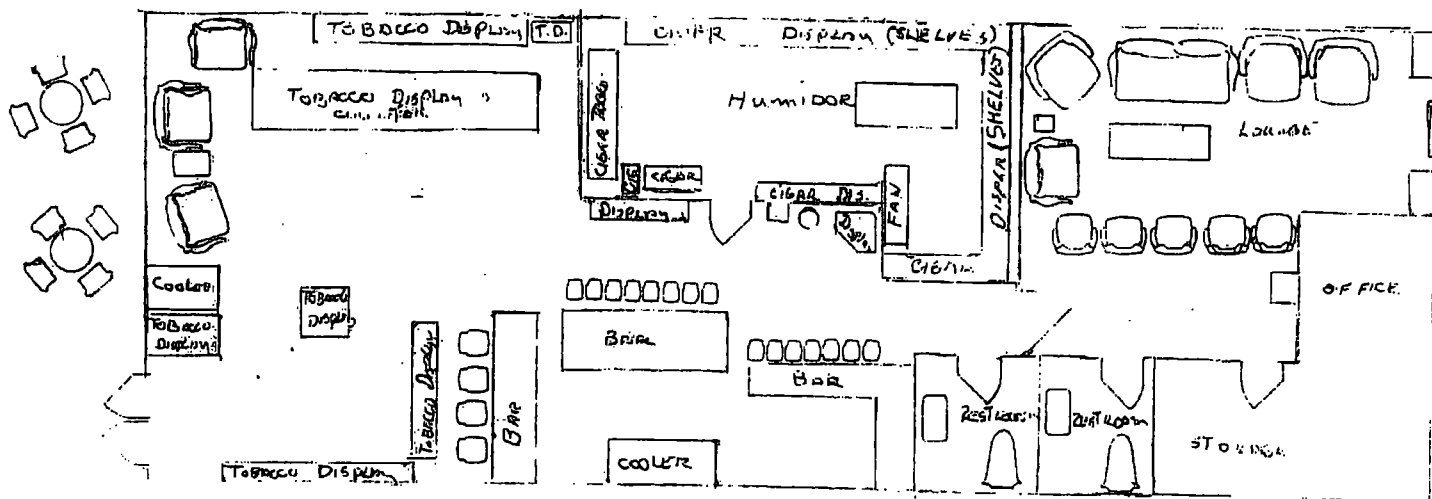
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Average Scale: 1 inch = 55.6 feet

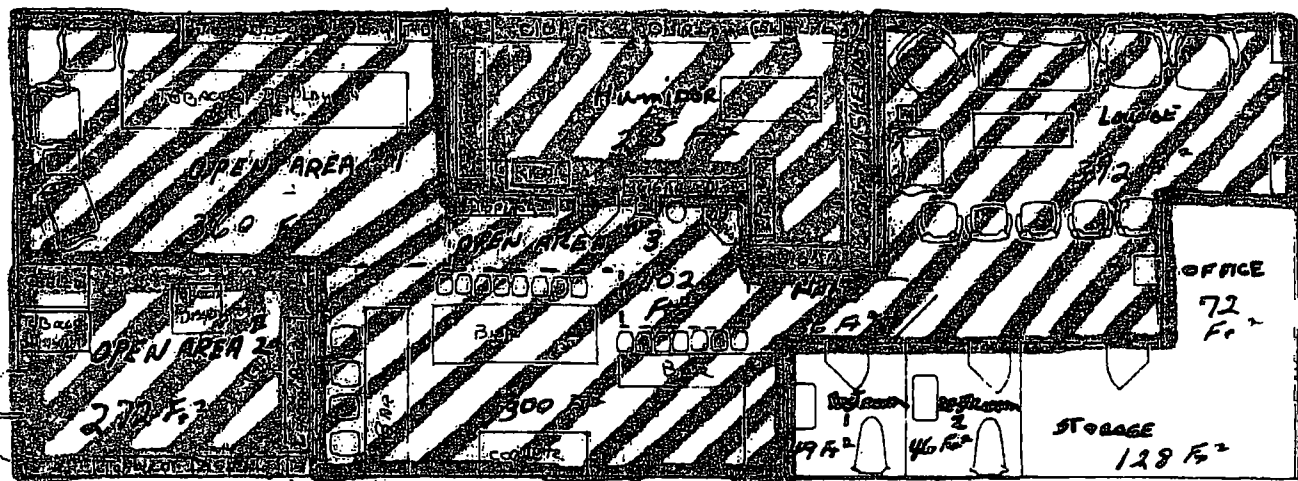
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| [REDACTED]  | [REDACTED] |
| [REDACTED]  | [REDACTED] |
| [REDACTED]  | [REDACTED] |
| [REDACTED]  | [REDACTED] |
| [REDACTED]  | [REDACTED] |
| [REDACTED]  | [REDACTED] |
| [REDACTED]  | [REDACTED] |
| RESTROOM #1 | 49 F²      |
| RESTROOM #2 | 46 F²      |
| [REDACTED]  | [REDACTED] |
| OFFICE      | 72 F²      |
| STORAGE     | 128 F²     |

TOTAL F² 2,042 Sq. Ft.

[REDACTED]

[REDACTED]

BOZA000020



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: 062797-01 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: \_\_\_\_\_

Improperly 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 exemption and become a drinking establishment. At this point the Tobacco merchant does not seek to become a drinking place.

Tobacco Merchant  
Appellant

6326 St. Andrews Rd Suite 202  
Columbia SC 29222  
Appellant's Address

803-551-0815  
Telephone Number

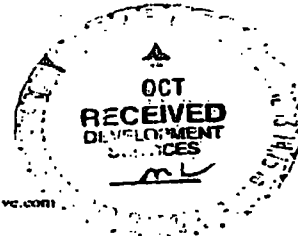
[Signature]  
Appellant's Signature

Attorney at Law  
Representing Tobacco Merchant

**Darryl  
Smalls**

Attorney and Counselor at Law  
6126 St. Andrews Road Suite 207 Columbia, SC 29212  
Tel: 803.551.0985 Fax: 803.551.0986

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



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  
Enclosure

cc: William Sheer

BOZA000022

67



## WRITTEN NOTICE OF VIOLATION

**DATE & TIME****VIOLATION OBSERVED:** September 16, 2009**DATE & TIME****NOTICE SERVED:** 9/30/09 9:30 PM**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,

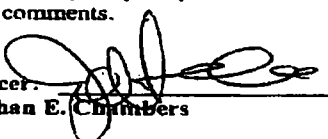
Your attention is called to the operation of a drinking establishment (SIC 5813) without obtaining a Special Exception from Board of Zoning Appeals at the above-referenced property. As such, in accordance with § 17-90 of the City of the Zoning Ordinance of the City of Columbia, South Carolina (hereinafter 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

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Department of Planning and Development Services (Zoning Division)  
PO Box 147 / Columbia, SC 29217 / 803.545.3333

BOZA000023

68



CITY OF COLUMBIA  
BUSINESS LICENSE  
CLEARANCE FORM

74054

**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. 1<sup>st</sup> 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 Slider  
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: DTT 35999 NAICS CODE: \_\_\_\_\_

☒ **STEP 1 - ZONING DIVISION (803) 545-3322**

IS THIS A SEXUALLY ORIENTED BUSINESS? \_\_\_\_\_ (YES) ☒ (NO) ☒ (INITIALS) \_\_\_\_\_

TMS#: 2707 01 SS ZONING DISTRICT: C-3  
ORDINANCE SECTION 17-258 5993 DESCRIPTION: CIGAR SHOP/STAND

☒ APPROVED ( ) DENIED  
ZONING ANALYST SIGNATURE: [Signature] DATE: 4/22/09  
ZONING ANALYST NAME (PRINT): Michael L. Smith

☒ **STEP 2 - BUSINESS LICENSE (803) 545-3345**

BUSINESS LICENSE SIGNATURE: [Signature] 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: [Signature] (kos) DATE: 5-22-09

☒ **STEP 4 - FIRE DEPARTMENT (803) 545-3701**

( ☒ ) APPROVED ( ) DENIED  
FIRE MARSHALL SIGNATURE: [Signature] 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 I. 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 use within 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 carry-out 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 carry-out service, or for carry-out 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:
- "x" means that the indicated use is permitted in the indicated district.
  - "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.
  - "a" means that the indicated use is permitted as an accessory use in the indicated districts.
  - "u/a" 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.
  - "n.e.c." means "not elsewhere covered" in the Standard Industrial Classification Coding Manual.
  - "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:
- Storage in connection with a trade;
  - Storage or long term parking of commercial vehicles or industrial storage in excess of one day; and
  - 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; u/a = permitted as an accessory use or as a principal use by special exception; and n.r. = no requirements. |                                                    |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| Principal Uses                                                                                                                                                                                                                | Zoning Districts                                   |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
|                                                                                                                                                                                                                               | D-1                                                | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-2 | RG-1 | RG-1A | RG-2 | RG-3 | IC-1 | IC-2 | IC-3 | IC-4 | IC-5 | IC-6 | IC-7 | M-1 | M-2 | UID | Off-Site<br>Parking<br>Requirements |  |
| DIVISION A: AGRICULTURE, FORESTRY AND FISHING                                                                                                                                                                                 |                                                    |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 1                                                                                                                                                                                                                             | Agricultural production—Crops                      |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 10                                                                                                                                                                                                                            | Horticultural specialties                          |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 101                                                                                                                                                                                                                           | Ornamental horticulture and nursery products       |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 102                                                                                                                                                                                                                           | Horticultural specialties not elsewhere classified |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 10                                                                                                                                                                                                                            | General farms, primarily crop                      |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 2                                                                                                                                                                                                                             | Agricultural production—Livestock                  |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 7                                                                                                                                                                                                                             | Agricultural services                              |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 74                                                                                                                                                                                                                            | Veterinary services (section 17-259)               |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 741                                                                                                                                                                                                                           | With indoor kennels                                |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |
| 742                                                                                                                                                                                                                           | With outdoor kennels                               |                                        |     |      |       |      |      |      |      |      |      |      |      |      |     |     |     |                                     |  |

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TABLE 1. TABLE OF PERMITTED USES

| LEGEND:                                                                                                                                                                                                                     |                                                                 |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|------------------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| * = permitted use in the district; o = special exception by Board of Zoning Appeals; s = permitted accessory use, etc. = permitted as an accessory use or as a principal use by special exception; and n = no requirements. |                                                                 |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Principal Uses                                                                                                                                                                                                              |                                                                 | Zoning Districts |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|                                                                                                                                                                                                                             |                                                                 | D-1              | RS-1 | RS-1A | RS-1B | RS-1C | RS-1D | RS-1E | RS-1F | RS-1G | RS-1H | RS-1I | RS-1J | RS-1K | RS-1L | RS-1M | RS-1N | RS-1O | RS-1P | RS-1Q | RS-1R |
| 561                                                                                                                                                                                                                         | Careless service stores                                         |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 565                                                                                                                                                                                                                         | Book stores                                                     |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 566                                                                                                                                                                                                                         | Recreational or hobby stores                                    |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 56                                                                                                                                                                                                                          | Apparel and accessory stores                                    |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 57                                                                                                                                                                                                                          | Furniture, home furnishings and equipment stores                |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 58                                                                                                                                                                                                                          | Eating and drinking places                                      |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 581                                                                                                                                                                                                                         | Eating and drinking places                                      |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5812                                                                                                                                                                                                                        | Eating places (except fast food)                                |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5813                                                                                                                                                                                                                        | Drinking places (alcoholic beverages) (section 17-200)          |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5814                                                                                                                                                                                                                        | Fast food eating places                                         |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 59                                                                                                                                                                                                                          | Manufacturing retail                                            |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 591                                                                                                                                                                                                                         | Outfitters and proprietary stores                               |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 592                                                                                                                                                                                                                         | Liquor stores                                                   |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 593                                                                                                                                                                                                                         | Used merchandise stores                                         |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 594                                                                                                                                                                                                                         | Manufacturing (except food stores)                              |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 595                                                                                                                                                                                                                         | Non-food stores                                                 |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5951                                                                                                                                                                                                                        | Mail order houses                                               |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5952                                                                                                                                                                                                                        | Automatic manufacturing machine operators                       |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 599                                                                                                                                                                                                                         | Food and food stores                                            |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5992                                                                                                                                                                                                                        | Food and food stores, except food stores and bottled gas stores |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5993                                                                                                                                                                                                                        | Food stores                                                     |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5994                                                                                                                                                                                                                        | Liquor stores (bottled gas) stores                              |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 599                                                                                                                                                                                                                         | Retail stores, not otherwise classified                         |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5992                                                                                                                                                                                                                        | Food                                                            |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5993                                                                                                                                                                                                                        | Other stores and stores                                         |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5994                                                                                                                                                                                                                        | Non-food stores and restaurants                                 |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5999                                                                                                                                                                                                                        | Manufacturing retail stores, not otherwise classified           |                  |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

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.

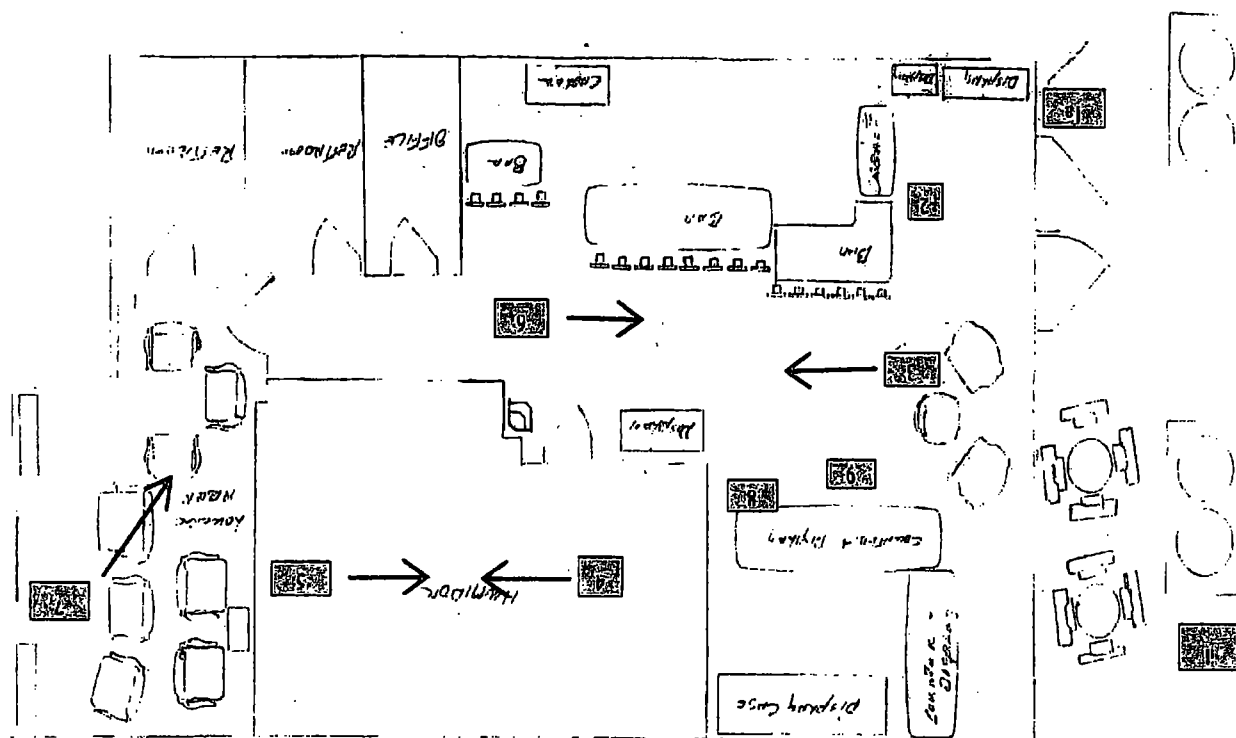
*Restaurant, fast food* means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it exhibits any of the following characteristics:

- (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.

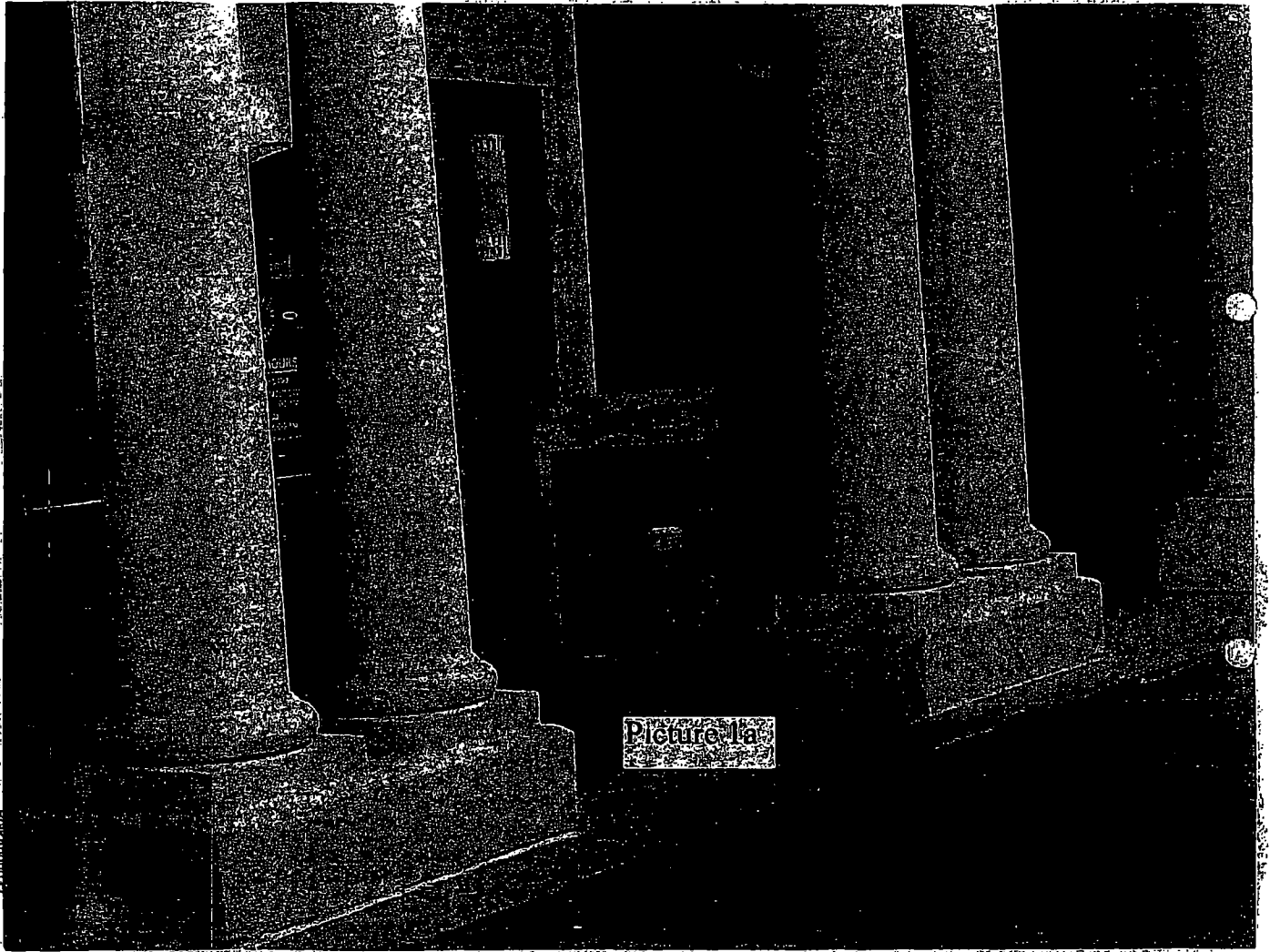
*Screening*. A visual shield against a higher impact land use created in a buffer transition yard with plantings, walls, fencing, etc.



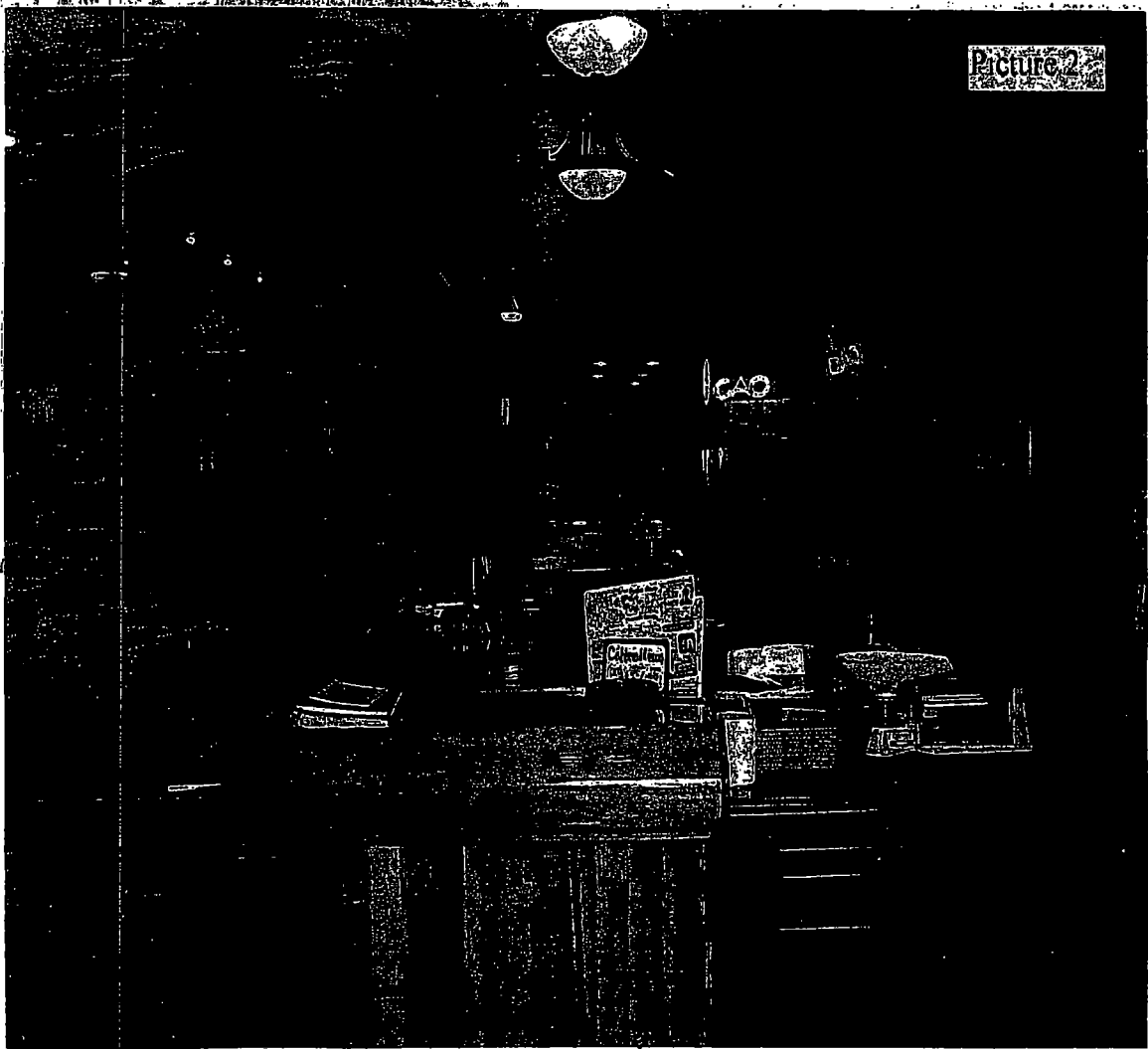
DRAWING FOR SITE  
NOT TO SCALE



BOZA000031

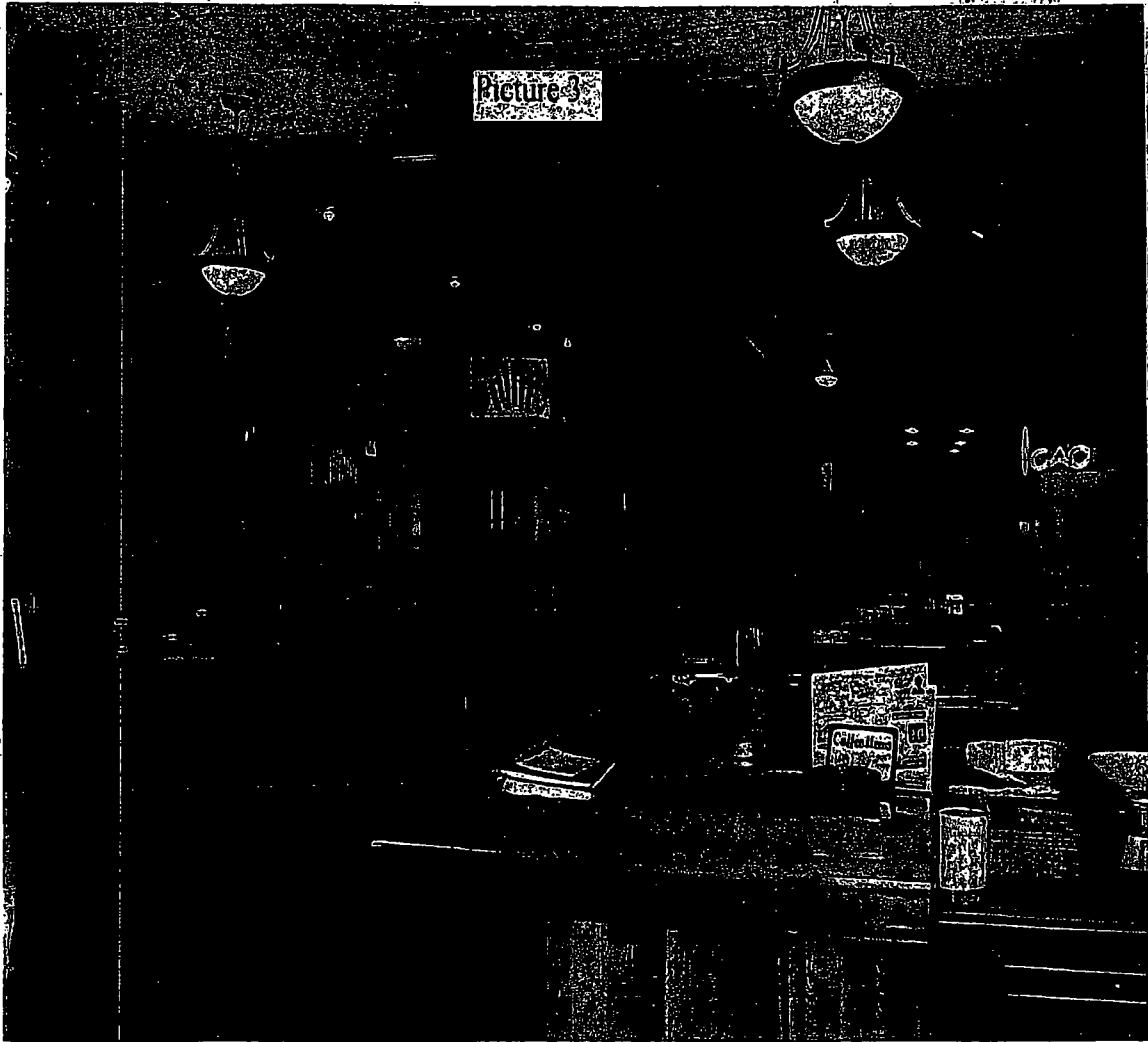


Picture 1a



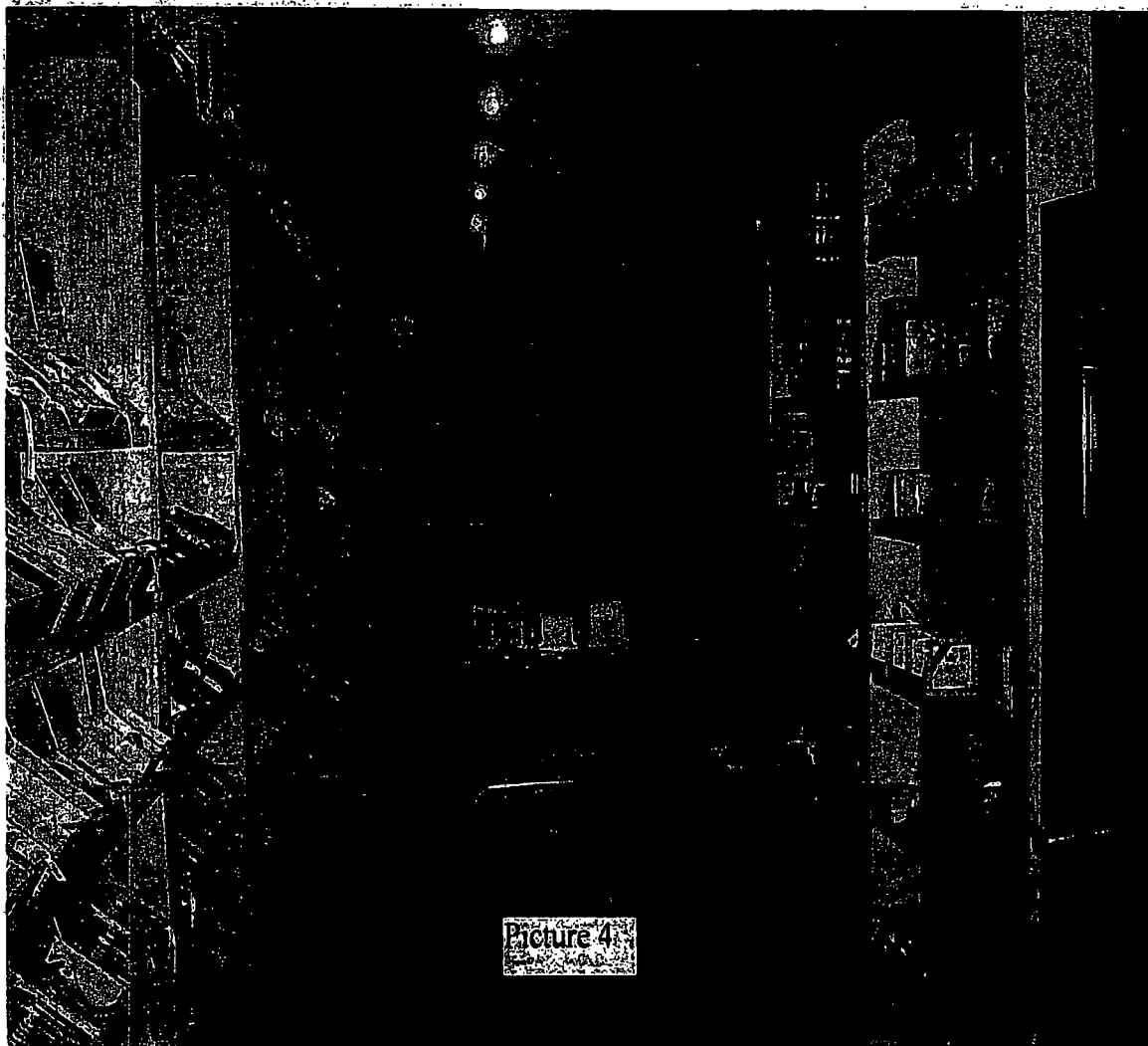
Picture 2

BOZA000033



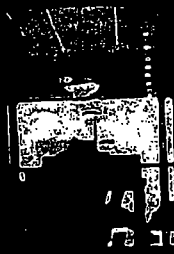
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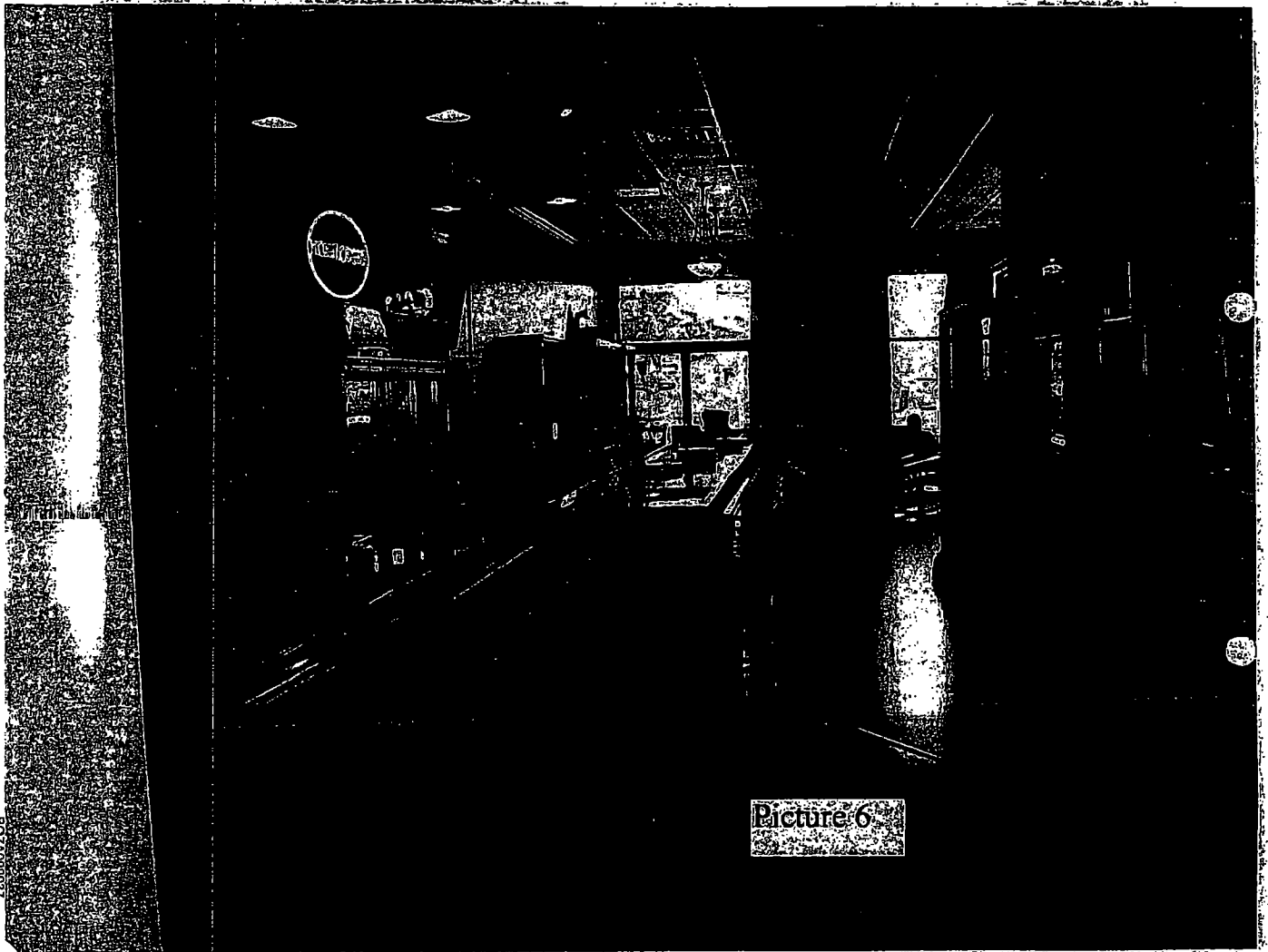


BOZA000035

Picture 5



OPERATING  
CHANGING THE FLIGHT



Picture 6

BOZ/000037

Picture 7

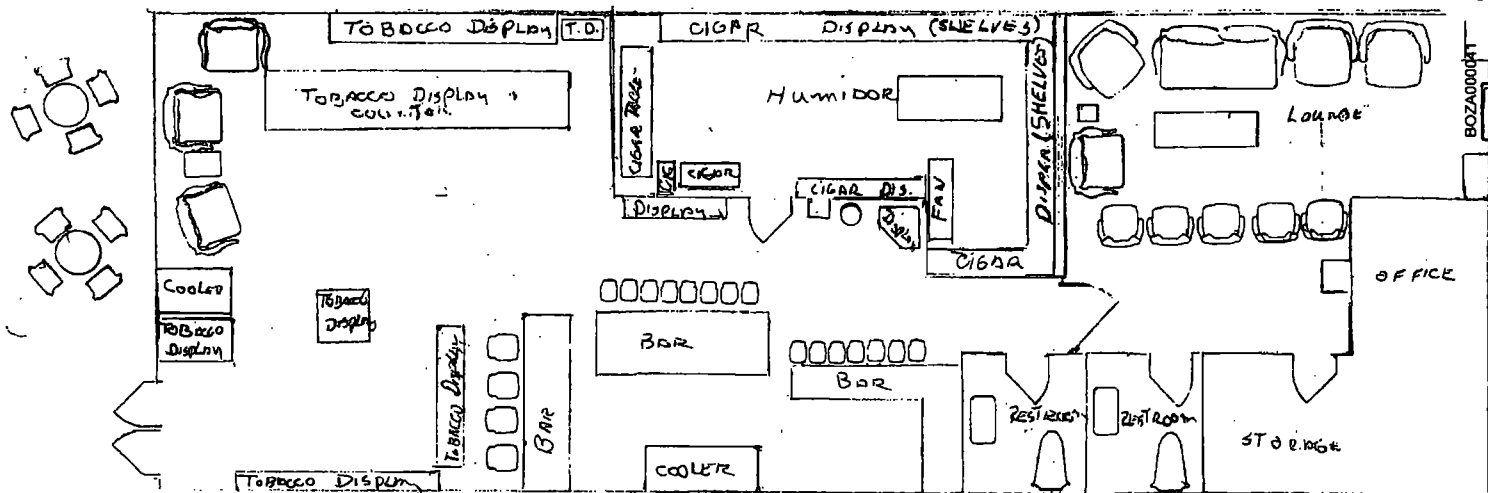
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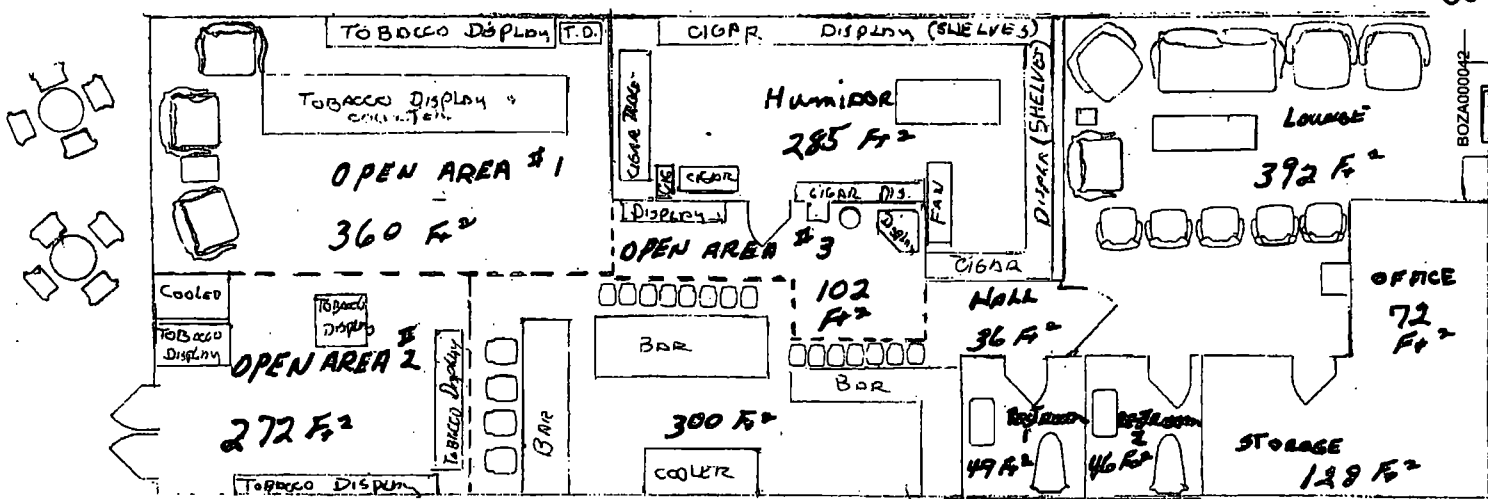


BOZ0000039



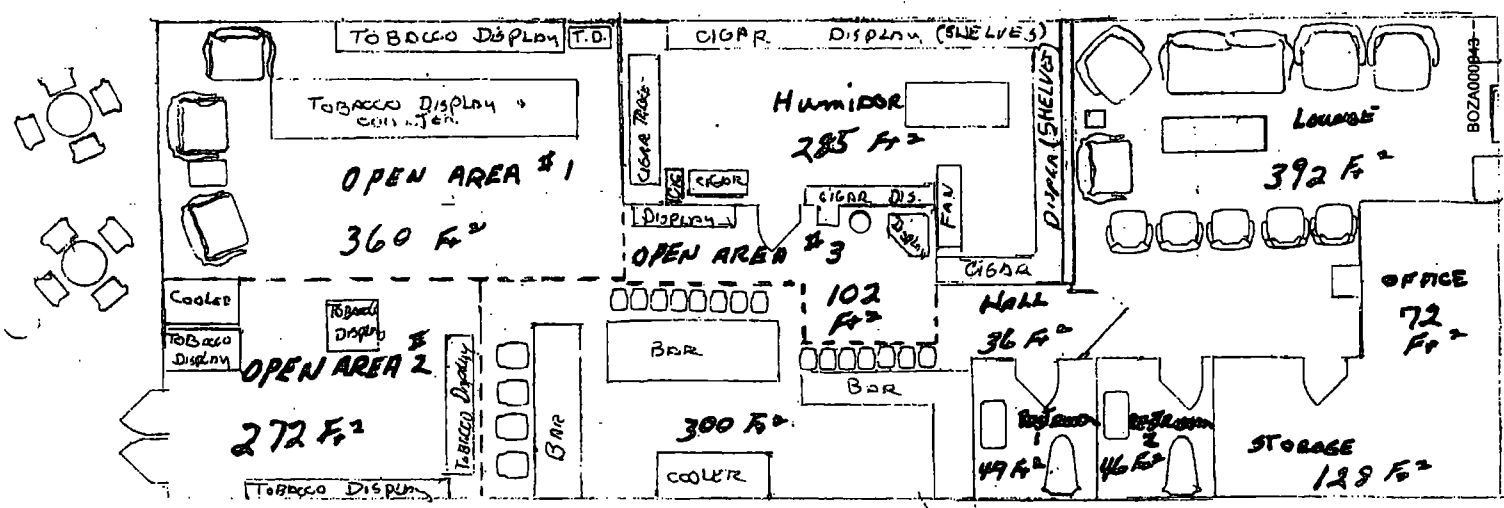
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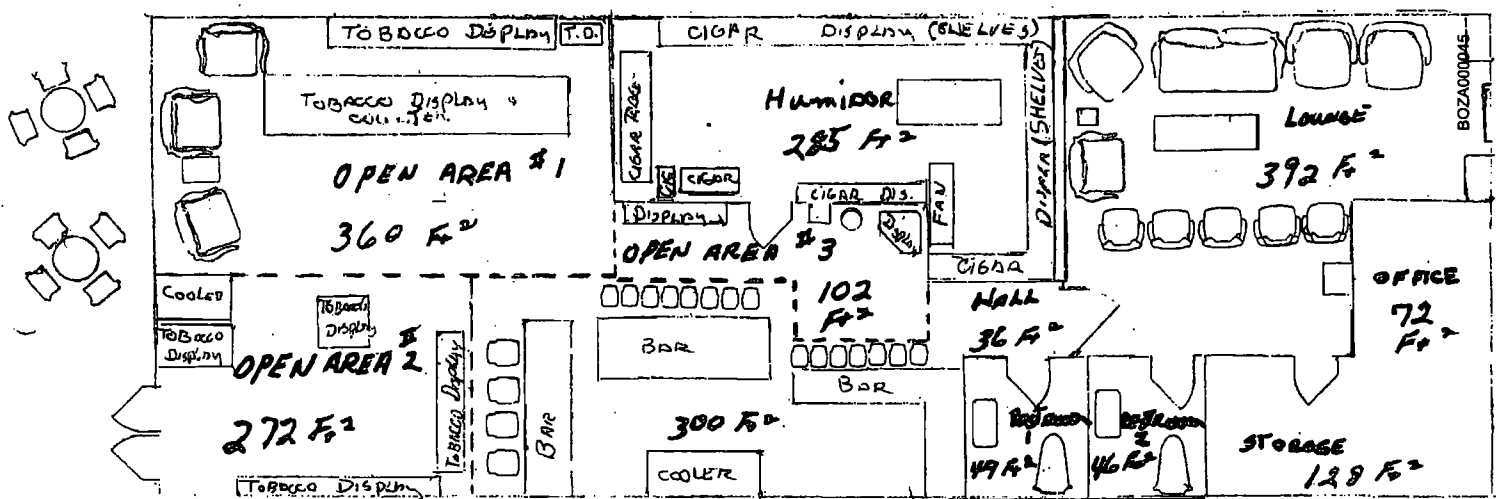
|              |                    |                      |       |
|--------------|--------------------|----------------------|-------|
| OPEN AREA #1 | 360 F <sup>2</sup> |                      |       |
| OPEN AREA #2 | 272 F <sup>2</sup> |                      |       |
| OPEN AREA #3 | 102 F <sup>2</sup> | TOTAL F <sup>2</sup> | 2,042 |
| HUMIDOR      | 285 F <sup>2</sup> |                      |       |
| HALL         | 36 F <sup>2</sup>  |                      |       |
| BAR AREA     | 300 F <sup>2</sup> |                      |       |
| RESTROOM #1  | 49 F <sup>2</sup>  |                      |       |
| RESTROOM #2  | 46 F <sup>2</sup>  |                      |       |
| LOUNGE       | 392 F <sup>2</sup> |                      |       |
| OFFICE       | 72 F <sup>2</sup>  |                      |       |
| STORAGE      | 128 F <sup>2</sup> |                      |       |



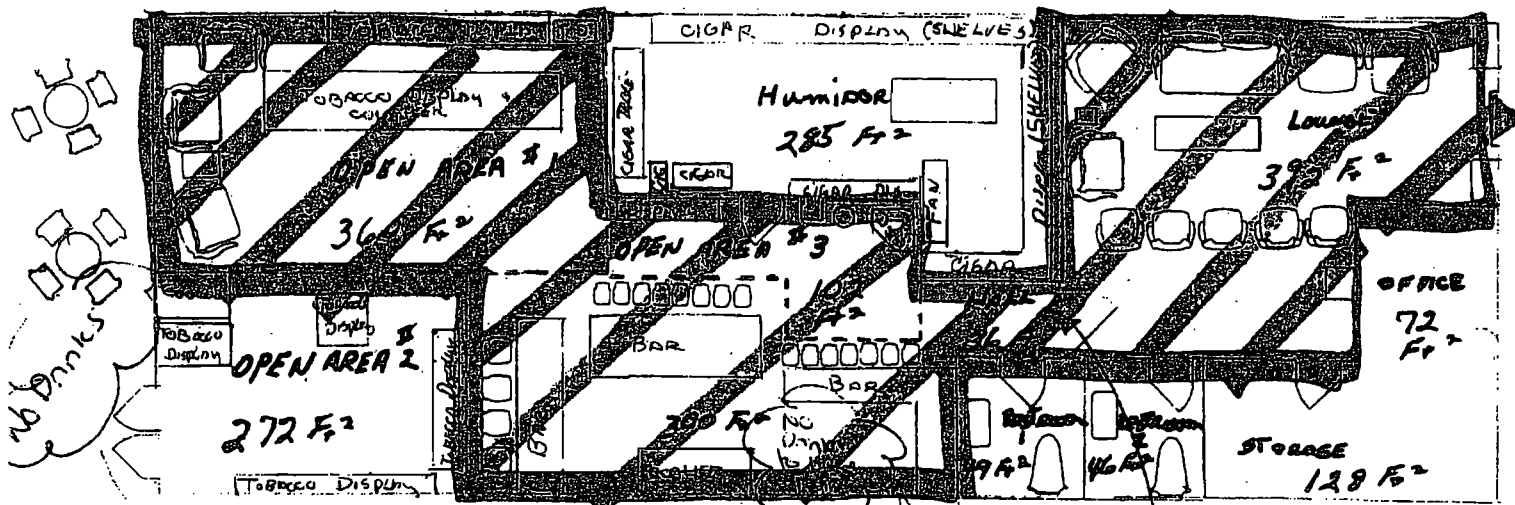


|              |         |           |       |
|--------------|---------|-----------|-------|
| OPEN AREA #1 | 360 Ft² | TOTAL Ft² | 2,042 |
| OPEN AREA #2 | 272 Ft² |           |       |
| OPEN AREA #3 | 102 Ft² |           |       |
| HUMIDOR      | 285 Ft² |           |       |
| HALL         | 36 Ft²  |           |       |
| BAR AREA     | 300 Ft² |           |       |
| RESTROOM #1  | 49 Ft²  |           |       |
| RESTROOM #2  | 46 Ft²  |           |       |
| LOUNGE       | 392 Ft² |           |       |
| OFFICE       | 72 Ft²  |           |       |
| STORAGE      | 128 Ft² |           |       |

|              |                     |                       |
|--------------|---------------------|-----------------------|
| OPEN AREA #1 | 360 Ft <sup>2</sup> |                       |
| OPEN AREA #2 | 272 Ft <sup>2</sup> |                       |
| OPEN AREA #3 | 102 Ft <sup>2</sup> | TOTAL Ft <sup>2</sup> |
| HUMIDOR      | 285 Ft <sup>2</sup> | 2,042                 |
| HALL         | 36 Ft <sup>2</sup>  |                       |
| BAR AREA     | 300 Ft <sup>2</sup> |                       |
| RESTROOM #1  | 49 Ft <sup>2</sup>  |                       |
| RESTROOM #2  | 46 Ft <sup>2</sup>  |                       |
| LOUNGE       | 382 Ft <sup>2</sup> |                       |
| OFFICE       | 72 Ft <sup>2</sup>  |                       |
| STORAGE      | 128 Ft <sup>2</sup> |                       |



|              |                    |                      |       |
|--------------|--------------------|----------------------|-------|
| OPEN AREA #1 | 360 F <sup>2</sup> |                      |       |
| OPEN AREA #2 | 272 F <sup>2</sup> |                      |       |
| OPEN AREA #3 | 102 F <sup>2</sup> | TOTAL F <sup>2</sup> | 2,042 |
| HUMIDOR      | 285 F <sup>2</sup> |                      |       |
| HALL         | 36 F <sup>2</sup>  |                      |       |
| BAR AREA     | 300 F <sup>2</sup> |                      |       |
| RESTROOM #1  | 49 F <sup>2</sup>  |                      |       |
| RESTROOM #2  | 46 F <sup>2</sup>  |                      |       |
| LOUNGE       | 392 F <sup>2</sup> |                      |       |
| OFFICE       | 72 F <sup>2</sup>  |                      |       |
| STORAGE      | 128 F <sup>2</sup> |                      |       |



|              |         |
|--------------|---------|
| 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 Data 2nd this area.

200  
600  
1/2 hr. FM  
available for  
charging

BOZA000046

31/5/20

fish will call men, the measurements of  
from men, target fish next week.

- have 6-month projection

- Bkuz - gme ex spishan

Other 3 Principles will provide # by end of week  
= send straight + VC to frame for #

ZB09-00834

# CITY OF COLUMBIA



## BUSINESS LICENSE ZONING PERMIT

P.O. Box 147  
Columbia, SC 29217  
803.545.3333  
[www.columbiadevelopmentservices.net](http://www.columbiadevelopmentservices.net)

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

BOZA000048

93



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

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

**ACCOUNT:**

William and Jackie Slicer  
122 Lake Elizabeth Dr  
Columbia SC 29203

Phone: 803 463 4393

## Paid Invoice

Page 1 of 1

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

| PERMIT NUMBER                              | ZB09-00834 |
|--------------------------------------------|------------|
| 1220 Bower Pkwy<br>SpC E-4<br>Columbia, SC |            |

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

**ACCOUNT:**

W/ll S

122 L

Col

Ph

**Total Paid**

10.00

Save Time & Money with Online Permits and Inspections. Go To: [www.buildingdepartment.cc](http://www.buildingdepartment.cc)

BOZA000049

94

# CITY OF COLUMBIA

## ZONING PERMIT

PRMTZT024662MAY1303 0305 INQ

PERMIT NUMBER **Z 03 005871** APPROVED BY: **TKM**

APPLICANT: **NAME MASHBURN CONSTRUCTION**  
**PHONE 400-1000**

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

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

**TMS** **PAGE 2787** **BLOCK 1** **LOT 5** **ZONING DIST. : QUID-C**

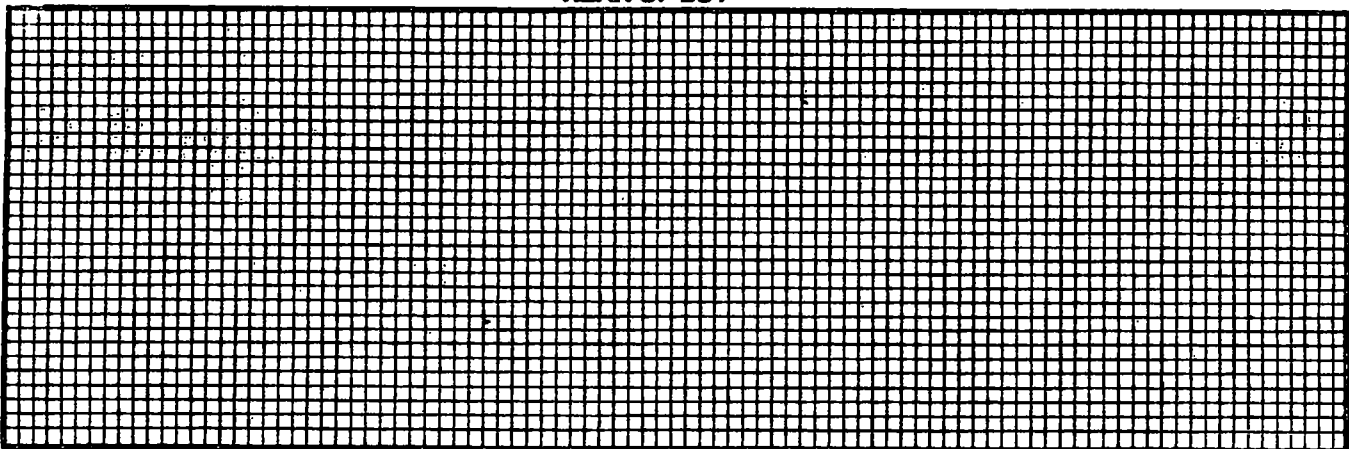
|                               |                          |              |             |           |             |           |
|-------------------------------|--------------------------|--------------|-------------|-----------|-------------|-----------|
| <b>MIN YARD REQUIREMENT :</b> | <b>PRIMARY - FRONT</b>   | <b>FT</b>    | <b>REAR</b> | <b>FT</b> | <b>SIDE</b> | <b>FT</b> |
|                               | <b>SECONDARY - FRONT</b> | <b>FT IN</b> | <b>SIDE</b> | <b>FT</b> | <b>SIDE</b> | <b>FT</b> |

**PRESENT USE:** **HOCONT** **PROPOSED USE:** **TABACQ MERCHANT**

**NATURE OF WORK** **INTERIOR UPFIT**

**CONDITIONS** **NO OTHER WORK AT THIS TIME**

**REAR OF LOT**



**FRONT OF LOT**

**BLOCK -** \_\_\_\_\_

*[Signature]*  
 \_\_\_\_\_  
 SIGNATURE OF APPLICANT

**5-13-03**  
 BOZA000030

95



# CITY OF COLUMBIA ZONING PERMIT

PRMTZT033411JUL1503 0307 INQ

PERMIT NUMBER Z 03 006367 APPROVED BY: SG

APPLICANT: NAME MASTER CONST  
PHONE 749-8841

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

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

TMS PAGE 1941 BLOCK 1 LOT 12 ZONING DIST. PLD-C

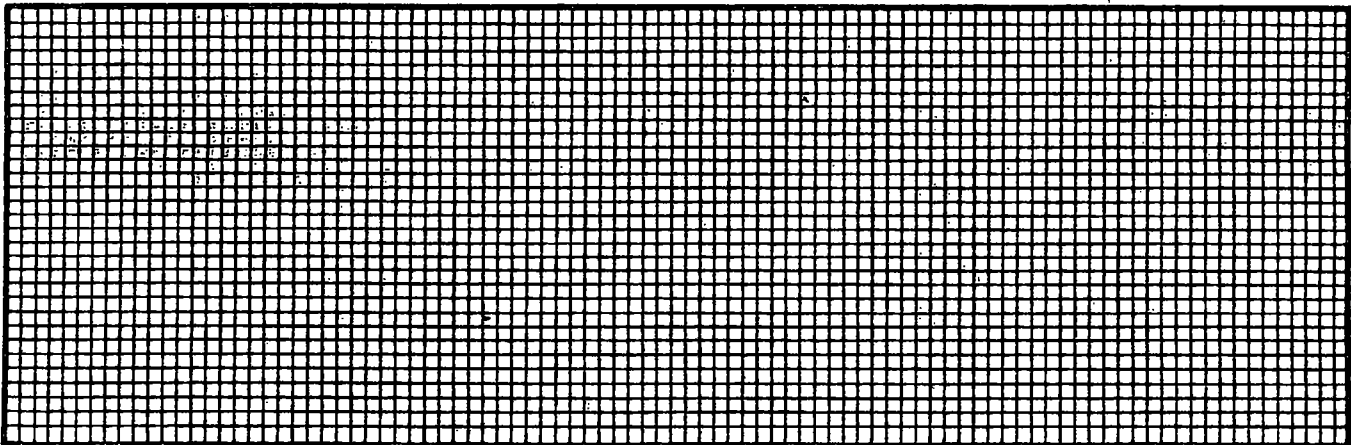
| MIN YARD REQUIREMENT : | PRIMARY - FRONT | FT | REAR | FT   | SIDE | FT |
|------------------------|-----------------|----|------|------|------|----|
| SECONDARY - FRONT      |                 | FT | IN   | SIDE | FT   | FT |

PRESENT USE: UOC 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

7/15/03  
BOZA000051

96

PRMTZT035497JUL3103] [0307] [INQ]

RECORD IS ADDED

NEXT SCREEN [PRMTZ]

ZONING PERMIT

Inq Num [Z03006484]

Permit Number [Z] - ^03] - ^006484] Approved By : [JEC]

Mstr Permit#

Issued Date ^ 7312003]

APPLICANT : Name [FLAGSHIP SIGNS ]

Receipt No.

Phone [796-2003 ]

Receipt No.

Permit Fee ^ 10.00]

LOCATION : Street No ^ 1220] & Suffix [ ]

Charge# [ ]

Direction [ ] Street Name [BOWERS PARKWAY ]

& Type [ ]

IS # : Page ^ 2799] Block ^ 1] Lot ^ 5] [ ]

Zoning Dist. : [C-3 ]

in Yard Requirement : Primary - front ^25]ft

rear ^10]ft side ^ 3]ft

Secondary - front ^ ]ft^ ]in side ^ ]ft side ^ ]ft

Present Use : [VACANT ]

Proposed use : [TOBACCO MERCHANT ]

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

Conditions :

[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 ] [C]

4:50:18:32

SUCCESSFUL ENTRY

0035496

0.00

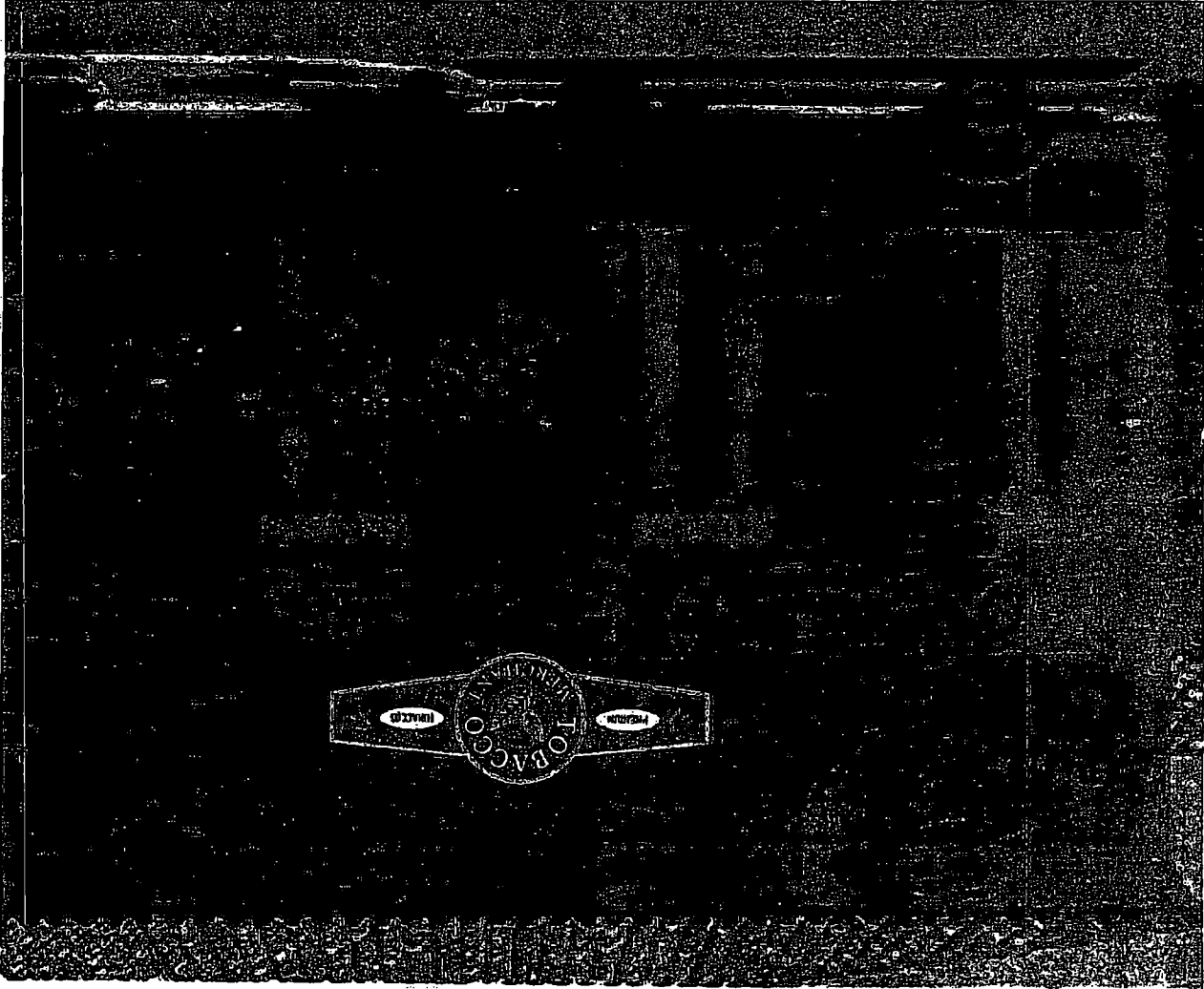
IV

| FORM|

| LTAI|

| Col 66|Row 1|Page 1|T27 ZONE01

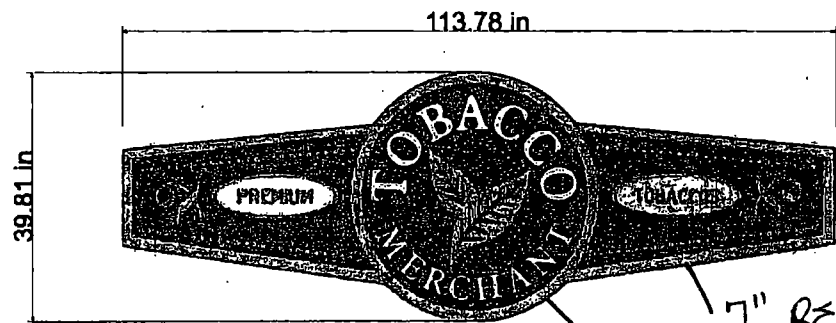
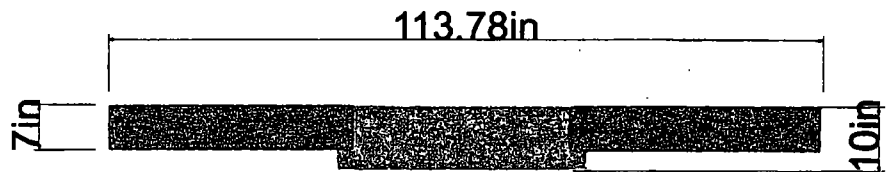
*Y. Nitro Carney* \* 7/31/03



98

BOZA000053

top view - looking up



front view

7" return  
10" return

66

BOZAI00054

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



FILED

## WRITTEN NOTICE OF VIOLATION

**DATE & TIME**

**VIOLATION OBSERVED:** September 16, 2009

**DATE & TIME**

**NOTICE SERVED:** 9/30/09 9:28 pm

**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 833); 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;

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;

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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  
-SP Five Points Overlay District  
-ID Innovista Design District

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| Principal Uses                             | D-1                                                               | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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 | OS-Street<br>Parking<br>Requirements |                                                    |
|--------------------------------------------|-------------------------------------------------------------------|--------------------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|--------------------------------------|----------------------------------------------------|
|                                            |                                                                   |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 183                                                               | Aquaponics                                 | x   |      |       |      |      |     |     |     |      |     |     |     | x   | x   |     |      |      |                                      |                                                    |
|                                            | 19                                                                | General farms, primarily crop              | x   |      |       |      |      |     |     |     |      |     |     |     | n/a | n/a |     |      |      |                                      |                                                    |
| 2                                          | Agricultural production-Livestock                                 |                                            | x   |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      | No requirement                                     |
| 7                                          | Agricultural services                                             |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| 74                                         | Veterinary services (section 17-250)                              |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 741                                                               | With indoor kennels                        |     |      |       |      |      | x   | x   | x   | x    | x   |     |     | x   |     |     | x    | x    |                                      | 3 for each 1,000 square feet of gross floor area   |
|                                            | 742                                                               | With outdoor kennels                       |     |      |       |      |      | x   | x   | x   | x    | x   |     |     | x   |     |     |      |      |                                      |                                                    |
| 75                                         | Landscape and horticultural services                              |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 751                                                               | 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   |
|                                            | 752                                                               | Lawn and garden services                   |     |      |       |      |      |     |     | x   | x    |     |     |     | x   | x   |     |      |      |                                      | 1.7 for each 1,000 square feet of gross floor area |
|                                            | 753                                                               | Ornamental shrub and tree services         |     |      |       |      |      |     |     | x   | x    |     |     |     | x   | x   |     |      |      |                                      |                                                    |
| 8                                          | Forestry                                                          |                                            | x   |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      | No requirement                                     |
| 9                                          | Fishing, hunting and trapping                                     |                                            | x   |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 91                                                                | Commercial fishing                         | x   |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      | 1.7 for each 1,000 square feet of gross floor area |
|                                            | 92                                                                | Felt hatcheries and preserves              | x   |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 97                                                                | Hunting and trapping, and game propagation | x   |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| DIVISION B. MINING                         |                                                                   |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| 14                                         | Mining and quarrying of nonmetallic minerals, except fuel         |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| DIVISION C. CONSTRUCTION                   |                                                                   |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| 15                                         | Building construction-General contractors and operative builders  |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 151                                                               | Office only                                |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| 16                                         | Construction other than building construction-General contractors |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 161                                                               | Office only                                |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| 17                                         | Construction-Special trade contractors                            |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            | 171                                                               | Office only                                |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
| DIVISION D. MANUFACTURING (section 17-293) |                                                                   |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |
|                                            |                                                                   |                                            |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                      |                                                    |



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| Principal Uses |                                                                                                                                              | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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<br>Parking<br>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           | Minimarket (section 17-269)                                                                                                                  |     |                                        |     |      |       |      |      |     |     | 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 17-269)                                                                                                  |     |                                        |     |      |       |      |      |     | e   | e   | x    |     | x   | e   | 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   | 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   |     |      |      | 1.7 for each 1,000 square feet of gross floor area |
| 46             | Pipelines                                                                                                                                    |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     | x   | x   |     |      |      | 1.7 for each 1,000 square feet of gross floor area |
| 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    | 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    |                                                    |
| 482            | Teletype                                                                                                                                     |     |                                        |     |      |       |      |      |     |     | x   | x    |     |     |     | x   |     |     |      | x    | 3 for each 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 substation                                                                                                                          | 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   | x   |     |      |      |                                                    |
| 493            | Combination electric and gas; and other utility services                                                                                     |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     | x   |      |      |                                                    |

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| Principal Uses                            |                                                                                       | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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<br>Parking<br>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    |                                       |                                                    |
| 495                                       | 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   |      |      |                                       | 1.7 for each 1,000 square feet of gross floor area |
|                                           | 501 Motor vehicles and automotive parts and supplies                                  |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
|                                           | 5093 Scrap                                                                            |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
| 51                                        | Wholesale trade-Non-durable goods                                                     |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                       | 1.7 for each 1,000 square feet of gross floor area |
|                                           | 511 Paper and paper products                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
|                                           | 512 Drugs, drug proprietaries and druggists' sundries                                 |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     | x   |      |      |                                       |                                                    |
|                                           | 513 Apparel-Goods and notions                                                         |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
|                                           | 514 Groceries and related products                                                    |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
|                                           | 515 Farm products-Raw materials                                                       |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
|                                           | 516 Chemicals and allied products                                                     |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
| 517                                       | Petroleum and petroleum products                                                      |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                       | 1.7 for each 1,000 square feet of gross floor area |
|                                           | 5171 Petroleum bulk stations and terminals                                            |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     | x   |      |      |                                       |                                                    |
|                                           | 5172 Petroleum and petroleum products wholesalers, except bulk stations and terminals |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
|                                           | 518 Beer, wine and distilled alcoholic beverages                                      |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
|                                           | 519 Miscellaneous nondurable goods                                                    |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   | x   |      |      |                                       |                                                    |
| DIVISION G. RETAIL TRADE (section 17-260) |                                                                                       |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                       |                                                    |
| 52                                        | Building materials, hardware, garden supply and mobile home dealers                   |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                       | 3.5 for each 1,000 square feet of gross floor area |
|                                           | 521 Lumber and other building materials dealers                                       |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     | x   |     |      |      |                                       |                                                    |
|                                           | 523 Paint, glass and wallpaper stores                                                 |     |                                        |     |      |       |      |      |     | x   | x   | x    | x   | x   | x   | x   |     |     | x    | x    |                                       |                                                    |
|                                           | 525 Hardware stores                                                                   |     |                                        |     |      |       |      |      |     | x   | x   | x    | x   | x   | x   | x   |     |     | x    | x    |                                       |                                                    |

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| Principal Uses                                      |                                                         | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-O | 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<br>Parking<br>Requirements              |
|-----------------------------------------------------|---------------------------------------------------------|-----|----------------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|----------------------------------------------------|
| 526                                                 | Related 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    | X    |                                                    |
| 533                                                 | Variety stores                                          |     |                                        |     |      |       |      |      |     | X   | 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    | 3.5 for each 1,000 square feet of gross floor area |
| 543                                                 | Fruit stores and vegetable markets                      |     |                                        |     |      |       |      |      |     |     | X   | X    |     |     |     | X   |     |     | X    | X    |                                                    |
| 545                                                 | 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                               |     |                                        |     |      |       |      |      |     | O   | O   | X    | O   | O   | O   | X   | X   |     | O    | O    |                                                    |
| 555                                                 | Boat dealers (17-286)                                   |     |                                        |     |      |       |      |      |     | O   | O   |      |     |     |     | X   |     |     | C    | C    |                                                    |
| 556                                                 | Recreational and utility water dealers (17-286)         |     |                                        |     |      |       |      |      |     | O   | O   |      |     |     |     | X   |     |     | C    | C    | 3.5 for each 1,000 square feet of gross floor area |
| 56                                                  | Apparel and accessory stores                            |     |                                        |     |      |       |      |      |     | O   | X   | X    | X   | X   | X   | X   | X   |     | X    | X    | 3 for each 1,000 square feet of gross floor area   |
| 57                                                  | Furniture, house furnishings and equipment stores       |     |                                        |     |      |       |      |      |     | X   | X   | X    | X   | X   | X   | X   | X   |     | X    | X    |                                                    |
| 58 Eating and drinking places                       |                                                         |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |
| 5812                                                | Eating places                                           |     |                                        |     |      |       |      |      |     | X   | X   | X    | X   | X   | X   | X   | X   |     | X    | X    | 8 for each 1,000 square feet of gross floor area   |
| 5813                                                | Drinking places (picnicking beverages) (Section 17-266) |     |                                        |     |      |       |      |      |     | O   | O   | O    | O   | X   | X   | O   | X   |     | C    | C    | 12 for each 1,000 square feet of gross floor area  |
| 59 Miscellaneous retail                             |                                                         |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |
| 591                                                 | Drugstores and proprietary stores                       |     |                                        |     |      |       |      |      |     | O   | X   | X    | X   | X   | X   | X   | X   |     | X    | X    | 3.5 for each 1,000 square feet of gross floor area |

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| Principal Uses                                         |                                                                                          | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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 | U-1 | MX-1 | MX-2 | Off-Street<br>Parking<br>Requirements              |                                                  |
|--------------------------------------------------------|------------------------------------------------------------------------------------------|-----|----------------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|----------------------------------------------------|--------------------------------------------------|
| 592                                                    | Liquor stores                                                                            |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    | gross floor area                                   |                                                  |
| 5931                                                   | Used merchandise stores with weapons                                                     |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    |                                                    |                                                  |
| 5932                                                   | Used merchandise stores without weapons (17-287)                                         |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    |                                                    |                                                  |
| 5933                                                   | Pawn shops                                                                               |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    |                                                    |                                                  |
| 594                                                    | Miscellaneous shopping goods stores                                                      |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    |                                                    |                                                  |
| 595 Non-store retailers                                |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |                                                  |
| 5961                                                   | Mail order house                                                                         |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    | 3 for each 1,000 square feet of gross floor area   |                                                  |
| 5962                                                   | Automatic merchandising machine operators                                                |     |                                        |     |      |       |      |      |     | 0   | 0   |      |     |     |     | 0   |     |     |      |      | 3 for each 1,000 square feet of gross floor area   |                                                  |
| 597 Fuel and ice dealers                               |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |                                                  |
| 5982                                                   | Fuel and ice dealers, except fuel oil dealers and bottled gas dealers                    |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     |      |      | 3.5 for each 1,000 square feet of gross floor area |                                                  |
| 5983                                                   | Fuel oil dealers                                                                         |     |                                        |     |      |       |      |      |     | 0   | 0   |      |     |     |     | 0   | 0   |     |      |      | 1.7 for each 1,000 square feet of gross floor area |                                                  |
| 5984                                                   | Liquefied petroleum gas (bottled gas) dealers                                            |     |                                        |     |      |       |      |      |     | 0   | 0   |      |     |     |     | 0   | 0   |     |      |      | 1.7 for each 1,000 square feet of gross floor area |                                                  |
| 599 Retail stores, not elsewhere classified            |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |                                                  |
| 5992                                                   | Flower                                                                                   |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    | 3.5 for each 1,000 square feet of gross floor area |                                                  |
| 5993                                                   | Cigar store and stands                                                                   |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    |                                                    |                                                  |
| 5994                                                   | News dealers and newsstands                                                              |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    |                                                    |                                                  |
| 5995                                                   | Miscellaneous retail stores, not elsewhere classified                                    |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   |     | 0    | 0    |                                                    |                                                  |
| DIVISION H. FINANCE, INSURANCE AND REAL ESTATE (60-67) |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |                                                  |
| 6141                                                   | Non-depository personal credit institutions (pay day loan and title loan establishments) |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   | 0   |      | 0    | 0                                                  | 3 for each 1,000 square feet of gross floor area |
| 6553                                                   | Cemetery subdividers and developers                                                      | 0   | 0                                      | 0   | 0    | 0     | 0    | 0    | 0   | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   | 0   | 0    | 0    | 0                                                  |                                                  |
| DIVISION I. SERVICES                                   |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |                                                  |
| 70                                                     | Hotels, roominghouses, camps and other lodging places                                    |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |                                                  |
| 701                                                    | Hotels, motels and tourist courts                                                        |     |                                        |     |      |       |      |      |     | 0   | 0   | 0    | 0   | 0   | 0   | 0   | 0   | 0   | 0    | 0    | 1 for each bedroom                                 |                                                  |

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| Principal Uses                                |        | D-1                                                                                         | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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<br>Parking<br>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                                                                |                                        |     |      |       |      |      |     |     | O   |      |     |     |     | 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 photostating 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   |
|                                               | 7339   | 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   | Dishwashing and extermination services                                                      |                                        |     |      |       |      |      |     |     | X   | X    | X   |     |     | X   |     |     | O    | O    | 3 for each 1,000 square feet of gross floor area   |
|                                               | 7343   | 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    |                                                    |
|                                               | 735    | Personal supply services                                                                    |                                        |     |      |       |      |      |     |     | X   | X    | X   | X   |     | X   |     |     | X    | X    |                                                    |
|                                               | 7361   | Employment agencies                                                                         |                                        |     |      |       |      |      |     |     | X   | A    | X   | X   |     | X   |     | X   | X    | X    |                                                    |
|                                               | 7362   | Temporary help supply services                                                              |                                        |     |      |       |      |      | X   | X   | X   |      | X   | X   | X   | X   |     | X   | X    | X    |                                                    |
|                                               | 737    | Computer and data processing services                                                       |                                        |     |      |       |      |      | O   | X   | X   | X    | X   | X   |     | X   |     | X   | X    | X    |                                                    |
| 738 Miscellaneous business services           |        |                                                                                             |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |
|                                               | 7381   | Detective agencies and protective services                                                  |                                        |     |      |       |      |      | O   |     | X   | X    | X   | X   | X   | X   |     | O   | X    | X    | 3 for each 1,000 square feet of gross floor area   |
|                                               | 7384   | Photostating 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    |                                                    |
|                                               | 7389   | Business services not elsewhere classified                                                  |                                        |     |      |       |      |      | O   |     | X   |      | X   | X   |     | X   |     |     | X    | X    | 3 for each 1,000 square feet of gross floor area   |
|                                               | 7389.1 | Recycling centers (see section 17-270)                                                      |                                        |     |      |       |      |      |     |     |     |      |     |     |     | O   | O   |     |      |      |                                                    |
| 78 Automobile repair, services and garages    |        |                                                                                             |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |

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| D-1                                                 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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 | IS-1 | IS-2 | UTD | MX-1 | MX-2 | Off-Street<br>Parking<br>Requirements |                                                                                                  |
|-----------------------------------------------------|----------------------------------------|-------------------------------------------------------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|------|------|-----|------|------|---------------------------------------|--------------------------------------------------------------------------------------------------|
| 751 Automobile rental and leasing without drivers   |                                        |                                                             |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                       |                                                                                                  |
|                                                     | 7512                                   | Passenger car rental and leasing without drivers            |      |       |      |      |     |     | X   |      | X   |     |     | X    |      |     |      | D    | D                                     | 3 for each 1,000 square feet of gross floor area                                                 |
|                                                     | 7513                                   | Truck rental and leasing without drivers                    |      |       |      |      |     |     | X   |      | X   |     |     | X    |      |     |      | D    | D                                     | 3 for each 1,000 square feet of gross floor area                                                 |
|                                                     | 7519                                   | Utility trailer and recreational vehicle rental             |      |       |      |      |     |     | X   |      | X   |     |     | X    |      |     |      | D    | D                                     | 3 for each 1,000 square feet of gross floor area                                                 |
| 752 Automobile parking                              |                                        |                                                             |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                       |                                                                                                  |
|                                                     | 7523                                   | Parking lots                                                | X    | X     | X    | X    | X   | X   | X   | X    | X   | X   | X   | X    | X    | X   | X    | X    | X                                     | No requirements                                                                                  |
|                                                     | 7525                                   | Parking structures                                          |      |       |      |      |     | X   | X   | X    |     | X   | X   | X    | X    | X   | X    | X    | X                                     | No requirements                                                                                  |
| 753                                                 |                                        | Automotive repair shops                                     |      |       |      |      |     |     |     | X    | X   | X   |     | X    | X    |     |      |      |                                       | 3.3 for each 1,000 square feet of gross floor area                                               |
| 754 Automotive services, except repair              |                                        |                                                             |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                       |                                                                                                  |
|                                                     | 7542                                   | Carwashes                                                   |      |       |      |      |     |     | X   | X    | X   |     |     | X    |      |     |      |      |                                       | 3.3 for each 1,000 square feet of gross floor area                                               |
|                                                     | 7549                                   | Automotive services, except repair and carwashes            |      |       |      |      |     |     | X   | X    | X   |     |     | X    | X    |     |      |      |                                       | 3.3 for each 1,000 square feet of gross floor area                                               |
| 76 Miscellaneous repair services                    |                                        |                                                             |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                       |                                                                                                  |
| 762 Electrical repair shops                         |                                        |                                                             |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                       |                                                                                                  |
|                                                     | 7621                                   | Radio and mobile telephone installation shops               |      |       |      |      |     | X   | X   | 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   | X    | X   | X   | X   | X    |      |     | X    | X    |                                       |                                                                                                  |
|                                                     | 7623                                   | Refrigeration and air conditioning service and repair shops |      |       |      |      |     |     | X   | X    | X   | X   | X   | X    |      |     |      |      |                                       |                                                                                                  |
|                                                     | 763                                    | Watch, clock and jewelry repair                             |      |       |      |      |     | X   | X   | X    | X   | X   | X   | X    |      |     | X    | X    | X                                     |                                                                                                  |
|                                                     | 764                                    | Upholstery and furniture repair                             |      |       |      |      |     | X   | X   | X    | X   | 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                      |      |       |      |      |     |     | X   | X    | X   |     | X   | X    |      |     | D    | D    |                                       |                                                                                                  |
| 78 Motion pictures                                  |                                        |                                                             |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                       |                                                                                                  |
|                                                     | 781                                    | Motion picture production                                   |      |       |      |      |     |     | X   | 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                     |      |       |      |      |     | X   | X   | X    | X   | X   | X   |      |      |     | X    | X    |                                       |                                                                                                  |

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| Principal Uses                                              |                                                                                                                                                    | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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 | U-D | MX-1 | MX-2 | Off-Street<br>Parking<br>Requirements                                     |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----|----------------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|---------------------------------------------------------------------------|
|                                                             | 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   | e   |      | 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 stadiums                                                                                                        |     |                                        |     |      |       |      |      |     |     | x   |      | x   | x   |     | x   |     |     |      |      | 3 for each 1,000 square feet of gross floor area                          |
|                                                             | 7943 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   | e   | 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) | e   | e                                      | e   | e    | e     | e    | e    | e   | e   | e   | e    | e   | e   | e   | e   | e   | e   | e    | e    | No requirements                                                           |
| 799 Miscellaneous amusement and recreation services         |                                                                                                                                                    |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                                           |
|                                                             | 7991 Physical Fitness Facilities and Yoga Studios                                                                                                  |     |                                        |     |      |       |      |      |     | e   | 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                                           |



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| Principal Uses                                              |                                                                                          | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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 | MX-1 | MX-2 | UTD | MX-1 | MX-2 | Off-Street<br>Parking<br>Requirements:                                                        |
|-------------------------------------------------------------|------------------------------------------------------------------------------------------|-----|----------------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|------|------|-----|------|------|-----------------------------------------------------------------------------------------------|
| 604                                                         | Offices and Clinics of Other Health Practitioners including Therapeutic Massage (17-263) |     |                                        |     |      |       |      |      | E   | E   | E   | E    | E   | E   | E   | E    |      | C   | C    |      | gross floor area                                                                              |
| 605                                                         | Nursing and personal care facilities                                                     |     |                                        |     | E    | E     | E    | E    | E   |     |     |      | X   | X   | X   |      |      | E   | E    |      | 1 for each 6 beds                                                                             |
| 606                                                         | Hospitals                                                                                |     |                                        |     |      |       |      |      | X   |     | X   | X    | X   | X   |     |      |      | X   | X    |      | 1 for each 2 beds (not including bassinets)                                                   |
| 607                                                         | Medical and dental laboratories                                                          |     |                                        |     |      |       |      |      | X   | X   | X   | X    | X   | X   | X   | X    |      | X   | X    |      | 1.7 for each 1,000 square feet of gross floor area                                            |
| 61                                                          | Legal services                                                                           |     |                                        |     |      |       |      |      | X   | X   | X   | X    | X   | X   | X   | X    |      | X   | X    |      | 3 for each 1,000 square feet of gross floor area                                              |
| 62 Educational services                                     |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                                                                               |
| 621                                                         | Elementary and secondary schools                                                         | E   | E                                      | E   | E    | E     | E    |      | X   | X   | X   | X    | X   | X   | E   |      |      |     |      |      | 2 per classroom, plus 2 per office, plus 1 for every 5 seats in main auditorium               |
| 622                                                         | 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 |
| 623                                                         | Libraries and information centers                                                        | E   | E                                      | E   | E    | E     | E    |      | X   | X   | X   | X    | X   | X   |     | E    |      | X   | X    |      | 3 for every 1,000 square feet of gross floor area                                             |
| 624 Correspondence schools and vocational schools           |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                                                                               |
| 6244                                                        | 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 |
| 6249                                                        | Vocational schools except vocational high schools not elsewhere classified               |     |                                        |     |      |       |      |      | X   |     | X   | X    | X   | X   |     | X    |      | X   | X    |      |                                                                                               |
| 63 Social services                                          |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                                                                               |
| 632                                                         | Individual and family social services                                                    |     |                                        |     |      |       |      |      | X   | X   | X   | X    | X   | X   |     |      |      | X   | X    |      | 3 for each 1,000 square feet of gross floor area                                              |
| 633                                                         | Job training and vocational rehabilitation services                                      |     |                                        |     |      |       |      |      | X   | X   | X   | X    | X   | X   |     | X    |      | X   | X    |      |                                                                                               |
| 635                                                         | Day care facilities (section 17-262)                                                     | E   | E                                      | E   | E    | E     | E    | E    | E   | E   | E   | E    | E   | E   | E   | E    |      | E   | E    |      | 1 per every 4 students                                                                        |
| 636                                                         | Residential care (section 17-263)                                                        | E   | E                                      | E   | E    | E     | E    | E    | E   | E   | E   | E    | E   | E   | E   |      |      | E   | E    |      | 1 per every 4 residents subject to state law                                                  |
| 64 Museums, art galleries, botanical and zoological gardens |                                                                                          |     |                                        |     |      |       |      |      |     |     |     |      |     |     |     |      |      |     |      |      |                                                                                               |
| 641                                                         | Museums and art galleries                                                                |     |                                        |     |      |       |      |      | X   | E   | X   | X    | X   | X   | X   |      | X    | X   | X    |      | 3 for each 1,000 square feet of gross floor area                                              |

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| Principal Uses                                                        |                                                                     | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D | RG-1 | RG-1A | UG-2 | RG-3 | C-1 | C-2 | C-3 | C-3A | C-4 | C-5 | C-6 | M-1 | M-2 | UTD | LOK-1 | LOK-2 | Off-Street<br>Parking<br>Requirements                                                                |  |
|-----------------------------------------------------------------------|---------------------------------------------------------------------|-----|----------------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|-------|-------|------------------------------------------------------------------------------------------------------|--|
| 642                                                                   | Arboreta, botanical and zoological gardens                          | 0   |                                        |     |      |       |      |      | 0   | 0   | x   | x    | x   | x   |     | 0   |     | 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                                             | 0   | 0                                      | 0   | 0    | 0     | 0    | 0    | 0   | 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                       |     |                                        |     |      |       |      |      |     |     | 0   |      |     |     |     | x   | x   |     | 0     | 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   | 0   | x     |       |                                                                                                      |  |
| 874                                                                   | Management and public relations services                            |     |                                        |     |      |       |      |      | x   | 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   | 0   | 0   | 0    |     |     |     |     |     | x   | x     |       | 2 for each dwelling unit                                                                             |  |
| 8811.2                                                                | Attached one-family                                                 |     |                                        |     | x    | x     | x    |      | 0   | 0   |     |      |     |     |     |     |     | x   | x     |       |                                                                                                      |  |
|                                                                       | Townhouses (section 17-255)                                         |     |                                        |     |      |       |      | x    |     | 0   |     |      |     |     |     |     |     |     |       | x     |                                                                                                      |  |
|                                                                       | Two-family                                                          |     |                                        | x   | x    | x     | x    |      | x   | 0   | 0   | 0    |     |     |     |     |     | x   | x     |       |                                                                                                      |  |
|                                                                       | Multifamily                                                         |     |                                        |     | x    | x     | x    |      | 0   | 0   | 0   | 0    |     |     |     |     |     | x   | x     |       |                                                                                                      |  |
|                                                                       | Group development                                                   |     | 0                                      |     | x    | x     | x    |      | 0   | 0   | 0   | 0    |     |     |     |     |     | x   | x     |       | Under 500 square feet: 1.5:1 DU<br>501 to 750 square feet: 1.75:1 DU<br>Over 750 square feet: 2:1 DU |  |
|                                                                       | High-rise (section 17-304)                                          |     |                                        |     |      |       |      | x    | x   |     | 0   | x    | x   | x   |     |     |     | x   | x     |       |                                                                                                      |  |
|                                                                       | Mid-rise (section 17-264)                                           |     |                                        |     |      |       |      | x    |     | 0   |     | x    | x   | x   |     |     |     | x   | x     |       |                                                                                                      |  |
| 8811.3                                                                | Mobile home parks subject to article VI, Chapter 2, of this chapter |     |                                        |     |      | 0     | 0    |      |     |     |     |      |     |     |     |     |     |     |       |       | 2 per mobile home accommodation                                                                      |  |

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| Principal Uses                                                  |                                                              |                                             | D-1 | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>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 | UFD | MX-1 | MX-2 | Off-Sheet<br>Parking<br>Requirements |                                                  |
|-----------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------|-----|----------------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|--------------------------------------|--------------------------------------------------|
|                                                                 | 8811.4                                                       | Dormitories                                 |     |                                        |     |      |       |      |      | C   |     |     |      | X   | X   |     |     |     |     |      | X    | X                                    | 1 for each bedroom                               |
|                                                                 | 8811.5                                                       | Fraternity and sorority houses              |     |                                        |     | O    | O     | O    |      | C   |     | O   |      | X   | O   |     |     |     |     |      | O    | O                                    |                                                  |
|                                                                 | 8811.6                                                       | Dormitories Private                         |     |                                        |     |      |       |      |      | C   |     |     |      | C   | C   |     |     |     |     |      | C    |                                      |                                                  |
| 89                                                              | Miscellaneous services                                       |                                             |     |                                        |     |      |       |      |      | X   | 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 affairs                           |     |                                        |     |      |       |      |      | X   | 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    | X                                    |                                                  |
|                                                                 | 916                                                          | 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                   |     |                                        |     |      |       |      |      |     |     | O   |      |     |     |     | O   | O   |     |      |      |                                      | 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    | X                                    | 1 for each employee on shift                     |
| 93                                                              | Public finance, taxation and commodity 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                                    |                                                  |

h11

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.

TABLE 2. SCHEDULE OF MAJOR HEIGHT AND AREA REQUIREMENTS

| District | Minimum Lot Area per Unit<br>(square feet) |                            | Approximate<br>Maximum<br>Density<br>(units<br>per acre) | Minimum Yard Requirements<br>(feet) |      |        | Minimum<br>Lot<br>Width<br>(feet) | Maximum<br>Height<br>(feet) | Percent<br>Maximum<br>Lot<br>Coverage |
|----------|--------------------------------------------|----------------------------|----------------------------------------------------------|-------------------------------------|------|--------|-----------------------------------|-----------------------------|---------------------------------------|
|          | First<br>Unit                              | Each<br>Additional<br>Unit |                                                          | Front                               | Rear | Side   |                                   |                             |                                       |
| 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 <sup>b</sup>             | 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 <sup>h</sup>                 | N/A  | N/A    | N/A                               | 50'                         | N/A                                   |
| MX-2     | N/A                                        | N/A                        | N/A                                                      | N/A <sup>i</sup>                    | N/A  | N/A    | N/A                               | N/A <sup>m</sup>            | 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:

<sup>a</sup> Minimum lot area for a high-rise residential development shall be one acre.

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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. 17-292. 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 façade 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. 17-293. 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 \_\_\_\_\_

## INCHOATE DOWER

## Black's Law Dictionary

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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 235, 346 N.Y.S.2d 235. 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, 85 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 /insideri/. 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 /insipetur/. 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 /insayt/. 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 /insivalij/. Lat.** Irregular; improper; out of the due course of law.

**Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare, vel respondere /insivalij est, náyasy tóvta llyijy parapékta, yúwa shokwa partikýale lyjes propósta, júvdsakéry, vel respondéti/. Improper, without looking at the**

Presenter

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Westlaw.

RLZPN § 33:3

2 Rathkopf's The Law of Zoning and Planning § 33:3 (4th ed.)

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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

Date \_\_\_\_\_

Case No. \_\_\_\_\_

Presenter \_\_\_\_\_

EXHIBIT \_\_\_\_\_

## 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 Graveland 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-

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

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-

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-

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*.

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RLZPN § 33:3

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124

BOZA000079

***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 097 INQ

APPLICATION

\*\*\*\*\*

Last Changed on APR 22 2009 by Employee 21828

NEXT SCREEN APPLY

Account Number 33786-8

Name of Business

Status: REGULAR Out of Business!

Cola/Rich

THE TOBACCO MERCHANT

C NOTES ATTACHED!

Location of Business

Current License Year 2009

Number Suffix Dir Street Name Type

License Number

1220 BOWER PKWY

Date Printed

Apt/Hotel: Name STE E-4 Type

Business Gross\$

In COLUMBIA License Area? Y Located In L

License Fee \$

Business Codes

Penalty Fee \$

077 - I Type TOBACCO PRODUCTS RETAIL

Fee Paid \$

S.I.Code 35999

Bus.Start Date 12061997

Federal ID 582282753

StateTaxNo. 3232486

Application Type 2

Ownership Type 1

Pd

Rec #

Mailing Address

Phone Numbers

Geographic Information

THE TOBACCO MERCHANT

Local 749-5499

Business License Area

1220 BOWER PKWY

Ho/of 803-351-2346

Planning Zone

COLUMBIA, SC

Emerg

Census Tract

ZIP CODE + 4

Tax Map Block Lot Suffix

29212

2797 1 5

Owner's Name

No. Employees 5 Hazardous Material/Waste N

PAUL BROCK/ PRESIDENT

Minority N and Certificate Number

Previous Account Number

Audit Dt 00000000 out of Business Dt 04282009

10:07:06:07 INPUT REQUEST

0.00



| LNAME151655NOV0609 091                          |                         | FOR           |             | LOOKUP BUSINESS BY NAME OR LOCATION |                   |
|-------------------------------------------------|-------------------------|---------------|-------------|-------------------------------------|-------------------|
| MORE LOCATIONS FOR YOUR SELECTION! PRESS XMIT!  |                         |               |             | NEXT SCREEN LNAME                   |                   |
| Business Name                                   | Business Location       |               | Account No. |                                     |                   |
| Business Code                                   | Account Status          | Area          | SIC         | #Emp                                | SDate Audit NHMA0 |
| 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 0           |                         |               |             |                                     |                   |
| 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, 3<sup>rd</sup> Floor, City Hall, 1737 Main Street  
Columbia, South Carolina

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

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|                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Requested Action:</b>                        | Administrative Appeal of the Zoning Administrator's decision to classify the use as a drinking establishment (Tobacco Merchant).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Applicable Sections of Zoning Ordinance:</b> | <p>§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.</p> <p>§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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Case History:</b>                            | <p>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.</p> <p>9/3/09 Our office received a complaint that the above referenced location was operating as a drinking establishment.</p> <p>9/9/09 Onsite inspection was conducted of the property.</p> <p>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.</p> <p>9/16/09 An additional onsite inspection was conducted to obtain pictures of business.</p> <p>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.</p> <p>10/5/09 Administrative Appeal filed.</p> |

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

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

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**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".

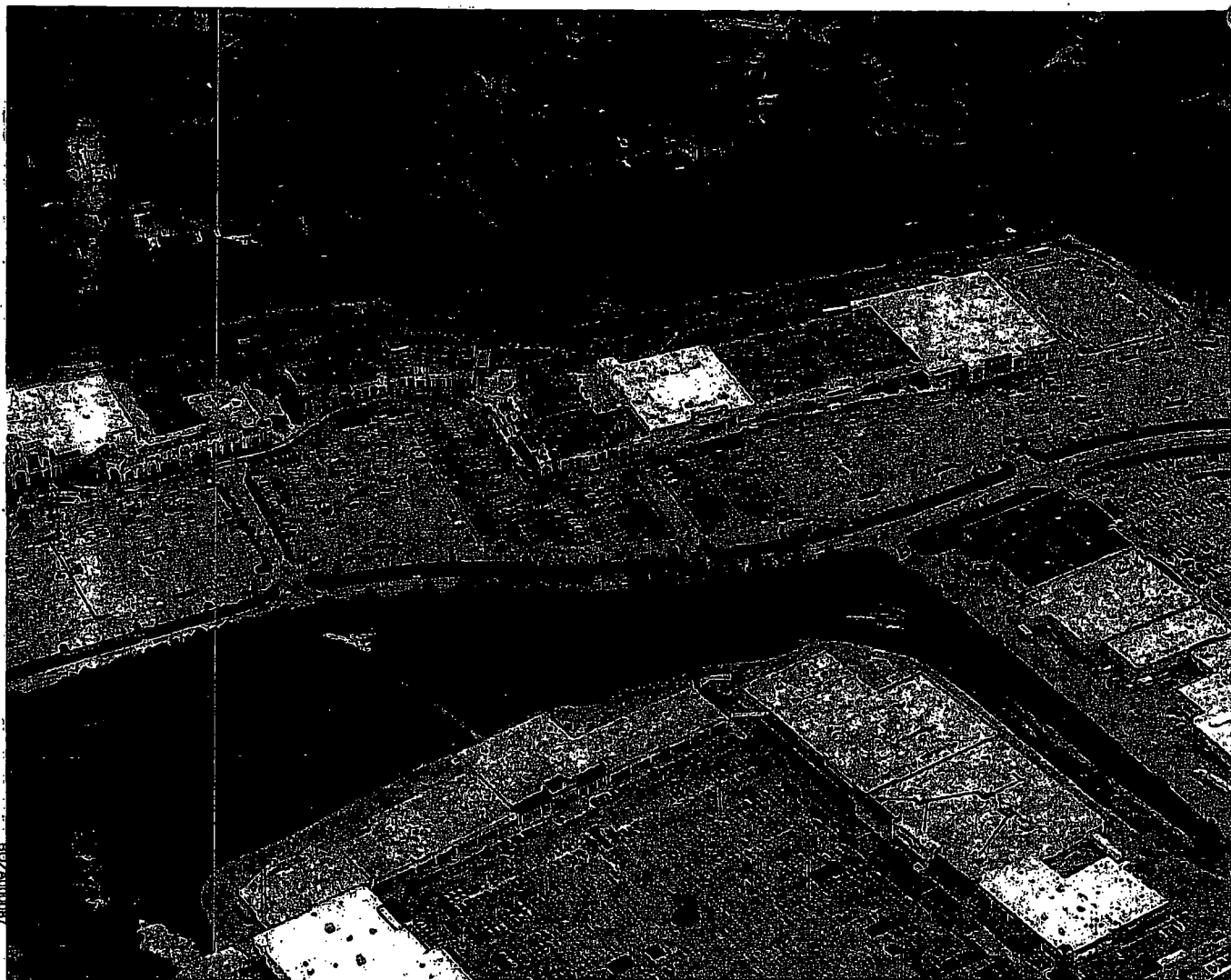
In closing, staff feels that it is clear that this business is operating as a drinking place based upon the amount of seating and area attributed to the on-premise consumption of beer and wine based upon the floor plan created by staff is significant and not incidental sales. We humbly request that the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

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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.

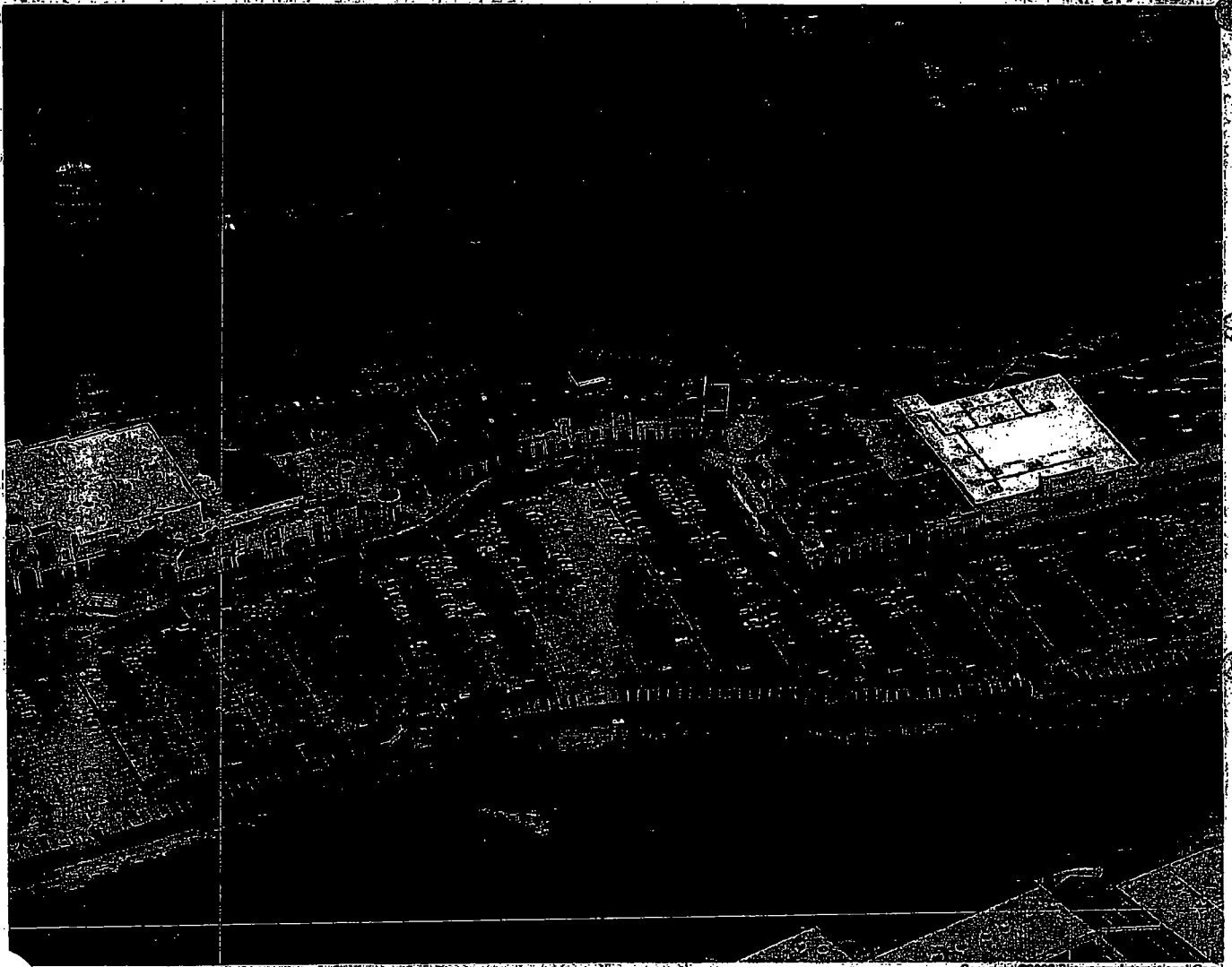
None.





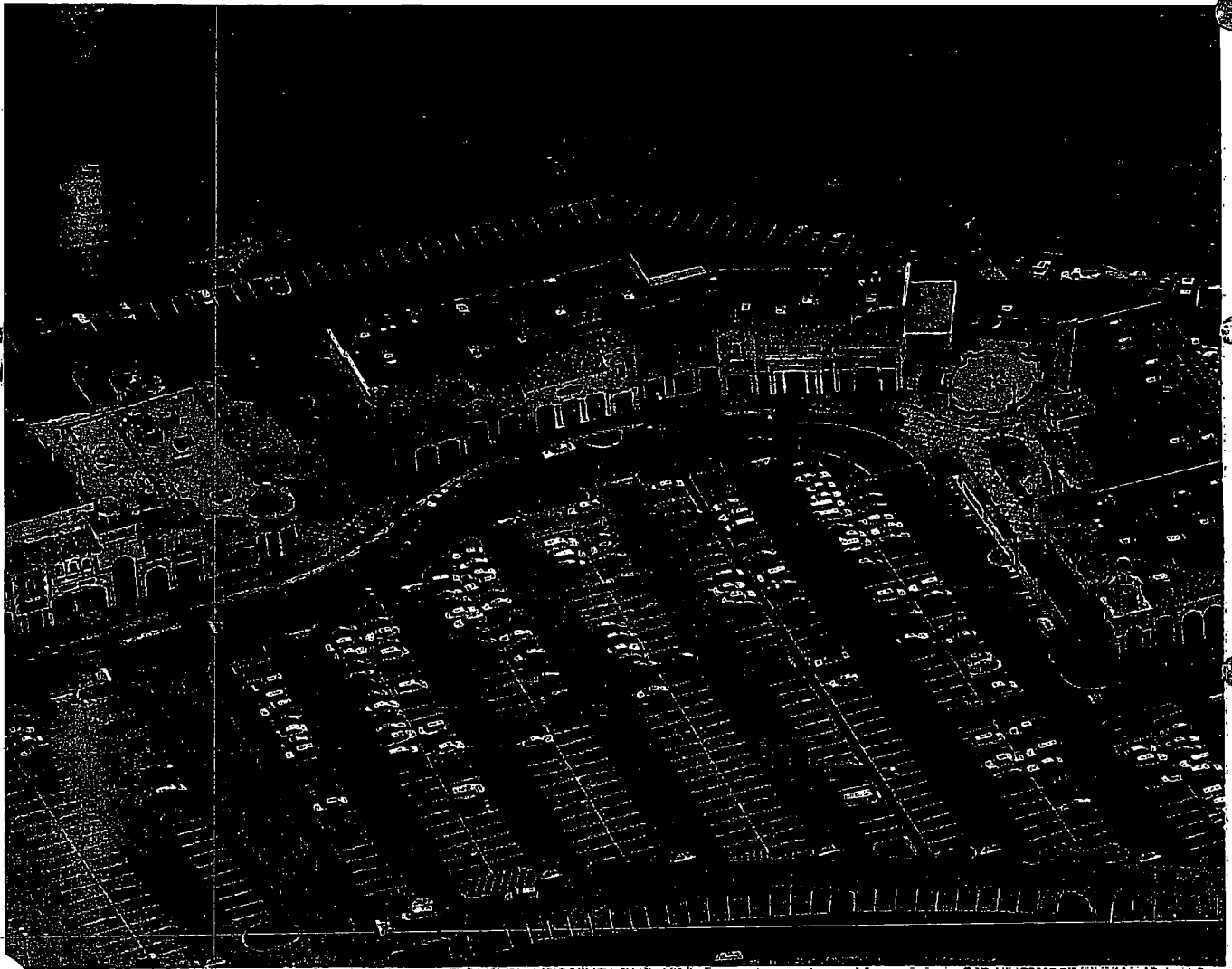
Average Scale: 1-inch = 163.5 feet

Copyright ©2007 Pictometry International Corp.



Average Scale: 1 inch = 111.2 feet

Copyright ©2007, Pinemere International Corp.



Average Scale: 1 inch = 53.6 feet

Copyright ©2007, Pitman International Corp.  
BOZ1000088



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: 00279701 Block: 35 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: Improperly 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 Ste 207  
Columbia SC 29212  
Appellant's Address

803-551-0215  
Telephone Number

[Signature]  
Appellant's Signature

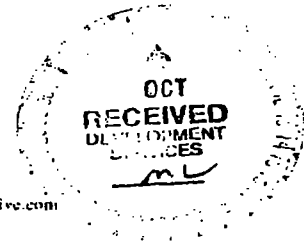
Attorney at Law  
Representing Tobacco Merchant



## 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@tisc.com



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,

A handwritten signature in black ink, appearing to be "Darryl D. Smalls".

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,

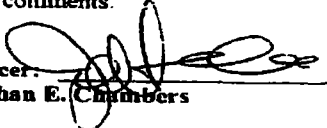
Your attention is called to the operation of a drinking establishment (SIC 5813) without obtaining a Special Exception from Board of Zoning Appeals at the above-referenced property. As such, in accordance with § 17-90 of the City of the Zoning Ordinance of the City of Columbia, South Carolina (hereinafter 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

---

Department of Planning and Development Services (Zoning Division)  
PO Box 147 / Columbia, SC 29217 / 803.545.3333



CITY OF COLUMBIA  
BUSINESS LICENSE  
CLEARANCE FORM

74054

**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. 1<sup>st</sup> 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**

IS THIS A SEXUALLY ORIENTED BUSINESS? (YES) \_\_\_\_\_ (NO) ☒ (INITIALS) \_\_\_\_\_

TMS#: 2777 01 SS ZONING DISTRICT: C-3  
ORDINANCE SECTION 17-258 5993 DESCRIPTION: Cigar Store/Shop  
( ☒ ) APPROVED ( ) DENIED

ZONING ANALYST SIGNATURE: [Signature] DATE: 4/22/09  
ZONING ANALYST NAME (PRINT): Michael L. Smith

☒ **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 Hartman (KOS) DATE: 5-22-09

☒ **STEP 4 - FIRE DEPARTMENT (803) 545-3701**

( ☒ ) APPROVED ( ) DENIED  
FIRE MARSHALL SIGNATURE: Robert Scott DATE: 5-22-09

**STEPS 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 use within 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 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 fixed 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. 2002-028, § 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:
- "x" means that the indicated use is permitted in the indicated district.
  - "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.
  - "a" means that the indicated use is permitted as an accessory use in the indicated districts.
  - "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.
  - "n.e.c." means "not elsewhere covered" in the Standard Industrial Classification Coding Manual.
  - "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:
- Storage in connection with a trade;
  - Storage or long term parking of commercial vehicles or industrial storage in excess of one day; and
  - 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 n.r. = no requirements. |                                   |                                                    |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
| Principal Uses                                                                                                                                                                                                                | Zoning Districts                  |                                                    |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               | D-1                               | RS-1A<br>RS-1B<br>RS-2<br>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<br>Parking<br>Requirements            |
| DIVISION A: AGRICULTURE, FORESTRY AND FISHING                                                                                                                                                                                 |                                   |                                                    |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
| 1                                                                                                                                                                                                                             | Agricultural production-Crops     |                                                    |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
| 10                                                                                                                                                                                                                            | Horticultural specialties         |                                                    |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               | 101                               | Ornamental floriculture and nursery products       |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               | 109                               | Horticultural specialties not elsewhere classified |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               | 10                                | General farms, primarily crop                      |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
| 2                                                                                                                                                                                                                             | Agricultural production-Livestock |                                                    |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
| 7                                                                                                                                                                                                                             | Agricultural services             |                                                    |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               | 74                                | Veterinary services (section 17-259)               |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               | 741                               | With indoor kennels                                |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               | 742                               | With outdoor kennels                               |     |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                                  |
|                                                                                                                                                                                                                               |                                   |                                                    |     |      |       |      |      | a   | a/e | a   | a    | a   | a   | a   | a   | a   | a   | 3 for each 1,000 square feet of gross floor area |

TABLE 1. TABLE OF PERMITTED USES

| LEGEND                                                                                                                                                                                                                   |                  |                                |     |      |       |      |      |     |     |     |      |     |     |     |     |                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------------------------------|-----|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|----------------------------------------------------|
| p = permitted use as the desired, s = special exception by Board of Zoning Appeals, a = permitted accessory use, ab = permitted as an accessory use or as a principal use by special exception, and n = no requirements. |                  |                                |     |      |       |      |      |     |     |     |      |     |     |     |     |                                                    |
| Principal Uses                                                                                                                                                                                                           | Zoning Districts |                                |     |      |       |      |      |     |     |     |      |     |     |     |     | On-Street Parking Requirements                     |
|                                                                                                                                                                                                                          | D-1              | RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-O | RG-1 | RG-1A | RG-2 | RG-3 | C-1 | C-2 | C-3 | C-3A | C-4 | C-5 | C-6 | M-1 |                                                    |
| 554 Gasoline service stations                                                                                                                                                                                            |                  |                                |     |      |       |      |      |     | a   | a   | x    | a   | a   | a   | x   | gross floor area                                   |
| 555 Boat dealers                                                                                                                                                                                                         |                  |                                |     |      |       |      |      |     | a   | a   |      |     |     |     | x   | 3.5 for each 1,000 square feet of gross floor area |
| 556 Recreational and utility trailer dealers                                                                                                                                                                             |                  |                                |     |      |       |      |      |     | a   | a   |      |     |     |     | x   |                                                    |
| 56 Apparel and accessory stores                                                                                                                                                                                          |                  |                                |     |      |       |      |      | a   | x   | x   | x    | x   | x   | x   | x   | 3 for each 1,000 square feet of gross floor area   |
| 67 Furniture, home furnishings and equipment stores                                                                                                                                                                      |                  |                                |     |      |       |      |      |     | x   | x   | x    | x   | x   | x   | x   |                                                    |
| 58 Eating and drinking places                                                                                                                                                                                            |                  |                                |     |      |       |      |      |     |     |     |      |     |     |     |     | 6 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)                                                                                                                                                              |                  |                                |     |      |       |      |      | a   | a   | a   | a    | x   | x   | a   | x   | 12 for each 1,000 square feet of gross floor area  |
| 5844 Fast food eating places                                                                                                                                                                                             |                  |                                |     |      |       |      |      |     | a   | a   | a    | a   | a   | a   | x   |                                                    |
| 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                                                                                                                                                                                                        |                  |                                |     |      |       |      |      | a   | x   | x   | x    | x   | x   | x   | x   |                                                    |
| 593 Used merchandise stores                                                                                                                                                                                              |                  |                                |     |      |       |      |      |     | a   | x   | x    | x   | x   | x   | x   |                                                    |
| 594 Miscellaneous shopping goods stores                                                                                                                                                                                  |                  |                                |     |      |       |      |      |     | a   | x   | x    | x   | x   | x   | x   |                                                    |
| 596 Non-food retailers                                                                                                                                                                                                   |                  |                                |     |      |       |      |      |     |     |     |      |     |     |     |     | 3 for each 1,000 square feet of gross floor area   |
| 5961 Mail order houses                                                                                                                                                                                                   |                  |                                |     |      |       |      |      | x   | 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                                                                                                                                                                                                    |                  |                                |     |      |       |      |      |     | a   |     |      |     |     |     | x   | 1.7 for each 1,000 square feet of gross floor area |
| 5984 Liquefied petroleum gas (bottled gas) dealers                                                                                                                                                                       |                  |                                |     |      |       |      |      |     | a   |     |      |     |     |     | x   |                                                    |
| 599 Retail stores, not elsewhere classified                                                                                                                                                                              |                  |                                |     |      |       |      |      |     |     |     |      |     |     |     |     | 3.5 for each 1,000 square feet of gross floor area |
| 5992 Florist                                                                                                                                                                                                             |                  |                                |     |      |       |      |      | a   | x   | x   | x    | x   | x   | x   | x   |                                                    |
| 5993 Cigar stores and stands                                                                                                                                                                                             |                  |                                |     |      |       |      |      | a   | x   | x   | x    | x   | x   | x   | x   |                                                    |
| 5994 News dealers and newsstands                                                                                                                                                                                         |                  |                                |     |      |       |      |      | a   | x   | x   | x    | x   | x   | x   | x   |                                                    |
| 5999 Miscellaneous retail stores, not elsewhere classified                                                                                                                                                               |                  |                                |     |      |       |      |      | a   | x   | x   | x    | x   | x   | x   | x   |                                                    |

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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:

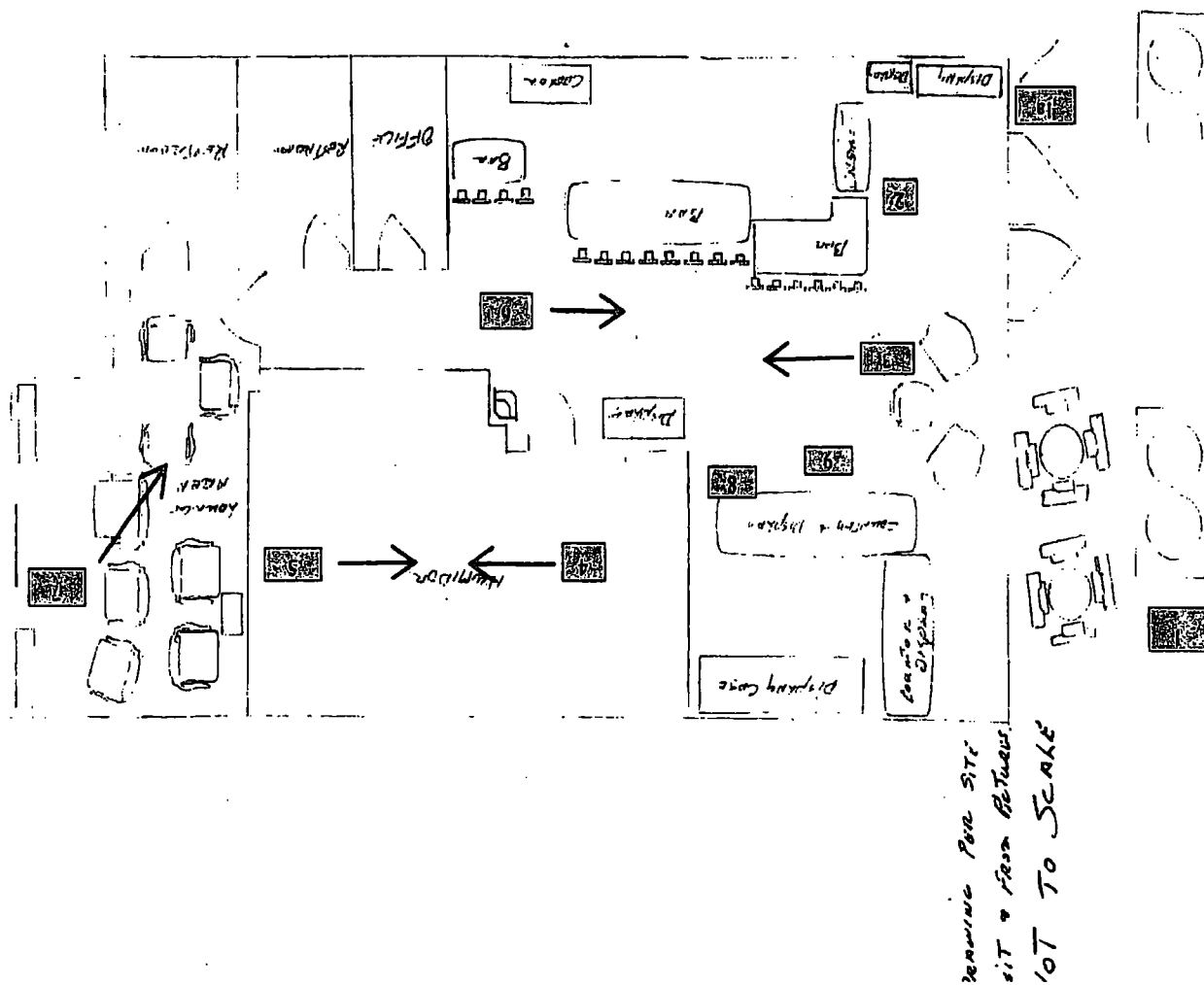
- (1) There is space or facilities allocated and used for carryout service, or for carryout and customer self-service for on-premises consumption combined;
- (2) Most food items are already prepared or packaged before the customer places an order, and
- (3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

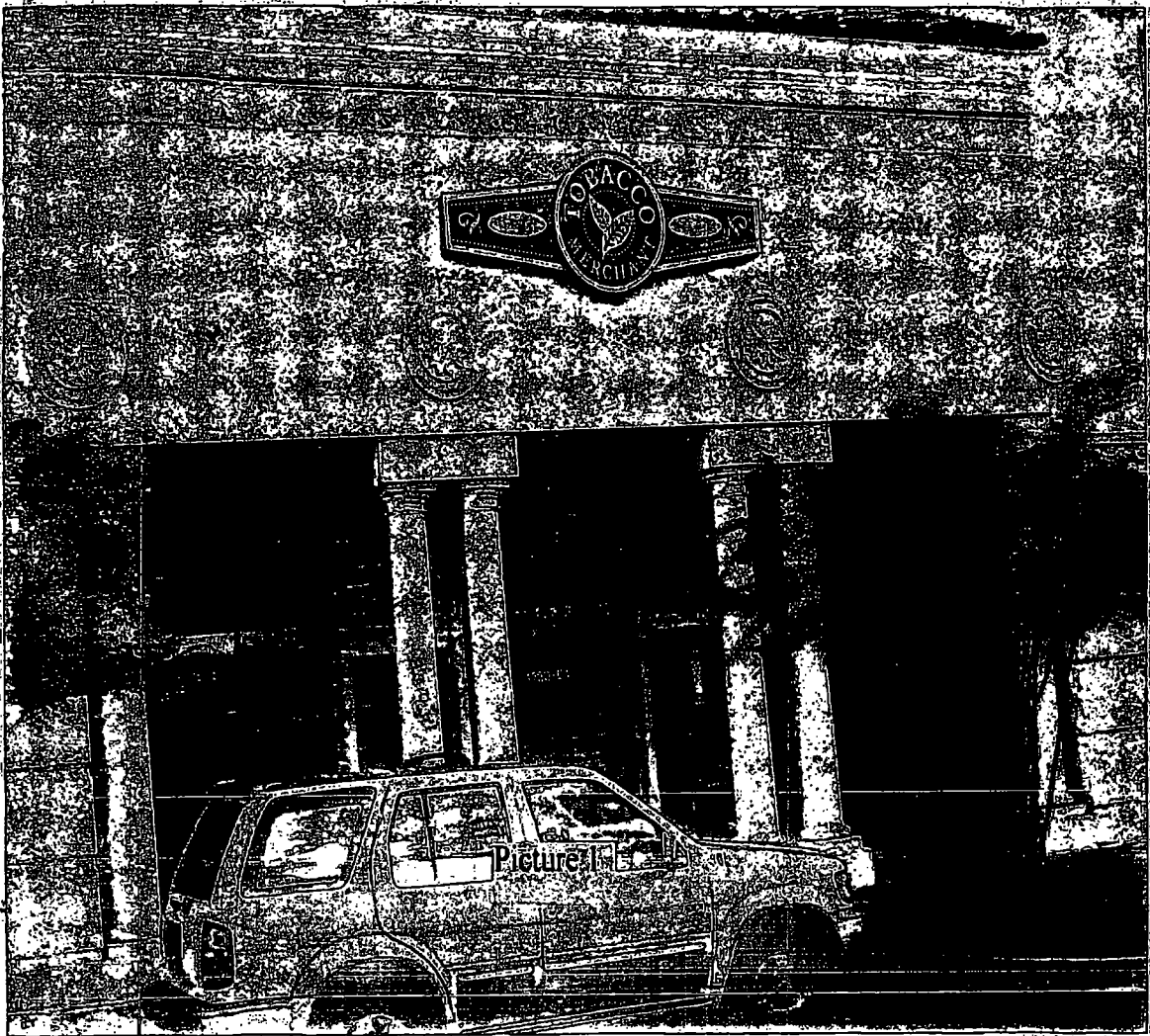
This definition does not include an establishment known as a retail grocery store, convenience store or delicatessen or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption.

*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.

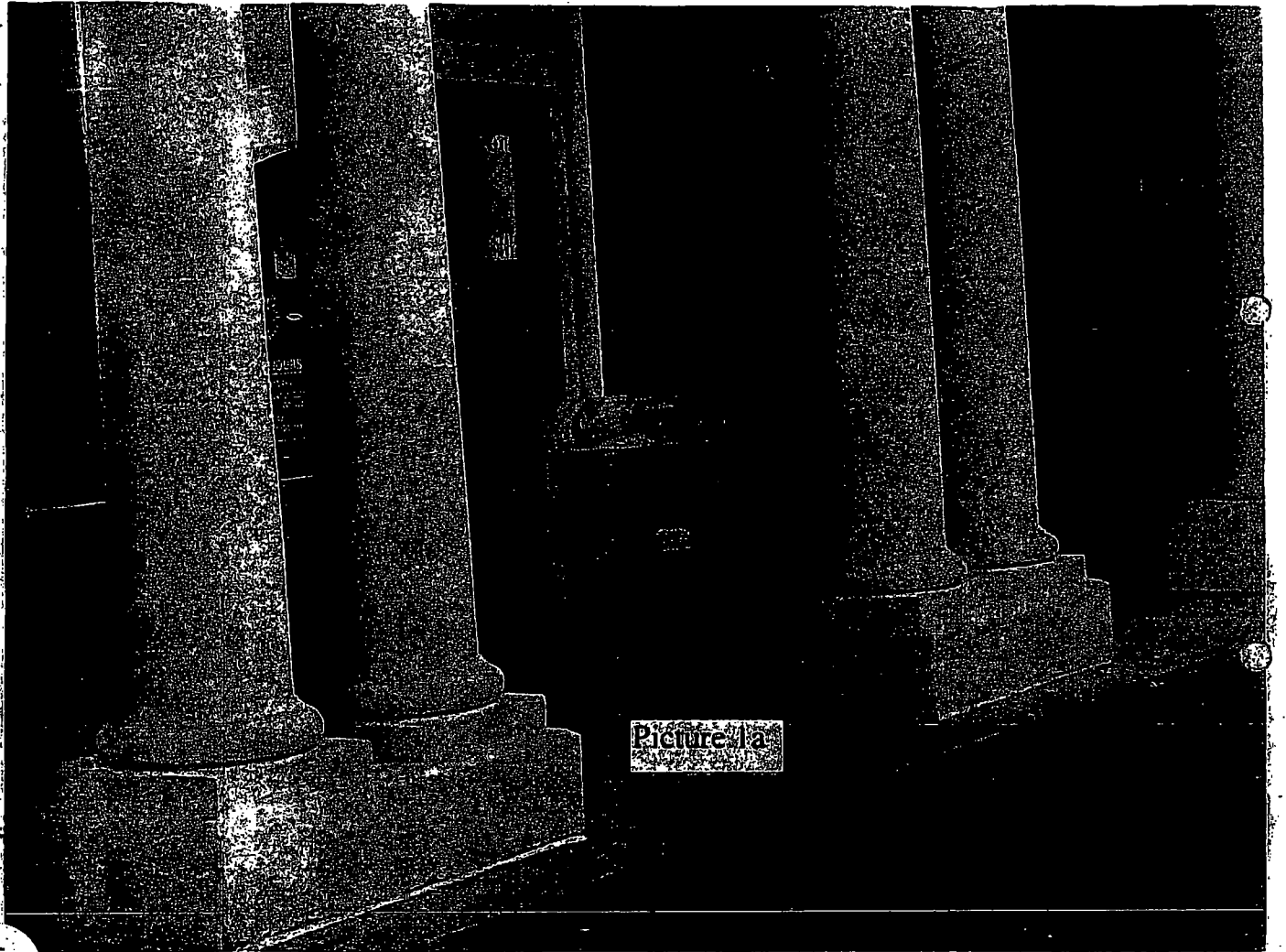


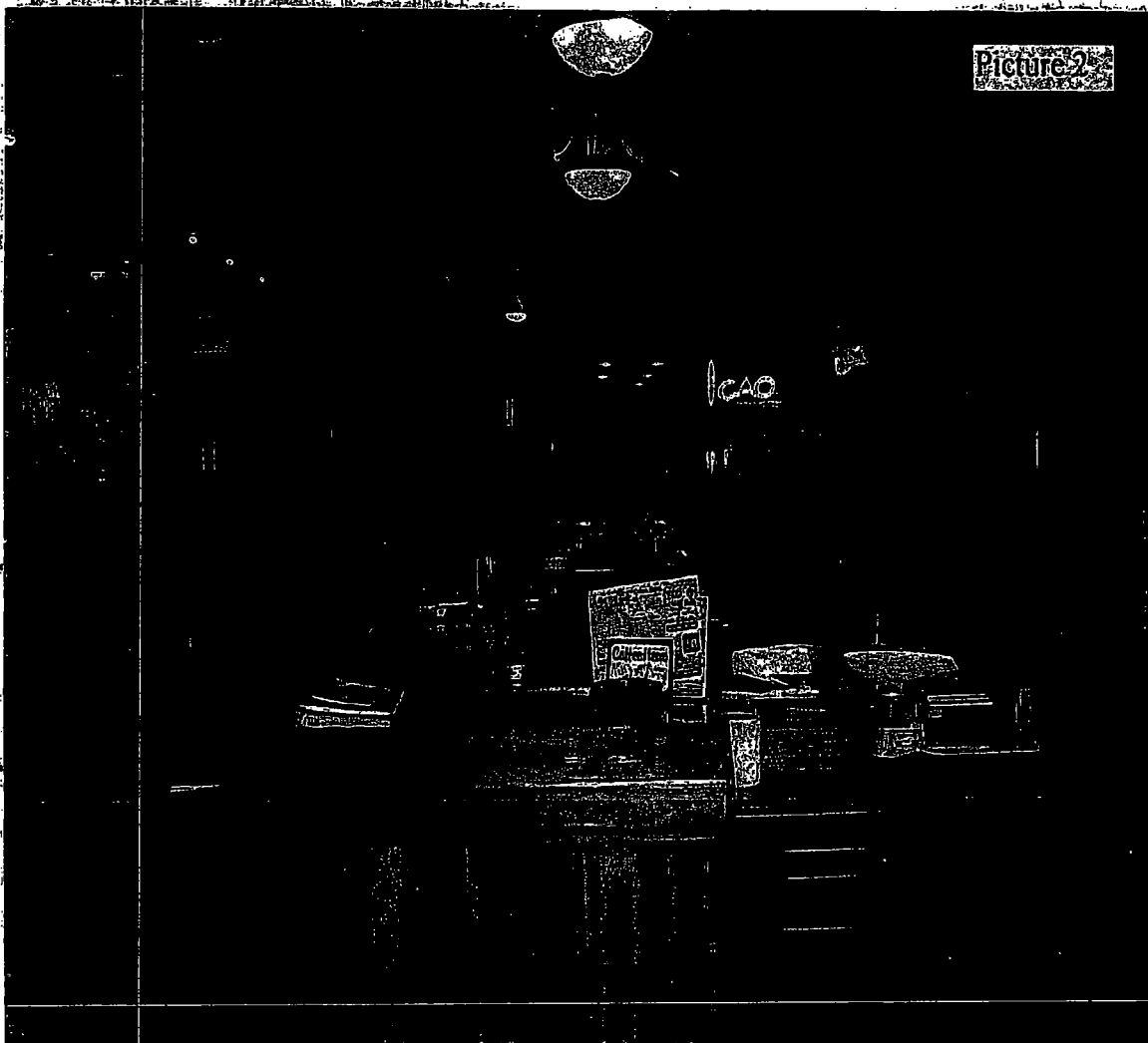




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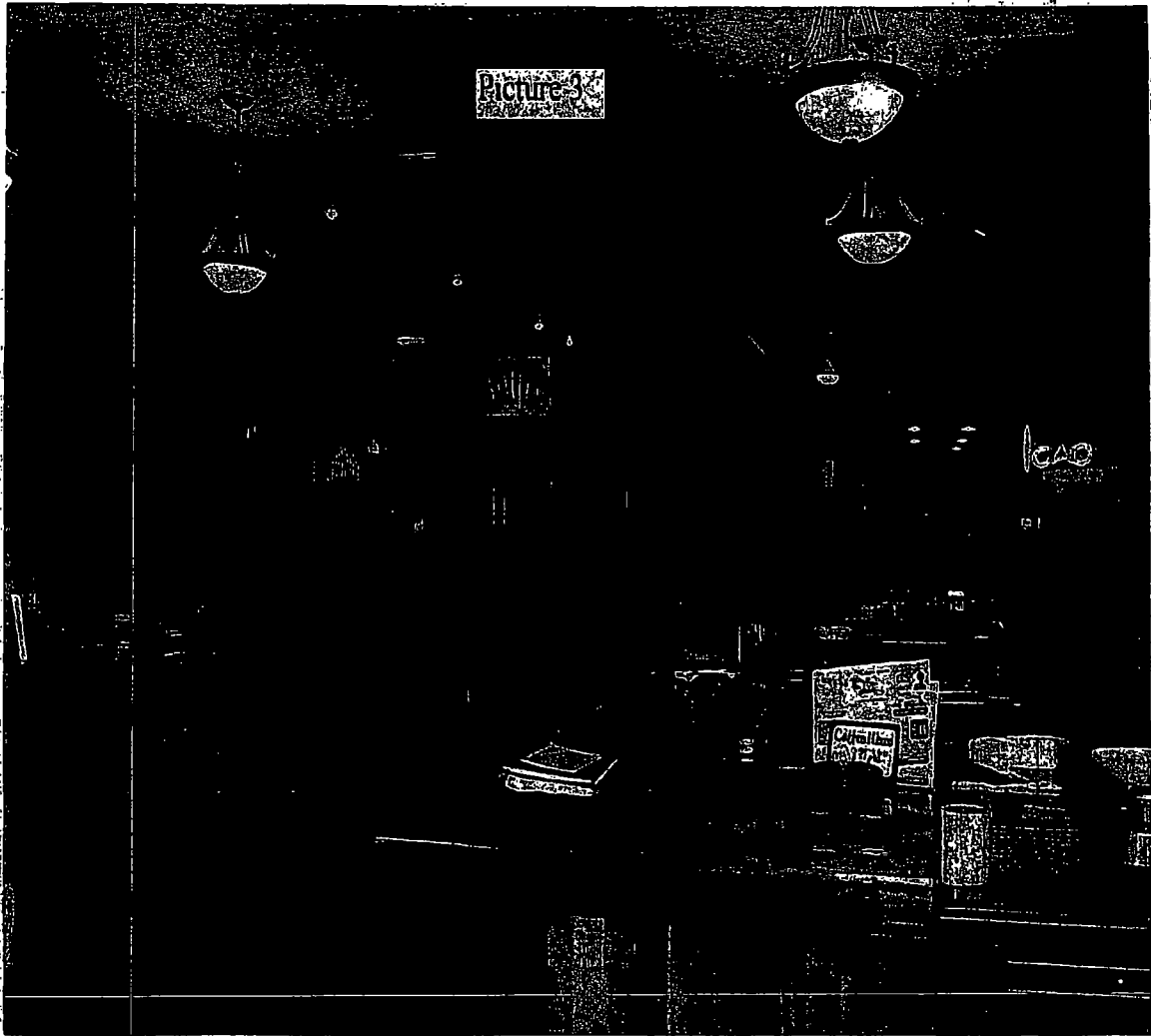
145



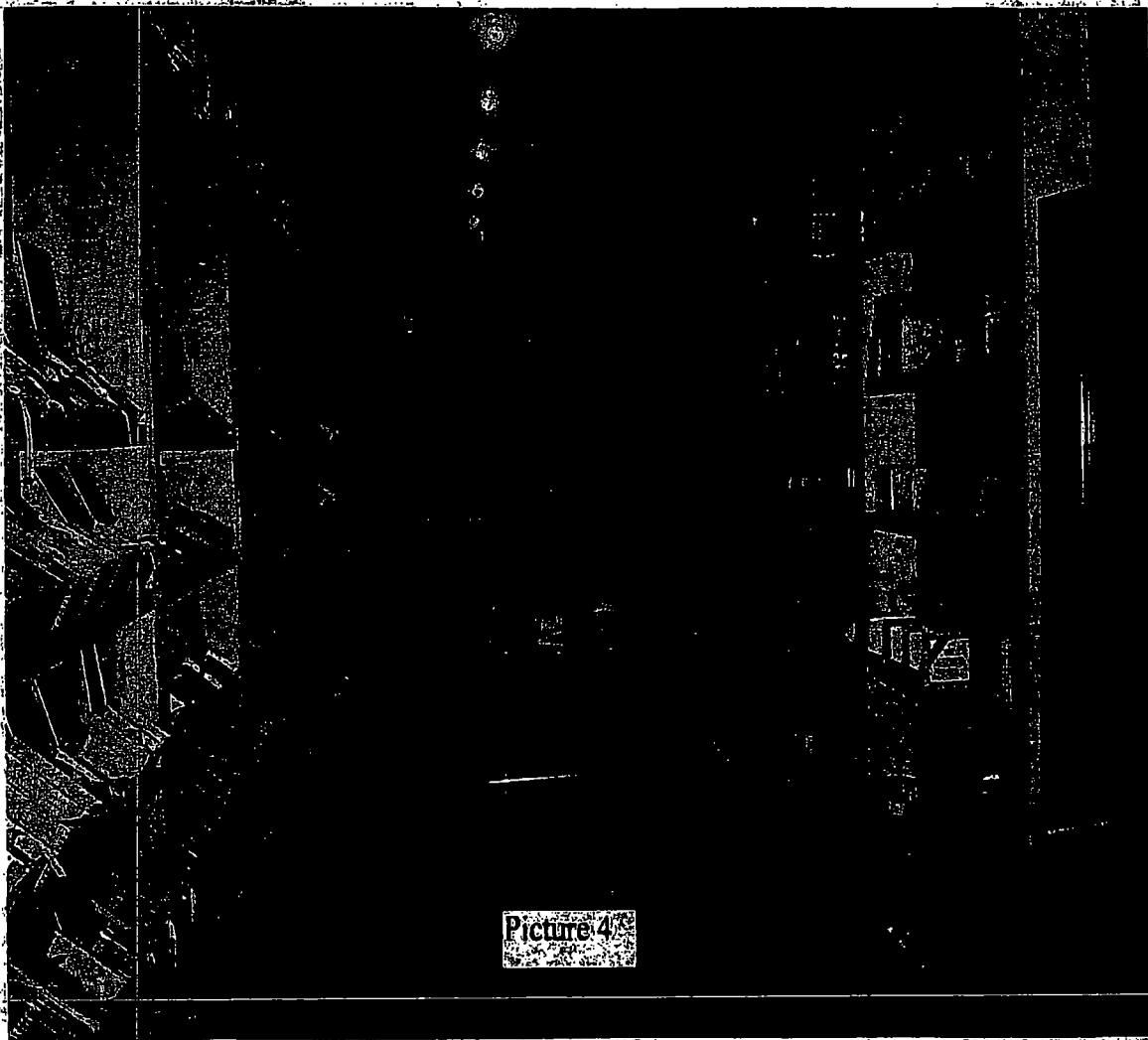


BOZA000102

147



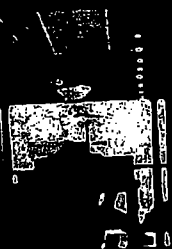
BOZA000103

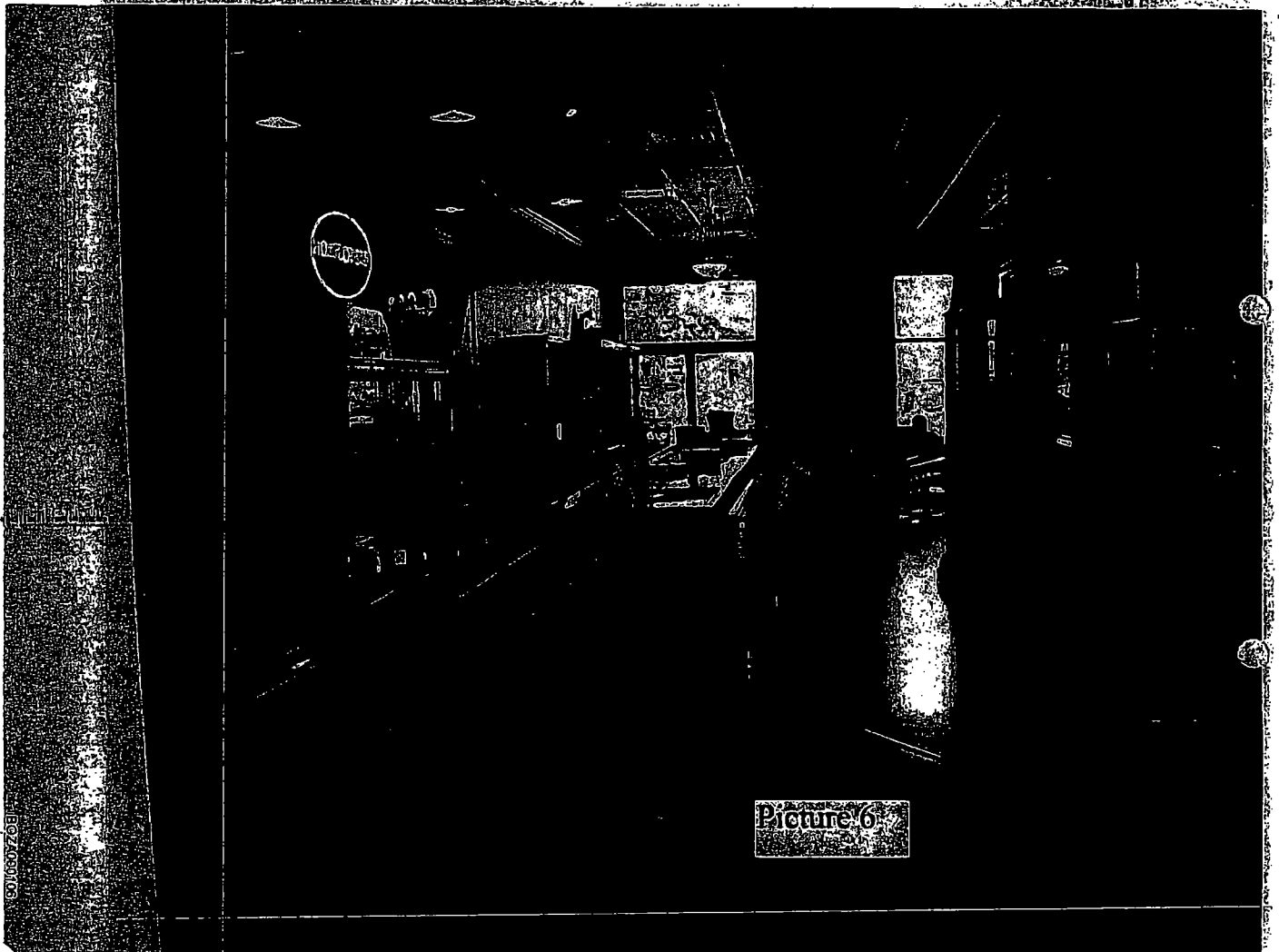


Picture 4

BOZA000104

Picture 5







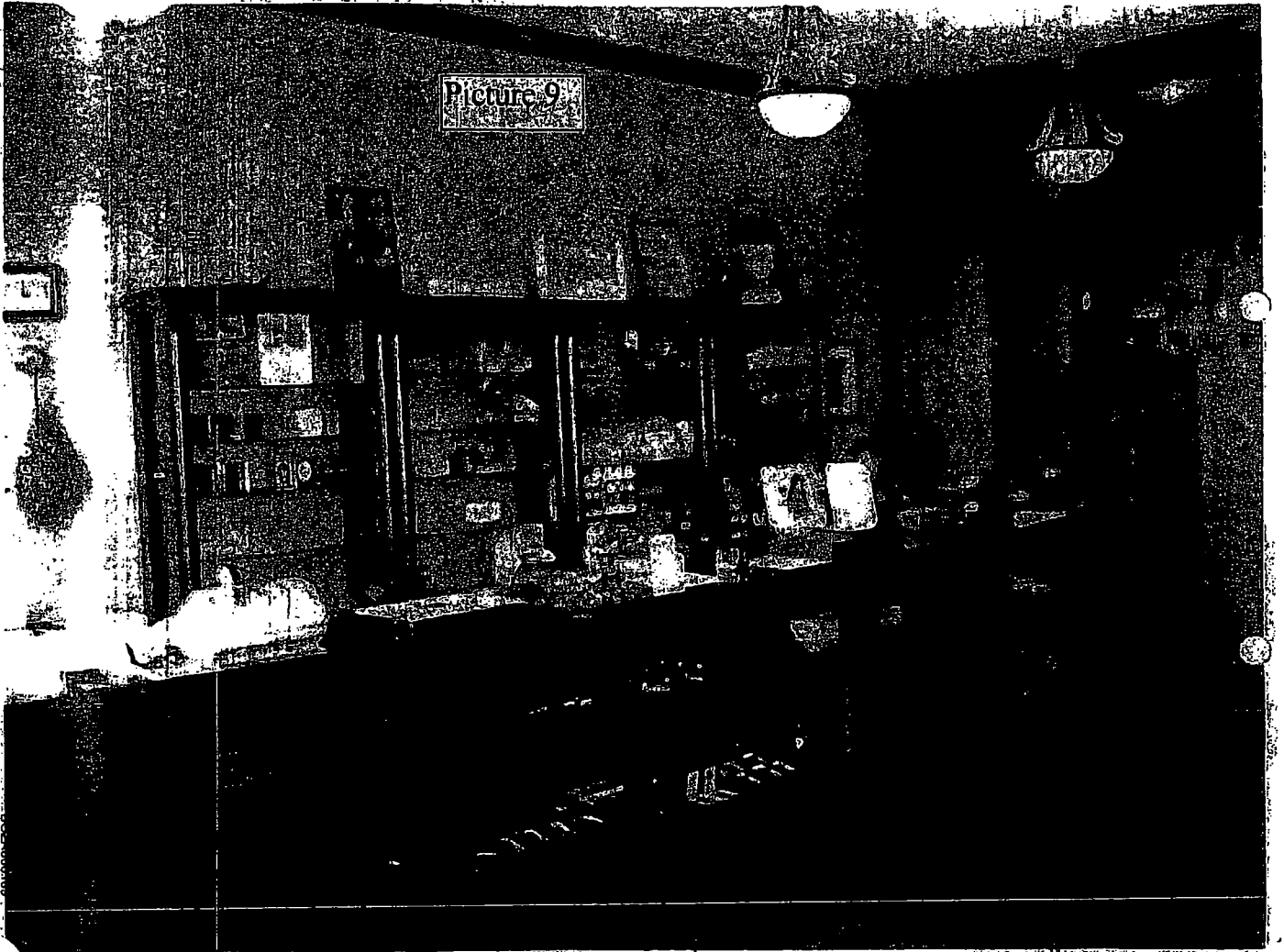
Picture 7

BOZA000107

Picture 8



Picture 9



# 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).

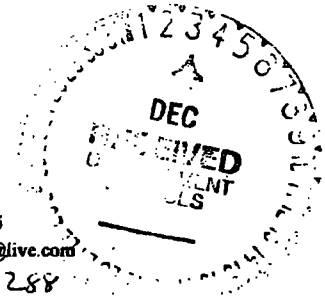
*Note: Applicant has requested this case be deferred until 1/12/10.*

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# 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



November 2, 2009

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

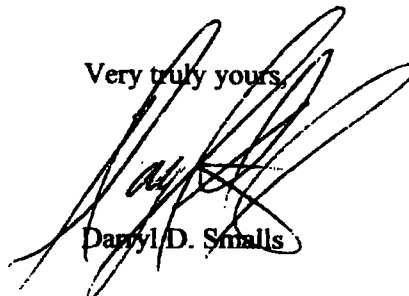
RE: Tobacco Merchant Zoning Appeal

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,

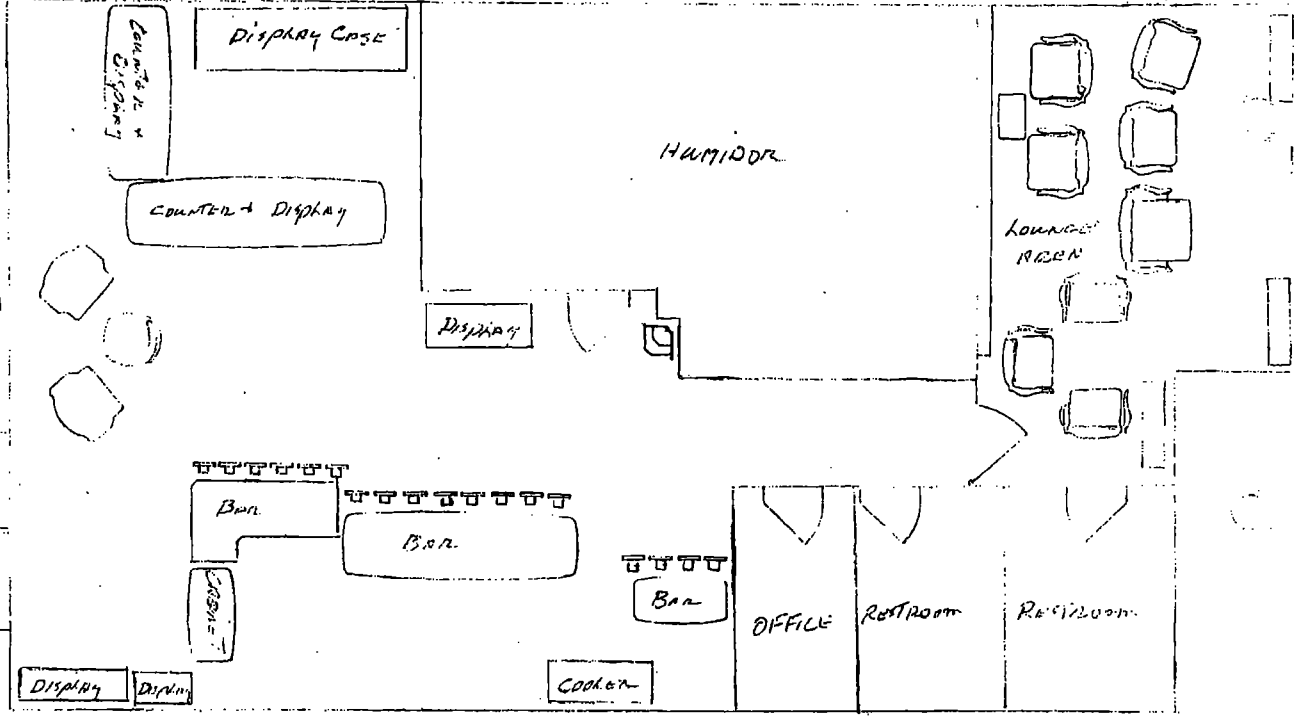
  
Darryl D. Smalls

DDS  
Enclosures

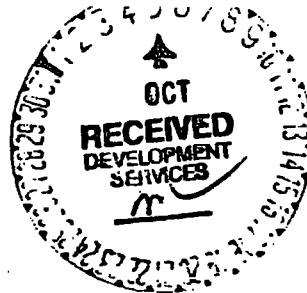
cc: William Slicer



maine for site  
 it is from future  
 of to scale



BOZAR00115



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: 002797-01 Block: SS 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: Improperly 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 Ste 207  
Columbia SC 2922

Appellant's Address

803-551-0245

Telephone Number

[Signature]  
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



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

A handwritten signature in black ink, appearing to be 'Darryl D. Smalls', written over the typed name.

Darryl D. Smalls

DDS  
Enclosures

cc: William Slicer



## WRITTEN NOTICE OF VIOLATION

**DATE & TIME****VIOLATION OBSERVED:** September 16, 2009**PERSON SERVED:**

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

**DATE & TIME****NOTICE SERVED:** 9/30/09 9:25pm**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,

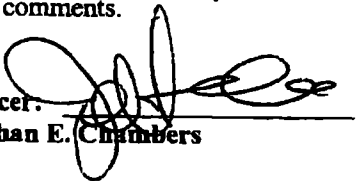
Your attention is called to the operation of a drinking establishment (SIC 5813) without obtaining a Special Exception from Board of Zoning Appeals at the above-referenced property. As such, in accordance with § 17-90 of the City of the Zoning Ordinance of the City of Columbia, South Carolina (hereinafter 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

74054

**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. 1<sup>st</sup> 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**

IS THIS A SEXUALLY ORIENTED BUSINESS? \_\_\_\_\_ (YES) ☒ (NO) ☒ (INITIALS) \_\_\_\_\_  
TMS#: 2797 01 SS ZONING DISTRICT: C-3  
ORDINANCE SECTION 17-258 5993 DESCRIPTION: Cigar Store/Shop  
☒ APPROVED ( ) DENIED \_\_\_\_\_  
ZONING ANALYST SIGNATURE: [Signature] DATE: 4/22/09  
ZONING ANALYST NAME (PRINT): Michael L. Smith

**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 Harkin (Kos) DATE: 5-22-09

**STEP 4 - FIRE DEPARTMENT (803) 545-3701**

( ☒ ) APPROVED ( ) DENIED  
FIRE MARSHALL SIGNATURE: Lat 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 use within 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              |                                                    |                  |                                        |     |      |       |      |      |     |     |     |     |     |     |     |     |     |     |                                                  |
|-----------------------------------------------|----------------------------------------------------|------------------|----------------------------------------|-----|------|-------|------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------------------------------------------------|
| Principal Uses                                |                                                    | Zoning Districts |                                        |     |      |       |      |      |     |     |     |     |     |     |     |     |     |     |                                                  |
|                                               |                                                    | D-1              | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D | RG-1 | RG-1A | RG-2 | RG-3 | C-1 | C-2 | C-3 | C-4 | C-5 | C-6 | C-7 | C-8 | M-1 | M-2 | UTD                                              |
| 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)               |                  |                                        |     |      |       |      |      |     |     |     |     |     |     |     |     |     |     |                                                  |
| 741                                           | With indoor kennels                                |                  |                                        |     |      |       |      |      |     |     |     |     |     |     |     |     | x   |     |                                                  |
| 742                                           | With outdoor kennels                               |                  |                                        |     |      |       |      |      |     |     |     |     |     |     |     |     | x   |     |                                                  |
|                                               |                                                    |                  |                                        |     |      |       |      |      |     |     |     |     |     |     |     |     |     |     | 3 for each 1,000 square feet of gross floor area |

891

**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; als = permitted as an accessory use or as a principal use by special exception, and nr = no requirements.

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

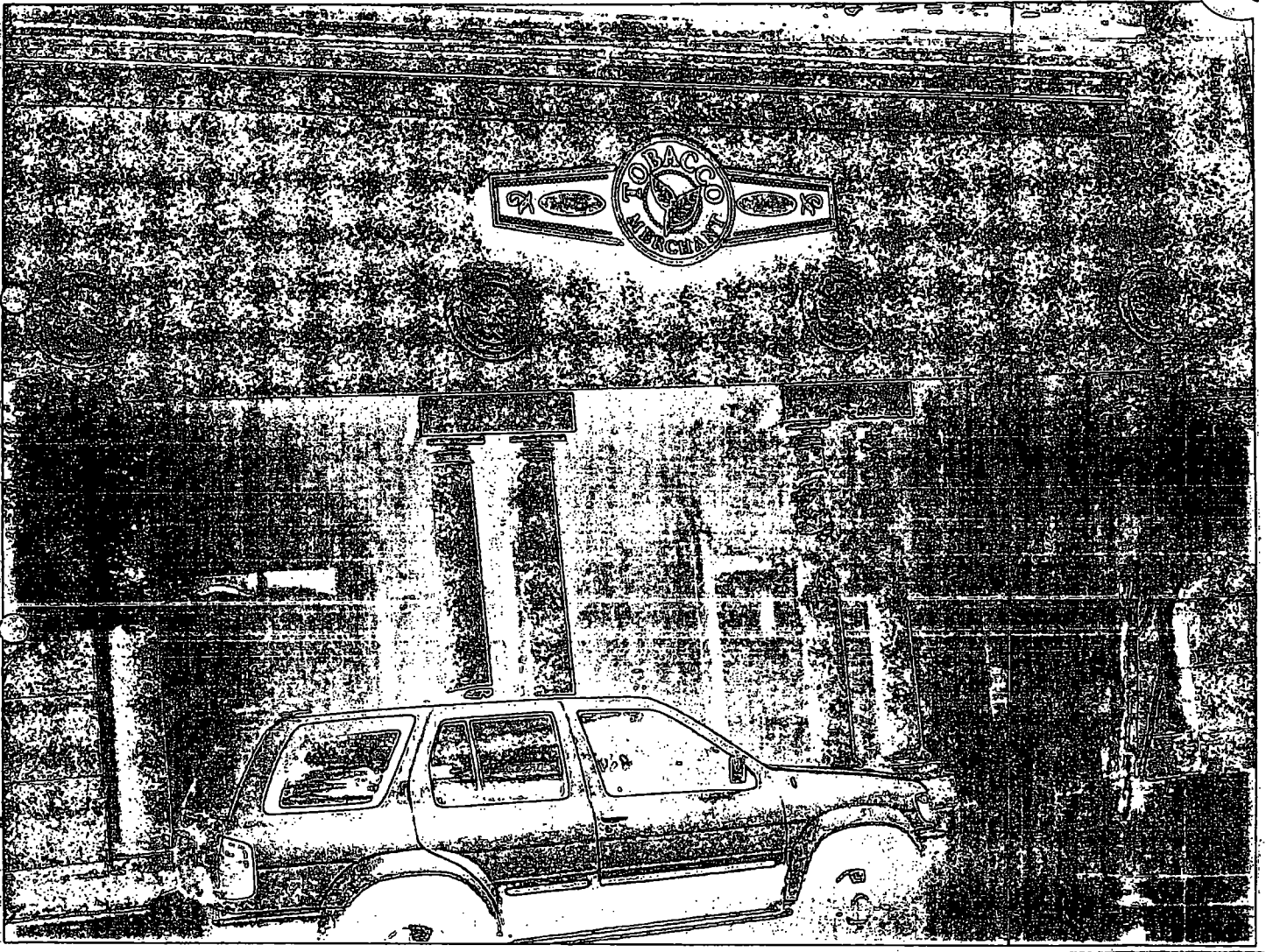
*Restaurant, fast food* means a place of business devoted to the retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it exhibits any of the following characteristics:

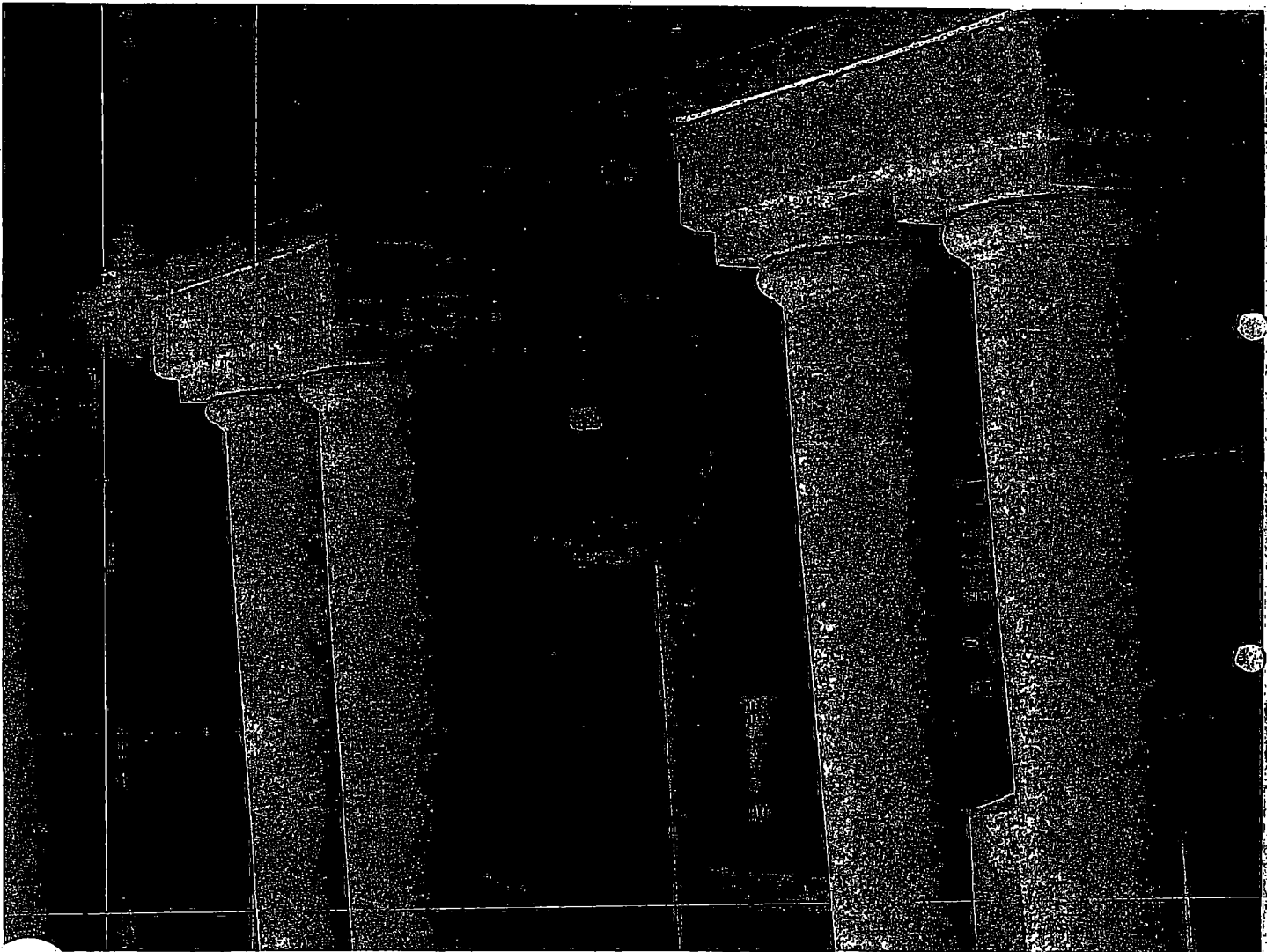
- (1) There is space or facilities allocated and used for carryout service, or for carryout and customer self-service for on-premises consumption combined;
- (2) Most food items are already prepared or packaged before the customer places an order; and
- (3) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

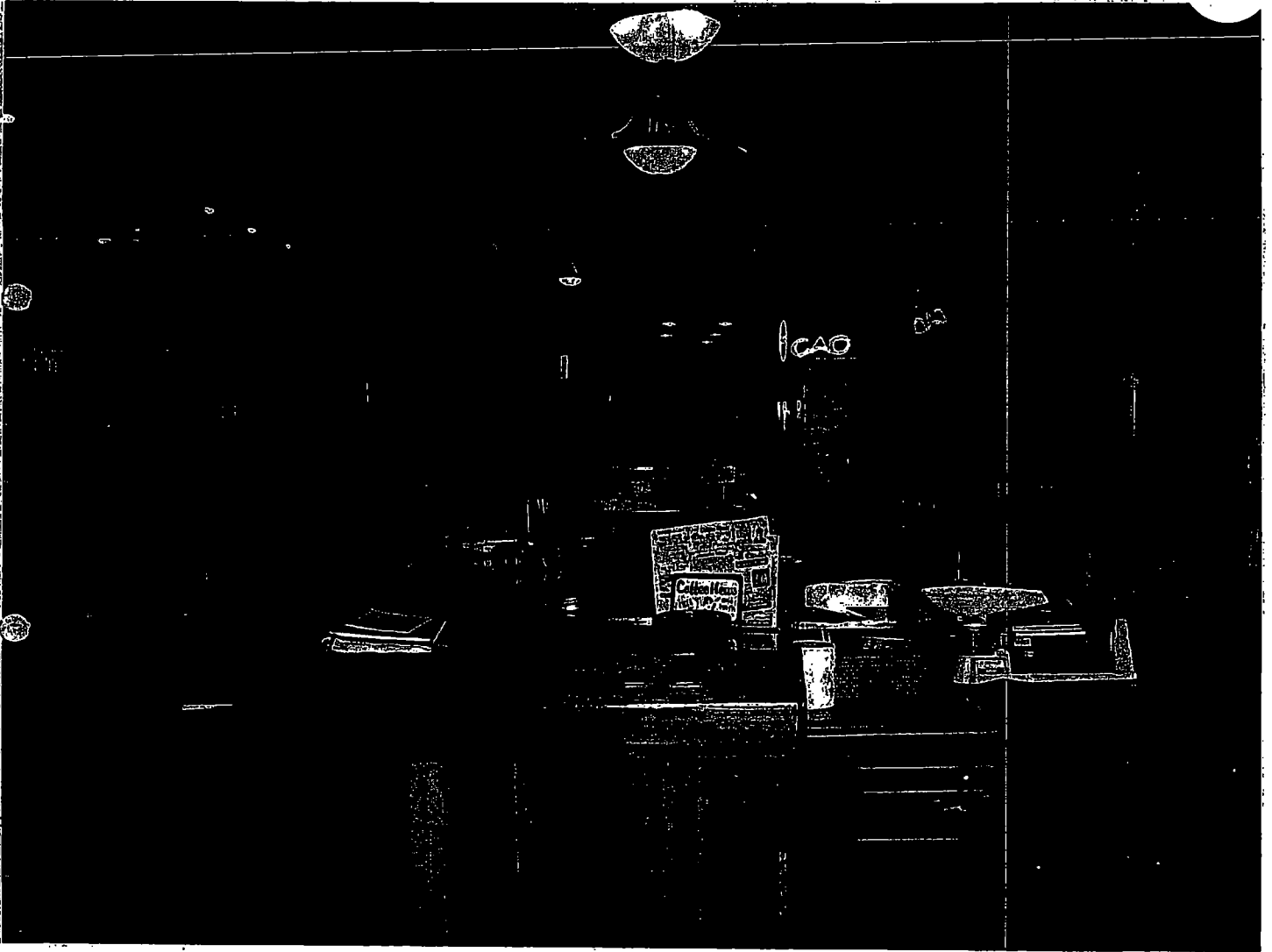
This definition does not include an establishment known as a retail grocery store, convenience store or delicatessen or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption.

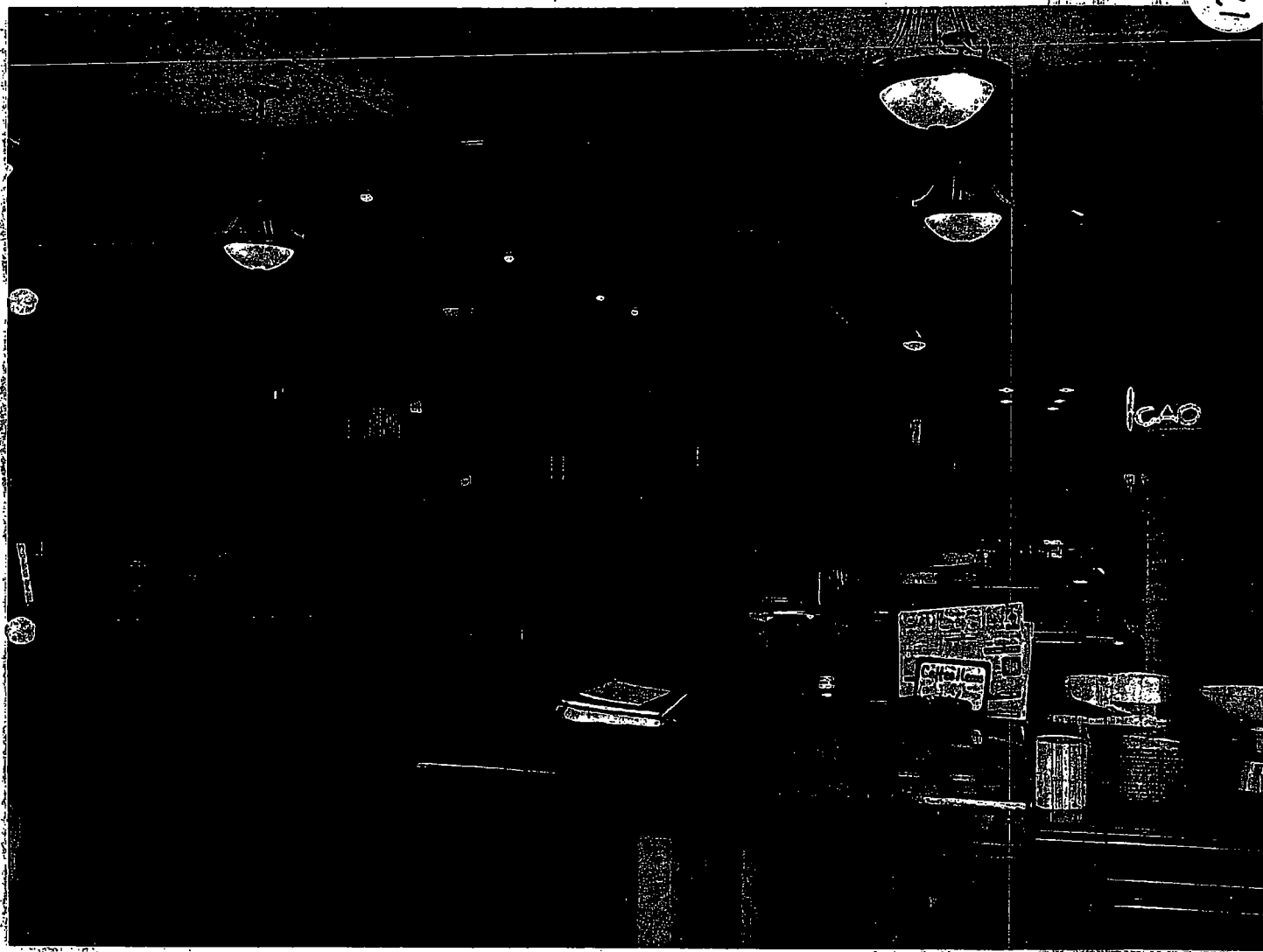
*Roominghouse and boardinghouse* mean any dwelling, other than a hotel or motel, in which more than three persons who are not members of the owner's or operator's family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, 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.

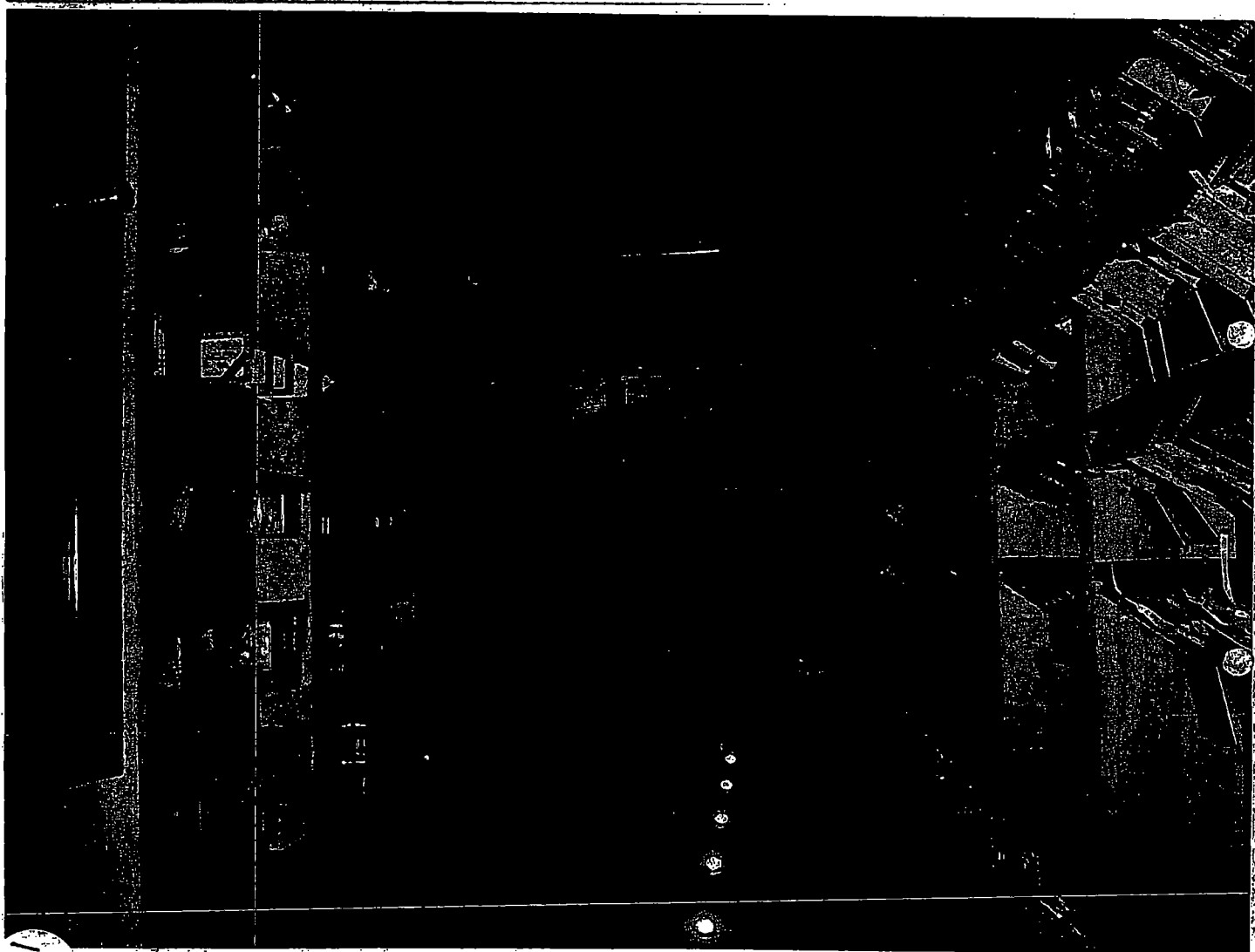
*Screening*. A visual shield against a higher impact land use created in a buffer transition yard with plantings, walls, fencing, etc.



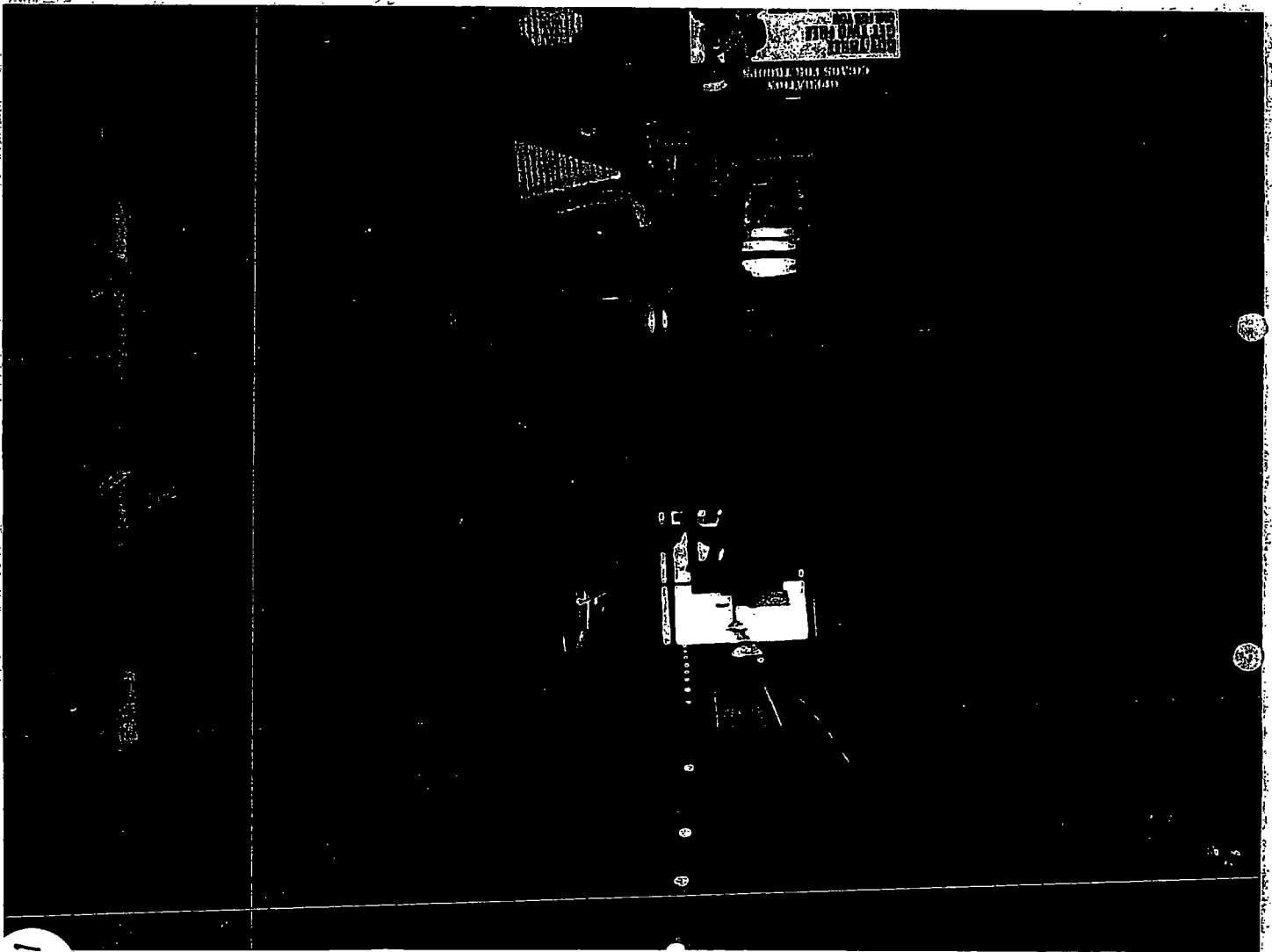




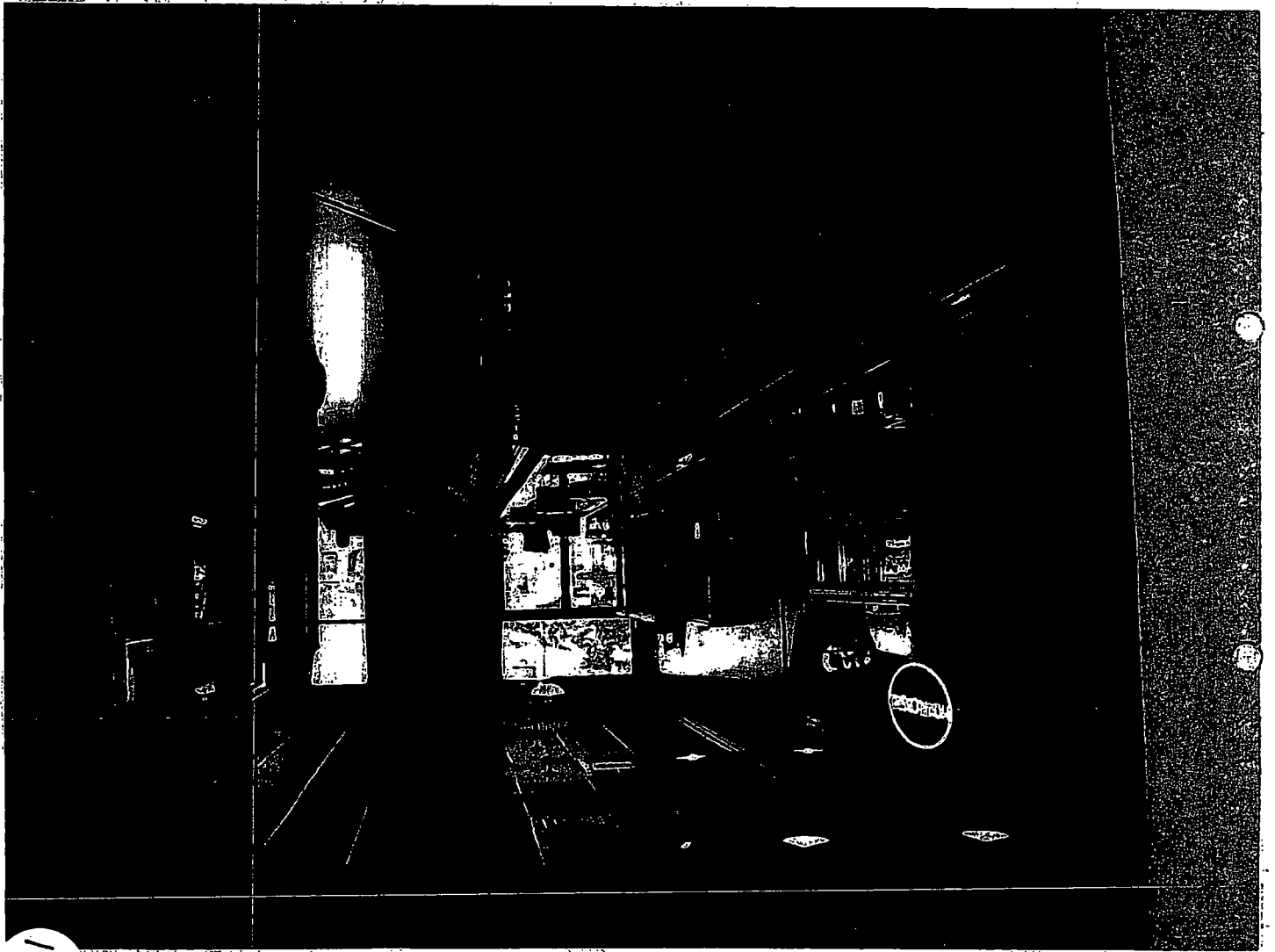




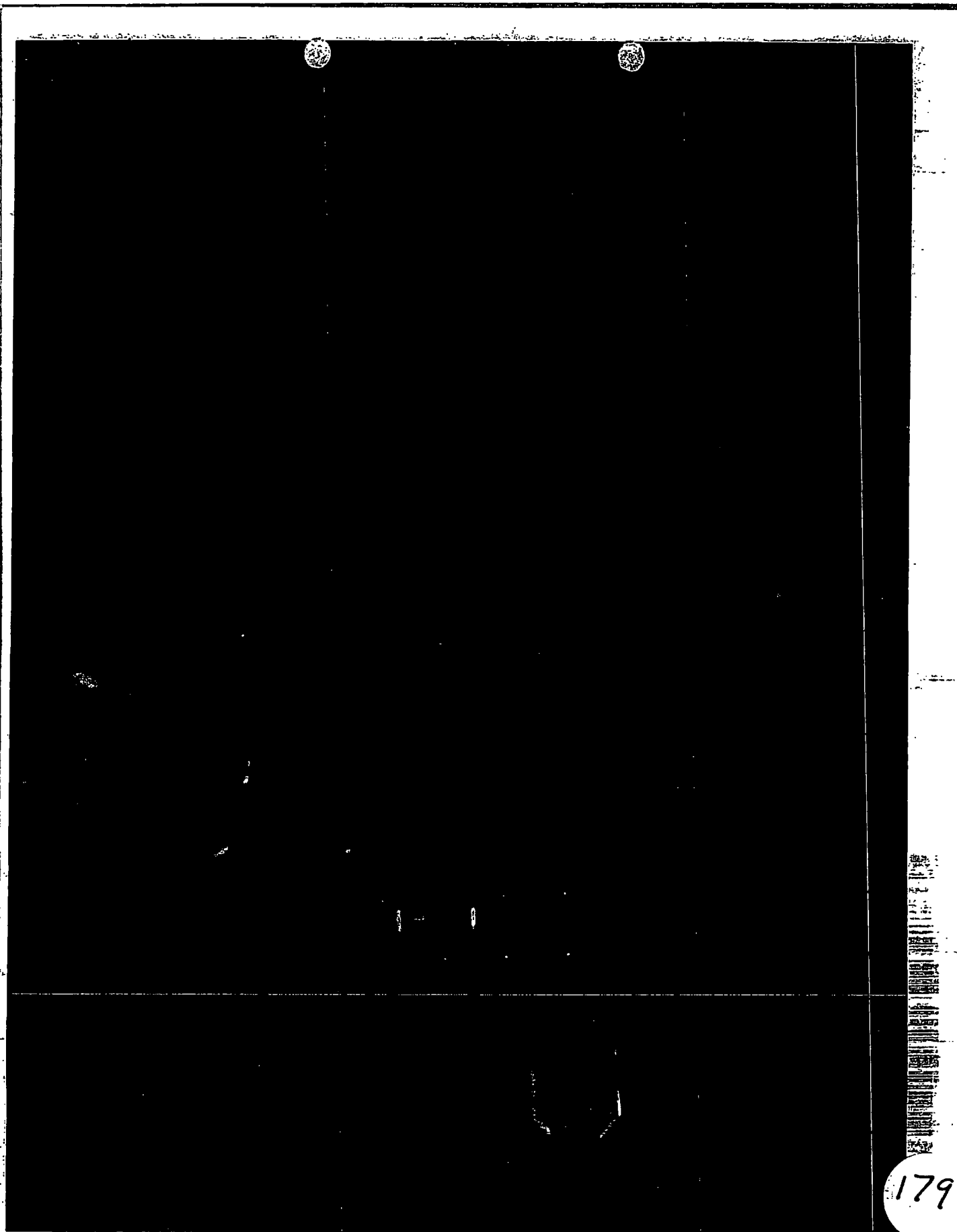




OPERATION  
COAST GUARD  
STATION

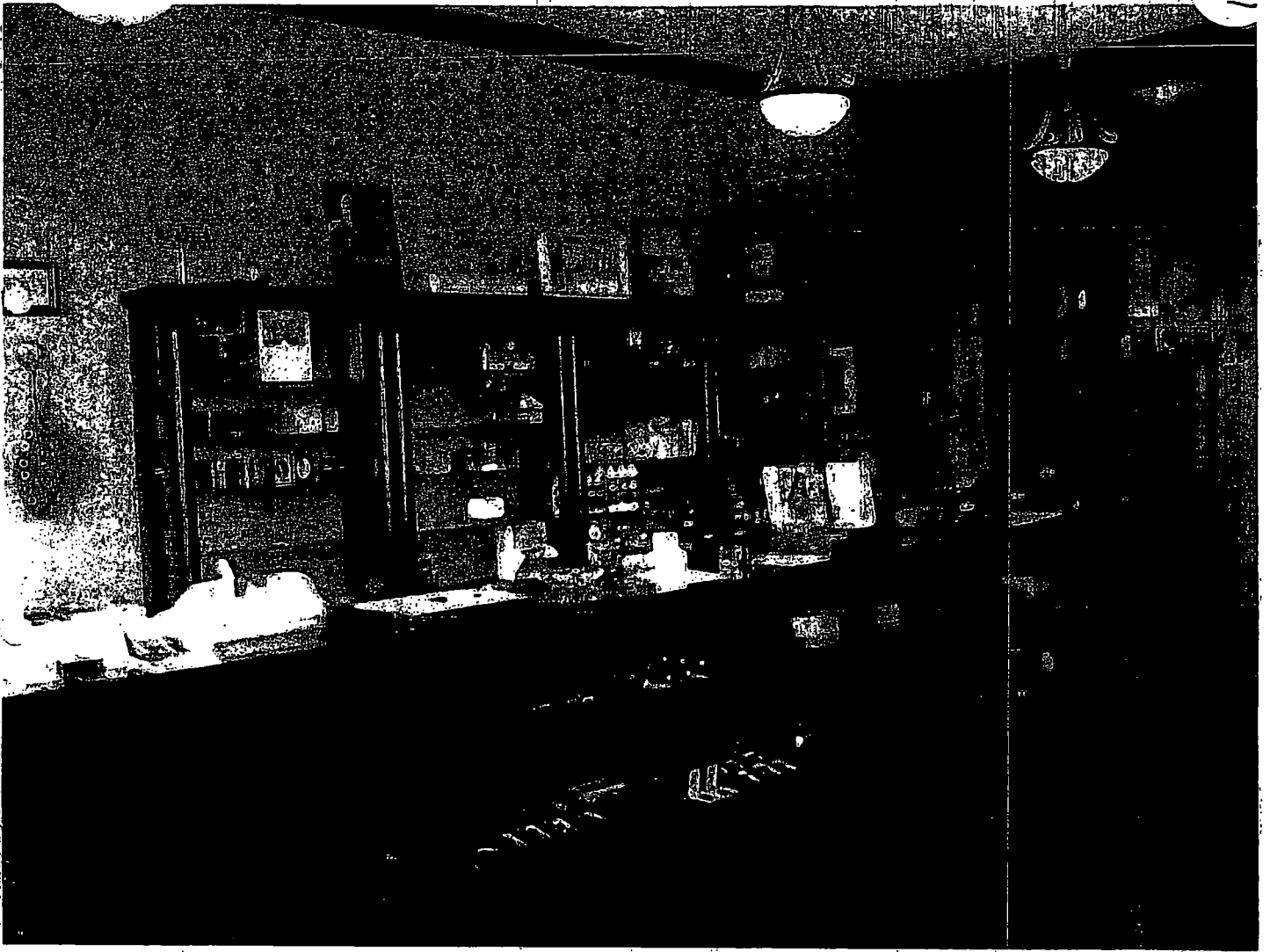






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1220 Box Gateway Sec. E4

03

02797-01-55



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

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

## Paid Invoice Summary

Page 1 of 1

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-AdministrativeAppeal | 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

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BOZA000138

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**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.

**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 an 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. This 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 1/4 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 than 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 adverse 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

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

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**I. CALL TO ORDER and DETERMINATION OF QUORUM**

**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 where 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 said 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 area 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 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
C/A NO.: 2010-CP-32-01368

Tobacco Merchant )  
Appellant )

Respondents' Memorandum of Law

vs.

City of Columbia Zoning )  
Administrator, Board of Zoning )  
Appeals and City of Columbia )  
Respondents, )

FILED  
2012 FEB 13 A 9  
CLERK OF COURT

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.<sup>1</sup>

**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

<sup>1</sup> 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 statute 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

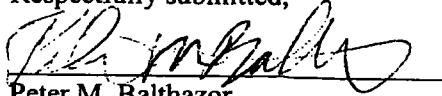


of the case.” Id. For example, in addition to the minutes and the video of the proceedings, the Zoning Administrator set forth detailed written evidence concerning its basis for concluding that the classification of the business as a drinking place did not constitute an accessory use. (BOZA000011 – BOZA000014; 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,



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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

BETH A. C. CARRIS  
CLERK OF COURT  
LEXINGTON, SC

2012 MAR -6 P 4:32

FILED

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.<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup> 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

<sup>2</sup> 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").<sup>3</sup> 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

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<sup>3</sup> 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.

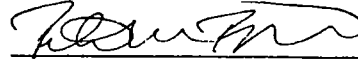
E. The Board's tie vote did not violate the Appellant's due process rights.

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,



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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.

RLZPN § 33:3

2 Rathkopf's The Law of Zoning and Planning § 33:3 (4th ed.)

Page 1

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

RLZPN § 33:3

2 Rathkopf's The Law of Zoning and Planning § 33:3 (4th ed.)

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 *Jantusch 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

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

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] *Jantusch 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



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*.

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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.

- (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."

(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)

**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.

*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

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.



*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.

**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:

| <i>Tree Type</i> | <i>Tree Diameter</i> | <i>Examples</i>                   |
|------------------|----------------------|-----------------------------------|
| 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.

*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.

*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.

*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

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.

*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 aeriels. 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.

*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.



(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

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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

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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

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)

**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)

**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."

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.

(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



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

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.

(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;

**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<br>Parking<br>Requirements                    |                                                        |
|--------------------------------------------------------------------------------|------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|----------------------------------------------------------|--------------------------------------------------------|
|                                                                                |                  | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>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 |                                                          |                                                        |
|                                                                                | D-1              |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                          |                                                        |
| 9 Fishing, hunting and trapping                                                | X                |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | 1.7 for each 1,000<br>square feet of gross<br>floor area |                                                        |
| 91 Commercial fishing                                                          | X                |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                          |                                                        |
| 92 Fish hatcheries and preserves                                               | X                |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                          |                                                        |
| 97 Hunting and trapping, and game propagation                                  | X                |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                          |                                                        |
| DIVISION B. MINING                                                             |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                          | No requirement                                         |
| 14 Mining and quarrying of nonmetallic minerals, except fuels                  |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     | X   |      |      |                                                          |                                                        |
| DIVISION C. CONSTRUCTION                                                       |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                          | 3 for each 1,000<br>square feet of gross<br>floor area |
| 15 Building construction—General contractors and operative builders            |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |      |                                                          |                                                        |
| 161 Office only                                                                |                  |                                        |             |      |       |      |      | X   | X   | X   | e    | X   | 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   | X   | a/e  | X    | X                                                        |                                                        |
| 17 Construction—Special trade contractors                                      |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |      | 1.7 for each 1,000<br>square feet of gross<br>floor area |                                                        |
| 171 Office only                                                                |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   | a/e  | X    |                                                          | X                                                      |
| DIVISION D. MANUFACTURING (section 17-293)                                     |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                          |                                                        |
| 20 Food and kindred products                                                   |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |      | a/c                                                      |                                                        |
| 206 Bakery products                                                            |                  |                                        |             |      |       |      |      |     |     |     | X    |     |     |     |     | X   | X   |      |      | a/c                                                      |                                                        |
| 207 Microbrewery (section 17-290) products                                     |                  |                                        |             |      |       |      |      |     |     |     | C    |     |     |     |     | X   | X   |      | C    | C                                                        |                                                        |
| 21 Tobacco products                                                            |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     | X   |      |      | 1.7 for each 1,000<br>square feet of gross<br>floor area |                                                        |
| 22 Textile mill products                                                       |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     | X   |      |      |                                                          |                                                        |
| 23 Apparel and other finished products made from fabrics and similar materials |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      | e    |                                                          | a/c                                                    |
|                                                                                |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      | e    |                                                          | a/c                                                    |

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| Principal Uses                                                                                                   | Zoning Districts               |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |       | Off-Street<br>Parking<br>Requirements                    |
|------------------------------------------------------------------------------------------------------------------|--------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|-------|----------------------------------------------------------|
|                                                                                                                  | RS-1<br>RS-1A<br>RS-1B<br>RS-2 | R-D<br>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 |       |                                                          |
|                                                                                                                  | D-1                            |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |       |                                                          |
| 24 Lumber and wood products, except furniture                                                                    |                                |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |      | a/c   | 3 for each 1,000<br>square feet of gross<br>floor area   |
| 241 Logging camps and logging contractors                                                                        | e                              |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |       |                                                          |
| 25 Furniture and fixtures                                                                                        |                                |             |      |       |      |      |     |     |     | e    |     | e   |     |     | X   | X   |      | e    | a/c   | 1.7 for each 1,000<br>square feet of gross<br>floor area |
| 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   |                                                          |
| 29 Petroleum refining and related industries                                                                     |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     | X    |      | a/c   |                                                          |
| 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   |                                                          |
| 37 Transportation and equipment                                                                                  |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     | X    |      |       | 1.7 for each 1,000<br>square feet of gross<br>floor area |
| 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                                   |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |       |                                                          |

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| Principal Uses                                                                                                                                  | Zoning Districts               |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   | Off-Street<br>Parking<br>Requirements              |                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|---|----------------------------------------------------|--------------------------------------------------|
|                                                                                                                                                 | RS-1<br>RS-1A<br>RS-1B<br>RS-2 | R-D<br>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 |   |                                                    |                                                  |
|                                                                                                                                                 | D-1                            |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   |                                                    |                                                  |
| 40 Railroad transportation                                                                                                                      |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   |                                                    |                                                  |
| 401 Railroads                                                                                                                                   |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     | X   |      |      | e |                                                    |                                                  |
| 402 Railway express service                                                                                                                     |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     | 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   |      |      |   |                                                    |                                                  |
| 45 Transportation by air                                                                                                                        |                                |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |      |   | 1.7 for each 1,000 square feet of gross floor area |                                                  |
| 46 Pipelines                                                                                                                                    |                                |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |      |   |                                                    |                                                  |
| 47 Transportation services                                                                                                                      |                                |             |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |      |   |                                                    |                                                  |

Supp. No. 10

CD17:51

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 of the  
 Planning, Land Development and Zoning  
 Ordinance No. 17-258

252

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 ATTEST  
 City Clerk  
 5.9.12

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| Principal Uses                                               | Zoning Districts                       |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | Off-Street<br>Parking<br>Requirements              |
|--------------------------------------------------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|----------------------------------------------------|
|                                                              | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>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 Arrangement of transportation services                   |                                        |             |      |       |      |      |     | 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    | 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   |     | e    | e    |                                                    |
| 484 Cable                                                    |                                        |             |      |       |      |      |     |     | X   |      |     |     |     |     | X   |     |      | X    |                                                    |
| 485 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    |                                                    |
| 492 Gas production and distribution                          |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     | e   | X   |      |      | 1.7 for each 1,000 square feet of gross floor area |
| 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    |                                                    |
| 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    |                                                    |
| 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                          |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |

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| Principal Uses                                                                                | Zoning Districts |                                |      |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      | Off-Street<br>Parking<br>Requirements |                                                                   |                                                          |
|-----------------------------------------------------------------------------------------------|------------------|--------------------------------|------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|---------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------|
|                                                                                               |                  | RS-1<br>RS-1A<br>RS-1B<br>RS-3 | R-D  |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |                                       |                                                                   |                                                          |
|                                                                                               | D-1              | RS-3                           | 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   |      |                                       | 1.7 for each for each<br>1,000 square feet of<br>gross floor area |                                                          |
| 512 Drugs, drug proprietaries and drug-<br>gists' sundries                                    |                  |                                |      |      |       |      |      |     |     | e   |      |     |     |     |     |     | X   |      |                                       |                                                                   |                                                          |
| 513 Apparel—Goods and notions                                                                 |                  |                                |      |      |       |      |      |     |     | e   |      |     |     |     |     | X   | X   |      |                                       |                                                                   |                                                          |
| 514 Groceries and related products                                                            |                  |                                |      |      |       |      |      |     |     | e   |      |     |     |     |     | X   | X   |      |                                       |                                                                   |                                                          |
| 515 Farm products—Raw materials                                                               |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |                                       |                                                                   |                                                          |
| 516 Chemicals and allied products                                                             |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |                                       | 1.7 for each 1,000<br>square feet of gross<br>floor area          |                                                          |
| 517 Petroleum and petroleum products                                                          |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |                                       |                                                                   |                                                          |
| 5171 Petroleum bulk stations and<br>terminals                                                 |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     |     |     | X    |                                       |                                                                   |                                                          |
| 5172 Petroleum and petroleum prod-<br>ucts wholesalers, except bulk<br>stations and terminals |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |                                       |                                                                   |                                                          |
| 518 Beer, wine and distilled alcoholic bev-<br>erages                                         |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     | X   | X   |      |                                       |                                                                   |                                                          |
| 519 Miscellaneous nondurable goods                                                            |                  |                                |      |      |       |      |      |     |     | e   |      |     |     |     |     | X   | X   |      |                                       | DIVISION G. RETAIL TRADE (section 17-263)                         |                                                          |
| 52 Building materials, hardware, garden supply<br>and mobile home dealers                     |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |                                       |                                                                   |                                                          |
| 521 Lumber and other building materials<br>dealers                                            |                  |                                |      |      |       |      |      |     |     | e   |      |     |     |     |     | X   |     |      | e                                     |                                                                   |                                                          |
| 523 Paint, glass and wallpaper stores                                                         |                  |                                |      |      |       |      |      |     |     | X   | X    | X   | X   | X   | X   | X   |     |      | X                                     |                                                                   | X                                                        |
| 525 Hardware stores                                                                           |                  |                                |      |      |       |      |      |     |     | X   | X    | X   | X   | X   | X   | X   |     |      | X                                     |                                                                   | X                                                        |
| 526 Retail nurseries, lawn and garden sup-<br>ply stores                                      |                  |                                |      |      |       |      |      |     |     | X   | X    | X   |     |     | X   | X   |     |      | X                                     | X                                                                 | 3.5 for each 1,000<br>square feet of gross<br>floor area |
| 527 Mobile home dealers                                                                       |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     |     | X   |      |                                       |                                                                   |                                                          |
|                                                                                               |                  |                                |      |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |                                       |                                                                   | 3 for each 1,000<br>square feet of gross<br>floor area   |

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| Principal Use                                         | Zoning Districts                       |             |      |       |       |      |      |     |     |      |      |     |     |     |     |     |      |      |      | Off-Street<br>Parking<br>Requirements |                                                    |
|-------------------------------------------------------|----------------------------------------|-------------|------|-------|-------|------|------|-----|-----|------|------|-----|-----|-----|-----|-----|------|------|------|---------------------------------------|----------------------------------------------------|
|                                                       | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>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 |      |                                       |                                                    |
|                                                       | D-1                                    | RS-3        | 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                                     | 3.5 for each 1,000 square feet of gross floor area |
| 533 Variety stores                                    |                                        |             |      |       |       |      |      |     |     | X    | X    | X   | X   | X   | X   |     |      |      | X    | X                                     |                                                    |
| 639 Miscellaneous general merchandise stores          |                                        |             |      |       |       |      |      |     |     | X    | X    | X   | X   | X   | X   | X   |      |      | X    | X                                     |                                                    |
| 54 Food stores                                        |                                        |             |      |       |       |      |      |     |     |      |      |     |     |     |     |     |      |      |      |                                       | 3.5 for each 1,000 square feet of gross floor area |
| 541 Grocery stores                                    |                                        |             |      |       |       |      |      |     |     | X    | X    | X   | X   | X   | X   | X   |      |      | X    | X                                     |                                                    |
| 543 Fruit stores and vegetable markets                |                                        |             |      |       |       |      |      |     |     |      | X    | X   |     |     |     | X   |      |      | X    | X                                     |                                                    |
| 546 Retail bakeries                                   |                                        |             |      |       |       |      |      |     |     | X    | X    | X   | X   | X   | X   | X   |      |      | X    | X                                     | 3 for each 1,000 square feet of gross floor area   |
| 549 Miscellaneous                                     |                                        |             |      |       |       |      |      |     |     | X    | X    |     | X   | X   | X   | X   |      |      | X    | X                                     |                                                    |
| 55 Automotive dealers and gasoline service stations   |                                        |             |      |       |       |      |      |     |     |      |      |     |     |     |     |     |      |      |      |                                       |                                                    |
| 561 Motor vehicle dealers (new and used) (17-286)     |                                        |             |      |       |       |      |      |     |     |      | X    |     | X   |     |     | X   |      |      | C    | C                                     | 3 for each 1,000 square feet of gross floor area   |
| 562 Motor vehicle dealers (used only) (17-286)        |                                        |             |      |       |       |      |      |     |     |      | X    |     | X   |     |     | X   |      |      | C    | C                                     | 3.5 for each 1,000 square feet of gross floor area |
| 563 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 |
| 564 Gasoline service stations (17-286)                |                                        |             |      |       |       |      |      |     |     | E    | E    | X   | E   | E   | E   | X   | X    |      | E    | E                                     | 3.5 for each 1,000 square feet of gross floor area |
| 565 Boat dealers (17-286)                             |                                        |             |      |       |       |      |      |     |     | E    | E    |     |     |     |     | X   |      |      | C    | C                                     |                                                    |
| 568 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                         |                                        |             |      |       |       |      |      |     |     |      |      |     |     |     |     |     |      |      |      |                                       |                                                    |

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| Principal Uses                                                             | Zoning Districts                       |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   | Off-Street<br>Parking<br>Requirements              |
|----------------------------------------------------------------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|---|----------------------------------------------------|
|                                                                            | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>RD-2 | RO-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 | 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                                                    |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   | 3.5 for each 1,000 square feet of gross floor area |
| 591 Drugstores and proprietary stores                                      |                                        |             |      |       |      |      |     | a   | x   | x    | x   | x   | x   | x   | x   |     |      | x    | x |                                                    |
| 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 | 3 for each 1,000 square feet of gross floor area   |
| 596 Non-store retailers                                                    |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   |                                                    |
| 5961 Mail order house                                                      |                                        |             |      |       |      |      |     |     | x   | x    | x   | x   | x   | x   | x   |     |      | x    | x |                                                    |
| 5962 Automatic merchandising machine operators                             |                                        |             |      |       |      |      |     |     |     |      | x   | x   |     |     | x   |     |      |      |   |                                                    |
| 598 Fuel and ice dealers                                                   |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   | 3.5 for each 1,000 square feet of gross floor area |
| 5982 Fuel and ice dealers, except fuel oil dealers and bottled gas dealers |                                        |             |      |       |      |      |     |     |     |      | x   |     | x   |     | x   |     |      |      |   |                                                    |
| 5988 Fuel oil dealers                                                      |                                        |             |      |       |      |      |     |     |     |      | e   |     |     |     | x   | x   |      |      |   |                                                    |
| 5984 Liquefied petroleum gas (bottled gas) dealers                         |                                        |             |      |       |      |      |     |     |     |      | e   |     |     |     | x   | x   |      |      |   |                                                    |
| 599 Retail stores, not elsewhere classified                                |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |   | 1.7 for each 1,000 square feet of gross floor area |

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| Principal Uses                                                                                                   | Zoning Districts |       |       |      |      |      |      |       |      |      |      |       |       |       |       |       |       | Off-Street Parking Requirements |
|------------------------------------------------------------------------------------------------------------------|------------------|-------|-------|------|------|------|------|-------|------|------|------|-------|-------|-------|-------|-------|-------|---------------------------------|
|                                                                                                                  | RS-1             | RS-1A | RS-1B | RS-2 | 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   |                                 |
|                                                                                                                  | D-1              | RS-3  | RD-1  | RD-2 | RD-3 | RD-4 | RD-5 | RD-6  | RD-7 | RD-8 | RD-9 | RD-10 | RD-11 | RD-12 | RD-13 | RD-14 | RD-15 |                                 |
| 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                               |
| DIVISION H. FINANCE, INSURANCE AND REAL ESTATE (60-67)                                                           |                  |       |       |      |      |      |      |       |      |      | 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                               |
| 6553 Cemetery subdividers and developers                                                                         | e                | e     | e     | e    | e    | e    | e    | e     | e    | e    | x    | x     | x     | x     | x     | x     | x     | x                               |
| DIVISION I. SERVICES                                                                                             |                  |       |       |      |      |      |      |       |      |      |      |       |       |       |       |       |       |                                 |
| 70 Hotels, roominghouses, camps and other lodging places                                                         |                  |       |       |      |      |      |      |       |      |      |      |       |       |       |       |       |       |                                 |
| 701 Hotels, motels and tourist courts                                                                            |                  |       |       |      |      |      |      |       |      |      |      |       | x     | e     | x     | x     | x     | x                               |
| 701.1 Suite hotel (section 17-272)                                                                               |                  |       |       |      |      |      |      |       |      |      |      |       | e     | x     | x     | x     | x     | x                               |
| 701.2 Bed and breakfast hotel (section 17-271)                                                                   |                  |       |       |      |      |      |      |       |      |      |      |       | c     | x     | x     | x     | x     | x                               |
| 702 Roominghouses and boardinghouses                                                                             |                  |       |       |      |      |      |      |       |      |      |      |       |       |       |       |       |       |                                 |
| 703 Camps and trailer parks                                                                                      | e                |       |       |      |      |      |      |       |      |      |      |       |       |       |       |       |       |                                 |
| 704 Organisation hotels and lodginghouses, on membership basis                                                   |                  |       |       |      |      |      |      |       |      |      | x    | x     | x     |       | x     | x     | x     | x                               |
| 72 Personal services                                                                                             |                  |       |       |      |      |      |      |       |      |      |      |       |       |       |       |       |       |                                 |
| 721 Laundry, cleaning and garment services                                                                       |                  |       |       |      |      |      |      |       |      |      |      |       |       |       |       |       |       |                                 |

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| Principal Uses                                                     | Zoning Districts |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | Off-Street<br>Parking<br>Requirements |
|--------------------------------------------------------------------|------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|---------------------------------------|
|                                                                    | D-1              | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>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   |     |      |      |                                       |
| 7212 Garment pressing and agents<br>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<br>dry cleaning                   |                  |                                        |             | a    | a     | a    | a    | e   | e   | x   | e    | x   | x   | x   | x   | x   |     | x    | x    |                                       |
| 7216 Dry cleaning plants, except rug<br>cleaning                   |                  |                                        |             |      |       |      |      |     |     |     |      |     |     | x   | x   |     |     |      |      |                                       |
| 7217 Carpet and upholstery clean-<br>ing                           |                  |                                        |             |      |       |      |      |     |     |     |      |     |     | x   | x   |     |     | o    | o    |                                       |
| 7218 Industrial laundries                                          |                  |                                        |             |      |       |      |      |     |     |     |      |     |     | x   | x   |     |     |      |      |                                       |
| 7219 Laundry and garment services<br>not elsewhere classified      |                  |                                        |             |      |       |      |      |     |     | e   |      |     |     | x   | x   |     |     |      | x    |                                       |
| 7219.1 Taylor and alteration shops                                 |                  |                                        |             |      |       |      |      |     | x   | x   | x    | x   | x   | x   |     |     |     | x    | x    |                                       |
| 722 Photographic studios, portrait                                 |                  |                                        |             |      |       |      |      | x   | x   | x   | x    | x   | x   | x   | x   |     | x   | x    | x    |                                       |
| 723 Beauty shops                                                   |                  |                                        |             |      |       |      | a    | e   | x   | x   | x    | x   | x   | x   | x   |     | x   | x    | x    |                                       |
| 724 Barbershops                                                    |                  |                                        |             |      |       |      | a    | e   | x   | x   | x    | x   | x   | x   | x   |     | x   | x    | x    |                                       |
| 725 Shoe repair shops, shoeshine parlors<br>and hat cleaning shops |                  |                                        |             |      |       |      |      |     | x   | x   | x    | x   | x   | x   | x   |     | x   | x    | x    |                                       |
| 726 Funeral service and crematories                                |                  |                                        |             |      |       |      |      | x   |     | x   | x    | x   |     | x   |     |     | x   | x    | x    |                                       |

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| Principal Uses                                                                | Zoning Districts                       |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | Off-Street Parking Requirements                    |
|-------------------------------------------------------------------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|----------------------------------------------------|
|                                                                               | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>RD-3 | 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    | 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   |     |     |     |     |      |      |                                                    |
| 73 Business services                                                          |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | 3 for each 1,000 square feet of gross floor area   |
| 7311 Advertising agencies                                                     |                                        |             |      |       |      |      | x   | x   | x   |      | x   | x   | x   | x   |     | x   | x    | x    |                                                    |
| 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 17.284)                  |                                        |             |      |       |      |      | 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    |                                                    |
| 7339 Stenographic services and reproduction services not elsewhere classified |                                        |             |      |       |      |      | x   | x   | x   | x    | x   | x   | x   | x   |     |     | x    | x    | 3 for each 1,000 square feet of gross floor area   |
| 734 Services to dwellings and other buildings                                 |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |

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| Principal Uses                                                                                   | Zoning Districts                       |             |                       |      |     |     |     |      |     |     |     |     |     |     |      |      | Off-Street<br>Parking<br>Requirements              |
|--------------------------------------------------------------------------------------------------|----------------------------------------|-------------|-----------------------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|----------------------------------------------------|
|                                                                                                  | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>RD-2 | RG-1<br>RG-1A<br>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    | 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   | 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    | 3 for each 1,000 square feet of gross floor area   |
| 738 Miscellaneous business services                                                              |                                        |             |                       |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |
| 7381 Detective agencies and protective services                                                  |                                        |             |                       |      | X   | X   | X   | X    | X   | X   | X   | X   |     | e   | X    | X    |                                                    |
| 7384 Photofinishing laboratories                                                                 |                                        |             |                       |      |     |     |     |      |     |     |     | X   | X   |     | X    | X    |                                                    |
| 7389 Miscellaneous                                                                               |                                        |             |                       |      |     |     | X   | X    |     |     |     | X   | X   |     | X    | X    | 1.7 for each 1,000 square feet of gross floor area |
| 7399 Business services not elsewhere classified                                                  |                                        |             |                       |      | e   |     | 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                                                |                                        |             |                       |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                    |

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| Principal Use                                                    | Zoning Districts                       |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          | Off-Street<br>Parking<br>Requirements              |
|------------------------------------------------------------------|----------------------------------------|---------------------|-----------------------|-----------------------|--------------------|--------------------|--------------------|--------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--------------------------|--------------------------|----------------------------------------------------|
|                                                                  | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>RD-1<br>RD-2 | RG-1<br>RG-1A<br>RG-2 | RG-3<br>RG-3A<br>RG-4 | C-1<br>C-1A<br>C-2 | C-3<br>C-3A<br>C-4 | C-5<br>C-5A<br>C-6 | M-1<br>M-1A<br>M-2 | UTD<br>UTD-A<br>UTD-B | MX-1<br>MX-1A<br>MX-2 | MX-3<br>MX-3A<br>MX-4 | MX-5<br>MX-5A<br>MX-6 | MX-7<br>MX-7A<br>MX-8 | MX-9<br>MX-9A<br>MX-10 | MX-11<br>MX-11A<br>MX-12 | MX-13<br>MX-13A<br>MX-14 | MX-15<br>MX-15A<br>MX-16 |                                                    |
|                                                                  | D-1                                    | D-2                 | D-3                   | D-4                   | D-5                | D-6                | D-7                | D-8                | D-9                   | D-10                  | D-11                  | D-12                  | D-13                  | D-14                   | D-15                     | D-16                     | D-17                     |                                                    |
| 7512 Passenger car rental and leasing without drivers            |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          | 3.3 for each 1,000 square feet of gross floor area |
| 7513 Truck rental and leasing without drivers                    |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 7519 Utility trailer and recreational vehicle rental             |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 752 Automobile parking                                           |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          | No requirements                                    |
| 7523 Parking lots                                                | e                                      | e                   | e                     | e                     | e                  | e                  | e                  | e                  | e                     | e                     | e                     | e                     | e                     | e                      | e                        | e                        | e                        |                                                    |
| 7525 Parking structures                                          |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 753 Automotive repair shops                                      |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          | 3.3 for each 1,000 square feet of gross floor area |
| 754 Automotive services, except repair                           |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 7542 Carwashes                                                   |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 7549 Automotive services, except repair and carwashes            |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          | 3.3 for each 1,000 square feet of gross floor area |
| 76 Miscellaneous repair services                                 |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 762 Electrical repair shops                                      |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 7621 Radio and mobile telephone installation shops               |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          | 3.3 for each 1,000 square feet of gross floor area |
| 7622 Radio and television repair shops                           |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 7623 Refrigeration and air conditioning service and repair shops |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 763 Watch, clock and jewelry repair                              |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 764 Reprography and furniture repair                             |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |
| 769 Miscellaneous repair shops and related services              |                                        |                     |                       |                       |                    |                    |                    |                    |                       |                       |                       |                       |                       |                        |                          |                          |                          |                                                    |

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| Principal Uses                                              | Zoning Districts |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     | Off-Street<br>Parking<br>Requirements |      |                                                                                                  |
|-------------------------------------------------------------|------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|---------------------------------------|------|--------------------------------------------------------------------------------------------------|
|                                                             | D-1              | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>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 |
| 7892 Motion picture theaters except drive-in                |                  |                                        |             |      |       |      |      | e   | e   | x   |      | x   | x   | e   | x   |     |     | x                                     | x    |                                                                                                  |
| 7833 Drive-in motion picture theaters                       |                  |                                        |             |      |       |      |      |     |     | e   |      |     |     |     | o   |     |     |                                       |      | 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                                       |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                       |      |                                                                                                  |



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| Principal Use                                                                                                                                     | Zoning Districts               |             |      |               |               |      |     |     |      |      |     |     |     |     |     |      |      |      | Off-Street<br>Parking<br>Requirements                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-------------|------|---------------|---------------|------|-----|-----|------|------|-----|-----|-----|-----|-----|------|------|------|--------------------------------------------------------|
|                                                                                                                                                   | RS-1<br>RS-1A<br>RS-1B<br>RS-2 | R-D<br>RD-2 | RG-1 | RG-1A<br>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 |      |                                                        |
|                                                                                                                                                   | D-1                            | RS-3        | RD-3 | RG-1          | RG-1A<br>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       |
| 7946 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    | 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    |                                                        |
| 799 Miscellaneous amusement and recreation services                                                                                               |                                |             |      |               |               |      |     |     |      |      |     |     |     |     |     |      |      |      |                                                        |
| 7991 Physical fitness facilities and yoga facilities                                                                                              |                                |             |      |               |               |      |     | O   | X    | X    | X   | X   | X   | X   |     | X    | X    | X    | 6 for each 1,000 square feet of gross floor area       |
| 7992 Public golf courses                                                                                                                          | e                              | e           | e    | e             | e             | e    | e   | X   |      | X    |     |     |     |     | X   |      |      |      | 6 for each hole                                        |
| 7993 Coin-operated amusement devices                                                                                                              |                                |             |      |               |               |      |     |     | X    |      | X   | X   | X   | X   |     |      | X    | X    | 6 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                                                      |
| 7999 Amusement and recreation services not elsewhere classified                                                                                   |                                |             |      |               |               |      |     |     |      | X    |     | X   |     |     | X   |      | e    | e    | 6 for each 1,000 square feet of gross floor area       |
| 7999.1 Bingo parlors                                                                                                                              |                                |             |      |               |               |      |     |     |      | e    |     | e   |     |     | e   |      |      |      |                                                        |
| 80 Health services                                                                                                                                |                                |             |      |               |               |      |     |     |      |      |     |     |     |     |     |      |      |      |                                                        |

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| Principal Uses                                                                               | Zoning Districts |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | Off-Street<br>Parking<br>Requirements                                                         |
|----------------------------------------------------------------------------------------------|------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|-----------------------------------------------------------------------------------------------|
|                                                                                              | D-1              | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>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    | 6 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    | 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    | 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    |                                                                                               |
| 8249 Vocational schools except vocational high schools not elsewhere classified              |                  |                                        |             |      |       |      |      | X   |     | X   | X    | X   | X   |     | X   |     |     | X    | X    | 1 for each 6 seats in the main assembly hall plus 4 for each classroom plus 2 for each office |
| 83 Social services                                                                           |                  |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                                                               |

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| Principal Uses |                                                                                   | Zoning Districts |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     | Off-Street Parking Requirements |      |                                                  |
|----------------|-----------------------------------------------------------------------------------|------------------|--------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|---------------------------------|------|--------------------------------------------------|
|                |                                                                                   | D-1              | RS-1<br>RS-1A<br>RS-1B<br>RS-2 | R-D<br>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                                             |
| 892            | 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 |
| 893            | 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    |                                                  |
| 862            | Professional membership                                                           |                  |                                |             |      |       |      |      | 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    | 3 for each 1,000 square feet of gross floor area |
| 865            | Political organizations                                                           |                  |                                |             |      |       |      |      | 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    |                                                  |
| 87             | Engineering, accounting, research, management, and related services organizations |                  |                                |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |                                 |      |                                                  |

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| Principal Uses |                                                                      | Zoning Districts                       |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | Off-Street Parking Requirements                  |
|----------------|----------------------------------------------------------------------|----------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|--------------------------------------------------|
|                |                                                                      | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3 | R-D<br>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 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 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                                                   |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      | 2 for each dwelling unit                         |
| 8811           | Dwellings                                                            |                                        |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |                                                  |
| 8811.1         | Detached one-family                                                  | X                                      | X           | X    | X     | X    | X    | X   | e   | e   | e    |     |     |     |     |     | X   | X    |      |                                                  |
| 8811.2         | Attached one-family                                                  |                                        |             |      | X     | X    | X    |     | e   | e   |      |     |     |     |     |     | X   | X    |      |                                                  |
|                | Townhouses (section 17-258)                                          |                                        |             |      |       |      | X    |     | e   |     |      |     |     |     |     |     |     | X    | X    |                                                  |
|                | Two-family                                                           |                                        |             | X    | X     | X    | X    | X   | e   | 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    |                                                  |
|                | 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    |     |     |     |      |     | X   | X   | X   |     |     | X    | X    | 2 per mobile home accommodation                  |

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| LEGEND:                                                                                                                                                                                                   |  |                                                  |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------|-------------|------|-------|------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|------|------|
| x = Permitted use in the district;                                                                                                                                                                        |  | e = Special exception by board of zoning appeals |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |
| 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                                 |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |
|                                                                                                                                                                                                           |  | RS-1<br>RS-1A<br>RS-1B<br>RS-2<br>RS-3           | R-D<br>RD-2 | RG-1 | RG-1A | RQ-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    |
| 8811.6 Dormitories, Private                                                                                                                                                                               |  |                                                  |             |      |       |      | c    |     |     |     |      | c   | c   |     |     |     |     | c    |      |
| 89 Miscellaneous services                                                                                                                                                                                 |  |                                                  |             |      |       |      |      | x   | x   | x   | x    | x   | x   | x   | x   |     | x   | x    | x    |
| 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    | 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    |
| 922 Public order and safety                                                                                                                                                                               |  |                                                  |             |      |       |      |      |     |     |     |      |     |     |     |     |     |     |      |      |
| 9223 Correctional institutions                                                                                                                                                                            |  |                                                  |             |      |       |      |      |     |     | e   |      |     |     |     | e   | e   |     |      |      |
| 9224 Police and fire protection                                                                                                                                                                           |  | x                                                | x           | x    | x     | x    | x    | x   | x   | x   | x    | x   | x   | x   | x   | x   |     | x    | x    |
| 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    |
| 96 Administration of economic programs                                                                                                                                                                    |  |                                                  |             |      |       |      |      | x   | x   | x   | x    | x   | x   | x   |     |     |     |      | x    |

Off-Street  
Parking  
Requirements

1 for each bedroom

3 for each 1,000 square feet of gross floor area

8 for each 1,000 square feet of gross floor area

9 for each 1,000 square feet of gross floor area

1 for each 6 inmates

1 for each employee on shift

3 for each 1,000 square feet of gross floor area

Supp. No. 11

(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.

§ 17-258

COLUMBIA CITY CODE

CD17:64.2

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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.

**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**

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**Tobacco Merchant,**

**Appellant**

**v.**

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

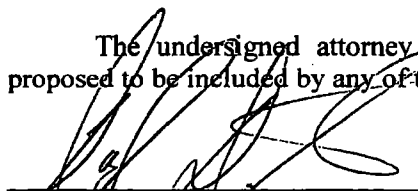
**Respondent**

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**Rule 210 Certification**

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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.

  
\_\_\_\_\_  
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**SC Court of Appeals**



Other Counsel of Record

Peter Balthazor  
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Columbia, S.C. 29202

**May 2, 2013**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM COURT OF COMMON PLEAS

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CASE No. 2012-212228

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Tobacco Merchant,

Appellant

v.

Respondent

City of Columbia, City Zoning Administrator  
City Board of Zoning Appeals

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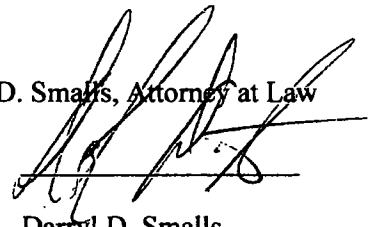
**Proof of Service**

---

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:

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City of Columbia Attorney  
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Date: 5/3, 2013

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**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

---

**APPEAL FROM LEXINGTON COUNTY**  
**Court of Common Pleas**

**Judge W. Jeffrey Young, Lexington County**

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**Case No. 2012-212228**

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**Tobacco Merchant,**

**Appellant**

**v.**

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

**Respondent**

---

**APPELLANT'S FINAL BRIEF**

---

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**RECEIVED**

MAY 17 2013

**SC Court of Appeals**

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**STATEMENT OF ISSUES ON APPEAL**

- 1. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE THE TOBACCO MERCHANT SHOULD NOT 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.**
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- 3. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE THE ZONING BOARD ERRED IN RULING THAT THE TOBACCO MERCHANT IS A DRINKING ESTABLISHMENT SINCE THE CITY IS 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.**
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5. THE CIRCUIT COURT ERRED BY AFFIRMING THE BOARD'S RULING THAT THE TOBACCO MERCHANT IS A DRINKING ESTABLISHMENT SINCE THE RULING WAS EFFECTIVELY A TAKING WITHOUT COMPENSATION.
6. THE CIRCUIT COURT ERRED BY AFFIRMING THE BOARD'S RULING SINCE THE BOARD ERRED BY NOT MAKING A DECISION AT ALL AS A RESULT OF A TIE VOTE AND RELYING ON THE ZONING ADMINISTRATOR'S DECISION.

## STATEMENT OF FACTS

The Tobacco Merchant is a retail tobacco store. William and Jackie Slicer purchased the business in 2009. After purchasing the business, the owners sought approval from the City Zoning and Business Licensing Divisions, to sell tobacco products and incidental sale of beer and wine in 2009. The Slicers fully informed the city officials they intended to sell beer and wine. After submitting the Business License Clearance Form, the City of Columbia approved the Tobacco Merchant's license as a Cigar Lounge. The owners of the Tobacco Merchant subsequently expended thousands of dollars to expand and modify their establishment.

On September 16, 2009, the Zoning administrator cited the Tobacco Merchant for operating a drinking establishment without obtaining a special exception. The Tobacco Merchant appealed to the Zoning Board which heard the case on two occasions January 12, 2010 and February 2010. After the final hearing on February 9, 2010 the Board vote ended in a tie. Three board members agreed with the administrator and three agreed that the Tobacco Merchant was not a bar but a tobacco store. The administrative rules of the board state that the administrator's ruling would be affirmed if the board vote was a tie. Based on this decision the Tobacco Merchant appealed to the Circuit Court on the following grounds:

- 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.

#### **ARGUMENT**

- I. **The Circuit Court erred in ruling that the Tobacco Merchant should be ruled a drinking establishment since the city ordinance provides that the sale of beer and wine is subordinate to the principal use, incidental to the sale of tobacco products and is an accessory use.**

The Tobacco Merchant is a retail tobacco establishment which has incidental sales of alcohol pursuant to the City of Columbia ordinance on smoking. The City of Columbia passed a smoking ban in 2008. The ban prohibits smoking in public buildings including bars and restaurants. City Ordinance Sec. 8-217 states the following:

**Sec. 8-217. - Prohibition of smoking in the workplace.**

**(a)** All employers shall provide a smoke free environment for all employees working in any work space or workplace as those terms are defined herein. Further, the employer

shall prohibit any persons present in any work space and workplace from smoking tobacco products therein.

(b) No person shall smoke or possess a lighted tobacco product in any work space and workplace.

This ban however permits tobacco retail establishments to have on site smoking, to sell tobacco products and sell items incidental to tobacco products. The city ordinance states the following:

**Sec. 8-818 Exceptions**

Notwithstanding the provisions of section 8-217 herein, smoking may be permitted in the following places or under the following circumstances:

(4) Retail tobacco stores as defined herein:

**Sec. 8-816 Definitions**

*Retail tobacco store* means any establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, *in which the sale of other products is merely incidental*, and in which the entry of persons under the age of 18 is prohibited at all times. *Sec. 8-216*

The Tobacco Merchant clearly follows the city's ordinance by selling beer and wine incidental to the sale of tobacco products. It is uncontested that the sale of beer and wine is incidental. The city admits that the sale of beer and wine is 10% of total sale as opposed to 90% for tobacco products. *See Video of Hearing February 9, 2010*

Moreover, the Tobacco Merchant is a retail tobacco establishment which has incidental sales of alcohol pursuant to the City of Columbia ordinance on accessory use. The appellant's sale of beer and wine is an accessory use pursuant to City Ordinance § 17-55. City Ordinance § 17-55 defines accessory use as follows:

*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.

The evidence presented at the hearing prove that sale of beer and wine is an accessory use to the sale of tobacco at the Tobacco Merchant. First the sale of beer of wine is subordinate to the sale of beer and wine. As stated by Board member Hubbard the sale of tobacco is clearly a primary use as opposed to the sale of beer and wine which is an accessory. *See Video of Hearing February 9, 2010.*

Second the sale of beer and wine is subordinate in area, extent or purpose to the principal building or principal use served. As Board member Hubbard stated a small percentage of the floor is dedicated to this (beer and wine)" *See video of hearing February 9, 2010.* "The dog is tobacco and the tail is drinking and it fits in what the code is trying to say" *See Video of Hearing February 9, 2010* (statement from Board member Hubbard) Moreover the space dedicated specifically to drinking is 300 square feet out of a total square footage of 2,042 square feet. *See Video of Hearing ( statement by Board member Cromatie)* Despite the Zoning administrator's position that the Tobacco Merchant is primarily a drinking establishment. *See Video of Proceeding January 12, 2010* Even the Board Chairperson clarified that the sale of tobacco is the primary use of the Tobacco Merchant. *See Video of Hearing February 9, 2010.*

Third the sale of beer and wine at the Tobacco Merchant is designed for the comfort and convenience of the customer. Moreover tobacco retailers are allowed as a matter of course to sell beer and wine as an accessory in Lexington County, Richland County, City of Charleston and City of Greenville. This practice of selling beer and wine incidental to sale of tobacco in a tobacco retail store is common and accepted. Most importantly as detailed later neither the zoning administrator nor board addressed the issue of accessory use in written orders. Based

upon the facts, law and this argument the sale of beer and wine in this case is an accessory use and the circuit order should be reversed.

**II. The Circuit Court erred in affirming the Zoning Board since the Zoning Board made no specific Findings of Fact and Ruling of Law as required by city ordinance and state law.**

The Zoning Board made do findings of fact and ruling of law and therefore their decision should be reversed. A zoning board's findings of fact are final and conclusive on appeal and should be treated in the same manner as a finding of fact by a jury and the court may not take additional evidence. S.C.Code Ann. § 6-29-840(A) (Supp.2003). Appeal to the Circuit Court is only for a determination of whether the board's decision is correct as a matter of law. On appeal from the circuit court, the Zoning Board's decision should not be interfered with unless it is arbitrary or clearly erroneous. *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 406, 552 S.E.2d 42, 44 (Ct.App.2001); *Rest. Row Assocs. v. Horry County*, 327 S.C. 383, 389, 489 S.E.2d 641, 644 (Ct.App.1997).

In this case the Board' decision is nonexistent and does not consist of any specific finding of fact or rulings of law. City of Columbia Ordinance 17-113 addresses written orders by the Zoning Board and provides "*all findings of fact and conclusions of law shall be separately stated in final decisions or order of the board.*" South Carolina Code Section 6-29-800 also requires that "[a]ll final decisions and orders of the board must be in writing" and that "[a]ll findings of fact and conclusions of law must be separately stated . . . ." S.C. Code Ann. § 6-29-800(F) (Supp. 2003).

This court opined that "[g]enerally, 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." *Id.* at 494, 536 S.E.2d at 899; *cf. Massey v.*

*City of Greenville Bd. of Zoning Adjustments*, 341 S.C. 193, 201, 532 S.E.2d 885, 889 (Ct. App. 2000) (rejecting the use of transcript as final decision).

In the present case, the Board's written order articulated the following: "*Based upon your application, submitted documents, and testimony considered by the Board of Zoning Appeals at January and February 9, 2010 public hearing, and in accordance with §17-1139(a) of the Zoning ordinance, the Board of Zoning Appeals failed to approve your application for Administrative Appeal.*" See R. p.1.

Therefore, in this case the Zoning Board made no findings of fact or conclusions of law at all. Moreover, neither the Zoning Board nor the Zoning Administrator ever addressed the accessory use at all in their written decisions. See *Board Decision and Zoning Administrator's Written Notice*. See R. p. 1 and p. 68. This Court stated in *Austin v Board of Zoning* that:

*"Our decision today, however, should not be interpreted as an indication that state and municipal agencies need not follow the mandate of section 6-29-800 and other statutory provisions requiring fully formed written final decisions. In the present case, the issue raised by Austin to the Board was limited to the narrow factual question of determining which of the two streets had a higher average traffic volume. While an exhaustive written decision may not be warranted when a narrow issue may be addressed succinctly by the Board, further detail will surely be required in more complicated cases. Indeed, thorough written findings and determinations eliminate potential confusion and ensure the will of the Board is accurately transmitted to the affected parties and reviewing courts."*

*Austin v Board of Zoning Appeals*, 362 S.C. 29, 606 SE2d 209 (Ct. App. 2004)

In the present case the issues before the Zoning Board are much more complicated than those facing the Board in the *Austin* case. This case contains complicated issues that should have been addressed in a detailed order. There were a multitude of issues facing the City of Columbia Board of Zoning appeals: 1) whether the Tobacco Merchant is a drinking establishment, 2) whether the city is barred by estoppel to find the Tobacco Merchant a drinking establishment, 3) whether the sale beer and wine is an accessory use.

The written determination of the Board is confusing. The decision of the Board is confusing since there was a tie vote by the Board members and the Board's written order only states that the Appellant's appeal failed. See *Video of February 9, 2010 Hearing and Board's Order*. R. p.1 How can an appellate court make a determination whether there has been an error of law if the Board's finding of fact and rulings of law are not set forth in its opinion/order? In fact the video of the proceeding before the Board illustrate how complicated the issues were. See *Video of Hearings January 12, 2010 and February 9, 2010*. This case was heard on two separate occasions and ultimately the Board vote was a tie. See *Video of Hearings January 12, 2010 and February 9, 2010*

As this Court stated in *Massey v. City of Greenville*:

"However, the Board's decision recorded in the transcript cannot satisfy the legal requirements for a final decision. Section 6-7-740 requires that the Board's final decision be "in writing" with separate findings of fact and conclusions of law. Even if the transcript is considered a "writing," it is virtually indecipherable and does not contain separate findings of fact and legal conclusions. Therefore, the transcript does not meet the statutory requirements of a final decision." *Massey v. Greenville* 335 S.C. 202, 516 S.E.2d 439 (1999);

A one sentence decision by the Zoning Board based upon a tie vote is not sufficient to meet the statutory requirements for findings of fact and rulings of law. Clearly, the Board's order fails to follow the city ordinance or state law and is legally deficient and should be reversed.



**III. The Circuit Court 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.**

The City of Columbia should be stopped from requiring a special exception for drinking since the city approved the business license and appellant relied upon the city to establish their business. A governmental body is not immune from the application of the doctrine of estoppel *where its officers or agents act within the proper scope of their authority* . . . The public cannot be estopped, however, by the unauthorized or erroneous conduct or statements of its officers or agents which have been relied on by a third party to his detriment. *DeStefano v. City of Charleston*, 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (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. *Grant v. City of Folly Beach*, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001). The Tobacco Merchant sought approval from the City Zoning and Business Licensing Divisions, to sell tobacco products and incidental sale of beer and wine in 2009. The Slicers fully informed the city officials they intended to sell beer and wine. After submitting the Business License Clearance Form, the City of Columbia approved the Tobacco Merchant's license as a Cigar Lounge. See *Clearance Form*. R. p. 69. The owners of the Tobacco Merchant subsequently expended thousands of dollars to expand and modify their establishment. As previously stated the Tobacco Merchant relied upon the City in making substantial improvements to its business and relied upon the City's decision to allow them to serve beer and wine the City should be estopped from now asserting that they are a drinking

establishment. There no facts submitted by the City to support a position that any City official made a mistake.

**IV. The Circuit Court erred in affirming the Board ruling that the Tobacco Merchant was a drinking establishment since the ruling violated the appellant's equal protection and due process rights.**

The Equal Protection Clause provides: "No State shall .. deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Equal protection is 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. *Skyscraper Corp. v. County of Newberry*, 323 S.C. 412, 475 S.E.2d 764 (1996); *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990). The determination of whether a classification is reasonable is initially one for the legislative body and will be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it. *Town of Hilton Head Island v. Fine Liquors, Ltd., supra*. "The fact that the classification may result in some inequity does not render it unconstitutional." *Davis v. County of Greenville*, 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994).

In this case evidence was presented that the city treated the Tobacco Merchant differently than other similarly situated businesses for example other retail establishments were allowed to sell beer and or wine without being subjected to city violations. Examples given at the Board hearings were other tobacco stores and retail beer and wine establishments. The city allows these establishments to sell beer and wine but does not pursue them for violations. The city's determination to prosecute some establishments and not others is a violation of the defendant's equal protection rights.

**V. The Circuit Court erred in affirming the Board since the ruling that the Tobacco Merchant is a drinking establishment was effectively a taking without compensation.**

Zoning Board's decision results in a taking of the Tobacco Merchant's property without just compensation in violation of the due process clause of the Fifth Amendment to the United States Constitution because the Board denies the owners an economically viable use of their property.

The Fifth Amendment to the United States Constitution prohibits the taking of private property "for public use, without just compensation." The takings clause applies to the states through the Fourteenth Amendment to the United States Constitution. "[T]he application of a general zoning law to a particular property effects a taking if the ordinance does not substantially advance legitimate [governmental] interests or denies an owner economically viable use of his land." *Agins v. City of Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106, 112 (1980) (*internal citations omitted*).

In this case, the zoning law as applied to the Tobacco Merchant is unconstitutional since it denies the owner an economic viable interest in his land. The city approved the license and the city should not be allowed at this point to damage the owner's economic interest.

**VI. The Circuit Court erred in affirming the Board since the Board erred by not making a decision at all as a result of a tie vote and relying on the zoning administrator decision which denied the Appellant Due Process.**

The Zoning Board's ruling is in essence no ruling at all should be reversed. The Zoning Board's administrative rule which allows for the zoning administrator's decision to effectively serve as the Board's decision is illegal and violates this defendant's due process rights.

Columbia City Ordinance §17-112(1) provides that the Zoning Board *will hear and decide* appeals from decisions of the Zoning Administrator. An indispensable component of procedural due process is that the persons legally responsible for making a decision must be informed and unbiased. *See Garris v. S.C. Reinsurance Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) ("Due process requires an administrative board, when acting in a quasi-judicial capacity, to consider all the evidence before deciding a particular question."). The Board of Zoning Appeals was set up under the city ordinances to provide and rule on appeals.

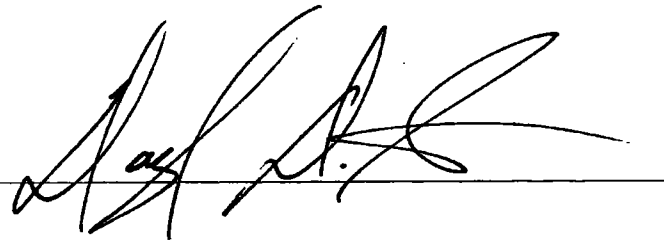
Generally, an administrative agency, board, or commission should act as a body, and, in the absence of a statutory exception, can act officially only in or at a lawfully convened session, if the act is one requiring deliberation or the exercise of discretion or judgment. Except where authorized by statute, the powers and duties of an administrative body may not be exercised by the individual members separately. 73 *C.J.S. Public Administrative Law and Practice* §16 at 384-385 (1983). "In order to be the action of the board, the action must be that of the board as such and not merely the action of the individual members thereof . . . ." 101A *C.J.S. Zoning & Land Planning* § 189 at 560 (1979). *See also* 73A *C.J.S. Public Administrative Law and Practice* §138 at 83 (1983) ("Where the legislature gives quasi-judicial powers to an administrative agency or officer, only the agency or person granted the authority may exercise it, and it has been held that a . . . decision by a person not authorized, notwithstanding approval by an administrative agency or officer, is without legal force and effect."); 56 *Am. Jur. 2d* §155 *Municipal Corporations* § 155 (1971) ("[T]he powers of a municipal council or body must be exercised at a meeting which is legally called. Action of all the members of the council separately is not the action of the council, and an agreement entered into separately by the members of the council outside a regular meeting is not binding.").

By relying on the decision of the Zoning Administrator the Board basically abdicated its statutory duties. The Board's decision should be reversed and remanded.

### CONCLUSION

Based upon the above referenced facts, law and arguments this defendant respectfully request that this court reverse the decision of the Circuit Court.

By: \_\_\_\_\_



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May 17, 2013

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas**

**Judge W. Jeffrey Young, Lexington County**

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**Case No. 2012-212228**

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**Tobacco Merchant,**

**Appellant**

**v.**

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

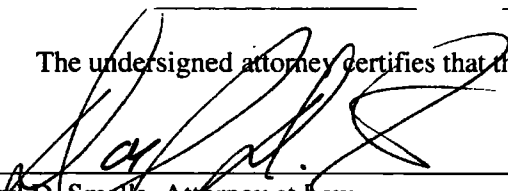
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**Respondent**

**Rule 211 Certification**

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The undersigned attorney certifies that the Final Brief complies with Rule 211(b).

  
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May 17, 2013

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM COURT OF COMMON PLEAS

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CASE No. 2012-212228

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Tobacco Merchant,

Appellant

v.

Respondent

City of Columbia, City Zoning Administrator  
City Board of Zoning Appeals

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**Proof of Service**

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I, the undersigned, attorney for the appellant, do hereby certify that I have served counsel of record with **Appellant's Brief** by mailing a copy of the same by United States mail first class, to the following addresses:

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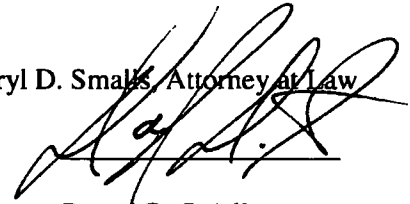
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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2012-212228

Tobacco Merchant ..... Appellant,

v.

City of Columbia Zoning Administrator,  
Board of Zoning Appeals, and City of Columbia. .... Respondents.

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### STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err in affirming the Board of Zoning Appeals' determination that Tobacco Merchant is a drinking place and that the sale of alcohol does not constitute an accessory use?
2. Did the circuit court err in determining that the Board of Zoning Appeals' written decision was sufficient under state and municipal law?
3. Did the circuit court err in denying that the Board of Zoning Appeals be estopped from finding Tobacco Merchant in violation of its zoning classification?
4. Did the circuit court err in finding that the Board of Zoning Appeals did not violate Tobacco Merchant's equal protection and due process rights?
5. Did the circuit court err in denying Tobacco Merchant's claim that the Board of Zoning Appeals' decision constituted a taking?
6. Did the circuit court err in finding that the Board of Zoning Appeals' tie votes did not violate Tobacco Merchant's due process rights?

### STATEMENT OF THE CASE

This is a zoning dispute. The main issue in this case is whether the Tobacco Merchant, a retail tobacco store, can sell beer and wine as an accessory use or whether it should be required to obtain a special exception to operate a drinking establishment.

In September 2009, the City of Columbia Zoning Administrator determined that Appellant Tobacco Merchant's use of its property as a drinking place was not permitted by the City of Columbia Zoning Ordinance. (R. pp. 56-59, 68) Tobacco Merchant appealed the Zoning Administrator's decision to the Board of Zoning Appeals (BOZA). Tobacco Merchant argued that the Zoning Administrator improperly characterized its business as a drinking place.

BOZA conducted two hearings and upheld the Zoning Administrator's determination that the Tobacco Merchant was operating as a drinking place. (R. pp. 184-189, 193-196) Drinking places are not permitted within the subject zoning district without first obtaining a special exception from BOZA. Tobacco Merchant appealed BOZA's decision to the circuit court.

The circuit court heard the appeal of BOZA's decision on February 13, 2012. On April 4, 2012, the circuit court denied Tobacco Merchant's appeal and affirmed BOZA's decision finding that Tobacco Merchant was operating as a drinking establishment in violation of its zoning classification. (R. pp. 3-18) Tobacco Merchant then filed its notice of appeal with this Court.

## STATEMENT OF FACTS

Appellant Tobacco Merchant is a retail tobacco store located in the Harbison area of Columbia and has operated at that location as a cigar and tobacco store since 1997. (R. pp. 23-24 *Videotape of January 12, 2010 hearing of City of Columbia Board of Zoning Appeals* at DVD marker 16:21.) In 2009, William and Jackie Slicer purchased the business and on April 22, 2009, they sought approvals to operate the business in the City. (R. pp. 56, 69) The Zoning Division approved the use of the business as a "cigar store/stand", which is permitted in the C-3 zoning district where Tobacco Merchant is located. (R. pp. 69, 129)

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. (R. pp. 56, 69) This internal use code signifies businesses with the use of "cigar store and stands." City Code, §17-258. (R. p. 257) According to the Table of Permitted Uses, cigar stores and stands are permitted in a C-3 district. (R. p. 257) A Zoning Permit was issued to Tobacco Merchant for a "Tobacco stand." (R. p. 93)

On September 3, 2009, the Zoning Division received a complaint that the Tobacco Merchant was operating as a drinking place. (R. pp. 56, 129) 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. (R. p. 230) It is undisputed that Tobacco Merchant is engaged in the retail sale of alcohol for on-premises consumption. The Zoning Division inspected the location and met with the business owner and his counsel regarding the complaint. The Zoning Division informed the owners of its view that the business was being operated as a drinking place without a special exception. (R. p. 57) A drinking place is permitted in a C-3 district only by special exception. City Code, §17-258. (R. p. 256)



The Zoning Division issued a Written Notice of Violation on September 16, 2009. (R. p. 68) 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.<sup>1</sup> (R. p. 68)

However, rather than apply for a special exception to operate as a drinking establishment, the owner appealed the Zoning Administrator's determination to BOZA. (R. pp. 66, 186) Tobacco Merchant asserted that the Zoning Administrator was in error because "[t]he Tobacco Merchant legally operates as a tobacco retail establishment which has incidental sales [of alcohol] pursuant to the City of Columbia ordinances." (R. p. 66)

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, in addition to its use as a tobacco stand, based upon the sale of alcohol and the amount of area in the building attributed to drinking. The Zoning Administrator 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. (R. pp. 54-55, 75, 77-79, 82, 130). 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. (R. pp. 184-189)

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

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<sup>1</sup> Tobacco Merchant made it clear that to obtain a special exception and operate as a drinking place would put it in violation of the ordinance prohibiting smoking in workplaces. (R. pp. 66, 185-186) See City Code § 8-217. The ban prohibits smoking in public buildings, including bars and restaurants. An exception is made for smoking in retail tobacco stores.

tobacco only whereas approximately 58% of the floor space constituted areas where alcohol could be consumed. (R. pp. 54, 193) The Zoning staff provided photographs of the full bar and also provided a floor plan showing the areas separated for drinking and for retail tobacco sales. (R. pp. 54, 75-85) The blue areas depicted on the floor plan show areas available for drinking. (R. p. 54) The floor plan also shows the location and setup of the bar and seating for the bar containing at least 19 chairs. (R. p. 54)

The owner provided sales figures suggesting that approximately 10% of sales came from alcohol with the other 90% coming from tobacco products. However, Tobacco Merchant admitted that sales figures and customer usage would change depending on the time of day. The owner acknowledged that during the daylight hours the business use was predominantly tobacco sales but as the evening progressed alcohol sales would increase. (R. p. 194) 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. A patron would not be required to purchase tobacco in order to purchase a drink. The owner also acknowledged that nothing would prohibit a patron from bringing his own cigarettes and ordering drinks at the bar. (R. p. 195)

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 or incidental use and that the retail sale of tobacco was the principal use of the location. (R. p. 194).

At the conclusion of the second hearing, a motion was made to reverse the Zoning Administrator's decision and find that the on-site sale and consumption of alcohol 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. (R. pp. 31-33, 52, 196).

## ARGUMENT

“In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.” S.C. Code Ann. § 6-29-840 (Supp. 2012). “Courts are bound to afford substantial deference to the decision of those charged with interpreting and applying local zoning ordinances.” *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (S.C. 2007). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Id.*

**I. The circuit court correctly determined that the Tobacco Merchant is a drinking place and that the sale of alcohol did not constitute an accessory use.**

Tobacco Merchant argues that the circuit court erred in finding that it is a drinking place because it has “incidental sales of alcohol pursuant to the City of Columbia ordinance on smoking.” As will be discussed herein, the question should not be whether alcohol sales are “incidental” pursuant to the smoking ordinance but whether the use of the business as a drinking place is an accessory use to its operation as a tobacco store. The circuit court correctly found that the Tobacco Merchant is a drinking place and that the sale of alcohol did not constitute an accessory use under the City of Columbia zoning ordinances.

A “drinking place” is defined as an “establishment engaged in the retail sale of drink, such as beer, ale or wine for consumption on the premises.” City Code; § 17-55. (R. p. 230) With this definition in mind, it is undisputed that Tobacco Merchant is operating as a “drinking place”. The issue is whether this use is merely an accessory use. Depending on the answer to this question, Tobacco Merchant can either continue serving alcohol without a special exception, or Tobacco Merchant will be required to obtain a special exception from BOZA to continue operating as a drinking place.

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 (emphasis added). (R. p. 228). "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.'" *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 579, 524 S.E.2d 404, 410 (1999). An accessory use is one that is dependent upon or pertains to the principal use and is considered an integral part of the primary use. 8 McQuillin Mun. Corp. §25:151 at 640-1 (3d ed. 2010). "Accessory uses are those which are customarily incident to the principal use." *Whaley*, 337 S.C. at 579, 524 S.E.2d at 410.

Based upon its view of the facts, BOZA upheld the Zoning Administrator's determination that Tobacco Merchant was operating as a drinking place in violation of its zoning classification and that the sale of alcohol for on-premises consumption did not constitute an accessory use to a tobacco shop. In its Order, the circuit court ruled that the facts presented to BOZA "demonstrate that the sale of alcohol is not subordinate to the sale of tobacco" and 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." (R. p. 9)

The following facts were presented to BOZA and reasonably support its decision that the Tobacco Merchant's sale of alcohol did not constitute an accessory use:

- 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 (R. pp. 54, 193);
- the size of the bar area and the number of seats allocated to the bar area (19 seats) (R. p. 54);
- the business advertised the sale of beer on a store-front sign (R. p. 77);
- the business does not require a customer to purchase tobacco in order to purchase alcohol (R. p. 195);
- the business does not restrict the use of tobacco products to those purchased in-house (R. p. 195);
- the sales figures may not accurately describe the character of the business at different times of the day (R. pp. 187, 189);
- the nature of the business changes from day to night (R. pp. 43, 189);
- the sale of tobacco started before the business installed a bar and began serving alcohol (R. pp. 187-188); and
- the bar was installed without obtaining a building permit (R. p. 125).

These facts demonstrate that the circuit court was correct in affirming that Tobacco Merchant's sale of alcohol did not meet the definition for an accessory use. The sale of alcohol for on-premises consumption is not dependent upon the sale of tobacco, nor is it an integral part of the sale of tobacco. Clearly, the ability to buy and consume alcohol in the store is not subordinate to and does not serve the sale of tobacco where the purchase of tobacco is not required to consume alcohol in the store. The sale of alcohol can stand on its own. This is

evident from the amount of space devoted to alcohol sales and use and the fact that a bar area exists with numerous seats available for patrons to enjoy drinks. (R. pp. 54, 56-58, 75-85)

In its brief, Tobacco Merchant attempts to point out statements made by BOZA members regarding the alleged accessory use of the business as discussed during BOZA's hearings on this matter. However, Tobacco Merchant does not dispute the facts presented to BOZA that reasonably support its decision and the circuit court's decision that the sale of alcohol did not constitute an accessory use. Isolated comments or observations made by BOZA members during the hearing do not conclusively show that alcohol sales are an accessory use.

Tobacco Merchant's attempt to set forth differing views and an alternative conclusion regarding accessory use in no way limits or reduces the evidence supporting BOZA's decision. It is certainly acknowledged that others viewing the same facts may come to a different conclusion than that reached by BOZA. However, based on the record as whole, BOZA was presented with evidence upon which it could reasonably conclude that the sale of alcohol did not constitute an accessory use. *See Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999) (stating that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision).

Rather than focus only on whether the sale of alcohol is an accessory use, Tobacco Merchant spends a large part of its argument contending that the sale of alcohol is "incidental" to the sale of tobacco and is thus allowed pursuant to the City's ordinances prohibiting smoking in workplaces. Tobacco Merchant cites to sections 8-217, 8-816 [sic], and 8-818 [sic] of the City of Columbia Code of Ordinances.<sup>2</sup> The smoking ordinances generally prohibit smoking in

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<sup>2</sup> Respondents understand Tobacco Merchant 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*,

workplaces but they make an exception to allow smoking in retail tobacco stores. A "retail tobacco store" is an establishment "whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental . . . ." City Code, § 8-216. 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. BOZA does not have jurisdiction to hear and decide issues related to any ordinances other than zoning ordinances. (R. p. 195) *See* S.C. Code § 6-29-800 (A)(1) (Supp. 2012) (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 the sale of alcohol is not "incidental" to the sale of tobacco products. 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").

Tobacco Merchant points to the ratio of alcohol sales to tobacco sales to support its bald assertion that the sale of alcohol is "incidental" to tobacco sales. Tobacco Merchant does not cite to any law or authority for this proposition. The sales numbers do not support a conclusion that the sale of alcohol is incidental (or an accessory use). The sales numbers tell us nothing about whether one product is dependent on the other product in the zoning context. There is no evidence in this matter that alcohol sales are dependent on the primary use of the business as a

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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).



retail tobacco store. In fact, the evidence shows that alcohol sales are not dependent on tobacco sales where one can patronize the business only for a drink.

Respondents submit that the sales figures are of limited value in determining whether alcohol sales are incidental. Zoning determinations such as in the present case are made based on the use of property; sales figures may not truly reflect how an area is being used.

A narrow approach to incidental or accessory uses relying too much on sales numbers may not adequately take into account the definitional approach of determining an accessory use and whether one use is "customarily incident" to another. *See Whaley*, 337 S.C. at 568, 524 S.E.2d at 410 (finding 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). It is not the numbers that matter but rather how the two uses are dependent on, or affiliated with, one another. Here, there is no evidence that alcohol is dependent on tobacco or that alcohol sales are customarily incident to tobacco sales.<sup>3</sup>

The circuit court's decision upholding BOZA's determination that the sale of alcohol is not an accessory use to a tobacco store should be affirmed.

**II. BOZA's final decision was procedurally and substantively sufficient under state law and municipal ordinances.**

Tobacco Merchant argues that the circuit court should not have affirmed BOZA's decision because BOZA made no specific findings of fact or conclusions of law. However, BOZA's February 24, 2010, final decision conforms to the requirements of state law and local ordinance. The final decision states in relevant part:

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<sup>3</sup> Tobacco Merchant states that tobacco retailers are allowed as a matter of course to sell beer and wine as an accessory use in neighboring jurisdictions and that such practice is common and accepted. App. Br. at 9. These assertions are unsupported by the record and Tobacco Merchant does not cite any authority for these unfounded statements.

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.

(R. p. 52)

Tobacco Merchant argues that South Carolina Code §6-29-800 requires that BOZA make findings of fact and conclusions of law. Section 6-29-800(F) merely requires that final decisions be in writing and on file as a public record and that any findings of fact and conclusions of law be separately stated and delivered to the parties.<sup>4</sup> Moreover,

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. For example, in *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000), this court upheld a circuit court finding that a transcript of a zoning board hearing constituted a sufficient final written decision. On the question of whether the transcript alone could satisfy the statutory requirement of a written decision, the court opined that “[g]enerally, the format of a final decision is immaterial as long as

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<sup>4</sup> “All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.” S.C. Code Ann. §6-29-800(F) (Supp. 2012).

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.”

*Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 34-5, 606 S.E.2d 209, 212 (Ct. App. 2004) (internal citation omitted). In fact, “[t]he minutes normally constitute the BZA’s final findings.” *Wyndham Enterprises, LLC v. City of North Augusta*, 401 S.C. 144, 149, 735 S.E.2d 659, 662 (Ct. App. 2012).

Tobacco Merchant cites *Massey v. City of Greenville Bd. of Zoning Adjustments*, 341 S.C. 193, 532 S.E.2d 885 (Ct. App. 2000), in support of its argument that BOZA failed to issue sufficient findings for a decision. However, *Massey* is inapposite here because the transcript was the only record of the board’s action and the transcript was “virtually indecipherable.” *Id.* at 197, 532 S.E.2d at 889. Such is not the case here. The recordings of the two BOZA hearings are clear and audible and there is no argument that the official minutes are not a good and accurate reflection of the hearings. At no time has Tobacco Merchant objected to the record as insufficient. Nor has Tobacco Merchant requested that a transcript be made of the BOZA hearings.

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. (R. pp. 56-59, 125-126).

In this case, BOZA upheld the Zoning Administrator's decision 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 . . . ." (R. p. 52). The facts upon which BOZA based its decision are adequately set forth in the record presented to the circuit court. Therefore, this Court should hold that BOZA's final decision complied with state law and city ordinances.

**III. BOZA should not be estopped from considering whether the sale of alcohol constituted an accessory use.**

Tobacco Merchant argues that the Respondents should be estopped from enforcing zoning ordinances regarding drinking places because "the city approved the **business license**." App. Br. at 13 (emphasis added).

Tobacco Merchant argues that it sought approval from the City Business License Division and the Zoning Division to sell tobacco products and the incidental sale of beer and wine. Tobacco Merchant claims in its brief that the City "approved the Tobacco Merchant's license as a Cigar Lounge." This is incorrect and there is no evidence in the record to support this statement. Apparently, the Business License Division listed the type of business as a "Cigar Bar/Shop."<sup>5</sup> (R. p. 165) However, there is no evidence in the record that the Business License Division approved the sale of alcohol. There is no evidence that the characterization of the business by the Business License Division was an approval to sell alcohol or that any such approval was recognized by the Zoning Division. The Zoning Division described the use of the property as a "cigar store/stand" on the City forms. (R. pp. 56, 165) The Zoning Division issued a Zoning Permit with a description of the business as a "Tobacco stand." (R. p. 193) The

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<sup>5</sup> There is no evidence in the record of what is meant by either "Cigar Lounge" or "Cigar Bar/Shop."

Business License Division's characterization of this business is not relevant to the Zoning Division's enforcement of zoning ordinances in this matter.

"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, 435 (2003), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005). 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, 692 S.E.2d 499 (2010). However, "[n]o estoppel can grow out of dealings with public officers of limited authority, and the doctrine of equitable estoppel cannot ordinarily be invoked to defeat a municipality in the prosecution of its public affairs because of an error or mistake of . . . one of its officers or agents . . . ." *DeStefano v. City of Charleston*, 304 S.C. 250, 257-8, 403 S.E.2d 648, 653 (1991).

Tobacco Merchant alleges that because it was "approved" by the Business License Division to sell alcohol, the Zoning Division could not prevent it from doing so. However, the Zoning Division is a separate division of City government and cannot be bound by a decision of a different licensing division.

Although the general aim of both zoning and licensing regulations is the promotion of the general welfare, each is independent of the other and seeks to accomplish its purpose by a different means. The fact that a zoning ordinance permits a use in a particular district does not authorize the use there without a license. On the other hand, a license or permit does not authorize a use in violation of zoning laws. In other words, a license or permit does not relieve one from complying with a zoning ordinance, and this generally is true of a state license or permit.

8 McQuillin Mun. Corp. § 25:14 at 62-3 (3d ed. 2010).

In addition to asserting that the Zoning Division should be estopped because the Business License Division issued a license, Tobacco Merchant appears to be claiming that the Zoning Division knew that retail sales of alcohol for on-premises consumption would be conducted as part of the retail tobacco business but that the Zoning Division changed its mind five or six months after issuing the zoning permit. There is no evidence in the record that the Zoning Division knew of intended retail sales of alcohol or that it approved retail sales of alcohol.

According to the facts presented at the hearing, Mrs. Slicer went to the Business License Division in April 2009 and inquired about forms needed for the sale of tobacco and for the retail sale of beer and wine. DVD of Feb. 9, 2010, hearing at 17:19. Counsel for Tobacco Merchant also indicated that Ms. Slicer completed all of the necessary forms and specifically informed City officials that Tobacco Merchant intended to add beer and wine as an “incidental” part of the sale of tobacco products.<sup>6</sup> *Id.* at 17:39. There is no evidence in the record that Ms. Slicer specifically informed the Zoning Division of any plans to sell alcohol. It was confirmed at the hearing that the Zoning Permit was approved **only** as a “cigar store and stand.” *Id.* at 39:53.

In *Quail Hill*, the Court held that a landowner receiving erroneous zoning information from an unauthorized employee was not sufficient to estop the County from enforcing a zoning classification preventing a landowner from developing his property. In that case, the landowner consulted a county subdivision coordinator and the county tax assessor to determine if the zoning classification for his property would allow him to develop a neighborhood of manufactured homes. The county subdivision coordinator and tax assessor erroneously advised the landowner that he could. Based on the fact that the subdivision coordinator and tax assessor were not

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<sup>6</sup> Alternatively, Tobacco Merchant claimed at the hearing that it was the City that completed all of the forms rather than Ms. Slicer. DVD of Feb. 9, 2010, hearing at 21:19.

employees of the zoning division and that the Zoning Administrator was the only authorized county employee to interpret or alter zoning classifications, the Court determined the landowner was given erroneous information by unauthorized individuals and could not rely upon that information to estop the county. *Quail Hill* at 237.

In the present case, Tobacco Merchant makes a similar argument – that the Zoning Division should be estopped from enforcing the C-3 zoning classification restrictions because a different division within City government may have approved the sale of alcohol.<sup>7</sup> *Quail Hill* makes it clear that a party cannot justifiably rely on assertions from unauthorized employees. There is no evidence that Business License Division employees are authorized to speak on behalf of the Zoning Division. Therefore, the Respondents cannot be estopped from enforcing zoning classifications based on any representations or licenses issued by the Business License Division.

The Court in *Quail Hill* also denied estoppel to the landowner because the landowner had the means of knowledge as to the true zoning classification of his property. *Id.* Similarly, Tobacco Merchant did not lack knowledge of the Zoning Division's classification of the use of its business. The Zoning Permit clearly stated that the business was classified as a "Tobacco stand." (R. p. 93). Moreover, the Business License Clearance Form indicates that the business was approved by the Zoning Division only as a "cigar store and stand." (R. p. 69; DVD of Feb. 9, 2010, hearing at 39:53). Tobacco Merchant was not justified in relying upon the Zoning Permit or the Business License Clearance form to think it would be able to install a bar and begin serving alcohol for on-premises consumption.

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<sup>7</sup> Respondents dispute that any City employee or division permitted Tobacco Merchant to sell alcohol. As set forth, the only indication that Tobacco Merchant informed the City of its plans to sell alcohol was the self-serving statement by Tobacco Merchant's counsel that Mrs. Slicer informed City officials. Mrs. Slicer did not testify at the hearing and Tobacco Merchant did not call any witnesses from the Business License Division or the Zoning Division.

Accordingly, the circuit court's decision that the Respondents should not be estopped from enforcing its zoning restrictions against Tobacco Merchant should be affirmed.

**IV. BOZA's classification of Tobacco Merchant as a drinking place did not violate Tobacco Merchant's equal protection or due process rights.<sup>8</sup>**

Tobacco Merchant argues that it has been treated "differently than other similarly situated businesses" such that the Respondents are violating Tobacco Merchant's equal protection rights. However, as correctly found by the circuit court, Tobacco Merchant fails to establish a cause of action for an equal protection violation.

Tobacco Merchant also makes no attempt to explain that it is a member of a class or 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"). In support of its argument that Tobacco Merchant was denied equal protection, Tobacco Merchant simply asserts that its business was treated differently than other similarly situated business. Tobacco Merchant vaguely refers to "other similarly situated businesses." Tobacco Merchant does not explain how the other vaguely-referenced businesses are similarly-situated to the Tobacco Merchant. Nor does Tobacco Merchant explain how the Respondents have treated the alleged similarly-situated businesses. To do so now would be speculative. For instance, the Respondents may have determined, under the facts of other cases, that the sale of alcohol was an

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<sup>8</sup> Respondents assert that Tobacco Merchant's argument concerning equal protection and due process 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). Moreover, Tobacco Merchant's statement of Issue No. 4 asserts that its equal protection **and** due process rights were violated. Tobacco Merchant does not cite any law, authority or facts to support its statement that its due process rights were violated.



accessory use. However, Tobacco Merchant does not provide a record for this Court to make any determination whether any of the other vaguely-referenced businesses are truly similarly-situated or whether the City has treated them differently. More importantly, there is no evidence in the record of a retail tobacco store located in a C-3 zoning district, like Tobacco Merchant, that installed a bar, bar stools, coolers, and TVs, and attempted to conduct retail sales of alcohol for on-premises consumption.

"To prove that a statute has been administered or enforced discriminatorily, more must be shown than the fact that a benefit was denied to one person while conferred on another. A violation is established only if the plaintiff can prove that the state *intended* to discriminate." *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 819 (4th Cir. 1995) Tobacco Merchant fails to argue or establish facts that Respondents denied a benefit to Tobacco Merchant that it conferred on others or that it intended to discriminate against Tobacco Merchant by denying its appeal.

Tobacco Merchant appears to mischaracterize the issue of code enforcement with one of equal protection. The simple fact that the Respondents have enforced zoning ordinances against Tobacco Merchant does not establish a claim for a violation of equal protection. The record shows that the Zoning Division received a complaint and performed an investigation. (R. pp. 56-57). There is no evidence Respondents arbitrarily decided to inspect and cite Tobacco Merchant for a violation of the zoning ordinance. Moreover, Respondents' enforcement of the zoning ordinance against Tobacco Merchant is not conditioned upon every other similarly situated business, if any, being cited at the same time.

Finally, Respondents have not violated Tobacco Merchant's due process rights. The fact that zoning ordinances may create some situations where Tobacco Merchant does not have unlimited free use of its 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.”). Tobacco Merchant has not been deprived of its property or precluded from obtaining beneficial use of the property. There is no dispute that the business may lawfully operate as a retail tobacco store, as it has done since 1997. (R. p. 23)

**V. BOZA’s ruling did not constitute a taking without compensation.**

Tobacco Merchant argues that BOZA’s decision resulted in a taking of Tobacco Merchant’s property without just compensation because Tobacco Merchant has been denied an economically viable use of its property. Respondents assume that Tobacco Merchant is attempting to assert a regulatory takings claim. Tobacco Merchant cites *Agins v. City of Tiburon*, 447 U.S. 255 (1980), in support of its claim. However, the takings test formulated by *Agins* has been abrogated and is not the proper precedent under which to analyze regulatory takings claims. See *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005).

Regulatory takings challenges should be analyzed under the standards set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978). The analysis under *Penn Central* includes “a complex of factors including the regulation’s economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action.” *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). Tobacco Merchant does not set forth any facts and makes no attempt to establish that Respondents have violated any of the factors governing regulatory takings.<sup>9</sup>

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<sup>9</sup> Tobacco Merchant has abandoned this issue by its short and conclusory argument. 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).

On the other hand, Tobacco Merchant has not been precluded from obtaining beneficial use of its property. Its use as a tobacco retail store may continue, just as it did for the thirteen years prior to the Slicers' acquisition of the business.

In addition, Respondents assert that this issue is not ripe for review. Tobacco Merchant seeks to serve alcohol in its establishment. Drinking places are permitted by special exception in the subject zoning district. Tobacco Merchant decided not to seek a special exception to operate a drinking place. (R. pp. 66, 185-186). Tobacco Merchant has not sought, nor been deprived of, a special exception to operate a drinking place. It is entirely possible that Tobacco Merchant could operate a retail tobacco store and a drinking place at the same location. Tobacco Merchant cannot now claim that it has suffered a taking where the use it seeks to establish may be allowed if it made application for a special exception.

**VI. BOZA's tie votes, which had the effect of upholding the Zoning Administrator's decision, did not deny Tobacco Merchant's due process rights.**

As described earlier, at the conclusion of the February 9, 2010, hearing, BOZA entertained two alternative motions concerning the Zoning Administrator's determination that the Tobacco Merchant was operating as a drinking place without a special exception. The first motion sought to overturn the Zoning Administrator's decision. The second motion sought to affirm the Zoning Administrator's decision. Each motion resulted in a tie vote by the count of 3-3. Therefore, pursuant to BOZA's procedural rules, in the event of a tie vote, it will be determined that the issue did not receive the requested relief from BOZA and the appeal will be

denied. (R. pp. 31-33, 52, 196). Tobacco Merchant argues that this procedure violates its right to due process.<sup>10</sup>

Initially, Respondents assert that Tobacco Merchant did not preserve this issue for review. Tobacco Merchant did not object to the tie votes, or to BOZA conducting business with six members. It was incumbent upon Tobacco Merchant to timely object to the procedures employed by BOZA and to the result of the tie votes. Its failure to do so is fatal to this Court's review of the issue. In order to preserve an issue for review, the issue must be raised to and ruled upon by the lower tribunal. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). Moreover, Tobacco Merchant did not request a rehearing.

In any event, BOZA's tie votes did not deprive Tobacco Merchant of due process. BOZA may conduct business if a quorum is present. City Code, § 17-111. (R. pp. 244-245) There is no dispute that a quorum existed to conduct business and to hear Tobacco Merchant's appeal. BOZA is specifically authorized to establish rules of procedure. *See* S.C. Code Ann. § 6-29-800(B) (Supp. 2012) (acknowledging the board's use of its own rules to determine appeals); City Code, § 17-111(b)(1) (authorizing BOZA to establish rules of procedure). (R. p. 245) BOZA has enacted a rule of procedure to govern the situation where a quorum is present to conduct business but where the quorum could result in tie votes. In such a situation, if no affirmative action is taken by BOZA on alternative motions, it will be determined that the appeal did not receive the requested relief, and its effect is to deny the appeal. (R. p. 52).

Tobacco Merchant does not cite any authority to support its argument that BOZA's procedure violates due process. Instead, Tobacco Merchant references general statements of the law prohibiting individual members from exercising a board's powers and duties. It is clear,

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<sup>10</sup> There is no dispute here concerning whether BOZA had the authority to promulgate its own rules of procedure. There is also no dispute concerning the substance of the procedural rule at issue.

however, that BOZA's duties were not carried out by individual members in this instance. There is no dispute or argument that the meeting was not properly called and conducted.

BOZA had the required quorum of its members present in order to conduct business in the instant case. City Code §17-111. Neither of BOZA's two alternative motions to affirm or reverse the Zoning Administrator's decision garnered a majority vote, so by operation of the procedural rule, Tobacco Merchant's appeal was denied. Tobacco Merchant received all of the due process to which it was entitled.

### CONCLUSION

For the reasons stated above, this Court should affirm the decision of the circuit court. BOZA's decision was in all respects proper under state and municipal law. Respondents correctly determined that Tobacco Merchant's sale of alcohol in a C-3 zoning district was not an accessory use and required a special exception.

Respectfully submitted,

By: 

Peter Balthazor, Assistant City Attorney  
S.C. Bar Number 68244

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2012-212228

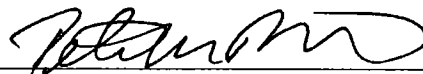
Tobacco Merchant ..... Appellant,

v.

City of Columbia Zoning Administrator,  
Board of Zoning Appeals, and City of Columbia ..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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May 23, 2013  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit court Judge

Case No. 2010-CP-32-01368

Tobacco Merchant, ..... Appellant,

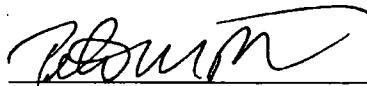
v.

City of Columbia Zoning Administrator,  
Board of Zoning Appeals, and City of Columbia. .... Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents' Final Brief, this proof of service and a certificate of compliance with Rule 211(b), SCACR by depositing a copy of the same in the United States Mail, postage prepaid, on May 23, 2013, at the address below:

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May 23, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Tobacco Merchant, Appellant,

v.

City of Columbia Zoning Administrator, Board of  
Zoning Appeals, and City of Columbia, Respondents.

Appellate Case No. 2012-212228

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Appeal From Richland County  
W. Jeffrey Young, Circuit Court Judge

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Unpublished Opinion No. 2014-UP-305  
Submitted May 1, 2014 – Filed July 30, 2014

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**AFFIRMED**

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Darryl D. Smalls, of Darryl D. Smalls, Attorney at Law,  
of Columbia, for Appellant.

Peter M. Balthazor, of the Columbia City Attorney's  
Office, of Columbia, for Respondents.

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**PER CURIAM:** Tobacco Merchant appeals the circuit court's order affirming the decision of the City of Columbia's Board of Zoning Appeals (the Zoning Board), which upheld the City of Columbia's Zoning Administrator's determination that Tobacco Merchant was operating as a drinking place without a special exception.



On appeal, Tobacco Merchant argues the circuit court erred because: (1) its beer and wine sales constituted an accessory use to its primary use as a retail tobacco store; (2) the Zoning Board's final written decision failed to comply with state law and the City of Columbia's ordinances; (3) the City of Columbia (the City) was estopped from requiring Tobacco Merchant to obtain a special exception to operate a drinking place; (4) the Zoning Board's decision violated Tobacco Merchant's equal protection and due process rights; (5) the determination that Tobacco Merchant was a drinking place was a taking without just compensation; and (6) the Zoning Board's tie votes violated Tobacco Merchant's due process rights. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether Tobacco Merchant's beer and wine sales constituted an accessory use: *Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) ("This [c]ourt will not reverse the [c]ircuit [c]ourt's affirmance of the [zoning board] unless [the b]oard's findings of fact have no evidentiary support or [the b]oard commits an error of law.").
2. As to whether the Zoning Board's final written decision was sufficient: S.C. Code Ann. § 6-29-800(F) (Supp. 2013) ("All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board[,] which must be delivered to parties of interest by certified mail."); *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 34, 606 S.E.2d 209, 212 (Ct. App. 2004) ("[I]t is well-settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions."); *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) ("Generally, 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.").
3. As to whether the City was estopped from requiring Tobacco Merchant to obtain a special exception to operate a drinking place: *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) ("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." (quoting *Greenville Cnty. v. Kenwood Enters.*, 353 S.C. 157, 171, 577 S.E.2d 428, 435 (2003))); *DeStefano v. City of Charleston*, 304 S.C. 250, 258, 403 S.E.2d 648, 653 (1991) ("[A governmental body] cannot be estopped . . . by the unauthorized or erroneous

conduct or statements of its officers or agents which have been relied on by a third party to his detriment." (citation and internal quotation marks omitted)).

4. As to whether the Zoning Board's decision violated Tobacco Merchant's equal protection and due process rights: *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) ("[An] unchallenged ruling, right or wrong, is the law of the case and requires affirmance."); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("[An appellant who] fails to provide arguments or supporting authority for his assertion . . . is deemed to have abandoned [the] issue.").

5. As to whether the determination that Tobacco Merchant was a drinking place was a taking without just compensation: *First Union Nat. Bank of S.C.*, 333 S.C. at 566, 511 S.E.2d at 378 ("[An] unchallenged ruling, right or wrong, is the law of the case and requires affirmance."); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."); *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006) ("[A]n issue that is contingent, hypothetical, or abstract is not ripe for judicial review.").

6. As to whether the Zoning Board's tie votes violated Tobacco Merchant's due process rights: *First Union Nat. Bank of S.C.*, 333 S.C. at 566, 511 S.E.2d at 378 ("[An] unchallenged ruling, right or wrong, is the law of the case and requires affirmance."); *Jones*, 387 S.C. at 346, 692 S.E.2d at 903 ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

**AFFIRMED.**<sup>1</sup>

**FEW, C.J., and SHORT and GEATHERS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas**

**Judge W. Jeffrey Young, Lexington County**

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**Appellate Case No. 2012-212228**

**Opinion No. 2014-UP-305 (S.C. Ct. App. filed July 30, 2014)**

**Tobacco Merchant,**

**Petitioner**

**v.**

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

**Respondent**

---

**PETITION FOR REHEARING OF APPELLANT TOBACCO MERCHANT**

---

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**RECEIVED**

**AUG 13 2014**

**SC Court of Appeals**

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## INTRODUCTION

Pursuant to Rule 221(a) and Rule 240 (i), SCACR the Appellant Tobacco Merchant respectfully petitions this Court for a rehearing of Opinion No. 2014-UP-305 dated, July 30, 2014. Rehearing is warranted when the Court has overlooked or misapprehended an argument. *Kennedy v. S.C. Retirement System*, 349 S.C. 531, 564 S.E. 2d 322 (2001). When the Court fails to address some of the arguments raised in the appeal, "a prima facie case for rehearing has been made." *Covar v. Sallat*, 22 S.C. 265, 272 (1885)

## STATEMENT OF THE CASE

The Tobacco Merchant is a retail tobacco store. The Tobacco Merchant has been in existence for thirteen years. Bill and Jackie Slicer purchased the business in 2009. After purchasing the business, the owners sought approval from the City Zoning and Business Licensing Divisions, to sell tobacco products and incidental sale of beer and wine in 2009. The Slicers fully informed the city officials they intended to sell beer and wine. After submitting the Business License Clearance Form, the City of Columbia approved the Tobacco Merchant's license as a Cigar Lounge. The owners of the Tobacco Merchant subsequently expended thousands of dollars to expand and modify their establishment.

On September 16, 2009, the Zoning administrator cited the Tobacco Merchant for operating a drinking establishment without obtaining a special exception. The Tobacco Merchant appealed to the Zoning Board, which heard the case on two occasions. After the final hearing the Board vote ended in a tie. Three board members agreed with the administrator and

three agreed that the Tobacco Merchant was not a bar but a tobacco store. The administrative rules of the board state that the administrator's ruling would be affirmed if the board vote was a tie. Based on this decision the Tobacco Merchant appealed to the Circuit Court, which affirmed. On appeal this Court affirmed and the petitioner now seeks a rehearing.

## ARGUMENT

**1. The Court Appeals Opinion failed to address the Petitioner's argument 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.**

The Court's opinion failed to address the Petitioner's argument that the Board erred by not making a decision at all because of a tie vote. The Zoning Board's ruling is in essence no ruling at all and should be reversed. The Zoning Board's administrative rule which allows for the zoning administrator's decision to effectively serve as the Board's decision is illegal and violates this defendant's due process rights. An indispensable component of procedural due process is that the persons legally responsible for making a decision must be informed and unbiased. *See Garris v. S.C. Reinsurance Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) ("Due process requires an administrative board, when acting in a quasi-judicial capacity, to consider all the evidence before deciding a particular question."). The Board of Zoning Appeals was set up under the city ordinances to provide and rule on appeals.

Generally, an administrative agency, board, or commission should act as a body, and, in the absence of a statutory exception, can act officially only in or at a lawfully convened session, if the act is one requiring deliberation or the exercise of discretion or judgment. Except where

authorized by statute, the powers and duties of an administrative body may not be exercised by the individual members separately. 73 C.J.S. *Public Administrative Law and Practice* §16 at 384-385 (1983). "In order to be the action of the board, the action must be that of the board as such and not merely the action of the individual members thereof . . . ." 101A C.J.S. *Zoning & Land Planning* § 189 at 560 (1979). See also 73A C.J.S. *Public Administrative Law and Practice* §138 at 83 (1983) ("Where the legislature gives quasi-judicial powers to an administrative agency or officer, only the agency or person granted the authority may exercise it, and it has been held that a . . . decision by a person not authorized, notwithstanding approval by an administrative agency or officer, is without legal force and effect."); 56 Am. Jur. 2d §155 *Municipal Corporations* § 155 (1971) ("[T]he powers of a municipal council or body must be exercised at a meeting which is legally called. Action of all the members of the council separately is not the action of the council, and an agreement entered into separately by the members of the council outside a regular meeting is not binding.").

In this case the Board vote on the Tobacco Merchant issue resulted in a tie. The Board then deferred to the Zoning Administrator's prior decision. By relying on the decision of the Zoning Administrator the Board basically abdicated its statutory duties. The Board's decision should be reversed and remanded since the board failed to exercise its statutory duty.

**2. The Court of Appeals Opinion misapprehends the Petitioner's argument that the Zoning Board erred in their final decision by making no specific finding of fact and ruling of law as required by city ordinance and state law.**

The Court's Opinion addressing whether the final written decision of the Board is sufficient is confusing and misapprehends the Petitioner's argument. The Court's opinion states "generally,

the format of 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 decision is supported by the facts of the case.” The Zoning Board made *no* findings of fact and ruling of law and therefore their decision should be reversed. On appeal from the circuit court, the Zoning Board's decision should not be interfered with unless it is arbitrary or clearly erroneous. *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 406, 552 S.E.2d 42, 44 (Ct.App.2001); *Rest. Row Assocs. v. Horry County*, 327 S.C. 383, 389, 489 S.E.2d 641, 644 (Ct.App.1997).

Moreover, the Zoning Board’s written orders are addressed in City of Columbia Ordinance 17-113 which provides “*all findings of fact and conclusions of law shall be separately stated in final decisions or order of the board*” South Carolina Code section 6-29-800 also requires that “[a]ll final decisions and orders of the board must be in writing” and that “[a]ll findings of fact and conclusions of law must be separately stated . . . .” *S.C. Code Ann. § 6-29-800(F) (Supp. 2003)*.

The court opined that “[g]enerally, 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.” *Id.* at 494, 536 S.E.2d at 899; *cf. Massey v. City of Greenville Bd. of Zoning Adjustments*, 341 S.C. 193, 201, 532 S.E.2d 885, 889 (Ct. App. 2000) (considering use of transcript but rejecting in part because it was virtually indecipherable).

The City of Columbia’s Zoning Board’s written order articulated the following: “*Based upon your application, submitted documents, and testimony considered by the Board of Zoning Appeals at January and February 9, 2010 public hearing, and in accordance with §17-1139(a)*



*of the Zoning ordinance, the Board of Zoning Appeals failed to approve your application for Administrative Appeal."*

Therefore, in this case the Zoning Board made no findings of fact at all. Moreover, neither the Zoning Board nor the Zoning Administrator ever addressed the accessory use at all in their written decisions. *See Board Decision and Zoning Administrator's Written Notice.* This Court stated in *Austin v Board of Zoning* that:

*"Our decision today, however, should not be interpreted as an indication that state and municipal agencies need not follow the mandate of section 6-29-800 and other statutory provisions requiring fully formed written final decisions. In the present case, the issue raised by Austin to the Board was limited to the narrow factual question of determining which of the two streets had a higher average traffic volume. While an exhaustive written decision may not be warranted when a narrow issue may be addressed succinctly by the Board, further detail will surely be required in more complicated cases. Indeed, thorough written findings and determinations eliminate potential confusion and ensure the will of the Board is accurately transmitted to the affected parties and reviewing courts." Austin v Board of Zoning 606 SE2d 209*

In the present case the issues before the Zoning Board are much more complicated than those facing the Board in the *Austin* case. This case contains complicated issues that should have been addressed in a detailed order. There were a multitude of issues faces the Columbia Board of Zoning appeals: 1) Whether the Tobacco Merchant is a drinking establishment, 2) whether the city is barred by estoppel to find the Tobacco Merchant a drinking establishment, 3) Whether the sale beer and wine is an accessory use.

The written determination of the Board is confusing. The decision of the Board is confusing since there was a tie vote by the Board members and the Board's written order only states that the Appellant's appeal failed. How can an appellate court make a determination whether there has been an error of law if the Board's finding of fact and rulings of law are not set forth in its

opinion/order? In fact the video of the proceeding before the Board illustrate how complicated the issues were. *See Video of Proceedings* This case was heard on two separate occasions and ultimately the Board vote was a tie. *See Video of Proceedings* Clearly, the Board's order fails to follow the city ordinance or state law and is legally deficient and should be reversed.

**3. The Court of Appeals Opinion misapprehends the Petitioner's argument the city is 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**

The City of Columbia should be stopped from requiring a special exception for drinking since the city approved the business license and appellant relied upon the city to establish their business. The Tobacco Merchant sought approval from the City Zoning and Business Licensing Divisions, to sell tobacco products and incidental sale of beer and wine in 2009. The Slicers fully informed the city officials they intended to sell beer and wine. After submitting the Business License Clearance Form, the City of Columbia approved the Tobacco Merchant's license as a Cigar Lounge. The owners of the Tobacco Merchant subsequently expended thousands of dollars to expand and modify their establishment. As previously stated the Tobacco Merchant relied upon the City in making substantial improvements to its business and relied upon the City's decision to allow them to serve beer and wine the City should be estopped from now asserting that they are a drinking establishment.

**4. The Court of Appeals' opinion misapprehends the Petitioner's argument 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**

The Court of Appeals' opinion misapprehends the Petitioner's argument 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. The Equal Protection Clause provides: "No State shall .. deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Equal protection is 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. *Skyscraper Corp. v. County of Newberry*, 323 S.C. 412, 475 S.E.2d 764 (1996); *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990). The determination of whether a classification is reasonable is initially one for the legislative body and will be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it. *Town of Hilton Head Island v. Fine Liquors, Ltd.*, *supra*. "The fact that the classification may result in some inequity does not render it unconstitutional." *Davis v. County of Greenville*, 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994).

In this case evidence was presented that the city treated the tobacco merchant differently than other similarly situated businesses for example other retail establishments were allowed to sell beer and or wine without being subjected to city violations. Examples given at the Board hearings were other tobacco stores and retail beer and wine establishments. The city allows these establishments to sell beer and wine but does not pursue them for violations. The city's

determination to prosecute some establishments and not others is a violation of the defendant's equal protection rights.

**5. The Court of Appeals' opinion misapprehends the Petitioner's argument that the Tobacco Merchant should not be ruled a drinking establishment since the city ordinance and state law provide specifically that that sale of beer and wine is subordinate to the principal use and incidental to the sale of tobacco products.**

The Court's Opinion states the court will not reverse the Circuit Court affirmance of the zoning board unless the board's findings of fact have no evidentiary support or the board commits an error of law. As previously argued the Board's order cites no findings of fact at all to support their position. Moreover, the Board's failure to present any findings of fact in its order is an error at law. The undisputed facts are the Tobacco Merchant is a retail tobacco establishment, which has incidental sales of alcohol pursuant to the City of Columbia ordinance on smoking.

*Retail tobacco store means any establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times. Sec. 8-216*

The Tobacco Merchant clearly follows the city's ordinance by selling beer and wine incidental to the sale of tobacco products. It is uncontested that the sale of beer and wine is incidental. The city admits that the sale of beer and wine is 10% of total sale as opposed to 90% for tobacco products.

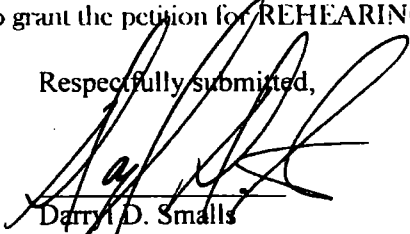
Moreover, the Tobacco Merchant is a retail tobacco establishment, which has incidental sales of alcohol pursuant to the City of Columbia ordinance on accessory use. The appellant's sale of beer and wine is an accessory use pursuant to City Ordinance§ 17-55. The facts are that the Tobacco Merchant has followed and complied with the City's ordinance. The Board's order does not cite nor does the Court of Appeals Opinion cite any facts to support a position otherwise.

### CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for REHEARING

Respectfully submitted,

August 13, 2014



Darryl D. Smalls  
Post Office Box 212724  
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(803) 727-6288  
Attorney for Petitioner

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

**APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas**

**Judge W. Jeffrey Young, Lexington County**

**Appellate Case No. 2012-212228**

**Opinion No. 2014-UP-305 (S.C. Ct. App. filed July 30, 2014)**

**Tobacco Merchant,**

**Petitioner**

**v.**

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

**Respondent**

**CERTIFICATE OF SERVICE**

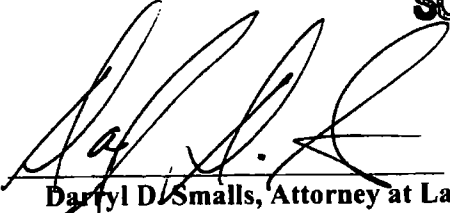
I hereby certify that on this date I served copies of the Petition for Rehearing of Appellant Tobacco Merchant on counsel for all parties by placing copies of same in the United States Mail, first-class postage prepaid, address to:

**RECEIVED**

**AUG 13 2014**

Other Counsel of Record:  
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Post Office 667  
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**SC Court of Appeals**

  
**Darryl D. Smalls, Attorney at Law**

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**Attorneys for Appellant Tobacco Merchant**

8/13, 2014

# The South Carolina Court of Appeals

Tobacco Merchant, Appellant,

v.

City of Columbia Zoning Administrator, Board of  
Zoning Appeals and City of Columbia, Respondents.

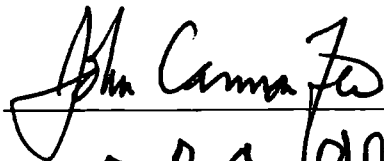
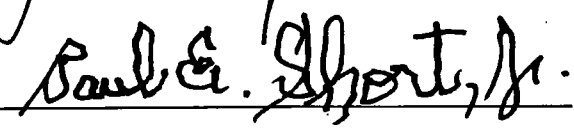
Appellate Case No. 2012-212228

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_  
J.

Columbia, South Carolina

cc:

Darryl D. Smalls, Esquire

Peter M Balthazor, Esquire

**FILED**

September 18, 2014